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The C-Suite in the Crosshairs: Federal Prosecutors Are Primed to Target Corporate Executives

by Wayne R. Gross and Howard M. Privette

The first major policy initiative launched by the Department of Justice under new Attorney General Loretta Lynch is clear and unequivocal. In a September 9,

2015, memorandum, Deputy Attorney General Sally Quillian Yates declared that “one of the most effective ways to combat corporate misconduct is by seeking accountability from the individuals who perpetrated the wrongdoing.”ⁱ The Yates Memo reveals that Justice Department attorneys are now operating under a top-level directive to “focus on individuals” in all cases involving allegations of “corporate fraud and misconduct.”

It is imperative that corporate counsel and other corporate officers and directors consider and understand the potential consequences of the six policy points set forth in the Yates Memo. These policies reflect a renewed emphasis by the Justice Department on investigating and charging corporate employees, officers, and directors. Briefly summarized, the six policies set forth in the Yates Memo are:

- ▶ To be eligible for any credit for cooperating with a government investigation, a corporation must provide the government with “all relevant facts about the individuals involved in corporate misconduct.”
- ▶ Both criminal and civil corporate investigations should focus on individuals from the inception of the investigations.
- ▶ Criminal and civil attorneys handling corporate investigations for the government should be in routine communication with each other.
- ▶ Except in “extraordinary circumstances,” no settlement or other resolution by a corporation will be allowed to provide protection for any individuals from criminal or civil liability.
- ▶ Investigations and cases involving corporations should not be resolved without a clear plan by government attorneys to resolve related individual cases.
- ▶ Civil attorneys for the government should consistently focus on individuals as well as the corporation and should evaluate whether to file a lawsuit against an individual based on considerations beyond that individual’s ability to pay.

For the companies themselves, the first of these policies may be the most relevant. Companies that learn of potential legal violations face important decisions about whether and how to alert and inform the relevant authorities. Under existing policies and practices of the Justice Department and the SEC, for example, companies that self-report violations may receive “credit” for “cooperation” when decisions are later made about whether and how to bring charges or to seek penalties and damages for those violations. Under the Yates Memo, however, a company will not receive **any** “credit” from the Justice Department unless it first “completely disclose[s] to the Department all relevant facts about individual misconduct.” This new policy requires the company to “identify all individuals involved in or responsible for the misconduct at issue, regardless of their position, status or seniority, and provide to the Department all facts relating to that misconduct.” Indeed, Ms. Yates was quite blunt about the new policy in a speech delivered the day after issuing her memo: “It’s all or nothing. No more picking and choosing what gets disclosed. No more partial credit for cooperation that doesn’t include information about individuals.”ⁱⁱ

Beware Internal Conflicts

In light of this policy, corporate counsel confronting the need to conduct an internal investigation or respond to a government inquiry must be particularly cognizant of potential conflicts within the company. For example, the new policy underscores the importance of involving independent counsel, not in-house counsel, to conduct internal investigations. Moreover, individuals within the company whose potential exposure warrants their own counsel should be permitted to engage counsel separate from that of the company. Failure to successfully navigate the potential conflicts at the outset can lead to problems downstream for the company, not only for the individuals but also for corporate counsel who, absent the implementation of proper steps, may be perceived as not representing their client – the company – but rather the executives and employees of the company.

For individual officers and directors of a company (including corporate counsel who might be swept up in an investigation), the Yates Memo is quite sobering. The number of cases brought against individual defendants has risen significantly in recent years. For example, on a year-to-year basis from 2013 through 2015 the SEC has been steadily pursuing an increasing number of claims against public company officers and directors. The Yates Memo reflects a similar effort by the Justice Department, which will undoubtedly produce a corresponding increase in the number of individuals subject to criminal prosecutions. Furthermore, the Justice Department brings or coordinates claims on behalf of the federal government in a wide variety of civil matters (such as antitrust cases and those brought under the False Claims Act). The Yates Memo instructs the Department’s civil lawyers to focus increasingly on individuals, even where those individuals might not have the financial ability to pay a judgment. All of this makes clear that federal law enforcement is expressly seeking to “send a message” of accountability and deterrence to those who work in the private sector.

Corporate officers face an increasingly complex set of everyday challenges to remain compliant with the laws and regulations that govern today’s marketplace, whether when engaging in business overseas under the umbrella of the Foreign



Corrupt Practices Act, seeking payment from the government for goods and services, reporting test results to the FDA, or participating in any other business activity that is subject to

government scrutiny. When questions are raised about potential violations, whether through an internal tip or an outside inquiry, they must be taken seriously. Individual officers and employees should work with corporate counsel to assist the company in such cases, but those individuals (including corporate counsel themselves) should also take prudent steps to ensure that their own interests will be protected by, for example, engaging their own separate counsel in appropriate circumstances.

A Proactive Approach

The Yates Memo reflects that companies must evaluate what measures to have in place to protect the company *and* its directors, officers, and employees. A proactive approach often produces the best antidote. Companies should implement robust and properly tailored ethics and compliance programs and adequately document management’s efforts to set an appropriate “tone at the top.”

Companies should also evaluate the amount and quality of insurance available to reduce the burden of internal and external investigations as well as any resulting litigation. For example, sufficient directors’ and officers’ liability insurance may be needed to pay for the increased costs of the individuals’ separate counsel. Furthermore, companies should work with their insurance professionals to clarify relevant policy provisions, such as the trigger for coverage under such insurance (e.g., will insurance cover only “formal” proceedings?). Individuals should ensure that the company’s indemnity obligations are clear and properly formalized, and also make sure that the company provides or makes available adequate insurance that would cover them for non-indemnifiable claims.

In conclusion, it would be a mistake to interpret the Yates Memo as nothing more than a public relations effort in response to criticism that the government did not effectively pursue individuals who were responsible for the 2007 financial crisis. Though the Justice Department is intent on changing public perception, noting that one purpose of these new policies is to “promote the public’s confidence in our justice system,” the Yates Memo also makes clear that the Department will be taking concrete steps to implement and energize its “focus on individuals.” Notably, the Yates Memo directs that formal changes will be made to the Justice Department’s written policies and manuals to reflect the six points articulated in the memo. It also states that the Department will conduct formal training sessions for its attorneys to help “turn these policies into everyday practice.” In sum, the Yates Memo constitutes nothing less than a grave warning to companies and especially to the individuals who serve them.

ⁱ Sally Quillian Yates, Memorandum re: Individual Accountability for Corporate Wrongdoing (U.S. Department of Justice September 9, 2015), available at <http://www.justice.gov/dag/file/769036/download>

ⁱⁱ “Deputy Attorney General Sally Quillian Yates Delivers Remarks at New York University School of Law Announcing New Policy on Individual Liability in Matters of Corporate Wrongdoing” (September 10, 2015), available at <http://www.justice.gov/opa/speech/deputy-attorney-general-sally-quillian-yates-delivers-remarks-new-york-university-school>

Wayne R. Gross

Wayne Gross is a highly respected trial attorney who regularly handles high-stakes business litigation for major companies and top executives in their most important matters. He is a founding partner of Greenberg Gross LLP, where he focuses on trial practice, complex civil litigation, and white-collar defense. He previously served as Chief of the U.S. Attorney’s Office in Orange County and prosecuted cases of national and international significance. Mr. Gross can be contacted at wgross@ggtriallaw.com or 949.383.2800.



Howard M. Privette

Howard Privette is a partner in the Securities Litigation and Enforcement practice of Paul Hastings LLP. An accomplished trial lawyer, Mr. Privette focuses his practice on representing corporations and their officers and directors in shareholder litigation, successfully defending dozens of securities class actions and derivative lawsuits involving issues of financial restatements and alleged GAAP violations, insider trading, earnings and product development disappointments, mergers and acquisitions, executive compensation, and other corporate governance matters. He also assists clients in sensitive internal investigations and in response to inquiries and litigation by the SEC, DOJ, and other regulators. Mr. Privette can be contacted at 714.668.6201 or howardprivette@paulhastings.com.



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SEC Proposes New Clawback Rule

by Chris Del Rosso, Wayne Jacobsen and Jeff Walbridge, O'Melveny & Myers LLP

On July 1, 2015, the SEC proposed a new rule which requires public companies to adopt, disclose and comply with a new mandatory clawback policy (the "Proposed Rule").

While the clawback policy and other requirements contained in the Proposed Rule will not be effective until after the SEC publishes the final version of the rule, the Proposed Rule reflects the SEC's current thinking and, most importantly, provides that clawback may potentially apply to compensation granted before the effective date of the final rule.

New Clawback Policy Requirements

The Proposed Rule requires public companies to adopt and comply with a written clawback policy providing that, in the event the company is required to prepare an accounting restatement due to the material noncompliance of the company with any financial reporting requirement under the securities laws, the company will recover the amount of erroneously awarded incentive-based compensation.

The key requirements of the Proposed Rule's clawback policy are highlighted below:

► **Restatement Trigger:** Recovery under the clawback policy is only triggered if a covered accounting restatement has occurred. An accounting restatement is defined as the result of the process of revising previously issued financial statements to reflect the correction of one or more errors that are material to those financial statements. In order to trigger application of the clawback policy, the company must be required to prepare an accounting restatement to correct a material error. Changes to previously issued financial statements that do not represent error corrections would not trigger a clawback (e.g., retrospective changes due to a change in accounting principles, discontinued operation reclassification or change in reporting entity would not trigger a clawback).

► **Covered Executives:** The universe of executives potentially subject to clawback is the company's "executive officers." The definition of "executive officer" is modeled after the definition of "officer" used for Section 16 purposes, so that all of the company's Section 16 executives will potentially be subject to clawback.

► **Covered Incentive-Based Compensation:** Compensation is potentially subject to clawback if it is incentive-based compensation that is granted, earned or vested based wholly or in part upon the attainment of a financial reporting measure. Financial reporting measures include measures that are determined and presented in accordance with the accounting principles used in the company's financial statements (such as revenues, net income or operating income), any measures derived wholly or in part from such financial information (such as EBITDA, FFO, return on invested capital or assets, working capital or relative performance against a peer group or index where performance is measured based on such financial information), and stock price and total shareholder return. Equity awards such as options or stock units would only be subject to clawback if the awards are either granted, earned or vested based wholly or in part upon the attainment of a financial reporting measure. Time-based equity (and cash) awards that vest based solely on continued employment, as well as discretionary cash (or equity) bonuses, are not subject to clawback.

► **Covered Time Period:** Recovery under the clawback policy generally applies to covered incentive-based compensation that is received during the three completed fiscal years immediately preceding the date the company is required to prepare a covered accounting restatement (e.g., if a company is required to prepare a covered restatement in fiscal 2018, clawback would apply to covered incentive-based compensation received in fiscal 2017, 2016 and 2015). For these purposes, compensation is treated as received in the company's fiscal period when the applicable financial reporting measure is attained (even if payment occurs in a later period or the award is subject to additional time-based vesting requirements after the financial reporting measure is attained). Recovery under the clawback policy only applies to compensation received while the company is public.

► **Amount of Erroneously Awarded Compensation:** Recovery under the clawback policy applies to erroneously awarded compensation, which is defined to mean the amount of covered incentive-based compensation received that exceeds the amount of compensation that otherwise would have been received had it been determined based on the accounting restatement. For example, if an

executive earned a \$1,000,000 bonus based on EBITDA performance as originally reported and would have earned a \$750,000 bonus based on EBITDA performance as corrected in the restatement, the recoverable amount would be \$250,000. For compensation based on stock price or total shareholder return where the amount of erroneous compensation is not subject to mathematical recalculation (because the company is required to determine the stock price impact of the restatement), companies must use a reasonable estimate of the recoverable amount. Importantly, the recoverable amount is determined on a pre-tax basis without giving effect to any taxes already paid by the executive on the recoverable amount.

► **Limited Board Discretion:** Companies are required to recover erroneously awarded compensation regardless of whether the executive had any responsibility for the covered restatement (i.e., it's a no-fault standard). There is a limited "impracticability" exception. However, we don't expect this exception to apply often in practice.

► **No Indemnification:** Companies are prohibited from indemnifying executive officers against the loss of erroneously awarded compensation and from paying or reimbursing executives for the premiums of an insurance policy that would cover these losses.



Chris Del Rosso



Wayne Jacobsen



Jeff Walbridge

New Disclosure Requirements

The Proposed Rule contains new disclosure requirements. Companies will be required to file their clawback policies as exhibits to their annual reports. In addition, new disclosures will be required for companies that actually have a covered accounting restatement.

Very Limited Number of Exempted Companies

The Proposed Rule applies to virtually all public companies, including JOBS Act emerging growth companies, smaller reporting companies, foreign private issuers and controlled companies.

What You Can Do

Our thoughts on some implementation considerations and potential action items are highlighted below:

► **Companies Should Review Executive Officer Determinations.** All of a company's Section 16 executives will potentially be subject to clawback under the Proposed Rule. In light of this application of the clawback rules, companies should review their executive officer determinations now to confirm that all individuals classified as executive officers are appropriately classified based on their current functions.

► **Companies Should Review Current Incentive-Based Compensation Agreements.** It is possible that compensation awarded prior to the effective date of the final rule could nevertheless be subject to clawback. For this reason, companies should confirm that their existing incentive-based compensation award agreements or terms provide them with a legal right to clawback compensation amounts that are subject to clawback under the rule, and if not, make the appropriate changes to preserve these rights.

► **Companies Should Consider Bifurcating Certain Awards.** Under the Proposed Rule, incentive-based compensation is subject to clawback if it is granted, earned or vested based wholly or in part upon the attainment of a financial reporting measure. In the adopting release, the SEC notes that if 60% of the target amount of an award is earned based on the attainment of a financial reporting measure and 40% is not, 100% of the award would be subject to clawback. For cash or equity awards that are designed to include both a financial reporting measure and some "other" component (such as a non-financial- or time-based or discretionary component), in order to minimize clawback exposure, it appears advisable to bifurcate the awards so that they can be treated as separate awards where no part of the "other" component can be viewed as being tied to a financial reporting measure.

► **Review Clawback Policies.** For companies that have already adopted clawback policies, it will likely be beneficial to identify the material gaps between the terms of the current policy and the Proposed Rule. However, since the SEC has requested comments on more than 100 items under the Proposed Rule, we expect that most companies will not formally update their policies until after the final rule is adopted.

Chris Del Rosso, Wayne Jacobsen and Jeff Walbridge are partners in the Newport Beach office of O'Melveny & Myers LLP. The opinions expressed in this article do not necessarily reflect the views of O'Melveny or its clients, and should not be relied upon as legal advice. For questions, please contact Chris Del Rosso at cdelrosso@omm.com, Wayne Jacobsen at wjacobsen@omm.com, or Jeff Walbridge at jwalbridge@omm.com.

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California Fair Pay Act Amended with Passage of Senate Bill 358

by Christopher Olmsted, Shareholder, Ogletree Deakins

The California Fair Pay Act (FPA), a state law that codifies the principle that an employee is entitled to equal pay for equal work without regard to gender, has been amended with the passage of Senate Bill 358 (SB 358), which Governor Jerry Brown signed October 6, 2015.

California's FPA was originally enacted in 1949. Before SB 358 went into effect, the California FPA, codified at Labor Code section 1197.5, provided that an employer may not pay an employee at rates less than that paid to employees of the opposite sex in the same establishment for equal work on equal jobs. The California FPA closely tracked the federal Equal Pay Act (EPA), and some state courts have relied on analogous federal precedential rulings to interpret the law.

SB 358 makes several changes to the FPA. Most notably, the bill changes terminology to permit an employee to prove that he or she received lower wages for "substantially similar" work, clarifies the employer's burden to demonstrate that a wage disparity is based on some legitimate factor other than sex, and prohibits employers from interfering with employees' ability to discuss and share information about their wages. The effect is to make it much more difficult for employers to defend against such actions.

"Equal" Changed to "Substantially Similar"

Before it was amended, the FPA required employers to pay employees of the opposite sex equivalent wages for "equal work on jobs the performance of which requires equal skill, effort, and responsibility." SB 358 changes "equal work" to "substantially similar work" when viewed as a composite of skill, effort, and responsibility.

The new "substantially similar" standard resembles language found in federal regulations interpreting the federal EPA. Those regulations provide that the jobs need not be identical to constitute "equal work"; they need only be "substantially equal." Some California courts have relied on the federal regulations to interpret the California FPA, so this revision may not be a significant departure from existing law.

Legislative analysis noted that this change is designed to prevent an employer that is subject to a wage discrimination challenge under the FPA from defeating a claim by simply arguing that the jobs performed by persons of opposite sex were not "equal" in every way. The amended law does not define "substantially similar," but plaintiffs' attorneys are certainly expected to contend that minor differences are not enough to justify substantial pay disparities.

"Same Establishment" Dropped

The pre-amendment law required that wage discrimination claims be based on a comparison of the wages of male and female employees "in the same establishment." SB 358 drops that requirement. The effect is that an employee may draw distinctions between his or her pay and the pay of opposite sex employees performing substantially similar work at other work sites to show pay disparity.

Legislative commentary pointed out that under existing law, if a female manager at a department store discovered that a similarly situated male manager at a branch across town earned higher wages, she could not invoke the protection of the FPA because she and the male manager did not work at the "same establishment."

Of course, geography itself may explain a pay differential. Some locations are busier or more profitable than others. The supply of talented job candidates may be tighter in one region than another. The cost of living may be higher in certain metropolitan areas than in other areas. Numerous other factors could explain differences in pay from one location to the next. The amendment invites scrutiny of these nuances and will undoubtedly lead to greater complexities in equal pay claims.

Employer's Burden of Proof Redefined

The California EPA recognizes that an employer may justify pay differentials based on a seniority system, a merit system, a system that measures earnings by quantity or quality of production, or a differential based on any bona fide factor other than sex. SB 358 elaborates on what qualifies as a "bona fide factor other

than sex." The newly-added language specifies that this factor "shall apply only if the employer demonstrates that the factor is not based on or derived from a sex-based differential in compensation, is job related with respect to the position in question, and is consistent with a business necessity." Each factor must be applied "reasonably." The statute does not specify what is a reasonable application. Notably, the one or more factors relied upon must account for the entire wage differential.

A "business necessity"—according to SB 385—means an "overriding legitimate business purpose such that the factor relied upon effectively fulfills the business purpose it is supposed to serve." The amendment includes the caveat that this defense will not apply "if the employee demonstrates that an alternative business practice exists that would serve the same business purpose without producing the wage differential."

This language clarifies that establishing a bona fide factor other than sex is the employer's burden of proof. Some federal courts have already held that employers bear this burden under the federal EPA.

Employee Disclosure of Wage Information

The amended law gives employees the right to discuss their own wages and to ask other employees about pay. This is not a significant change to California law because Labor Code section 232 already prohibits an employer from conditioning employment on the demand that an employee refrain from disclosing the amount of his or her wages or discriminating against an employee for making such a disclosure. Neither the existing nor amended Labor Code requires an employer to disclose employees' wages to other employees.

Practical Tips

Review Pay Practices. As always, employers must avoid making pay decisions based on sex or any other protected category. Ensure that your company's pay scale is fair, consistent, and lawful. Consider implementing a written policy regarding pay policies. Train managers and supervisors regarding pay raise practices.

Audit Pay Levels. Certainly there are legitimate reasons for differences in pay. Experience, training, skill, demand in a particular market, cost of living, seniority, and many other relevant factors can be taken into account. Consider implementing a structured compensation policy. Determine the rationale for pay differentials.

Keep Records. Review your record-retention policies relating to pay and personnel records. Past pay decisions may be scrutinized if an employee files an FPA claim. Why was Employee-A given a 2 percent raise in 2013 while Employee-X, Employee-Y, and Employee-Z received a 4 percent raise? You will need records to support each such pay decision.

In short, employers should ensure that they can show that their pay policies are structured in such a way that any pay differential between two similar jobs is based on job-related factors. This can be achieved by identifying "substantially similar" jobs and defining valid differentiators such as seniority, performance, education, training, experience, geographic variations, and the like. Given the complexity of this law, prudent employers will work to devise a system that ensures employees are paid fairly and without regard to gender.

Christopher Olmsted

Christopher Olmsted is a shareholder in the San Diego office of Ogletree Deakins. Ogletree Deakins is one of the largest labor and employment law firms representing management in all types of employment-related legal matters. The firm has 750 attorneys located in 48 offices across the United States, in Europe, and in Mexico. California locations include Orange County, Los Angeles, San Francisco, and San Diego. Ogletree Deakins has been named a Law Firm of the Year four consecutive years by *U.S. News – Best Lawyers*® "Best Law Firms." Contact him at 858.652.3111 or christopher.olmsted@ogletreedekins.com.



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Let's Arbitrate – or Not: Advantages and Disadvantages of Employment Arbitration

by Edson McClellan, Partner, and Kenneth Zielinski, Associate, Rutan & Tucker LLP

California courtrooms are daunting to companies sued for discrimination, harassment, or other employment claims. Studies show that California employers face a higher level of exposure to employment claims than any other state. Headlines routinely report California juries returning multi-million dollar verdicts against employers.

Not all employment disputes, however, must be resolved in a courtroom. If an employer and an employee agree, they can resolve their dispute in arbitration. While it may seem self-evident that an employer would prefer arbitration over civil litigation in all cases to avoid the whims and prejudices of a California jury, in actuality arbitration is a mixed bag for employers. This article reviews some of those advantages and disadvantages.

What Is Arbitration?

Disputes in arbitration are resolved by a neutral third-party, the arbitrator, who hears and assesses the evidence just like a judge or jury would. Many arbitrators are former judges, although it is not necessary that arbitrators be former judges, or even that they be attorneys, so long as the parties agree on the arbitrator. The parties in an arbitration have the opportunity to present witnesses and other evidence, just as they would in court.

While arbitration is a formal process, the rules and procedures are generally less formal than in court, particularly as it relates to the rules of evidence. Arbitrators are generally more lax with the admission of evidence, admitting hearsay and other evidence that would be excluded in a courtroom. Witnesses in arbitration testify under oath, just as they would in court. At the end of the case, the arbitrator issues a decision, which the winner can then seek to have converted into a civil judgment.

Arbitration Advantages for the Employer

No "Runaway Jury" Award: Arbitrators are usually former judges or retired attorneys, who are less likely than a jury to become inflamed by an employer's conduct and seek to punish the employer. Juries tend to bring more emotion and more collective anti-employer bias to their decision-making. As a result, arbitrators are typically less likely than juries to issue large punitive or emotional distress damages awards.

Confidentiality: Employment disputes often involve embarrassing facts, which the employer would prefer to keep private. One of the key advantages to arbitration for employers is the privacy it affords. Unlike court actions, arbitration proceedings and decisions normally do not become a matter of public record. Thus, if an employer were to lose an arbitration, it is less likely that other employees or plaintiffs' counsel would learn of the outcome and file copycat suits.

Expedient, Convenient, Less-Expensive Forum: Generally, arbitrations are scheduled, conducted, and concluded more quickly and less expensively than in court, especially since the State's budget crisis has lengthened delays in the courtroom. The reason arbitration is generally faster and cheaper is that arbitrators can cut through the red tape and procedures involved in court cases. For example, instead of resolving a "discovery" dispute through lengthy written motions, which is generally required in court, an arbitrator can resolve the dispute in a short conference call with counsel.

Protection from Employment Class Action Litigation: One of the biggest liability threats to employers is wage-and-hour and other employment-related class actions. A single employee can file a lawsuit seeking to represent a whole class of similarly-situated employees, many of whom would otherwise have no interest in suing their employer.

Employers can avoid class actions by having their arbitration agreements with employees contain class action waivers, which are enforceable if properly written. Plaintiffs' lawyers are much less financially incentivized to pursue a claim on behalf of a single employee, whose personal recovery may be small, than they are to pursue claims on behalf of a class of employees, whose potential recovery is exponentially higher. (Although beyond the scope of this article, while arbitration agreements can avoid class actions, arbitration

agreements may not be able to avoid claims under California's Private Attorney General Act ("PAGA"). PAGA actions bear many of the same characteristics as class actions.)

Arbitration Disadvantages

Employer Pays for the Arbitrator: Employers are generally required to pay all of the arbitrator's fees, which can be substantial. Many arbitrators have daily fees of \$5,000 or more, which in multi-day arbitration hearings can add up. Plaintiffs' lawyers rely on that expense to leverage settlements with employers.

Unpredictability: With a jury, one might expect that at least a majority of jurors will get it right, even if some jurors do not. In arbitration, all of your eggs are in one basket – the arbitrator's – and if the arbitrator gets it wrong, there is no safety net of another voice. Arbitration awards are appealable only in narrow circumstances, so there is typically no recourse when the arbitrator reaches the wrong result.

Middle of the Road Awards: The parties select the arbitrator. As a result, arbitrators likely feel some debt of gratitude to both sides. Perhaps as a result of this, or their desire not to send anyone home a loser, arbitrators are known for "splitting the baby" on their awards, resulting in no clear winner.

Dispositive Motions: Arbitrators are regarded as less likely than civil judges to grant dispositive motions (e.g., a motion for summary judgment) that would end the case in the employer's favor. Instead, arbitrators are more likely to allow the case to proceed to a full hearing.

The Last Word

For most employers, particularly those facing potential exposure to class actions, the advantages of arbitration outweigh the disadvantages. Employers who choose to implement arbitration agreements as a part of their risk management strategy should be certain the agreements comply with California law, or the agreements will be deemed unenforceable.

Should you have any questions regarding any of the above, or any other employment-related issue, please feel free to contact Rutan attorneys Edson McClellan or Kenneth Zielinski.

Edson McClellan

Edson McClellan is a partner in the Orange County office of Rutan & Tucker and a member of the firm's Employment and Labor Section. His practice focuses on complex civil litigation matters. He has significant experience in litigation involving theft of company trade secrets, employee raiding, noncompetition agreements, breach of fiduciary duty, and contract disputes. Edson's practice also involves all areas of employment law, including counseling and litigation. Edson can be reached at 714.641.3411 or emcclellan@rutan.com.



Kenneth Zielinski

Kenneth Zielinski is an associate in the firm's Employment and Labor section. He handles a wide variety of employment-related litigation matters on behalf of employers, including wage and hour class actions; employment discrimination, harassment, retaliation and wrongful discharge. Mr. Zielinski's practice also focuses on complex commercial litigation including contractual disputes and business torts. Kenneth can be reached at 714.338.1876 or kzielinski@rutan.com.





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INTELLECTUAL PROPERTY LAW

To Tweet or Not to Tweet: Social Media and Intellectual Property Issues

By Jeffrey L. Van Hoosear and Catherine J. Holland, Partners, Knobbe Martens Olson & Bear LLP

Social media platforms are very useful, but they also create legal issues. Without question, social media has changed the way businesses communicate with their clients and consumers. Likewise, social media has changed the way businesses use their intellectual property (IP). Most companies use some form of social media to advertise and promote their brands. Those companies that keep IP issues in mind as they utilize social media will increase the awareness of their brands among targeted demographics. Those companies that misuse their IP in social media will only increase what they spend on lawyers.

Social media allows a company to easily post comments, quotes, photographs, videos, and music. However, posting and distributing such works without permission may infringe on the IP rights of others. Companies should work with counsel to establish a social media policy, terms of use, and policies for employees and independent contractors to minimize the risk of violating the IP rights of others.

The fact that something can be found on the Internet does not mean that it can be freely used without permission, nor does the lack of copyright or trademark notice mean a work is not protected. There are federal, state and common laws that govern IP rights associated with patents, copyrights, trademarks, trade secrets and rights of publicity. These overlapping laws are all relevant in the context of social media, and vary state by state. Rights of publicity, which protect the name and likeness of a person from being used for commercial purposes, are one example. Approximately 20 states have statutes and approximately 28 states have recognized common law rights. Some states allow post-mortem rights, New York does not, and the length of post mortem rights varies by state. Indiana, birthplace of James Dean, extends post mortem rights to 100 years.

How does the right of publicity relate to social media? Many companies love to associate their brand with a celebrity. What could be better than a photo of a celebrity shopping at the company store? A convenience store named Duane Reade (DR) had just such a photo. It tweeted a paparazzi photograph of actress Katherine Heigl leaving its store, shopping bag in hand. The message was "Love a quick #DuaneReade run? Even @KatherineHeigl can't resist shopping at #NYC's favorite drugstore." Although Ms. Heigl did indeed shop there, DR did not have permission to use her image. DR found itself facing a \$6 million lawsuit based on claims under Federal trademark law, and a right of publicity claim under New York state law. Ms. Heigl claimed that DR improperly used her image to suggest that she endorsed DR, and that DR had exploited her celebrity status without her permission. This case demonstrates the importance of being careful when using social media to promote your business. DR may have been able to communicate the existence of the photo, without adding a blatant commercial endorsement.

One example of successful "celebrity tweeting" occurred between Arby's and the pop artist Pharrell Williams. After Pharrell wore a vintage hat to the 2014 Grammys, Arby's tweeted "Y'all trying to start a beef? Hey @Pharrell can we have our hat back?" Pharrell took the tweets in stride, retweeted, and eventually put his hat up for auction on eBay. Arby's anonymously bought the hat for \$44,000, which Pharrell donated to his charity for at-risk youth. Afterwards, Arby's tweeted "We're HAPPY to support a great cause." Although Arby's spent \$44,000 for a hat, the publicity generated by the stunt was worth it. Lesson: your company's tweets should be amusing, not confusing. Avoid suggesting endorsements by people who have not agreed to endorse your products.

Fair use of materials is another IP minefield in social media. Fair use is a legal concept allowing you to use some portion of a copyrighted work under certain circumstances. Unfortunately, there is no clear definition of "some portion" and "certain circumstances." Companies often want to republish a photograph or a video that has appeared on Facebook or Twitter. It is usually acceptable to republish a tweet or a Facebook update within the same social network systems.

The more difficult situation is when the company wants to post material from Twitter or Facebook on its website. Merely attributing the source of a photo or

other material is generally not sufficient to protect you from a copyright infringement claim. Without written permission to use the work, a company must determine if a "fair-use" defense is available. It is a complicated analysis that considers the nature of the work, whether the work is for educational or nonprofit purposes, the amount of the work that was copied, and the impact of the copying on the market value of the work. There is rarely a clear answer.

An example of how difficult it can be to evaluate fair use is the case of photographer Daniel Morel. Mr. Morel was in Haiti during the devastating earthquake in 2010. He uploaded photographs of the earthquake to his TwitPic account. Several news agencies republished his photographs without his permission. Morel sued for copyright infringement, and the jury awarded him \$1.2 million in damages. Many were surprised that the reproduction of his newsworthy photographs did not qualify as fair use. The best practice is always to get written permission to publish the work when possible.

How can a company minimize its risk of being sued for intellectual property infringement on its social media sites? The most important step is to have a clear social media policy listing the do's and don'ts. For example, "Do not post material the company does not own without prior written permission" is much more effective than paragraphs of legalese. The company should have a comprehensive pre-screening policy for posting both company content and user generated content. The company should limit the employees who can access a company's social media accounts. There should be a designated person to monitor all social media accounts for misuse of IP by the company or any third parties, and who is authorized to take corrective action.

The company's social media policy should also explain how important it is to be sensitive when dealing with customer sites, fan sites, and review sites like Yelp for fair use and public relations issues. Companies should frequently update their employees and independent contractors on the company's social media policy, and on any new developments relating to the company's IP. To reduce liability for user generated content, the company should always display the terms and conditions of use on its website, describe the company's takedown procedures for material alleged to be infringing, and provide up to date company contact information. The safe-harbor provision in the Digital Millennium Copyright Act (DMCA), which includes some of the above recommendations, can provide protection against copyright infringement claims arising from user generated content.

Companies that consult with counsel and take the time to understand and develop a social media policy, terms of use, and policies for employees and independent contractors will minimize their risk of violating the IP rights of others.

Jeffrey L. Van Hoosear

Jeffrey L. Van Hoosear is a partner in the Orange County office of Knobbe Martens Olson & Bear LLP, where he is chair of the Trademark Group. His practice focuses on trademark selection and clearance, intellectual property licensing, domain name and website content issues, rights of publicity, and proceedings before the Trademark Trial and Appeal Board. He can be reached at 949.760.0404 or jeff.vanhoosear@knobbe.com.



Catherine J. Holland

Catherine J. Holland is a partner in the Orange County office of Knobbe Martens Olson & Bear LLP. Her practice includes all aspects of international trademark, unfair competition, domain name and copyright matters, including clearance, registration, licensing, franchising and enforcement of rights on the internet and in social media. She can be reached at 949.760.0404 or catherine.holland@knobbe.com.





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The Onslaught of Wage and Hour Litigation: Tips for Protecting Your Company

by Marie D. DiSante and Amy S. Williams, Carothers DiSante & Freudenberger LLP

Wage and hour lawsuits continue to spiral out of control, striking fear into the hearts of employers of all sizes. Given the complexities and evolving nature of wage and hour laws, it is very easy for employers to make honest mistakes along the way, and even the smallest errors can snowball quickly into extremely expensive disasters for employers. Now is the time to recognize these issues and take affirmative steps to protect your company against this continued onslaught of wage and hour litigation.

MEAL AND REST PERIODS

Think the California Supreme Court ruling that employers don't have a duty to make sure employees actually take their meal breaks is the end of the story? Not so fast! Meal and rest break issues in California remain a rich source of lawsuits.

This year, the California Court of Appeal in *Safeway Inc. v. Superior Court (Esparza)* ruled that the trial court correctly certified a class action against Safeway for its lack of a policy or practice of paying meal break premium pay to employees whose time records reflected breaks of less than 30 minutes on one or more occasions. This happened even though it is firmly established in California that a short lunch does not automatically translate into liability for premium pay on the part of the employer. An employer's obligation is simply to provide employees the opportunity to take a full 30-minute break; if the employee chooses to clock back in a few minutes early (or chooses to skip his/her break entirely), the employer is not liable for any meal break premium. The employer is only liable for meal break premiums if the employer fails to provide an employee the opportunity to take a 30-minute break. This troubling decision confirms that even technical compliance with the Labor Code and California law with respect to meal breaks may not be sufficient to avoid class claims.

Protective Measures:

- ▶ Regularly review meal and rest break policies.
- ▶ Regularly train managers and employees with regard to providing and taking meal and rest breaks.
- ▶ Audit record-keeping practices to ensure that meal breaks are being properly documented.
- ▶ Implement a mechanism for determining whether a premium wage is actually due as a result of any late, short or missed breaks.

MISCLASSIFICATION

Exempt or non-exempt? Employee or independent contractor? These classifications continue to be a vexing area of concern for employers. It is imperative that employers understand the differences between exempt and non-exempt employees, including what it takes for the administrative, executive, professional, computer professional, outside sales, and commission/inside sales exemptions to apply under California and Federal law. Likewise, employers must be able to navigate the crucial distinctions between employees and independent contractors. Misclassification claims are alive and thriving, and failing to accurately classify the workforce could have costly legal consequences, leaving employers exposed to governmental investigations, class actions and individual lawsuits.

Protective Measures:

- ▶ Be prepared to prove that exempt employees spent more than half their time performing exempt duties.
- ▶ Know how much an employee must be paid to qualify for the exemption.
- ▶ Create detailed job descriptions.
- ▶ Conduct audits to uncover misclassification errors.
- ▶ Analyze independent contractor issues before the business relationship begins.

WAGE STATEMENTS

California law regarding the content of wage statements is yet another minefield for the unwary employer. California Labor Code section 226 requires every employer to furnish each employee with an accurate itemized wage statement setting forth eight categories of information. Sounds simple, but countless lawsuits have flowed, and millions of settlement dollars have been expended, for the failure to provide the following information:

- (1) the amount of gross wages or net wages paid during the pay period;
- (2) the total number of hours worked;
- (3) the number of piece-rate units earned and the applicable piece rate (for an employee paid on a piece rate);
- (4) any deductions made;
- (5) inclusive dates of the pay period;
- (6) all applicable hourly rates in effect and the number of hours worked at each rate;
- (7) the name and address of the employer;
- (8) the name of the employee and either an employee identification number or the last four digits of the employee's social security number.

Protective Measures:

- ▶ Conduct an audit of wage statements to ensure that all information required



by Labor Code section 226 is provided. Include different categories of employees (exempt, non-exempt and piece-rate workers) in the audit to make sure all the permutations are reviewed.

▶ Don't simply rely on a payroll service provider because the responsibility for any missing element in a wage statement is likely to remain with the employer.

EXPENSE REIMBURSEMENT

California Labor Code section 2802 provides that an employee is entitled to be reimbursed by his or her employer for all expenses or losses incurred in the direct consequence of the discharge of the employee's work duties. Thus, California employees have an explicit right to be reimbursed for business-related expenses, such as equipment, materials, training, business travel and uniforms. Additionally, in a decision sure to wreak havoc with workplace "bring your own device" programs (BYOD), the California Court of Appeal has now told employers that if California employees *must* use their cell phones for work-related calls, they *must* be reimbursed a reasonable portion of their cell phone bills for that use, even if the employee did not actually incur any additional expense by using his or her own device for business reasons.

Protective Measures:

- ▶ **Mileage Reimbursement:** Mileage reimbursements must be made when wages are paid or at least once per calendar month. Any payment must be made no later than the end of the calendar month following the month in which the expenses were incurred and the amount of the reimbursement must appear separately on the employee's paystub.
- ▶ **Travel:** Employers must reimburse employees for costs associated with meals, lodging and other incidental expenses when the employee is required to travel away from home on business.
- ▶ **Uniforms:** Employers requiring employees to wear a uniform are responsible for purchasing uniforms and paying for any related costs associated with maintaining and laundering the uniforms. Uniforms are defined to include apparel of distinct design or color, even if the clothes do not actually contain any company logos.
- ▶ Review and update existing expense reimbursement and BYOD policies.

PAGA

Enacted in 2004, California's Private Attorneys General Act (PAGA) deputizes employees and allows them to act on behalf of California's Labor & Workforce Development Agency (LWDA) to bring a lawsuit "on behalf of themselves and others" on any violation of the California Labor Code, regardless of how small, technical, or short-lived the alleged violation.

In recent years, PAGA lawsuits have become an end run around class actions, since the California Supreme Court determined that arbitration agreements were ineffective to compel PAGA claims to arbitration on an individual basis. This means that PAGA claims can proceed on a representative (i.e., quasi class) basis in Court, notwithstanding an arbitration agreement with a valid class action waiver.

Protective Measures:

- ▶ Audit timekeeping and payroll policies and practices for legal compliance.
- ▶ Carefully review and address PAGA notices if any are received.
- ▶ Examine whether there is an ability to cure violations to stave off liability.

Wage and hour issues remain a hot legal trend, and for this reason, employers must be diligent, properly advised and proactive in shielding themselves from liability before any wage and hour claims are threatened. This is an area where an ounce of prevention can be worth hundreds of thousands of dollars.

To contact DiSante or Williams, visit www.CDFLaborLaw.com or call 949.622.1661.

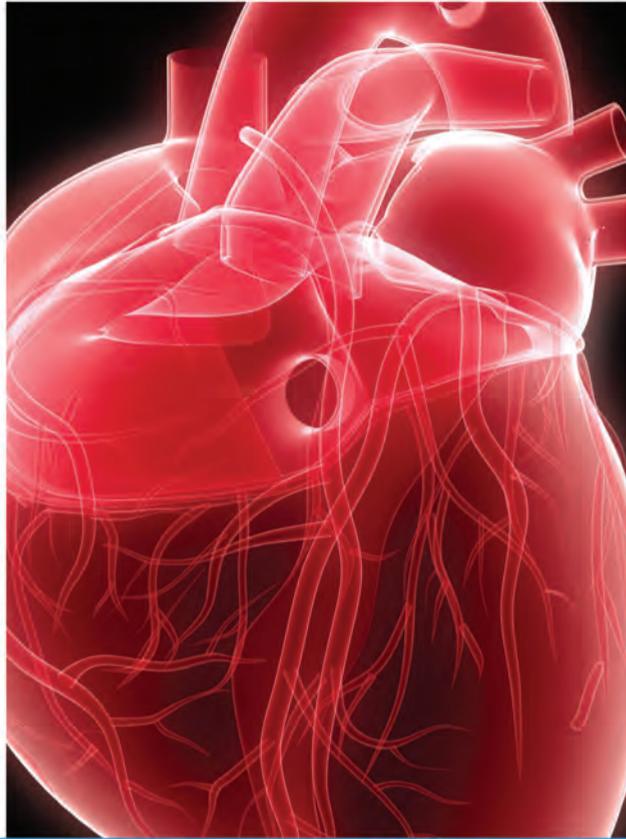
About Marie D. DiSante and Amy S. Williams

Marie D. DiSante is founding partner of Carothers DiSante & Freudenberger LLP. With nearly three decades of experience, DiSante has been resolving and preventing disputes for California employers of all sizes. She also has positioned clients at the forefront of emerging and unprecedented class action litigation in the state – especially wage and hour compliance issues.



Senior Counsel Amy S. Williams represents companies of all sizes and aggressively defends California employers in class action and single plaintiff matters. With more than a decade of experience, Williams counsels employers on preventative measures to avoid litigation, reviews general employment policies and wage and hour issues and conducts internal investigations.





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Q & A with Mark P. Robinson, Jr. *Senior Partner at Robinson Calcagnie Robinson Shapiro Davis, Inc.*

Question: *What is the key to maintaining a long and successful career as a trial attorney?*

Mark: Apart from tirelessly working to perfect your craft and occasionally being lucky, the key to maintaining a long and successful career as a trial attorney is to consistently exhibit the highest standards of integrity, honor, and courtesy, especially with opposing counsel. These are traits that I emphasize daily to those in my firm and it is because of these tenets that I consider some of Orange County's most prominent defense attorneys my closest friends. These traits are also some of the founding principles of the American Board of Trial Advocates (ABOTA), whose general purpose is to improve the ethical and technical standards of the legal practice, which ultimately benefits the general public through a more efficient administration of justice. Focusing on these traits also serves to preserve and promote the 7th Amendment's right to a civil jury trial, which is a bedrock of our American society and a mission of ABOTA.

Question: *What does ABOTA do to preserve the civil jury trial?*

Mark: My father, Mark P. Robinson, was one of the founding members of ABOTA and he served as its first president. During his career, he worked primarily as an insurance defense lawyer. In the late 1950s, he, his colleagues, and friends perceived that the jury system in California was under attack by the press, legislators, judges, and scholars. They founded ABOTA to preserve the right to trial guaranteed by the 7th Amendment, which is an "anchor right" of our society. I served as National President of ABOTA in 2014 and in my travels throughout the nation speaking with various ABOTA chapters, I became increasingly aware that our civil justice system is in danger — between 1992 and 2005 the total number of civil trials fell 52 percent. In 1997, there were 3,369 civil jury trials in Texas, yet in 2012 there were fewer than 1,200. Some counties in Oregon go years without having a single civil jury trial. These statistics are why ABOTA sponsored the Save Our Juries public awareness campaign.

Question: *What is Save Our Juries?*

Mark: Save Our Juries is a public awareness campaign sponsored by ABOTA. Its purpose is to educate and mobilize citizens in the fight to save our disappearing 7th Amendment right. The campaign, which can be accessed at www.saveourjuries.org, educates the public about the right to a civil jury trial, landmark cases that would not have happened without a civil jury trial, and actions concerned citizens can take to protect their rights to a jury trial, including contacting the media and Congress. Preservation of the civil justice system and the civil jury trial begins with court funding — since Chief Justice Tani Cantil-Sakauye recently noted that California courts needed a \$266 million increase just to "tread water" in 2014-2015, it's important that citizens understand this, the implications of losing their 7th Amendment rights and actions they can take to preserve those rights

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Litigation Management for In-House Counsel: The First 60 Days

As every general counsel knows all too well, hundreds of new lawsuits are filed every day in California. The first person to review and handle a new complaint is typically in-house counsel. While in most cases outside counsel will ultimately be retained, there are many important tasks that in-house counsel can accomplish in the first 60 days that will significantly advance the interests of the company. The following is a list of such steps and responsibilities.

1. Obtain an Extension to Respond

The first step is to contact plaintiff's counsel and obtain an extension of time to respond to the complaint. In virtually all cases, counsel will cooperate and provide a reasonable extension. Most plaintiff's counsel do not want the first interaction with a defendant to be an unreasonable refusal to provide a routine extension, which will then set a bad precedent of non-cooperation. You should request a 30 day extension. This will provide you a 60 day window (or 51 days in federal court) to conduct your due diligence and analysis.

2. Tender the Claim to Insurance

It is a truism that 100% of claims that are not tendered will not be covered by insurance. Moreover, even if a claim is tendered late, the insurance carrier will argue that it has no obligation to pay pre-tender fees. *Truck Ins. Exch. v. Unigard Ins. Co.* (2000) 79 Cal.App.4th 966, 976-977. In fact, the carrier may even take a position of denying coverage completely if it alleges prejudice by the late tender.

It is imperative that in-house counsel tender the complaint immediately to all insurance companies who issued policies to your company. Do not limit your tender to one line of insurance. Tender under all policies – CGL, D&O, EPLI, etc., both primary and excess. Because insurance policies vary in terms of the trigger of coverage – “occurrence” policies versus “claims made” policies – you need to ensure you have accounted for all policies that were issued either when the claim occurred and when the claim was made.

Even if your initial review of the complaint leads you to conclude there is no coverage, tender anyway. It is well-established California law that as long as the complaint contains allegations of liability that might be covered by the policy, or if the complaint could be amended to include such allegations, a duty to defend exists. *Montrose Chem. Corp. v Superior Court*, supra, 6 Cal.4th at 295.

Because of this broad duty to defend, our office has successfully triggered coverage for claims involving product liability, pollution, intellectual property, unfair competition and misappropriation of trade secrets under CGL policies, class action lawsuits under EPLI policies, and banking and securities fraud claims under D&O policies. Given the financial impact of litigation and the importance of an insurer-funded defense, it could be malpractice to not tender the complaint. *Jordache Enterprises, Inc. v. Brobeck, Phleger & Harrison* (1998) 18 Cal.4th 739, 744-745. So, don't delay. Tender right away.

3. Procedural and Jurisdictional Defenses: Arbitration, Forum, Venue and Related Considerations

Significant analysis should be given to procedural and jurisdictional defenses during the first 60 days. The first consideration is the right to arbitrate. California has a “strong public policy in favor of arbitration as a speedy and relatively inexpensive means of dispute resolution.” If there is a contractual arbitration clause, promptly file a petition to compel arbitration, as failure to do so may constitute waiver of the right to arbitrate.

The second step is to determine whether an action can be removed to federal court. There are two grounds for removal: federal question (such as a cause of action based on federal law) and diversity. The deadline for removal is thirty days from being served with the complaint. 28 U.S.C. § 1446(a).

The third issue is whether venue is proper – whether the suit belongs in the Superior Court of one county versus another. (In Los Angeles, filing in the proper branch is a further consideration). You can file a motion to transfer venue pursuant to Code of Civil Procedure section 396b if venue is improper. Similar concepts of motions to transfer venue exist under the federal rules, but are even more powerful, as defendants can obtain inter-district transfers and have cases transferred all over the United States. 28 U.S.C Sections 1404(a).

4. Provisional Remedy Issues

There is a small minority of cases (misappropriation of trade secret, interference with contract, intellectual property, etc) where plaintiff may be seeking provisional

remedies, such as a temporary restraining order, writ of attachment, temporary protective order or other similar remedies. This may be done on an ex parte, emergency basis (with or without notice) or on noticed motion basis (16 court days).

A quick way to ascertain whether provisional remedies are being sought is to check the online docket of the court website. One can also call the clerk in the department and ask if any matters have been set for hearing. A pointed phone call and e-mail to opposing counsel can also smoke out any such proceedings.

If provisional remedy issues do arise, then many litigation decisions will have to be accelerated significantly, and outside counsel will have to be chosen quickly. In such cases, it is extremely critical to retain highly experienced business trial lawyers who know their way in the courtroom.

5. Cross-Complaints

In-house counsel should review the complaint to determine if there are claims for affirmative relief that may be brought against the plaintiff, or a codefendant, or someone not yet a party to the action. Claims against the plaintiff can be asserted regardless of the subject matter relationship. Code Civ. Proc. § 428.10(a).

Certain cross-complaints are compulsory, and failure to plead them will bar your company from asserting them in any later lawsuit. Code Civ. Proc. § 426.30. A cross-complaint is compulsory if the cause of action “arises out of the same transaction, occurrence, or series of transactions or occurrences as the cause of action ... in (the) complaint.” Code Civ. Proc. § 426.10(c).

Cross-complaints against a codefendant or third person not yet a party to the action are generally permissive. The courts look to whether the cause of action asserted “(1) arises out of the same transaction, occurrence, or series of transactions or occurrences (set forth in the complaint) ... or (2) asserts a claim, right, or interest in the property or controversy which is the subject of the cause (of action) brought against him.” Code Civ. Proc. § 428.10(b).

6. Discovery

There is no reason to wait until you hire outside counsel to serve fundamental discovery. While there is a 10 day “hold” on discovery for plaintiffs, there is no such waiting period for defendants, and discovery can be served immediately upon service. Code Civ. Proc. §§ 2025.210(b).

There are three types of discovery that can easily be served by in-house counsel. First, you can serve contention interrogatories and document demands which are keyed to the factual allegations in the complaint. You can ask for identification of all facts, witnesses and documents which support the contentions in the complaint, and production of all such documents. Anything not produced or identified by the plaintiff will be excluded at trial. Second, you should ask for production of the fundamental documents in the case, such as any documents that relate to the facts of the complaint. Finally, you should serve additional routine discovery, such as form interrogatories.

7. Conclusion

As set for the above, there are many important tasks that in-house counsel can do in the first 60 days. Not only will you save the company significant money and resources by handling these initial tasks in-house, but you will personally become much more engaged in the defense of the litigation.

Edward Susolik

Edward Susolik is a senior partner at Callahan & Blaine, a boutique litigation firm specializing in complex business litigation. All 28 of Callahan & Blaine's senior attorneys have at least 10 years experience. Mr. Susolik is head of Callahan & Blaine's insurance department, and has been named one of the “Top 100 Attorneys in Southern California” by Super Lawyer Magazine for every year from 2009 to 2016. Callahan & Blaine's successes include hundreds of defense adjudications, dismissals and de minimis settlements on behalf of Orange County businesses, as well as a \$934 million jury verdict in a complex business litigation case, which is the largest jury verdict in Orange County history. The firm recently celebrated its 31st anniversary. Mr. Susolik can be reached at ed@callahan-law.com or 714.241.4444. Callahan & Blaine's website is found at www.callahan-law.com.



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Long before companies like Tiffany and Cartier existed, Black, Starr & Frost had established its brand as the trusted resource for discriminating clientele, building its legacy as an innovator and pioneer in the luxury jewelry world. The company coined the term "the carriage trade," and claims many firsts including the creation of the first class ring, the Gillmore Medal of Honor that inspired the Congressional Medal of Honor, the development of the first safe deposit box system, and the first retailer to take a location on New York's Fifth Avenue, a mecca to luxury brands today.

Black, Starr & Frost has long been a favorite among European royalty, Hollywood celebrities and captains of industry. Black, Starr & Frost's heritage and fame was earned by representing some of the world's most storied stones including the 127.01-carat Portuguese diamond, the largest, faceted blue diamond in the world at one time, now in the Smithsonian Institute; the Lucky Baldwin Ruby and most recently, the 76.01-carat Archduke Joseph diamond, the largest Type 2A Golconda D Color Internally Flawless Diamond in the world, obtaining three world records. Black, Starr & Frost is named in the famous song, *Diamonds Are a Girl's Best Friend* performed by Marilyn Monroe in *Gentlemen Prefer Blondes*.

In 2006, world-renowned jeweler, Alfredo J. Molina, acquired the famous brand of Black, Starr & Frost. Today, Molina is committed to restoring the brand to its prior prominence, building on the history and tradition of the founders. The bayside location offers every elegance first conceived by Messrs. Black, Starr & Frost, and the commitment to excellence and gracious service continues today.



The staff at the stunning salon will greet you as if you are entering their home. The salon consultants are experts who are passionate about jewelry and take the time to educate the clients they serve. The service is legendary, as you are offered a demitasse of hot espresso, fine chocolates or a glass of champagne on the patio upon your arrival. Offering full concierge services to its clients, Black, Starr & Frost strives to deliver the world to Orange County. Every detail is perfect and of the finest quality. This fall, Black, Starr & Frost is pleased to announce the Grand Opening of their newest salon in Phoenix, Arizona.

Chairman Molina believes that true quality is all about rejection. Only the world's finest quality gemstones are Black, Starr & Frost gems, rejecting more than 99 percent of the diamonds and gemstones he inspects.

Black, Starr & Frost recently introduced its new Everyday Luxury collection, which includes stackable rings, bangles and bracelets in sets of three featured in yellow,

white and rose gold. In addition, Black, Starr & Frost has returned to its tradition as a world-class watchmaker, introducing the first, new men's watch collection in more than three decades. Finally, Black, Starr & Frost also introduced its signature diamond stud collection, with three distinct designs that can be worn from the beach to the boardroom to the ballroom...a classic jewelry staple that will last a lifetime and be treasured as an heirloom for generations to come. With more than 204 years of expertise and gracious service, who better to create a one-of-a-kind masterpiece for a lifetime than Black, Starr & Frost?



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Cybersecurity

Legal and Practical Considerations

Cybersecurity is a hot topic, but recent headlines only begin to scratch the surface of risks posed to companies in virtually every sector of the economy. Responsibility for securing data and systems begins at the board level. Appropriate preventative measures may significantly reduce legal exposure and harm to business operations in the event of a breach. Interviewer Samantha McDermott discussed the topic of cybersecurity in Orange County with Keith Palumbo, Vice President of Legal Affairs at Cylance, Inc., and Marc J. Schneider, a Shareholder in Stradling's litigation practice who also serves as the firm's General Counsel.

Samantha McDermott: It seems like every day there is another article in the newspaper about "cybersecurity." What have you been seeing on this front?

Marc Schneider: Counseling companies before and after consumer data breaches has become a regular part of our practice, and related government investigations and consumer litigation are here to stay as well. But there is quite a bit of additional activity that does not make the headlines. For example, we have defended lawsuits asserting that a bank should be responsible for purportedly unauthorized wire transfers from customer accounts, allegedly sent by hackers. There is a California statute that governs these types of cases, which protects the bank so long as "commercially reasonable" security procedures are in place. And we have helped tech companies protect their intellectual property, after hackers stole their valuable trade secrets and attempted to sell them over the internet. The havoc caused by hackers is limited only by their imaginations, and they appear to be creative. I'm sure we will continue to see new types of mischief.

Keith Palumbo: My colleagues in our Professional Services division have seen a fairly consistent increase in the number of attacks we are helping clients deal with. What's most telling is the breadth of victims, from retail, to industrial production, to hi-tech, to medical, no segment of the U.S. economy has been spared from this type of activity. We are seeing an unhealthy mix of targeted phishing campaigns, nation-state attacks focused on exfiltration of intellectual property, and financially motivated hacks of opportunity where traditional economic gain (e.g., credit card data) appears to be the goal. In general, we are also seeing more companies increasing their security budgets and related hiring as they take a more proactive approach to cyber-defenses. Nobody wants to be the next headline.

Samantha McDermott: What are the practical and legal consequences of a data breach?

Marc Schneider: Unfortunately, unless your company is in certain discrete sectors of the economy such as financial services, there is no federal law that preempts state law in this area. That means the company will have to navigate a patchwork of overlapping, and even conflicting, laws at the federal and state level (and even possibly the laws of foreign countries). Investigations by various state government agencies, the FTC, and even the SEC typically follow a breach, with the potential for massive fines. For example, last April the FTC levied a \$25 million civil penalty against AT&T for a breach resulting in theft of customers' names and Social Security numbers. And, of course, the plaintiff's bar may file class action lawsuits against a company for damages purportedly suffered by the impacted consumers. The plaintiff's bar even may file a derivative lawsuit against the directors and officers of a public company for mismanagement relating to the breach. If a public company experiences a stock price drop as a result of the breach, you also can expect a class action on behalf of shareholders.

Keith Palumbo: Even if a reporting obligation is not triggered, data breaches can be deeply disruptive to an organization's daily business functionality. Put simply, the impact on business continuity can be disastrous: machines must be taken out of service and rebuilt, resources diverted and schedules revised. In some instances, damage to the operational structure of a breached entity can be so broad that basic daily functions of the business (payroll, procurement, vendor management) can grind to a total halt.

In addition to the legal risk, there is obviously reputational risk attendant to being the victim of a breach, which may have a substantive and durable effect on the overall health of the business. All this, even before the lawsuits begin.

Samantha McDermott: Would a data breach be covered by insurance?

Marc Schneider: Yes, but a company should not assume that its standard policies will be enough. Your errors and omissions policy is not likely to be comprehensive for these purposes, nor is your director and officer insurance. Many insurers now offer policies specifically for cybersecurity issues, but the terms and scope of coverage vary widely. A company should analyze its current insurance with a broker or attorney to determine whether its coverage is adequate. As a related matter, if the company shares consumer data with a third party as part of its business, the company should make certain that the relevant agreements address how this data is to be handled, as well as indemnity and liability obligations in the event of a breach.

Keith Palumbo: It is imperative to speak directly with your broker to determine the scope of your existing coverage, including any carve-outs and limitations. Insurance offerings focused on covering cyber-related risk are becoming more common, and more affordable. However, as with all insurance, the devil is in the details. Having regular and frank discussions with your insurance broker to stay abreast of any relevant changes to your policy, or indeed to policy coverage in general, is a must.

Samantha McDermott: Should companies consider taking preventative measures now, in advance of a data breach?

Marc Schneider: Absolutely. It is imperative that a company's board and management take preventative measures now to protect their company against data breaches. By doing so, they also will be protecting themselves against personal liability if a breach occurs despite their best efforts to protect against one. Recent court decisions applying Delaware law make clear that directors may not receive the protection of the business judgment rule in the event of a breach, if they were not adequately addressing cybersecurity issues in advance of the breach.

A company should make sure it has appropriate policies in place to protect sensitive data. Because the company must move quickly in the event of a data breach, it is also important to have a data breach response plan in place in advance. The company also should review its computer systems for vulnerabilities, often with the assistance of an outside expert like Cylance. It is important that either in-house or outside legal counsel is involved throughout this process, both to inform the company of its legal obligations and to cloak the company's efforts with the attorney-client privilege so they will not be discoverable in the event of litigation. The board should make cybersecurity a regular agenda item.

Keith Palumbo: In addition to spending the time to develop an incident response plan and establishing a relationship with a trusted cybersecurity company with substantial incident response and breach remediation experience, undertaking a review (and perhaps augmentation) of the company's existing security posture is paramount. Leveraging counsel to ensure that privilege attaches to the output of any such security assessment or other similar engagements is obviously an important consideration.

The advent of a new generation of software products focused on providing proactive threat protection, including Cylance Protect, also gives companies a host of forward-looking options to mitigate risk and improve their general security posture rather than relying on reactive and ineffective security solutions.

Samantha McDermott: What should a company do if its data is breached?

Marc Schneider: First, identify the source and extent of the breach. Depending on the nature and scope of the breach, the company may have to provide notice to impacted consumers and various federal and state government agencies. The company should quickly shore up its security systems, particularly since such disclosures may attract additional hackers. The company also must prepare to explain the incident to its customers, business partners, and the press, perhaps with the help of an experienced PR firm. And be proactive with your customers. For example, it often makes sense to offer identity theft protection services. Such services will help protect your customers and your reputation. Perhaps just as importantly, such measures can significantly mitigate, or even eliminate, potential damages to impacted consumers. That means a significantly decreased chance of litigation.

Keith Palumbo: Preventing the next attack by maintaining a vigilant defensive posture and keeping abreast of proactive solutions should be a primary focus for any organization. Ideally, this includes having strong relationships with trusted cybersecurity advisors with legal and security expertise and an incident response plan designed to quickly pull relevant stakeholders together in the wake of an incident. With these measures, a company can improve its position to best contain a breach, minimize damage, and reduce time to resolution. Cybersecurity is a combination of people, process, and technology, and by thinking proactively about each of these functional areas, stakeholders can lower their overall risk profile, begin a move from detect-and-respond to prevent-and-respond, and be better prepared to face the unknown unknowns like "zero day" attacks or malware, which are inherent in doing business in the 21st century.



Marc J. Schneider
Litigation Shareholder, Stradling
(949) 725-4137
mschneider@syocr.com



Keith Palumbo,
Vice President, Legal Affairs
Cylance, Inc.
(949) 381-7200

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The Latest on Employment Arbitration Agreements

Until last month, a divide existed between California state and federal courts whether an arbitration agreement between employer and employee could waive an employee's right to bring a representative claim under the California Private Attorney General Act ("PAGA") (Cal. Lab. Code § 2698 *et seq.*) – state courts said no, while most California federal courts held the opposite.

PAGA authorizes an employee to bring an action for civil penalties on behalf of

the state against his/her employer for Labor Code violations committed against the employee **and fellow employees**, with most of the litigation proceeds going to the state. Thus, a PAGA claim is a type of government enforcement action where the representative employee acts as the state's proxy. If employees bring a representative PAGA action, they can potentially recover penalties under PAGA for themselves and for any of the other employees they represent; whereas, if representative actions were not permitted, they can only seek damages under PAGA for themselves.

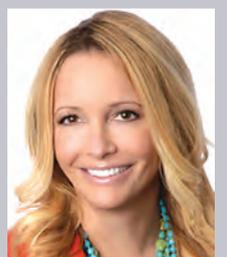
Declining to enforce a representative action waiver contained in an arbitration agreement, the San Francisco Ninth Circuit Court of Appeals in *Sakkab v. Luxottica Retail North America, Inc.* decided in September, held that the Federal Arbitration Act ("FAA") does not preempt California's "Iskanian rule," which prohibits waiver of representative claims under PAGA.

The California Supreme Court in *Iskanian* held that class action waivers in arbitration agreements are enforceable under the FAA, but that representative PAGA claims are unwaivable under California law. Thus, *Sakkab* resolved this split between federal and state courts, in favor of the bar against representative PAGA waivers.

Where does that leave arbitration agreements in the California employment context? An employer's arbitration agreement can waive an employee's right to bring a class action, requiring an employee to arbitrate his/her individual claim only; however, the agreement cannot waive the right to bring a representative action under PAGA, whether in court or in arbitration.

Therefore we should see an increase in PAGA litigation, as well as the government's reaction to this complex statute. On October 2nd, the Governor signed AB 1506, effective immediately, amending PAGA to broaden the areas an employer may cure before an employee may bring a civil action to include a violation of the requirement that an employer provide its employees with the inclusive dates of the pay period and the name and address of the legal entity that is the employer.

Samantha Hoffman is the Managing Shareholder of the Orange County office of Jackson Lewis, an AmLaw 100 firm dedicated to representing management exclusively in workplace law. Contact Samantha at 949.885.1360 or HoffmanS@jacksonlewis.com.



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What's New at Saddleback College's Economic and Workforce Development Division?

by Israel S. Dominguez, MBA, Director of Economic & Workforce Development, Saddleback College

As the Director of Economic and Workforce Development at Saddleback College, I serve as the primary external workforce and training representative of the college to agencies, consortia, partnerships, and regional workforce groups throughout the region, as well as to cultivate and promote positive and substantive relationships with local business and industry.

More specifically, my role is to expand relationships and forge stronger partnerships with business and industry in the region. Additionally, I am directly responsible for collaborating with strategic partners and organizations such as Orange County Workforce Investment Board, the Orange County Business Council, South Orange County Economic Coalition, Goodwill Industries, The Small Business Administration, Small Business Development Centers, Chambers of Commerce, City Managers, Economic Development Managers, and other regional colleges.

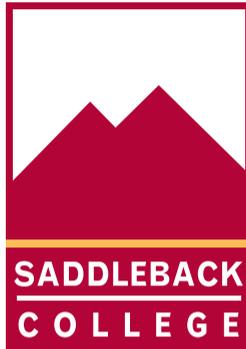
I am proud to say that the Saddleback College Economic and Workforce Development (EWD) Division facilitates a variety of solutions for employment development and workforce training.

We deliver customized training solutions to train or retool the workforce of south Orange County employers.

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We provide fee-based advanced business consulting to regional businesses, industry sectors, city and state agencies, and chambers of commerce; and thereby promote and support growth of the regional economy. Areas of expertise include but not limited to:



Dominguez

Access to capital, business and contract law, customer service, e-commerce, economic research and analysis, financial analysis, growth and investment strategies, international trade, marketing strategies, marketing research, operations management, real estate, and strategic planning.

Saddleback College is expanding our Cooperative Work Experience (CWE) program. CWE is a venture in which students, employers and Saddleback College work together to provide relevant, quality education and valuable work-related experiences for the student. It is called CWE because it is dependent upon employers and educators cooperating to form a more complete educational program for the students.

The program helps maintain a flow of trained personnel into the occupational field, reducing the cost of employee turnover by employing people who are on a career path. The CWE student develops work objectives with his or her supervisor which furthers the employer's goal and the employee's work performance. The employer is provided with the opportunity to communicate business and industry needs to the college thus helping the college to remain current with industry standards.

Over the next few months, Saddleback College will be developing the 2016 South Orange Economic Report and will present the findings to businesses and strategic partners in February 2016. Over the next one to two years, my EWD colleagues and I will implement many of the recommendations from the 2015-2020 Economic and Workforce Development plan.

I encourage Orange County Business Journal readers to contact me to learn more on how we can assist their company with many of the aforementioned services and programs.

Israel S. Dominguez, MBA, Director of Economic & Workforce Development
BGS 218

28000 Marguerite Parkway
949.582.4777

idinguez@saddleback.edu
www.saddleback.edu/ewd

Saddleback College Economic and Workforce Development – New Services for Business and Industry

Saddleback College and all of California's community colleges recognize that the growth and stability of the state's economy rely on a highly skilled workforce. For over 45 years, Saddleback College has educated and prepared the citizens of Orange County to enter the workforce in well-paying careers in industries that fuel our regional economy.

Serving local business and industry, city governments, economic development agencies, chambers of commerce, regional workforce groups and the community at large, we work to cultivate and promote positive and substantive partnerships and relationships throughout the region. The Saddleback College Economic and Workforce Development (EWD) Division facilitates a variety of solutions for employment development and workforce training.

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Israel S. Dominguez, MBA
Director of Economic &
Workforce Development



Israel Dominguez is the director of economic and workforce development at Saddleback, a new position at the college. Mr. Dominguez comes to Saddleback from Cuesta College in San Luis Obispo, where he served as director of the college's Business and Entrepreneurship Center since 2007. In this role he provided advanced business consulting services to businesses and industry sectors in San Luis Obispo, Santa Barbara, and Ventura Counties. In his new role, he will serve as the college's primary representative with south Orange County business, industry, and governmental agency-based organizations regarding economic and workforce development and training. Mr. Dominguez earned a bachelor's degree in Business Administration with a concentration in Marketing Management from California Polytechnic State University, San Luis Obispo. He also earned a Master of Business Administration degree from the University of La Verne.

For more information, please contact:

Israel S. Dominguez, MBA
Director of Economic & Workforce Development
idinguez@saddleback.edu



Saddleback College
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Our **California Workplace Law Update** seminar takes place on December 8, 2015. For more information or to RSVP please email: OCSVP@JacksonLewis.com and mention code **OCBJ**.



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Business Contracts: Don't Be a Poor Unfortunate Soul

by Donald J. Hamman and J. Michael Vaughn, Stuart Kane LLP

In Disney's © "The Little Mermaid," the young mermaid Ariel makes a Faustian bargain with Ursula, the unscrupulous sea-witch, to attempt to win Prince Eric's love.

Ursula offered a magic potion to turn Ariel into a human for three days, and if Ariel could get Prince Eric to "seal the deal" by the kiss of true love, she would remain human for eternity. Otherwise, Ariel would turn back into a mermaid and belong to Ursula. Ursula demanded and received "security" – Ariel's voice. Ursula's minions, Flotsam and Jetsam, silenced Sebastian, who tried to advise Ariel, as her counsel, to decline the offer. But Ariel signed the contract, Ursula performed and held Ariel's voice, and while Ariel found her Prince Eric, they ultimately experienced turmoil resolving their differences, without the assistance of counsel.

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Life Imitates Art

Some business contracts are not too different than Ursula's proposal – one party is not trustworthy, and the other will pay dearly for something tough to achieve, while not really understanding all the details. Indeed, a local California Court of Appeal Justice wrote, presumably in jest, "I've re-financed several times. I now have a really good interest rate, but for all I know, the house belongs to Taylor Swift and I've agreed to take part in the clinical study of some drug that killed almost all the lab mice." Nevertheless, the legal system supports lawful, binding contracts.

The law requires very little to establish a binding contract: parties, mutual consent, and a promise to do something, or not to do something, specific, for good consideration.

Practical Contracting Suggestions

While it is always advisable to have a good business attorney review your contracts, here are some practical suggestions for avoiding deals like Ariel's:

Balance and Fairness: It's not a wrestling match. Design your contracts with an eye towards win-win situations.

Arbitration: Pre-dispute contractual jury waivers are unenforceable in California. Unless you want any dispute decided by a jury, consider requiring an ADR process, such as arbitration with a retired judge or a reference proceeding in the Superior Court, for some or all disputes.

Attorneys' Fees Provision: The "American Rule" is that each party in a dispute pays its own legal fees, unless a contract or statute provides otherwise. A "fee shifting" clause allows the prevailing party to recover attorneys' fees and can be a significant contractual deterrent to parties who try to get out of their contractual obligations.

Enforceability and Unconscionability: Unilaterally imposed or harsh terms, especially when imposed by a party with vastly superior bargaining power and absent meaningful negotiation, may be invalidated.

Letters of Intent: An LOI can be binding or simply an expression of interest. If unstated, then a judge or jury can decide years, and big dollar figures, later. State whether it is binding.

Leopards and Spots: Contracts are sometimes not worth the napkin they are not written on. Of paramount importance is the character of the person with whom you deal. The best contracts are signed and never again consulted, by parties who honor "the deal."

Expressing and memorializing the essential deal terms and the parties' intent are among the best practices for creating enforceable contracts. A thoughtful approach to contracting practices can help avoid future heartache and possibly litigation.

Don Hamman

Mr. Hamman is a partner with Stuart Kane. He is a trial and appellate attorney with experience in mediation, binding and non-binding arbitrations, settling cases, and handling writ, jury and bench trials and appeals in complex business litigation, real estate litigation, employment litigation and environmental disputes. Mr. Hamman can be reached at 949.791.5130 or dhamman@stuartkane.com.



Mike Vaughn

Mr. Vaughn is of counsel with Stuart Kane. He is a corporate and securities attorney with hands-on experience in mergers and acquisitions, financing transactions, corporate governance, equity incentive and compensation programs and strategic transaction support. Mr. Vaughn can be reached at 949.791.5184 or mvaughn@stuartkane.com.



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Stuart Kane is pleased to announce the addition of corporate attorney Michael Vaughn as Of Counsel!

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From This Year's Legislature, A Mixed Bag for Employers

■ By: James J. McDonald, Jr., Fisher & Phillips LLP



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has proven to be independent-minded when it comes to signing or vetoing legislation, and this year was no exception.

Equal Pay

The most significant employment legislation the governor signed this year is SB 358, the revision of California's Equal Pay Act. This revision changes the burden of proof in an equal pay case, making it more likely that equal pay lawsuits will proliferate in coming years. Under the new law, an employee merely must show that an employee of the opposite sex is being paid more for performing "substantially similar work, when viewed as a composite of skill, effort and responsibility, and performed under similar working conditions." Unlike under prior law, the higher-paid employee need not be in the same location. Then the burden shifts to the employer to show that the wage differential is based on a seniority system, a merit system, a system that measures earnings by quality or quantity of production, or a bona fide factor other than sex such as education, training or experience. With respect to a bona fide factor other than sex, the employer must show that the factor is not based on a sex-based differential in compensation, that it is job-related and consistent with business necessity, and that it accounts for the entire wage differential.

The new law also reinforces the right of "freedom of speech" about wages. Employers may not prohibit employees from disclosing their own wages, discussing the wages of others, or inquiring about the wages of another employee. There is no obligation on the part of the employer or co-workers, however, to disclose wages.

This new law will become effective January 1, 2016. Employers should begin now to examine their wage rates to determine if any sex-based differentials exist that cannot be defended under the new law. If successful, employees who sue under the new law will recover the amount of the wage differential, plus the same amount as liquidated damages, plus interest and attorneys' fees.

Piece-Rate Employees

AB 1513 imposes burdensome new requirements on employers that pay

employees on a piece-rate basis. Courts recently have held that such employees must be paid at least minimum wage for all hours worked, including training time, waiting time between jobs and paid rest breaks. This law requires that piece-rate employees be paid for their rest breaks (and cool-down breaks, if taken) at the average wage earned that week, not the minimum wage. Employers must also separately list each piece-rate employee's non-productive time and rest and cool-down break time, with applicable pay rates, on each wage statement. This legislation will make paying piece-rate workers so administratively difficult that some employers may abandon piece-rate pay altogether, a likely not unintended goal of the proponents of the law.

A PAGA Break

AB 1506 amends the Private Attorneys General Act (PAGA) to provide employers an opportunity to cure certain defects in employee wage statements before being sued. Those wage statements must contain the name and address of the legal entity that is the employer and the beginning and ending dates of the pay period, among other information. Under the new law, an employer may avoid a PAGA lawsuit over defects in those items if it provides corrected wage statements within 33 days of the postmark date of an employee's written notice of the defects. Employers may still be liable for other, non-PAGA penalties for such defects, however.

It Could Have Been Worse

Governor Brown vetoed several troubling pieces of legislation. He vetoed AB 465, which would have outlawed compulsory arbitration of Labor Code claims. He correctly observed that such a provision would likely be found to be pre-empted by federal law after years of costly litigation and legal uncertainty. He also vetoed AB 1017, which would have prohibited employers from seeking previous salary information from applicants for employment. For the second straight year, the governor vetoed legislation (AB 676) that would have prohibited an employer from discriminating against job applicants on the basis of their being unemployed. Finally, he vetoed SB 406, which would have extended family leave rights to employees to care for grandparents, grandchildren, in-laws and siblings. He rightly noted that this change could have resulted in employees taking up to 24 weeks of family and medical leave per year and he stated he would be open to legislation allowing employees to take leave for additional family members that does not create this anomaly. Watch for this one to be back next year.

James J. McDonald, Jr. is managing partner of the Irvine office of the national labor and employment law firm Fisher & Phillips LLP. He may be reached at jmcdonald@laborlawyers.com.

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Three Tips to Increase Retention

by Lisa Pierson, President, Kimco Staffing Services

According to a recent Towers Watson survey, employers and employees tend to agree on the top two reasons why employees stay in their jobs: salary and career advancement. However, there is a big discrepancy in the three reasons that round out the top five. Employers believe these reasons are relationship with supervisor, ability to manage work-related stress, and learning opportunities. Employees, however, list confidence in senior leadership, job security, and length of commute. As a company, if you're building a retention strategy based on what you believe, you may be missing the mark.

Below are three tips to building a successful retention strategy.

Culture

Creating a culture where employees are able to interact with leaders and



understand how the business is run builds trust and creates an environment of confidence. You can achieve this by being as transparent as possible. Recognition is another driving factor when creating a culture where people want to work. Implement fun recognition programs, and of course, financial bonuses are always appreciated. If that's not a realistic option, there are

many ways to reward employees that cost little to no money and are still valued, such as verbal recognition or a note of appreciation.

Compensation

Most companies claim their salaries are "fair according to the market." But are they? Have you done the research to ensure you're staying on track with salary trends? It's easy to fall behind and lose top talent to your competitors only because they've done their due diligence and have set a new bar for

paying competitively. It's crucial to remember that compensation doesn't just mean base salary. It also means the whole package: benefits, perks, vacation time, sick time, wellness programs, 401ks, etc. Keep an eye on what's happening in the market and with your competitors to avoid losing people to better total compensation packages.

Turnover

Negative turnover is when you lose the people you want to keep. Positive turnover is when employees choose to leave, but they are folks you would have ultimately "managed out" or terminated. Tracking these two types of turnover separately is important because it's the negative turnover that's the critical element. You want to aim for low negative turnover numbers because that typically means you're keeping your top performers happy. Conduct exit interviews to find out why people are leaving. There may be changes you can make to prevent other employees (that you want to keep) from leaving. Plus, don't forget how expensive new hires are...wouldn't you rather put that money into retention?

As employers, do your best to give employees a reason to stay...not a reason to leave.

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Lisa Pierson

Lisa Pierson is the President of Kimco Staffing Services. Headquartered in Southern California since 1986, Kimco has the market expertise to help companies find top talent and the business



acumen to help our clients navigate California's unique employment environment. Our unique approach to staffing focuses on individualized service, customized solutions, and a commitment to deliver "Hire Results"! You can reach Lisa at lperson@kimco.com or 949.331.1102.

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Since opening its doors in 1972, Latham's Orange County office has been a leading force in the Orange County business community, representing many of the county's largest and most influential companies. Throughout the firm's 43-year presence in Orange County, Latham lawyers have made significant contributions to civic causes and have held numerous leadership positions in community organizations.

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On the pro bono front, Latham lawyers are consistently the leading contributors of pro bono hours to the Public Law Center, which has honored Latham as the "Large Law Firm of the Year" on numerous occasions.



Contact:

B. Shayne Kennedy, Orange County Managing Partner

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Scott Akamine, General Counsel & Secretary Incipio Technologies, Irvine

Scott Akamine serves as the general counsel and secretary of Incipio, the leading designer and manufacturer of award-winning mobile device accessories and technology. Akamine oversees all legal matters for the company and its affiliates, including corporate transactions, intellectual property, litigation and international regulatory matters. The scope of Incipio is ever-growing, having gone from a one-man shop to a talented team of more than 350 employees. Brands under the Incipio portfolio include Tavik, ClamCase and Braven. Prior to Incipio, Akamine was senior corporate counsel and assistant secretary at Allergan, serving on the core team of the hostile takeover attempt by Pershing Square and Valeant, where he provided support on a variety of legal matters. Akamine also provided legal assistance in the negotiation of the definitive agreement whereby Allergan agreed to be acquired by Actavis plc. While at Allergan, Akamine was also responsible for SEC reporting, securities law compliance and M&A transactions. Akamine also led an internal initiative to restructure the commercial and clinical contracts team, which processed approximately 10,000 contracts annually.



Robert Bello, General Counsel Hughes Marino, Irvine

Robert Bello, Esq. was integral in spearheading SB 1171, a law conceived by Hughes Marino President and CEO Jason Hughes, which requires brokers to disclose whether they are acting as dual agents to prevent conflicts of interest and ensure transparency. Bello worked tirelessly to ensure the success of SB 1171, researching every angle of existing real estate law and industry practices, strategizing with Hughes Marino's outside lobbying firm, being as responsive as possible when it came to answering questions regarding the new bill, and testifying before the Assembly Judiciary Committee. Since joining the firm, Bello has been instrumental in helping to protect Hughes Marino and its clients' interests. In addition to helping SB 1171 get passed into law, he also reviews leases and purchase agreements to ensure clients obtain the deal they negotiated for, and he has also overseen all legal issues associated with Hughes Marino's continued growth in California, including new offices in Los Angeles, San Francisco and Silicon Valley. Hughes Marino is an award-winning commercial real estate firm exclusively representing tenants and buyers, never landlords, with zero conflict of interest.



Brad Blanche, Associate General Counsel; Senior Director, Intellectual Property and Standards – Broadband & Communications Group Broadcom Corp., Irvine

Broadcom, headquartered in Irvine, is one of the largest semiconductor companies worldwide. When Brad Blanche joined Broadcom as associate general counsel in 2012, it was facing exponentially increasing costs of maintaining a massive IP portfolio, diminishing resources for growing its portfolio, and more enhanced scrutiny of patent applications by the USPTO. Blanche recommended several improvements to enhance efficiency of Broadcom's patent application prosecution while maintaining high quality, including a new strategic program in which Broadcom's in-house attorneys worked closely with outside counsel on key strategic applications to focus prosecution of such applications to align with Broadcom's business goals. Blanche is also lead in-house lawyer protecting and enforcing the well-known Broadcom trademark and other Broadcom marks worldwide. Before joining Broadcom, Blanche was instrumentally involved in the FTC's groundbreaking decision in which for the first time it relied solely on an unfair competition theory in finding violations of licensing obligations made to a standards setting organization. Broadcom continues maintaining its IP portfolio's strength and every year receives a Top 10 ranking by the IEEE for its IP portfolio strength for all semiconductor companies, including maintaining a Top 2 ranking among fabless semiconductor companies.



Donald Bunnin, Senior Attorney, Litigation Allergan plc, Irvine

Donald Bunnin has the daunting task of heading up all non-IP litigation related to the operations of former Allergan Inc., which is now part of Allergan plc, the company resulting from the merger of Allergan Inc. and Actavis. Few in-house lawyers have a plate as full as Bunnin's as he manages a wide range of cases, including antitrust, product liability, class actions, employment, commercial actions and other types of cases. During Bunnin's tenure in this role, Allergan's track record in these cases has been nothing short of phenomenal. In addition to overseeing all these matters, Bunnin has also been a leader in Allergan's efforts to increase the efficiency of its litigation by implementing innovative and creative approaches to controlling legal spend and alternative fee arrangements. He has also been one of the architects of Allergan's participation in corporate America's efforts to promote litigation reform; for example, he played an important role in preparing Allergan's comments on the proposed amendments to the Federal Rules of Civil Procedure. He is active in the Orange County Bar Association, DRI and the International Association of Defense Counsel. Allergan is a \$23 billion diversified global pharmaceutical company and a leader in a new industry model - Growth Pharma.



William Burding, Executive Vice President & General Counsel Orange Coast Title Co., Santa Ana

Upon joining Orange Coast Title Co. in 1998, William Burding has seen the growth of the company from a three-state regional title company to a 46-state operation, and one of the top three title agencies in the country. He was responsible for the licensing of each of the new states, as well as the acquisition of several companies to build the footprint it enjoys today. Besides his role as general counsel, he is an executive vice president and a member of the company's executive committee. In addition to expanding the title agency footprint, Burding was instrumental in the purchase of Real Advantage Title Insurance Co., one of the nation's newest title insurance companies. He also led in the company being the first title agency in the country to achieve a SSAE 16 SOC 1 and 2 type 1 and 2 (no exceptions) report which demonstrates the highest level of compliance with American Land Title Association's (ALTA) "Best Practices," which is the most recognized way of compliance with the Dodd-Frank Financial Reform Act. Orange Coast Title Co. provides title services to real estate consumers and professionals.



Tara Cowell, Vice President & Associate General Counsel St. Joseph Health System, Irvine

Tara Cowell serves as vice president and associate general counsel for the Southern California Region of the St. Joseph Health (SJH). SJH is a \$4.7 billion not-for-profit integrated Catholic health delivery system sponsored by the St. Joseph Health Ministry. The Southern California region also includes an affiliation with Hoag Memorial Hospital Presbyterian (Hoag). Cowell brings 15 years of proactive and strategic health law experience to her role. Cowell provides leadership to the Office of General Counsel's paralegals and coordinators. With the creation of Covenant Health Network through the affiliation with Hoag, Cowell supports this new entity in its role of expanding access to care and ensuring the health of the population served. With many exciting new ventures for the organization related to wellness and fitness, Cowell is a valued partner in moving these strategic priorities forward. Cowell graduated from Cal State Fullerton with a BA in ethnic studies and then went on to receive her JD from the University of San Francisco School of Law.



Karen Crawford, Chief Legal Officer Stearns Lending LLC, Santa Ana

Karen Crawford serves as chief legal officer for Stearns Holdings LLC, parent company of Stearns Lending LLC, where she leads the legal, compliance, and internal audit strategy and functions for the company's multi-channel mortgage origination, sales and servicing operations. She has been instrumental in preparing Stearns Lending for any and all legal and regulatory changes that might affect the mortgage landscape. She also has extensive knowledge and experience in origination, servicing, secondary marketing corporate matters and general risk management which gives her a broad perspective of the mortgage business and prioritization of legal, operational and reputational risks faced by mortgage companies today. That perspective provides unique value to Stearns executives and board of executives in development of business strategy and day-to-day management of the business. She recently spearheaded Stearns' exciting partnership with Blackstone, a leading global asset manager. In her role, she facilitated the complex legal work and diligent efforts required to bring two companies together to build a strategic partnership. She also navigated Stearns through industry-wide regulatory changes, which no doubt allowed for back-to-back record breaking months in fundings for February and March. Stearns has provided mortgage lending services throughout the United States for more than 25 years.



Shannon Dwyer, Executive Vice President, General Counsel St. Joseph Health System, Irvine

Throughout her career, Shannon Dwyer has helped St. Joseph Health make strides toward establishing itself as one of the top nonprofit health care providers in California. As health care has changed dramatically – demanding a new, more efficient model that favors partnerships and coordination with groups and organizations – Dwyer has helped keep St. Joseph Health at the forefront of innovation by fashioning affiliations and agreements with a range of groups, and making her own department far more lean. Outside of her duties with the system, Dwyer continues to be passionate about providing quality health care, especially to low-income and vulnerable members of the community. To do her part, Dwyer helped found the Family Advocates Program, a medical-legal collaborative designed to improve the health of patients from vulnerable communities by addressing the legal issues adversely impacting their well-being, in partnership with the Public Law Center more than 10 years ago. Dwyer also continues to be active in a broad range of community and professional organizations. St. Joseph Health is a \$5 billion, 14-hospital, nonprofit health system serving California, Texas and New Mexico.



Mark Foster, General Counsel Sabal Financial Group LP, Newport Beach

For the past 11 years, Mark Foster has been an active and dynamic member of Orange County's community of corporate counselors. Today, Foster serves as a high-impact general counsel to one of Orange County's fastest-growing private companies – Sabal Financial Group LP, a nationwide diversified financial services firm specializing in the acquisition, valuation, management and servicing of commercial real estate and acquisition, development and construction (ADC) loans and mortgages. When Foster was hired in June 2012, he optimized a consistent system of processes during a burgeoning period of growth for the company, allowing for record deal-flow to occur. Over the past two years, Foster has also overseen the addition of 150 employees, three securitizations of assets totaling \$850 million, the addition of multiple new business lines and expansion into European markets. Sabal currently has over \$7.4 billion of assets under management and continues to acquire assets on a global scale. Foster oversees the use of more than 270 outside law firms nationwide and, under Foster's leadership, the Sabal in-house legal team has expanded to seven lawyers and a corporate paralegal.



Chad Franks, Vice President/General Counsel/Secretary to the Board Decton Group of Staffing Companies, Irvine

Chad Franks started at Decton, a privately held staffing company, seven years ago. When he started, Decton had been in business for more than six years with 3,000 employees, yet had no legal or human resources department. Franks quickly made sure all processes were paperless, not only to create an environmentally friendly legal division, but to assure he could handle Decton's legal matters from anywhere. Franks next reviewed the 2007 and 2008 balance statements and P&Ls, and realized that workers' compensation was Decton's biggest spend (after payroll). Franks created an internal Workers' Compensation Claims Handling Department. Now, he oversees a team of 80+ employees and 20 outside counsels who work to resolve more than 200 claims at any given time. By 2013, Decton's safety rating fell (for the better) by nearly half due to the firm's new handling of claims. Next, Franks created a Litigation Department. He devised strategies for then-pending and future litigation. Finally, he created a Mergers & Acquisitions sub-division of the Legal Department in 2010. Decton has grown five times in annual revenues since he started in 2008.



David Goodwin, Counsel, Government & Military Oakley Inc., Foothill Ranch

Oakley relies on David Goodwin's knowledge of the hyper-technical worlds of government contracts, anti-corruption compliance and export controls to provide a competitive advantage. In



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these and related areas, Goodwin's deep involvement with all aspects of the business provides an opportunity for legal considerations to be built in at an early stage and then leveraged through development, manufacturing, marketing and sales. In this market space, decisions as basic as component sourcing can have significant downstream ramifications that directly affect sales. Goodwin's involvement also extends to the unique legal issues embedded in Oakley's DNA—facilitating agreements to enable a skydiving filmshoot in under a week; developing expertise in federal, state and local regulations of tattoo operations for a trade show booth giving permanent tattoos; and even more supporting military units operating all around the world. Oakley Inc. manufactures sports performance equipment and lifestyle pieces including sunglasses, sports visors, ski/snowboard goggles, watches, apparel, backpacks, shoes, optical frames and other accessories.



Angela Grinstead, Vice President, Associate General Counsel CoreLogic, Irvine

Angela Grinstead served as both a leader and indispensable member of the team implementing the largest strategic acquisition in CoreLogic's history - the \$651 million acquisition of Marshall & Swift/Boeckh (MSB), DataQuick Information Systems (DataQuick) and other assets from Decision Insight Information Group, a portfolio company owned by an investment fund of TPG Capital (the "MSB Transaction"). A significant carve-out acquisition, Grinstead led a large team of in-house and outside specialists in a transaction that, due to an FTC challenge, spanned over nine months. Concurrent with her role on the MSB Transaction, she also served as lead in-house counsel in the securing and funding of CoreLogic's \$1.4 billion senior secured credit facility. In 2014, Grinstead also served as lead counsel in CoreLogic's \$400 million notes offering. CoreLogic is a leading provider of consumer, financial and property information, analytics and services to business and government.



Daniel Harkins, Partner & Chief Legal Officer Research Affiliates LLC, Newport Beach

Daniel Harkins has more than 40 years of legal and business experience. In addition to private practice representing financial service firms, he has served as the chief operating officer for a registered investment advisor and as a senior vice president, general counsel and chief financial officer for a publicly traded FINRA member firm. For the past nine years, he has been the chief legal officer for Research Affiliates, a global leader in smart beta and asset allocation. The firm delivers solutions in partnership with some of the world's leading financial institutions, which offer mutual funds, ETFs, separately managed accounts and commingled accounts. Harkins joined the company in 2006 as chief compliance officer and assumed the role of chief legal officer in 2008. During his tenure, he has been responsible for the firm's compliance with the myriad of financial regulations around the world, as well as all general corporate legal matters. In 2012, Harkins became a partner in the firm. The firm employs approximately 90 people in its Newport Beach office and has affiliate offices in London and Hong Kong. As of June 30, 2015, about \$174 billion in assets



are managed worldwide using investment strategies developed by Research Affiliates.

Victoria Harvey, Senior Vice President, Chief Legal Officer & Corporate Secretary Smile Brands Group Inc., Irvine

During 2011 and 2012, Victoria Harvey was part of Smile's senior management team, navigating the company through a successful Chapter 11 restructuring and reorganization vital to its survival. She continues to oversee the complex legal affairs for Smile Brands Group, including managing its litigation involving employment, commercial, ADA, trademark, franchise and lease disputes. She also oversees the internal investigations of discrimination, harassment and other employment related matters, and provides day-to-day advice to management and human resources professionals on a wide variety of employment related issues. Harvey also works closely with all of the company's departments, including marketing, operations, IT, franchise, and finance with respect to various legal issues, compliance related issues and company-wide contracts. She also serves as the secretary for the board of directors. Smile Brands Group Inc. is the largest provider of support services to general and multi-specialty dental groups in the United States based on number of dental offices. The company provides comprehensive business support services, non-clinical personnel, facilities and equipment through exclusive long-term agreements with affiliated dental groups.



Maggie Jenkins, General Counsel QSC Audio Products LLC, Costa Mesa

Maggie Jenkins is general counsel for QSC, a globally recognized leader in the design and manufacture of professional audio system solutions, and named a "Best Place to Work" for four years by the *Orange County Register*. Jenkins has been able to apply her keen awareness and unique perspective of legal issues that QSC faces in its global, high-end audio industry. While QSC enjoys and strives for double-digit annual growth, Jenkins has effectively and efficiently managed the Legal Department with limited resources. She consistently looks for creative ways to address ongoing and new legal issues, while meeting the business needs and thinking about long-term risk mitigation worldwide, including issues relating to litigation, antitrust, intellectual property, product development and contracts. Her refreshing and non-threatening approach allows her the "legal-in," necessary to identify issues and provide solutions.



Monica Johnson, Assistant General Counsel & Assistant Corporate Secretary Ventura Foods LLC, Brea

Monica Johnson has helped to design, build and implement a world-class Legal Department at Ventura Foods. For Johnson, taking the time to get to know people and build relationships is key to her success as an in-house lawyer. Also, her ability to think strategically and with an eye toward the big picture has enabled her to focus on ways to do things instead of all the reasons they cannot be done. The feedback she receives from her



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Ventura Foods business partners, and hearing that they see her not just as a lawyer, but as a valuable business partner who is proactive in helping the company succeed truly gives her a sense of pride and accomplishment. After chairing several successful MCLE Conferences at Angel Stadium, Johnson was selected by her in-house peers to serve on the ACC board of directors where she presently serves as communications co-chair and 2016 gala chair. Additionally, she has been nominated and selected to participate in the Project 5/165 regional workshops.

**Elona Kogan, Chief Legal Counsel & Vice President of Government Affairs
Avanir Pharmaceuticals, Aliso Viejo**

Elona Kogan joined Avanir Pharmaceuticals in May 2011 with responsibility for overseeing Avanir's legal affairs. In March 2015, Kogan's areas of responsibilities were broadened to include government affairs. Kogan has helped lead Avanir through the development of its robust R&D pipeline with a promising lead investigational product for agitation in Alzheimer's, the successful double-digit annual growth of its lead neuroscience product – NUEDEXTA – while developing the legal-compliance-commercial infrastructure, and the \$3.2 billion sale of Avanir to Otsuka Pharmaceutical Co., in 2015. Kogan advises management on strategic and core legal and business matters ranging from regulatory matters, compliance, enterprise risk management, corporate development activities, litigation, corporate governance, SEC matters and other strategic issues. Most recently, Kogan was associate general counsel and privacy officer at King Pharmaceuticals (a Pfizer company), where she was the primary legal liaison for corporate strategic and tactical commercial initiatives. Previously, Kogan was counsel for U.S. Medicines at Bristol-Meyers Squibb. Kogan earned her JD from the SCALE Program at Southwestern University and her BA in economics from Columbia University, Barnard College.



**Sheela Krishnan, Corporate Counsel
Advantage Sales & Marketing Inc., Irvine**

When Advantage Sales & Marketing (ASM) General Counsel Tania King hired Sheela Krishnan in 2010, the company was in yet another huge transition. ASM was growing rapidly as a result of more than 50 acquisitions in less than 10 years. During that same time period, the company itself was bought and sold three times by various consortia of private equity firms. Krishnan has become invaluable to the company's team and various business units. ASM is the leading sales and marketing agency in the industry with a workforce of over 38,000 associates generating over \$65 billion in sales. By partnering with ASM business units' operational and sales teams, Krishnan not only preempted business issues, but created a tangible differentiator for salespeople to leverage based on the strong compliance that she and her legal department team instituted. Krishnan helped to create cohesive ASM Compliance Standards and roll-out training for each associate in these ethical and procedural morays. The result impressed potential clients so much, it became a key selling point to ASM representatives making new business pitches. Beyond compliance, Krishnan has made significant contributions through her leadership in handling employment law and commercial contract matters, as well as mergers and acquisitions.



**Michael Lavin, Executive Vice President & Chief Legal Officer
Consumer Portfolio Services Inc., Irvine**

Consumer Portfolio Services (CPS) is a public finance company. Michael Lavin, its executive vice president and chief legal officer, is part of a small executive team that accomplished an incredible turnaround in an industry decimated by the recession. Lavin joined CPS in 2001, as the company was just emerging from a tough industry down-cycle. From 2001 through 2007, CPS acquired three competitors, increased monthly loan originations to over \$120 million, and pushed the total managed portfolio to over \$2 billion. In 2009, when Lavin was offered the position of senior vice president and general counsel, many viewed this as a dubious offer. In 2007, the company had originated over \$1.3 billion in auto loans, and had a stock price near \$10/share. By 2009, however, CPS had originated only \$9 million in auto loans, and its stock had dropped to 25 cents. Lavin was offered positions in the legal departments of several stable companies. However, he chose a different path. Lavin believed that when you are presented with difficult challenges, you should rise to meet them. CPS has emerged stronger and more dominant in its sector. In 2014, CPS achieved revenues of more than \$250 million and employs more than 350 people in Orange County.



**Richard LeBrun Jr., Managing Director, Deputy General Counsel
PIMCO, Newport Beach**

Richard LeBrun is a managing director and deputy general counsel in the Newport Beach office of PIMCO, primarily responsible for the firm's alternative funds and transactions. PIMCO is a global investment management firm with a singular focus on preserving and enhancing investors' assets. The firm manages investments for institutions, financial advisors and individuals. The institutions PIMCO serves include corporations, central banks, universities, endowments and foundations, and public and private pension and retirement plans. Prior to joining PIMCO in 2005, LeBrun was an associate with Ropes & Gray, focusing on investment management and private equity-related matters. He has 15 years of legal experience and holds a JD from the University of Michigan Law School where he was admitted to the Order of the Coif. He received an undergraduate degree from Northwood University. He was admitted to the bar in Massachusetts and New York.



**Suzu Lee, Vice President & General Counsel
ITT Cannon LLC, Irvine**

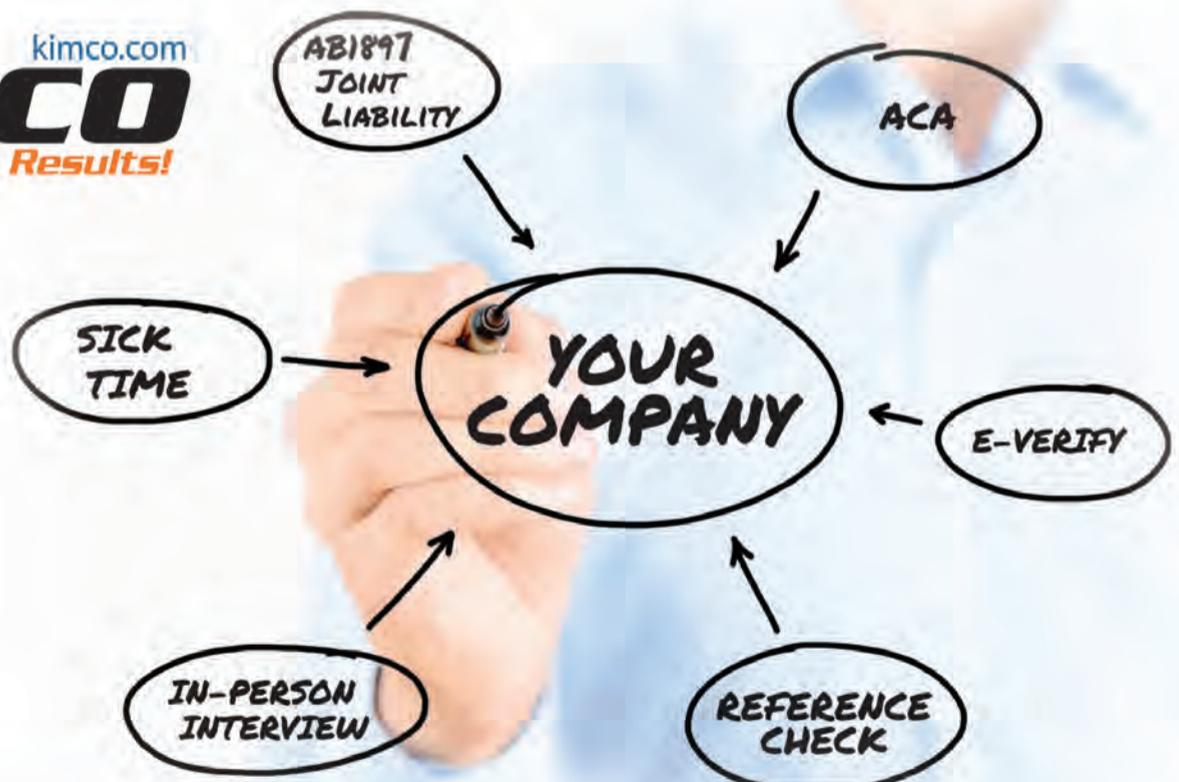
Suzu Lee has been vice president and general counsel of ITT Cannon in Orange County, which manufactures electrical connectors, for the past five years. ITT Cannon celebrated its 100th anniversary this year. Currently, ITT Cannon is undergoing a business turnaround to which Lee has been a key contributor, with her leadership team. ITT Corporation split into three publicly listed companies in 2011, and Lee led this effort for ITT Cannon. The corporate split led to ITT's stock price rising from \$18/share in 2011 to the current stock price of approximately \$35.66/share. Other



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accomplishments include leading the move of ITT Cannon's headquarters from Santa Ana to Irvine and maintaining ITT Cannon's presence in Orange County, with a new ten year lease with the Irvine Company. Lee has led multiple major business transactions for ITT Cannon, including the purchase of ITT Cannon's Nogales, Mexico facility, which is now the company's largest manufacturing site and its America's Manufacturing Center of Excellence. She led the buyout of ICS' Korean joint venture, creating an entry into the Korean economy.

Jason Liljestrom, General Counsel William Lyon Homes, Newport Beach

Jason Liljestrom worked with William Lyon as outside counsel and helped the company through its 2013 initial public offering. After joining the company, he was actively involved in the organization's 2014 acquisition of Polygon Northwest Homes for over \$520 million. At the time of the acquisition, Polygon was the largest private home builder in the Pacific Northwest and had 20 years of home building history in Washington and Oregon, delivering approximately 16,000 homes before its acquisition. Liljestrom also managed the capital markets transactions associated with the acquisition of an infill portfolio of residential land parcels in California in 2014 for over \$150 million which, together with the Polygon acquisition, significantly expanded the company's lot supply and geographic footprint. As the company's sole in-house counsel for the duration of his tenure at Lyon, Liljestrom has focused not only on acquisitions and capital markets transactions, but also the company's SEC filings and reporting, acquisition integration, corporate governance initiatives, board matters and a variety of other matters. William Lyon Homes is one of the largest Western U.S. regional home builders, with active operations in California, Arizona, Nevada, Colorado, Washington and Oregon.



Christopher Magill, Director of Legal Affairs Viant Inc., Irvine

Christopher Magill serves as director of legal affairs for the Viant family of companies, which includes Viant, Myspace, Specific Media, Vindico and Xumo. In his role, he acts as the sole in-house attorney and provides legal support for all commercial and corporate legal matters, as well as manages and oversees the organization's IP, litigation and risk management initiatives. At Viant, Magill drafts, negotiates and reviews commercial agreements, licensing agreements, service agreements and vendor agreements. He provides legal support for significant transactions including a \$125 million credit facility, the creation of a \$25 million joint venture and multiple equity transactions. Magill also counsels executive management on human resources, risk management, privacy and international regulatory compliance; drafts and maintains corporate governance documents; and negotiates international office lease transactions. Founded in 1999, Viant is a technology company offering clients a comprehensive suite of advertising applications available on-demand, in the cloud.



Stephen Moran, Vice President & General Counsel CalAmp Corp., Irvine

Over the past 19 years, Stephen Moran has served as the general counsel for seven global technology companies—six of those in Orange County and three of them NASDAQ companies—in five industries (electrical interconnect, semiconductor, copier/fax/printer, medical device and MRM/M2M), ranging in annual revenues from \$236 million to \$1 billion. He has earned a reputation for successfully and ethically advancing and protecting the legal and business interests of his companies. Since joining CalAmp, Moran has acquired two companies with no outside counsel: first, Radio Satellite Integrators Inc., a privately held Florida corporation providing SaaS solutions for a wide variety of fleet types including applications in public works, waste management, transit and public safety; and second, Crashboxx, a privately held early stage technology Colorado company with proprietary driver behavior, crash detection, crash notification, and physical and bodily damage estimation technologies for the emerging insurance telematics marketplace. He was also lead in-house counsel for a \$172.5 million Rule 144A offering of 1.625% Convertible Senior Notes and related note hedge and warrant transactions.



Stan Mortensen, Executive Vice President & General Counsel Corinthian Colleges Inc., Santa Ana

Stan Mortensen joined Corinthian Colleges Inc., a for-profit post-secondary education company (CCi) in 2000. He had recently completed the company's initial public offering. During his tenure, the school grew rapidly, buying up dozens of vocational colleges across the country. In 2003, Mortensen oversaw the \$56 million acquisition of Career Choices Inc. followed in 2010 with the \$395 million purchase of Heald College and the \$13.3 million acquisition of QuickStart Intelligence Corp. in 2012. However, CCi found itself the target of critics questioning the for-profit model. A very long process was capped when, in 2014, the DOE delayed federal aid payments, essentially halting CCi's cash flow. Mortensen worked to negotiate a solution that would be beneficial to Corinthian's students and agreeable to the government. He orchestrated an unprecedented deal with the government to sell 53 Everest and WyoTech campuses and online programs to nonprofit Zenith Education Group. With this transaction, Mortensen helped CCi accomplish several key objectives, including ensuring the continued education of 40,000 of its students, the continued employment of over 8,000 of its employees and the assumption by Zenith of hundreds of millions of dollars of current and prospective contractual obligations.



Shawn Murphy, Vice President, General Counsel & Secretary Mazda Motor of America Inc., Irvine

Just before a downturn in the economy and the auto industry, Shawn Murphy began heading the Legal, Governmental and Audit Groups at Mazda, and has contributed to the company thriving. He has reduced legal spend 33% from 2007-2014, despite managing many significant legal and government affairs issues. For example, Murphy led efforts negotiating with federal and state lawmakers to establish rulemaking requiring significant improvement in fuel economy (54.5 mpg) by 2025. He is also heavily involved in developing advertising and communication materials regarding Mazda's entire product line-up, including its SkyActiv technology (significantly enhanced internal combustion engines and transmissions, increased use of light-weight, high-strength materials, and other fuel



saving and safety technologies). This technology is class-leading and effective in achieving high fuel economy and reduced greenhouse gas emissions without electrification and its potential downsides. Mazda's new SkyActiv products have been extremely well-received. In 2012 and 2013, the EPA recognized Mazda as the automaker with the most fuel-efficient fleet, and both 2013 and 2014 were the most profitable in its 70-year history.

Keith A. Newbury, Vice President, Chief Intellectual Property Counsel Edwards Lifesciences, Irvine

Keith Newbury joined Edwards Lifesciences, the global leader in the science of heart valves and critical care monitoring, as vice president, chief intellectual property counsel in 2007. Since then, Newbury has implemented a new paperless patent and trademark system, developed and led a best-in-class IP education program for Edwards employees, and assumed the management of all litigation at the company. As part of a global enforcement program, Newbury secured the largest U.S. IP verdict of 2014, with a \$394 million jury award in a patent infringement case against a major competitor. This was after obtaining \$84 million patent damages payment against the same competitor. The entire global dispute was settled later that year including a patent cross-license agreement worth over \$1 billion over eight years. Outside of Edwards, Newbury is a past president and board member of the Los Angeles Intellectual Property Law Association and currently serves as chair of the Sponsorship Committee. He is also been a strong supporter of the Laguna Beach SchoolPower Foundation and the Child Education Center in La Canada Flintridge.



John O'Laughlin, General Counsel Redwood-Kairos Real Estate Partners, Rancho Santa Margarita

John O'Laughlin joined Redwood Real Estate Partners as its general counsel in 2007. Prior to joining the company, O'Laughlin headed his own private practice focusing primarily on corporate and real estate litigation and transactions. From 1982 to 2004, O'Laughlin was a partner at the law firm of Butterwick, Bright & O'Laughlin Inc., serving as the firm's managing partner from 1990 to 2004. During his 30 years of practice he has represented a broad spectrum of clients, including business owners, landowners and operators, developers, contractors, brokers and agents, in all aspects of the litigation process, including real property, construction, eminent domain, contract and lease disputes. His experience extends to representing clients in real property transactions such as acquisitions, sales, commercial leasing and development. In addition, he has negotiated, documented and closed numerous loans secured by various types of real property including shopping centers and office complexes. Redwood Real Estate Partners is a privately owned, entrepreneurial real estate investment company focused on the acquisition, development and re-development of commercial real estate throughout the United States.



Guthrie Paterson, Vice President & General Counsel Trace3, Irvine

Guthrie Paterson serves as vice president, general counsel for Trace3, a leading technology solutions provider based in Southern California serving Fortune 1000 clients. Paterson has broad responsibility covering legal and operational matters, as well as supporting sales efforts, managing distribution relationships and advising on strategic finance efforts. In this role, he helps to drive sales and scale a rapidly growing operational platform - while simultaneously reducing the company's overall risk profile. During his five-year tenure, Trace3 has grown from \$100 million revenue and 100 employees to \$430 million revenue and 300 employees. Recent accomplishments include sourcing a new \$112 million working capital facility with Wells Fargo Capital Finance, partnering with sales leadership to drive increased revenue, and successfully obtaining a dismissal of Trace3 without liability from a three-year unfair competition litigation pursued by a competitor. Previously, Paterson served as general counsel for Comtex News Network, a leading provider of online real-time news and finance content solutions. Prior to Comtex, Paterson was a senior M&A attorney in the New York and Los Angeles offices of Jones Day, an international law firm.



Jamie Salimi, Senior Corporate Counsel Trace3, Irvine

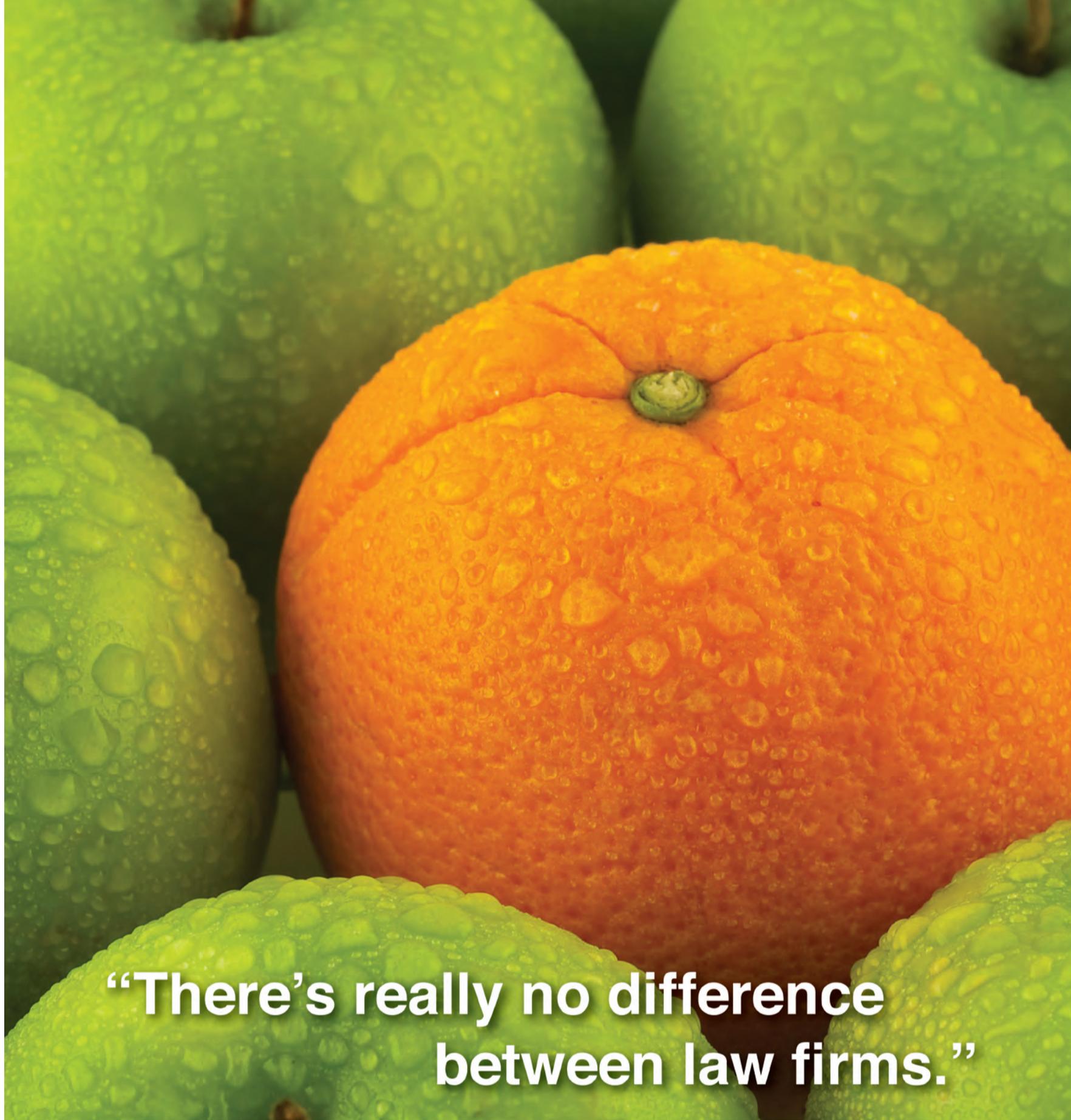
Jamie Salimi plays a significant role at Trace3, directly through its legal department and indirectly contributing to the business and sales goals of the company. Year after year, she engages head-on with clients and partners to negotiate and secure agreements to facilitate the business, many with Fortune 100 companies. Specifically in 2015, she was the attorney at Trace3 that negotiated to completion and satisfaction of all parties a purchase agreement with a prominent Indian tribe in Southern California. During the final hours with a looming quarter end deadline that was important to meet for the client, there were unanticipated issues that arose with the legal terms that Salimi had to navigate through. After several meetings and conference calls with the business heads at Trace3 and the client and the attorneys at the client, she was successfully able to negotiate the final terms and see the final agreement to signing. This brought about unprecedented monthly and quarter end results for Trace3 and the sales representative in particular. Trace3 is a leading technology solutions provider based in Southern California serving Fortune 1000 clients.



Libby Stockstill, Senior Corporate Counsel (U.S.) Billabong, Irvine

Libby Stockstill joined Billabong to build and run the in-house legal department for Billabong's North American operations as the company launched a global turnaround. During her time with the company, it has undertaken sweeping change which has involved considerable, complex legal work on transformational worldwide projects, including the company's move to a global omnichannel platform, in addition to her responsibilities for all U.S. and Canadian legal matters for all of the company's brands. In August, the company reported its first profit since 2011 as it continues to focus on building great global brands. Prior to joining Billabong, Stockstill spent more than eight years in the NY and OC offices of Latham & Watkins LLP, where she represented clients in billions of dollars of public and private mergers and acquisitions, including serving as counsel to Volcom in its acquisition by PPR; Goldman Sachs as financial advisor to Anheuser-Busch in its acquisition by InBev; Too Faced Cosmetics Inc. in its acquisition by Weston Presidio and Odyssey





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2015 General Counsel Award Nominees

Investment Partners and their portfolio companies in various acquisitions.

James J. Sullivan, Senior Vice President, Chief Administrative Officer WellTok, Newport Beach

James J. Sullivan joined WellTok Inc. on June 17, 2013. Sullivan leads the legal, deal management, compliance and human capital management functions at Welltok. Welltok Inc. is fundamentally transforming the way population health managers partner with consumers to optimize their health and get rewarded. The company's CafeWell Health Optimization Platform™ organizes the growing spectrum of health and condition management programs, apps and digital tracking devices. Sullivan is an accomplished legal advisor within the health care industry, mastering the complexities of security, privacy and intellectual property. He recently served as executive vice president, general counsel and secretary of Quality Systems Inc., a health care technology company offering electronic health records, financial software and services to physician groups and community hospitals. Previously, he served as senior vice president, general counsel and secretary for TriZetto Corp. and as senior vice president, general counsel and secretary for Long Beach Financial Corp., a national mortgage lender.



Robert Tennant, Vice President & General Counsel Veros Credit, Santa Ana

Orange County native Rob Tennant is vice president and general counsel for Veros Credit. Veros Credit is the benchmark in the world of auto financing. The company acquires and services non-prime and sub-prime motor vehicle installment contracts, giving disadvantaged individuals an opportunity to build or reestablish credit. Tennant has worked to elevate the role of counsel in the company by building the legal department from scratch - hiring attorneys and staff for the legal team, implementing an internal framework for handling litigation in house saving the company millions of dollars, and bringing other departments such as bankruptcy and compliance under his oversight. He is helping to change the business by overseeing the purchase and implementation of new technology to assist with complex business transactions, the purchase of commercial properties, and he provides guidance to the company as it expands into a number of other states. Veros Credit operates in 18 states and continues to expand.



Cherrie Tsai, Vice President, Deputy General Counsel & Secretary Kaiser Aluminum Corp., Foothill Ranch

Cherrie Tsai is vice president, deputy general counsel and secretary of Kaiser Aluminum, a leading manufacturer of semi-fabricated specialty aluminum products that serves the aerospace, automotive and general engineering markets. Tsai joined Kaiser Aluminum in 2008 and has continued to take on increasing roles and responsibilities within Kaiser's Legal Department, including assuming primary responsibility for providing



and coordinating legal support for external reporting and filings with the Securities and Exchange Commission, as well as assuming responsibilities for Kaiser's corporate governance, compliance and commercial groups. Tsai works closely with Kaiser's senior management team and board of directors, as well as its Accounting, Tax, Investor Relations, Sales and Human Resources groups. In the legal community, Tsai serves on the board of directors of the Orange County Bar Association, and as a co-chair of the In-House Section of the Orange County Asian American Bar Association, of which she is a past president. Tsai holds a JD from Loyola Law School, Los Angeles and a BA from the University of California, Irvine.

Jim Watson, Deputy General Counsel St. Joseph Health System, Irvine

Jim Watson serves as deputy general counsel for St. Joseph Health (SJH), a \$6 billion not-for-profit integrated Catholic health care delivery system sponsored by the St. Joseph Health Ministry. SJH's comprehensive range of services includes 16 acute care hospitals, home health agencies, hospice care, outpatient services, skilled nursing facilities, community clinics and physician organizations throughout California, Texas and New Mexico. Watson brings 20 years of Catholic health care experience to his role. He provides leadership to the Office of General Counsel, which is staffed by seven attorneys who manage an aggregate caseload of over 500 open matters. Together with his highly-skilled team, Watson has helped transform the Office of General Counsel's role to that of a strategic business partner and agent for organizational change, valued for its ability to directly enable SJH goals and vision. Additionally, he monitors the work performed by outside counsel for quality, efficiency and performance and leads development of standards for providing legal services to improve quality and reduce costs throughout SJH. Over the past two years, Watson has had an opportunity to provide leadership to the SJH Ministry Integrity and Ministry Security teams.



Christina Zabat-Fran, Manager of Legal Affairs St. John Knits Inc., Irvine

Christina Zabat-Fran is manager of legal affairs for St. John Knits, the Orange-County-born women's luxury fashion house. In the three years since joining St. John, she has seen her responsibilities grow exponentially, and now leads all transactional work and manages the worldwide licensing portfolio for the brand. Reporting to the general counsel, she interacts with the brand's business stakeholders on a daily basis to structure transactions and to negotiate and draft contracts. She provides incisive legal advice on a variety of apparel and non-apparel manufacturing, distribution and retail-related issues. Zabat-Fran is a member of the inaugural class of UC Irvine School of Law, where she founded the student bar association and the law review, on which she served as co-editor-in-chief. She is extremely active in professional and community groups, and is a long-time leader in community building and the creative arts, being an artist, black belt and pianist herself. She is currently chair-elect of the OCBA Corporate Counsel Section, and provides pro bono assistance to many groups including California Lawyers for the Arts.



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NIKKI NGUYEN, ESQ., MANAGING PRINCIPAL

NIKKI@N2NLEGAL.COM | (949) 333-1233 | N2NLEGAL.COM

2030 MAIN STREET, SUITE 1300, IRVINE, CA 92614