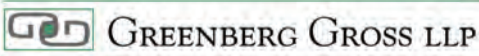




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Is Your Company's Rush to Release Product Negatively Impacting Its Ability to Obtain Patent Protection?

Many companies set their sights on selling products or releasing software as quickly as possible to bring in revenue. While this may be beneficial in the short-term, it may have serious consequences long-term if a patent filing strategy is not first developed and then followed. Products and software often include inventive concepts that a company wants to protect, which may be done through obtaining a patent.

Releasing or marketing a product constitutes "public disclosure," which generally includes non-confidential conveyance of information describing an inventive concept. Actions have to meet a relatively low bar to be considered public disclosure. The following categories of actions constitute public disclosure: (1) describing the inventive concept in a printed publication (e.g., marketing materials, online blogs, grant proposals, pitch decks); (2) using the inventive concept in public (e.g., displaying a product that includes the inventive concept at a trade show even if the inventive concept is concealed or not easily discerned); (3) placing a product that includes the inventive concept on sale; or (4) making the inventive concept otherwise available to the public (which will likely be determined on a case-by-case basis). Moreover, the public disclosure may occur anywhere in the world.

When an inventive concept is publicly disclosed prior to filing a patent application, whether the inventor(s) or employer may subsequently apply for patent protection on the disclosed inventive concept varies from country to country. Individual countries may provide for a "grace period" for filing a patent application within a specified time period, which is typically 6 or 12 months from the date of the public disclosure. For example, the United States, Argentina, Canada, and Japan offer a grace period of 12 months while Australia, the Eurasian Patent Organization, and the European Patent Organization offer a grace period of 6 months.

To further complicate matters, many countries have specific criteria that need to be met for the grace period to apply. Therefore, even if a patent application is filed within the grace period, unless the disclosure meets certain criteria required by that country, the inventor(s) or employer will not be permitted to obtain a valid patent on the disclosed inventive concept (and any patent that is obtained improperly is subject to be invalidated during any ensuing litigation).

The United States (US) is one country that does not require that specific criteria surrounding the disclosure be met for its grace period to apply. The relevant US law states that any "disclosure made 1 year or less before the effective filing date of a claimed invention shall not be prior art to the claimed invention...if...the disclosure was made by the inventor...or by

another who obtained the subject matter disclosed directly or indirectly from the inventor." The "effective filing date" is the earliest filing date that may be obtained by filing either a provisional application or non-provisional application in the US, a patent application directly with the patent office of another country or an application with the World Intellectual Property Organization (WIPO), often referred to as a "PCT application."

As one example of the need to meet specific criteria, the European Patent Office (EPO) only provides for a grace period if either of the following caused the disclosure: 1) an evident abuse in relation to the applicant or his legal predecessor, or 2) display of the invention by the applicant or his legal predecessor at an official or officially recognized international exhibition. Similarly, China only provides for a grace period if any of the following apply, the disclosure: 1) was in the purpose of public interest when a state of emergency or an extraordinary situation occurred in the country, 2) was at an international exhibition sponsored or recognized by the Chinese Government, 3) was at a prescribed academic or technological meeting, or 4) was disclosed by any person without the consent of the applicant. Thus, the EPO and China each require that the disclosure meet specific, narrow criteria for the grace period to apply.

As one theoretical example of the negative effects of public disclosure, consider the disclosure of a new product and its inventive concepts to potential investors. Unless done under a non-disclosure agreement (NDA), the disclosure marks the beginning of each country's grace period. The inventor(s) or employer may file an application with the USPTO within 1 year from the disclosure and may prevent competitors from copying the inventive concept within the US once a patent issues. However, as disclosure to potential investors fails to meet criteria set forth by many foreign countries, the inventor(s) and employer are likely to be barred from applying for patent protection on the disclosed inventive concepts outside of the US. Thus, competitors may copy the inventive concepts and incorporate such into products that are sold outside of the US.

While public disclosure of an inventive concept complicates the path to obtaining patent protection, avoiding the public disclosure issue altogether is straightforward. Inventors can either (1) file a patent application (provisional, non-provisional, within the US or abroad) prior to publicly disclosing the inventive concept, or (2) disclose the inventive concept only under an NDA (also referred to as a confidentiality agreement).

In summary, the prevailing guidance is that inventor(s) and employers should discuss any inventive concepts with their patent counsel prior to any scheduled public disclosures in order to devise a strategy for filing patent applications that also coincides with the desire to market and release products as early as possible. In fact, discussing product cycles with your patent counsel enables development of a patent filing strategy (within the US and abroad) that ensures drafting and filing of patent applications do not disrupt desired product release dates and maintains the ability to file for patent protection in any jurisdiction.

Additionally, in the event an inventive concept is publicly disclosed and a grace period has expired (or did not apply), a "creative" patent counsel may still be able assist you in strategizing on filing for patent protection on alternative embodiments or improvements in order to obtain some patent protection on the inventive concept.



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It's (Still) Not Easy Bein' Green

Kermit the Frog first sang the words “It’s Not Easy Bein’ Green” back in 1970 - 50 years ago! While the “greening” of society has increased significantly since 1970, this article will explain why it is still sometimes hard for consumers and brand owners to be “green.”

Whether shopping online or at “brick and mortar” stores, consumers encounter commonly used “green” terms - GREEN, CLEAN, CRUELTY FREE, ECO-FRIENDLY, ORGANIC, NATURAL, SUSTAINABLE – no matter what product they are buying. Although today’s marketplace is absolutely greener than it ever has been before for consumers, green branding has become more challenging for brand owners.

As is the case any time there is a new trend, the number of trademarks catering to that trend increases. Companies of all sizes want to be green as their consumers are demanding it. The chart below shows the approximate number of Federal trademark applications filed within the last year for a few common green words.

TRADEMARK OFFICE FILING TRENDS:	
WORD APPEARING IN MARK	APPROX. USPTO FILINGS IN LAST YEAR
GREEN	1,800
CLEAN	1,900
NATURAL	1,100
ECO/ECO FRIENDLY	800
ORGANIC	600
SUSTAINABLE/SUSTAINABLY/ SUSTAINABILITY	400
	TOTAL: 6,600

Because of such filing trends, companies will want to take precautions and ensure that they do a proper review or clearance and conduct a search of the trademark office records, as well as search common-law users, before adopting a new green mark or using a new green slogan. Such a search or clearance process will hopefully ensure that the selected mark or slogan is available and not already in use by another.

However, many of the pending green marks identified above are likely to face refusals to register based on descriptiveness – i.e., that the mark merely describes the applied-for goods or services and therefore is not inherently distinctive and not subject to registration. Another potential refusal that some marks may face is deceptiveness. An examiner can refuse an application if it considers the mark deceiving to consumers because it conveys a particular idea or feature to the consumer that is not present.

A case in point is a refusal to register the mark GREEN SEAL for tape products. Here, the applicant indicated that the products were not intended to be environmentally friendly or “green,” but rather part of a color-coded family of tape products (BLACK SEAL, BLUE SEAL, etc.), and that the current mark was used on its products with imagery of a green-colored sea mammal (seal). However, the refusal to register was maintained as the mark had the potential for deceiving the consumer.

One company well aware of “bein’ green” is Earth Friendly Products, with local headquarters in Cypress, California. It is the owner of the EARTH FRIENDLY PRODUCTS and ECOS brands. Around the same time that Kermit the Frog was singing about being green, Van Vlahakis, a chemist, founded EARTH FRIENDLY PRODUCTS to develop cleaning products that would be a safer and greener alternative to the harsh chemical ingredients of the day.

With regard to the ECOS brand, the term “ecos” was selected for a plant-powered laundry detergent back in 1990. “Ecos” means “home” in Greek, and also translates to habitat or environment in Latin. The ECOS products were safe for the home – your ecos – and safe for the ecos of the planet. Earth Friendly Products can also tout the fact that its bottles are made from post-recycled consumer plastic, and that it is constantly working to create more sustainable products like its new ECOSNEXT Liquidless Laundry Detergent. Earth Friendly Products is also a participant in the Safer Choice program –

the gold standard of third-party safety certification. Created by the U.S. Environmental Protection Agency, Safer Choice helps consumers find cleaning products that are safer for their health and the environment without sacrificing performance. Earth Friendly Products has over 140 Safer Choice certified products (more than any other company), and has been named Safer Choice Partner of the Year five times, including most recently in 2021.

A business must still be mindful that even a mark that has been cleared for use, and perhaps even registered, must still be used in a truthful manner from an advertising perspective. There is a significant focus on fair and truthful advertising with respect to use of green terms or claims in marketing today that did not exist in years past. The Federal Trade Commission (FTC) has actually developed “Green Guides” in 1992 (and updated in 2010) to help businesses with proper advertising and gives very specific examples. The Guides are definitely worth a review before launching any green initiative.

Businesses also should consider the National Advertising Division (NAD), established in the 1970s and is a division of the Better Business Bureau (BBB), which reviews the veracity of advertising claims. The NAD, through published recommendations, provides guidance on what constitutes fair advertising and serves as a dispute forum for both consumers and competitors.

Consumers now have significant social media and influencers to assist them in paying attention to green brands, and are being more vocal about how businesses brand themselves. As a result, consumers have more influence than ever on how businesses brand themselves and do not take kindly to “greenwashing” – a term used where a company claims to be green or environmentally conscious but cannot substantiate such claims. In this new green environment, a business always should be asking itself several questions - can we substantiate our claims? are we puffing too much? how will a consumer react to our claims? will the claims create negative press attention for the brand or the company?

In this regard, businesses can take a cue from Earth Friendly Products and its Earth Month campaign. For Earth Month, the “Just Clean” campaign had a wonderful double meaning where Earth Friendly Products could advertise that its products contain exactly what is needed to “just clean,” but also promote the connotation that it was a champion for sustainable living for everyone.

At the heart of Earth Friendly Products’ mission lies a single goal: to make safer cleaning products available and affordable to everyone. It may not be easy being green, but Earth Friendly Products wants to change that.

Amber Enriquez serves as General Counsel and Corporate Secretary for Earth Friendly Products, the privately held American manufacturer of the environmentally friendly cleaning products brand ECOS. She joined the company in 2008. Since her graduation from Chapman University Fowler School of Law in 2009, she has quickly risen to the highest-level legal position in the company, directing legal strategy and managing legal operations for the company’s four U.S. manufacturing facilities, global operations in Europe, and sales in over 65 countries.



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Heading Into 2022, How California Employers Can Avoid A COVID Litigation Infection

By Ashley A. Halberda and Todd R. Wulffson

With the constantly-changing landscape of COVID-19 protocols, and the first waves of COVID-related employment litigation already hitting California courts, California employers find themselves in a perpetual state of reacting to new governmental mandates, updating workplace policies, and trying to be proactive in an effort to avoid COVID-related lawsuits. Businesses have been forced to divert their attention from routine operations to focus on what has now become business as usual – masks, vaccines, accommodations for both, and constant testing – transforming employers into pseudo-healthcare providers. It is nearly impossible to stay up-to-date on applicable federal law, OSHA/Cal-OSHA regulations, CDC guidance, and the various city and county ordinances, without adversely impacting the business. This article will focus on a few key ways California employers can minimize their COVID litigation risk.

If You Don't Already Have a Mandatory Vaccination Policy – Wait a Little Longer

Many California employers, in an effort to be proactive and to assist with the national vaccination effort, have been implementing mandatory vaccination policies before there is any legal requirement to do so. This is leading to lawsuits by people who object to vaccinations for religious, medical or other reasons. It is also putting a further hiring strain on California employers, already struggling to find qualified candidates. There is no legal defense for believing one is “doing the right thing” with respect to requiring employees to be vaccinated – and California employers should hold off on implementing mandatory vaccination policies until applicable law and regulations specifically require them (and provide some measure of protection against many of the percolating lawsuits).

President Biden announced his plan to introduce, through OSHA's Emergency Temporary Standard (“ETS”), a federal vaccine mandate for federal employees, federal contractors, and private employers with 100 or more employees. Many aspects of this impending federal mandate are still unknown. While this directive takes effect “immediately” for many, for states like California, with a state-specific OSHA system, the effective date is still unknown. Cal-OSHA claims that employers will have 50 to 90 days to comply with the requirements once they are announced; yet, as of the writing of this article, no such requirements have been published. Further, there is much uncertainty surrounding which employers will be covered by this mandate. There is no guidance as to how this 100-employee marker should be calculated, but based on other federal laws, such as the Family Medical Leave Act, the size threshold for this mandate will likely be an aggregate of part-time and full-time employees working for an employer, for the prior six months. There will be exemptions to this order for qualifying religious and American With Disabilities Act (“ADA”) exceptions – but again, the details of any such exemptions have not been announced.

Under President Biden's plan, employees who are exempted from vaccination will need to be tested weekly. Mandatory COVID testing is expensive for employers. California employers are already required to pay for any required COVID tests, as well as compensate employees for time spent taking the test and mileage. (To avoid any shenanigans, employees should be advised where to go to get tested.) Mandatory testing also may impose requirements for “show up” pay (minimum of two, and maximum of four, hours) if employees report to work, but are sent home for testing positive.

With respect to federal workers and contractors, the new Guidance states that all such employees must be “fully-vaccinated” by December 8, 2021. Although it may change when the ETS is released, currently the Guidance does not allow the options of weekly testing or working remotely. Federal contractors should let employees know about the deadline now, and advise those working remotely, that they may also need to be vaccinated (although it is likely this will change). If any employees have religious, medical or other objections, encourage them to contact Human Resources or Legal, so each case can be evaluated as we wait for the ETS.

Review, But Do Not Maintain Copies of, Vaccination Cards

Employers in California must now ask employees if they are vaccinated and keep a record of employee vaccination status. Many employers are taking the extra step of copying and maintaining a record of employee vaccination cards, and are also questioning the veracity of cards presented to them (another reason perhaps not to keep a copy). This goes beyond California's requirements and exposes employers to potential liability. Vaccination cards are considered a confidential medical record, and employers should not keep a record of them. Any confidential medical information should be kept separate from traditional personnel records. Improper maintenance and use of vaccination information could lead to claims of discrimination, retaliation, and violation of the California Consumer Privacy Act. Less is more under these circumstances, and a simple yes or no list will suffice.

Update Your COVID Prevention Plans

Every California business is required to create a safe environment and should already have a COVID-19 Response Plan pursuant to the current, Cal-OSHA ETS. This is usually done as a supplement to the employer's Injury & Illness Prevention Plan. These are living documents that need to be updated on a regular basis due to the frequently-changing safety standards and protocols. There is a myriad of orders and guidelines issued by federal, state, county, city and other local government offices with which California employers must comply, that often change weekly. If a company has more than one location in California, different plans will need to be developed for each location to comply with local governmental rules. Plans should include the company's plan for vaccinating employees and responding to positive or potentially exposed employees. Employees should be trained on these plans and have a copy of, or access to, the Response Plan.

California employers should be sure to stay informed, utilize subject matter experts, and keep employees apprised of all your efforts. Reducing employee anxiety is as important as reducing litigation exposure, as both can lead to an avoidable, 2022 COVID business infection.

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Navigating the ESG Landscape

The global Environmental, Social, and Governance (ESG) movement has steadily gained influence, ushering in the practice of quantifying and evaluating the impact of companies' actions and operations on the environment, society and internal corporate governance. ESG investment guidelines, shareholder pressure, exchange listings mandates, government bid requirements, and customer demands have created an immediate need to examine and address ESG standards within companies of all sizes.

Despite concerns early in 2020 that the pandemic would slow the growth of ESG initiatives, the opposite has proved true with political and investor momentum aligning and ESG initiatives surging. This growth has only accelerated in 2021 as investors double down on ESG demands.

As companies and investors look to the future, here are eight ESG trends likely to continue:

1. Global and US ESG Policy Developments

A number of countries have strengthened their climate commitments in advance of the 26th Conference of the Parties (COP 26) to the UN Framework Convention on Climate Change taking place in Glasgow next month. The UK, EU, South Korea, Japan, and China have all made net zero or carbon neutrality commitments.

In the US, the Biden Administration has re-joined the Paris Climate Agreement and committed to significant emissions reductions by 2030. Its infrastructure proposals, should they pass Congress, make major investments in clean energy priorities to help meet those targets. In March, the Securities Exchange Commission (SEC) created a new ESG enforcement task force and is considering rulemaking to establish standards for public company climate-related disclosures. Recent proxy seasons have seen growing momentum around climate-related resolutions and company climate change policies.

2. Focus on ESG in California

The scope of ESG issues continues to expand in California, from environmental issues of drought, wildfires, and air quality, to pressing social matters of housing affordability and criminal justice reform. In September, Governor Newsom signed a major climate bill with \$15 billion of initiatives focused on drought and extreme heat response, wildfire mitigation, adapting to sea level rises, building electric vehicle infrastructure, and promoting sustainable agriculture, among other items. Amendments to the California Environmental Quality Act (CEQA) also now require developers and local jurisdictions to evaluate wildfire impacts.

2. Growth of Biodiversity and Pandemic Resilience Initiatives

The pandemic highlighted the connection between biodiversity and global health pandemics. Greater efforts will surely be put into future pandemic preparedness, including research and reports focusing on the effectiveness of government responses to COVID-19. The lessons learned will continue to influence enterprise risk management evaluations, and supply chains will likely be the subject of further scrutiny.

3. Rise of ESG Litigation

ESG-related litigation will increase amid greater scrutiny of ESG performance and higher stakeholders expectations. Litigation is likely to cover a broad range of ESG factors, including climate change, which has so far taken center stage. Supply chain issues, greenwashing, and diversity appear common topics for litigation, as stakeholders look to challenge companies on whether there are material differences between public commitments and the actual position on the ground. Infrastructure projects that may conflict with good ESG practices will come under increasing focus. Boards and senior management may consider their ESG strategies and begin developing mitigation measures and resilience to head off and address ESG litigation.

4. Continued Focus on Social Issues

The pandemic has been credited with shifting the ESG focus away from environmental and towards social and governance factors. While climate change had dominated the ESG discussion up to 2020, the pandemic forced companies to reconsider their approach to human capital management. Events in the US and elsewhere put a spotlight on diversity and social justice. These effects are still being played out, particularly in corporations — many of which are increasingly implementing human rights policies and raising expectations for senior management to improve diversity. Investors will be increasingly focused on boardroom diversity in line with companies' corporate policies, and may even pursue litigation.

5. Emphasis on Supply Chain Resilience

Supply chains have come under increased strain throughout the pandemic and as Chinese environmental policy led to factory shutdowns and relocations. Companies now broadly recognize the existence of supply chain risks in addition to operational

risks when considering ESG performance. Governments and courts across jurisdictions are also increasingly holding companies accountable for the actions of their suppliers. Concerns are also being raised around the ESG implications for supply chain finance, and governments are developing stricter regulations connected to supply chains. This level of scrutiny and focus can only be expected to intensify. Supply chain-related regulation, litigation, and NGO activity are all likely to proliferate. Accordingly, investors will want to further expand their ESG focus to a company's supply chain, including Scope 3 greenhouse gas emissions.

6. Proliferation of Innovation, Technology, and the ESG Data Lake

ESG data services are poised to proliferate as the ESG "data lake" quickly fills. Further innovation and the development of technological solutions will likely allow companies, investors, and other stakeholders to analyze more readily available ESG data, and assess ESG risks and opportunities.

7. More Attention on Sustainable Finance

ESG-related finance has gained popularity during the pandemic, as companies looked to shore up their balance sheets while supporting their ESG strategies. The sustainable finance market witnessed the development of a wide range of newer instruments, including ESG, social, sustainability, and sustainability-linked bonds and loans and transition bonds, in addition to the continued growth of the more established green bonds and loans. Further innovation in this area is expected to continue. Financial institutions are under pressure to direct their capital to ESG-friendly projects and companies through the imposition of standards which require them to disclose the impact of their financed corporate clients' activities as part of the financial institution's own sustainability impact assessments. Companies will likely look to enter finance arrangements that reward conformance to their ESG targets with lower interest rates. This will be an area where greenwashing will be closely monitored.

8. Convergence of Governance and Standards

The alphabet soup of ESG terminology, standards, and initiatives will continue to converge around a global consensus. The recommendations of the Task Force on Climate-related Financial Disclosures (TCFD) have become widely accepted as the reporting standard for climate matters. Activity is underway at the International Financial Reporting Standards Foundation, the World Economic Forum (which is working toward common ESG reporting metrics and disclosure standards, with the support of the Big 4 accounting firms), and the International Organization of Securities Commissions (which is working to support convergence among securities regulators). Further focus on ESG at the board and senior management levels can also be expected. The EU is currently consulting on sustainable corporate governance, and its conclusions will likely ripple out to the US and other leading economies.

Why Latham

Latham's ESG team combines cross-sector legal and commercial acumen to help clients drive value through their ESG strategies, while carefully addressing and mitigating risk. Our cross-disciplinary approach draws on Latham's experienced team of regulatory, transactional, and litigation practitioners to provide a comprehensive offering that helps clients align with the many facets of ESG, including responsible investment, sustainability, and corporate integrity issues.

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Student-Athletes Gaining Traction on Employment Field

Student-athletes have received some interesting calls recently from courts and regulators, which have shown a renewed willingness to consider them employees under federal law. With student-athletes also gaining new freedoms to monetize their name, image, and likeness, educational institutions face a period of heightened uncertainty regarding the proper treatment of their student-athletes.

NLRB General Counsel Memorandum GC 21-08

On September 29, National Labor Relations Board ("NLRB") General Counsel Jennifer Abruzzo issued a memorandum, GC 21-08, that put educational institutions and athletic conferences on notice that she considers certain "Players at Academic Institutions" to be employees under the National Labor Relations Act ("NLRA") and "will be taking that legal position in future investigations and litigation." The memo also asserted that "misclassifying" players as "mere" student-athletes rather than employees and "leading them to believe that they do not have statutory [employment] protections" has a chilling effect and could be a separate, independent violation of the NLRA. The memo laid out several reasons for Abruzzo's position, including the NLRA's broad definition of "employee," as well as the common law concept of an employee, which Abruzzo noted includes a person "who perform[s] services for another and [is] subject to the other's control or right of control," and under which "[c]onsideration, i.e., payment, is strongly indicative of employee status." According to Abruzzo, these factors all apply to student-athletes who perform services for their colleges and the NCAA in return for compensation (like tuition, room, board, and fees) and who are subject to the rules or regulations of their schools and the NCAA.

The memo also reinstated an Obama-era NLRB General Counsel memo, GC 17-01, which had been rescinded under the Trump Administration. As articulated in GC 17-01, and repeated in the recently issued GC 21-08, the following factors (again, according to Abruzzo) favor a finding that student-athletes are employees:

- the athletes play sports (perform a service) for the university and the NCAA, thereby generating as much as tens of millions of dollars in profit and providing an immeasurable positive impact on the university's reputation;
- the athletes receive significant compensation, covering tuition, fees, room, board, and books, and stipends for other expenses like travel and childcare;
- the NCAA controls the athletes' terms and conditions of employment, including practice and competition hours, scholarship eligibility, limits on compensation, minimum grade point average, and restrictions on gifts and benefits players may accept, and ensures compliance with those rules through its "Compliance Assistance Program"; and
- the university controls the manner and means of the athletes' work on the field/arena and various facets of the athletes' daily lives to ensure compliance with NCAA rules.

The GC 21-08 memo concluded by arguing that recent developments bolster the General Counsel's new position. It highlighted the Supreme Court's unanimous decision in *NCAA v. Alston*, 141 S. Ct. 2141 (2021), which recognized that college sports is a profit-making enterprise and expanded permissible types of "education-related compensation" that had been limited by the NCAA. It noted that, shortly after *Alston*, the NCAA announced the suspension of name, image, and likeness ("NIL") rules for student-athletes. Now that student-athletes may earn money for use of their NIL, including through endorsement deals (and, as a result of *Alston*, may earn compensation and benefits that had previously been limited), they are even more akin to professional athletes. The memo also noted student-athletes' recent collective actions about racial justice issues and demands for fair treatment—all efforts, in Abruzzo's view, to improve their working conditions.

Case Law Development Under the FLSA

The NLRB General Counsel's memo also arrived against the backdrop of ongoing litigation about whether student-athletes are employees under the Fair Labor Standards Act ("FLSA"). In *Johnson v. NCAA et al.*, No. 2:19-cv-05230

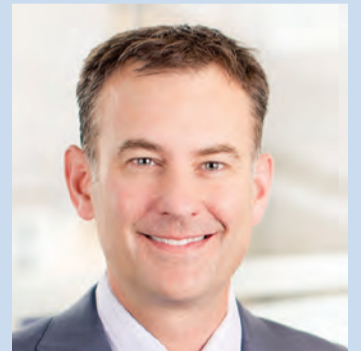
(E.D. Pa.), a group of students allege that they engage in Division I athletics as employees and are entitled to wages from the NCAA and the universities they attend. The district court recently denied the defendants' motion to dismiss, allowing the students' claims to proceed against the universities and the NCAA under a joint employer theory. While the case is ongoing, the schools are seeking an interlocutory appeal in the Third Circuit on two questions: (i) are student-athletes, under the FLSA, ever employees of the schools for which they compete?; and (ii) if so, under what circumstances are student-athletes considered employees of their schools? Although other circuit courts have previously concluded student-athletes are not employees in the FLSA context, these cases predate *Alston*. See *Berger v. NCAA*, 843 F.3d 285 (7th Cir. 2016); *Dawson v. NCAA*, 932 F.3d 905 (9th Cir. 2019).

While it is unclear if *Alston* will change the calculus for federal courts considering FLSA issues in the student-athlete context, the NLRB General Counsel's memo is unlikely to have an impact there. The FLSA and the NLRA statutes have separate, well-developed case law on what constitutes an "employee." The memo is also not a binding decision of the NLRB—it is only the view of its General Counsel, to which courts do not afford deference. See *Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 212 (1988).

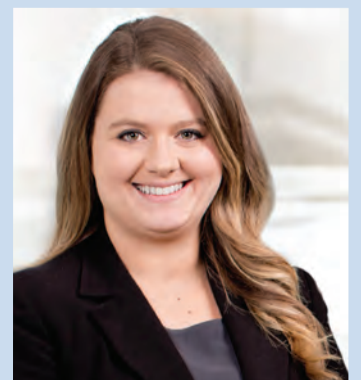
Key Takeaways

As these legal trends develop, educational institutions will need to evaluate whether to treat certain student-athletes as employees under the NLRA and possibly the FLSA as well. It is yet to be seen how expansively the General Counsel's memo and case law decided in the wake of *Alston* will be interpreted—including whether the NLRB ultimately adopts Abruzzo's position. Whether and how Congress might respond remains another unknown. In any event, schools will be faced with many decisions around how to refer to student-athletes and how to structure benefits like scholarships and additional education support. Educational institutions will also need to prepare for the possibility of student-athletes engaging in organizing efforts such as labor protests, walkouts, and strikes—all of which are considered protected activities for employees. Ultimately, how schools navigate their relationships with student-athletes during this period of uncertainty will be informed by whether a school indeed views and treats student-athletes as students first. For more information visit www.omm.com

Adam J. Karr, a Labor & Employment partner in O'Melveny's Los Angeles office, represents clients in class action and individual litigation, arbitrations, and before state and federal agencies. He advises on wage-and-hour matters; contract disputes; non-compete and trade secret litigation; employee benefits claims; discrimination and harassment claims; investigations; and compliance with all aspects of US labor laws, including the NLRA and FMLA. He can be reached at akarr@omm.com or (213) 430-6516.



Allison Bader, an associate in O'Melveny's Newport Beach office, represents companies in complex civil litigation matters and employment-related actions, ranging from claims of discrimination and retaliation to wage-and-hour violations. She represents clients in the retail, real estate, technology, and transportation industries. Bader also advises employers on compliance with federal and state employment laws. She can be reached at abader@omm.com or (949) 823-6987.





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California Imposes Significant New Restrictions on Severance and Settlement Agreements

CHARLES L. THOMPSON, IV - SHAREHOLDER

On October 7, 2021, California Governor Gavin Newsom signed Senate Bill (S.B.) No. 331 into law. SB 331 is known as the “Silenced No More Act.” It amends California Code of Civil Procedure Section 1001 and the California Fair Employment and Housing Act (FEHA) and imposes significant new restrictions on severance and settlement agreements. The law takes effect on January 1, 2022, and it is not retroactive.

Key Provisions

The following are SB 331’s key provisions:

Time to Consider the Agreement

An employer must give an employee or former employee at least five days to consider a severance agreement the employer offers the employee. The employee may sign it sooner than five days if the employee wishes.

Right to Consult an Attorney

An employer also must notify an employee or former employee to whom the employer offers a severance agreement that the employee has the right to consult an attorney regarding the severance agreement.

Disclosure of FEHA Claims

A settlement agreement may not prevent or restrict an individual from disclosing factual information relating to all claims of harassment, discrimination, or retaliation under the FEHA, including claims based on race, sexual orientation, religion, color, national origin, ancestry, disability, medical condition, and age. This provision builds upon 2018’s SB 820 (the “Stand Together Against Non-Disclosure Act”), which prohibited settlement agreements from restricting individuals from disclosing factual information relating to claims based on sex.

Disclosure of Unlawful Workplace Acts

A severance agreement may not prohibit a separated employee from disclosing information about unlawful workplace acts unless the provision is part of a settlement agreement to resolve an employment discrimination-related claim that the employee has filed in court, “before an administrative agency, in an alternative dispute resolution forum, or through an employer’s internal complaint process”; and “the employee [was] given notice and an opportunity to retain an attorney or the employee from discussing or disclosing unlawful acts in the workplace. SB 331 requires that the agreement include language along the following lines: “Nothing in this agreement prevents you from discussing or disclosing information about unlawful acts in the workplace, such as harassment or discrimination or any other conduct that you have reason to believe is unlawful.”

Other Provisions

SB 331 also clarifies that a severance agreement may include “a general release or waiver of all claims”; prohibit the disclosure of “trade secrets, proprietary information, or confidential information that does not involve unlawful acts in the workplace”; and require that the amount of severance paid remain confidential.

Key Takeaways

Employers may wish to revise their settlement and severance agreement templates now in preparation for the law’s January 1, 2022, effective date. Employers also may wish to consider whether they wish to resolve and obtain settlement agreements for current litigation in 2021 so that SB 331 does not apply to those agreements.



Vince M. Verde, Shareholder (Orange County)

Vince Verde is the head of the firm’s Trial Practice Group. He is a litigator and former prosecutor with extensive jury and non-jury trial experience. He has tried and won jury trials in multiple jurisdictions and represents employers in state and federal courts in single and multi plaintiff actions. His diverse practice includes the representation of regional and national clients in all phases of litigation involving employment and labor matters, unfair competition, trade secret and non-compete matters, work place violence, intellectual property rights, class action lawsuits and complex business disputes. He has extensive experience in all areas of employment law, including wrongful termination, retaliation and 1102.5 claims, discrimination, harassment, wage and hour issues, family and medical leave, disability discrimination and accommodation and employee privacy. Mr. Verde draws on his skills as a trial attorney in order to successfully resolve matters early in the litigation or obtain dismissals through summary judgment.



Patricia A. Matias, Shareholder (Orange County)

Patty Matias represents employers in all areas of employment law, including wage and hour, class and representative actions, discrimination and harassment, retaliation, government agency investigations, disability, leaves of absence, and employment policies. Patty works closely with clients to identify their objectives, address their specific problems, and achieve business-focused results. In response to client satisfaction surveys, Patty’s clients have noted that she “works tirelessly to guarantee we are educated and protected” and has been a “valuable source of knowledge, support, and guidance.”



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Recent Developments in M&A Law

The mergers and acquisitions (M&A) market continues to run hot, with 2021 set to outpace recent years as measured by both deal volume and total deal value. Courts have been busy too, issuing a variety of rulings that will impact M&A transactions and other business arrangements. We focus on two important cases below.

Manti Holdings LLC v. Authentix Acquisition Co.

This case arose from a merger of Authentix Acquisition Co. with a third-party acquirer. Before the merger, Authentix and its stockholders entered into a stockholders agreement that provided for drag-along rights, requiring all stockholders to consent to a sale of Authentix and refrain from exercising appraisal rights if the sale was approved by holders of a majority of Authentix shares. Subject to certain conditions, appraisal rights in the M&A context allow stockholders to pursue a valuation at fair market value in lieu of accepting an M&A transaction price.

Holders of a majority of Authentix shares later approved the sale of Authentix. Although they signed the stockholders agreement, dissenting stockholders sought to perfect their alleged appraisal rights and brought suit against Authentix, seeking statutory appraisal under Section 262 of the Delaware General Corporation Law (DGCL).

The Delaware Supreme Court held that Section 262 does not prohibit sophisticated and informed stockholders, who are represented by counsel and who have bargaining power, from voluntarily agreeing to waive appraisal rights in exchange for valuable consideration. The court reasoned that: (1) the DGCL is a broad enabling act allowing freedom for private ordering; (2) Section 262 does not contain any language preventing stockholders from agreeing to an ex ante waiver of appraisal rights; and (3) public policy does not prohibit sophisticated and informed stockholders from waiving appraisal rights in exchange for valuable consideration. The court's ruling established that a Delaware corporation can enforce appraisal waivers against its own stockholders.

The decision does not, however, directly address the enforceability of other waivers, such as waivers of books and records rights. The court warned that certain rights may be viewed as so fundamental to the corporate form that they cannot be waived, such as "rights designed to police corporate misconduct or to preserve the ability of stockholders to participate in corporate governance." The decision nevertheless serves as a guidepost for, among others, private equity and venture capital investors whose investments typically include drag-along rights with appraisal waivers.

Online HealthNow, Inc. and Bertelsmann, Inc. v. CIP OCL Investments, LLC, et al.

This case arose from the acquisition of OnCourse Learning Corp. Following the acquisition, the buyers sued CIP OCL Investments LLC and a related entity (CIP), both of which were affiliated with the target company, as well as multiple executives, alleging misrepresentation or concealment of millions of dollars of tax liabilities during the sales process.

The purchase agreement included an anti-reliance provision stating that the buyers relied only on the contractual representations and warranties in entering into the purchase agreement. However, by means of a "no-survival" clause, the purchase agreement was structured so that all representations and warranties, including regarding tax matters, expired at closing. In addition, the purchase agreement included a non-recourse provision limiting recourse for claims, including against non-parties affiliated with the target company—a scope that included CIP.

Buyers alleged they became aware of false tax representations only after the closing and that CIP was aware for years of the target's failure to accrue tax liabilities associated with online transactions. After the closing, buyers asserted approximately \$18 million in purchase price adjustments. Sellers disagreed and buyers brought their claim for fraud, among others.

The Delaware Court of Chancery rejected CIP's defensive arguments that it could not be liable for fraud due to a combination of the non-reliance provision, the expiration of representations and warranties at closing, and

the non-recourse provision. The court held that Delaware public policy does not allow expungement of fraud claims through a contractual walk-away construct where a party, or in this case, even a non-party, seeks to avoid liability for fraud. Moreover, Delaware public policy does not allow persons who knowingly participate in fraud to escape liability merely by not entering into the subject contract or not themselves making representations and warranties.

The Court of Chancery relied on a prior case, *ABRY Partners V, L.P. v. F & W Acquisition LLC*. In *ABRY Partners*, the Delaware Supreme Court held that "a seller may not contractually limit its liability for making knowingly false statements within the contract itself." In *ABRY Partners*, the court balanced two key interests: (1) Delaware's longstanding tradition of respect for private ordering and carefully negotiated risk allocation; and (2) evidence of Delaware law's "strong and storied intolerance of fraud." The court balanced these two interests by explaining that contractual terms "exempting a party from tort liability for harm caused intentionally or recklessly [are] unenforceable on grounds of public policy." Ultimately, under *ABRY Partners*, in situations where "an agreement purports to limit liability for a lie made within the contract itself, and parties know of the lie, such parties cannot skirt liability through contractual limits within the very contract they procured by fraud."

Applying the legal framework from *ABRY Partners*, the Court of Chancery held that the no-survival clause in the purchase agreement did not bar a fraud claim. In reaching this conclusion, the court determined that the "weight of authority" and "Delaware's public policy" prevented the sellers and CIP from invoking a survival clause "in a contract allegedly procured by fraud to eviscerate a claim that the contract itself is an instrument of fraud."

The court also noted that the holding in *ABRY Partners* "implicitly rejected the argument that a non-recourse provision will operate to insulate a third-party from liability when that party facilitated the target's lies." The court reasoned that the non-recourse provision at issue could not therefore be invoked to avoid liability, primarily because of the allegations that CIP "[knew] of and facilitated the fraudulent misrepresentations in the [stock purchase agreement]."

John Bradley is a Partner in the firm's Corporate and Securities practice. John's practice includes representation in mergers and acquisitions on behalf of buyers and sellers; corporate governance and advising senior executives, directors, and public company boards and committees; periodic and other reporting under the Securities Exchange Act of 1934; debt and equity securities offerings, including registered public offerings under the Securities Act of 1933; venture capital financings; software licensing transactions; and drafting and negotiating a wide variety of business agreements.



Neil Dy is an Associate in the firm's Corporate and Securities practice. Neil's practice includes mergers and acquisitions transactions and securities law matters.



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Creating a Charitable Legacy: How Life Insurance Can Help Your Contributions Do More

PROVIDED BY: DJM FINANCIAL, NORTHWESTERN MUTUAL

When most of us purchase life insurance, we're thinking about one thing: making sure our loved ones are taken care of after we're gone. But life insurance can also provide a way to create a lasting impact on a charity or cause that has special meaning for you. That's because life insurance allows you to make a much larger gift to charity than you might otherwise be able to give. At the same time, it can also provide certain tax benefits.

Making Every Dollar Count

To understand how life insurance can boost your charitable efforts, consider this hypothetical example. Imagine Ellen contributes \$5,000 each year to an organization that creates educational opportunities for young girls in developing countries. Her donations are earmarked to buy textbooks. If Ellen donates this amount over the next 20 years, her total charitable gift would total \$100,000.

What if Ellen wanted to do more for this charity? She learns that it would take a pledge of \$500,000 to build a library, which is more than Ellen can afford to give right now. Fortunately, there's a solution that would enable Ellen to meet her giving goal without having to come up with a lot of cash up front. Ellen could use her annual contributions to pay the premiums on a life insurance policy with a \$500,000 death benefit and name the charity as beneficiary of the policy. In doing so, Ellen would be able to leverage her annual contributions, thus creating what could potentially become a much larger legacy over time.

Naming a Charity as a Beneficiary

The simplest way to use life insurance as a tool for charitable giving is to name a favorite charity as a beneficiary of a new or existing life insurance policy on your life. This approach enables you to retain control over the policy, which means you can change your beneficiary at any time and access any cash value.

Naming a charity as your policy's beneficiary will not provide a federal income tax charitable deduction. However, your estate will receive an estate tax charitable deduction for the amount of the benefit the charity receives upon your death. Maintaining ownership of your policy provides another important benefit: the ability to transfer your policy's ownership to the charity of your choice in the future, when you may no longer require the life insurance for your own needs. At that time, you may be able to take an income tax charitable deduction.

Purchase a New or Donate an Existing Policy

A second option would be to either purchase a new policy or donate an existing one to a favorite charity and name that organization as the beneficiary and "owner." To do this, you must assign all rights in the policy to the charity, which means you give up all control of the policy forever. In exchange, you may be able to take an income tax charitable deduction. The policy would not be included in your gross estate, unless you die within three years of the transfer. Then, your estate would be eligible for an offsetting estate tax charitable deduction.

When you transfer an existing life insurance policy to charity, that organization has the option to take advantage of any accumulated cash value to meet current funding requirements, preserve the full death benefit to meet future needs or a combination of the two.

Using a Life Insurance Policy with a Charitable Remainder Trust (CRT)

A third choice is to use a life insurance policy in conjunction with a charitable remainder trust (CRT). A CRT lets you convert a highly appreciated asset, like stock or real estate, and use it to create a lifetime

stream of income to meet your current needs. Upon your death, the remaining trust assets go to the charity you chose. With the income from the CRT, you could then purchase a life insurance policy on your life, usually inside an irrevocable life insurance trust (ILIT), and name one or more heirs as the policy beneficiaries. At your death, the proceeds from your ILIT would pass income tax free to your loved ones, thereby "replacing" the assets that went to the charity.

The Benefit of a Professional Perspective

These are just some of the options that make life insurance a powerful financial tool for leveraging your donations and accomplishing your charitable goals. By either gifting a policy outright or naming a charity as beneficiary, you can provide the organizations and/or causes that matter most to you with a lasting legacy while keeping the inheritance of your loved ones intact.

Financial security is the confidence that comes from taking action today to provide for tomorrow. It's an ongoing process during which you should be disciplined but flexible to adapt to changes over time. Working with a qualified financial professional can help as you make sound decisions about your life insurance.

Article prepared by Northwestern Mutual with the cooperation of DJM Financial Wealth Management & Insurance Services. The members of DJM Financial are Private Wealth Advisors with Northwestern Mutual, the marketing name for The Northwestern Mutual Life Insurance Company (NM), Milwaukee, Wisconsin, and its subsidiaries. DJM Financial is based in Irvine, California. To contact DJM Financial, please call Joel Staples at (949) 622-7298, e-mail at joel.staples@nm.com, or visit djmfinancial.nm.com.

Established in 1990, DJM Financial is a premier multigenerational wealth management firm based in Irvine, California that serves individuals, business owners, and their families. Financial independence doesn't happen by chance; it results from expert strategic planning. That's why DJM Financial includes professionals whose talents, skills and expertise help ensure that you get the best possible guidance every time. Areas of focus include wealth management, estate planning, insurance and risk management solutions, business planning, and qualified retirement plan services. While there are various layers of complexity in comprehensive financial planning, DJM Financial is fundamentally guided by their pledge to always do what is in the client's best interest. As a result, they have built a firm that intends to support families and businesses for generations to come.



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How to Choose a *Spouse* Divorce Attorney?

By Paul Nelson, Esq.

Here's irony for you: To escape one's relationship—your marriage—you must create another relationship—with your divorce attorney.

And just like a marriage, your attorney-client relationship will require commitment, demand honesty, and often hinge on compromise. The difference? Unlike a marriage, your relationship with a divorce attorney is designed to be short-lived.

Even so, you should look for a lawyer much like you would a spouse. Accordingly, here are some tips when divorce attorney seeking:

1. Ask for References

Matchmakers have been around for centuries. Many cultures still use them to pair compatible mates from the pool of local singles. Even in our more "liberal" Western culture, it's still common for friends to set each other up with dates, and for people to seek the approval of family and loved ones before getting "serious" with a potential husband or wife.

Likewise, when looking for an attorney, it makes sense to ask the advice and seek references from others in your professional circle, such as your CPA/financial advisor, business lawyer, or business coach.

2. Locate a State Bar-Certified Specialist in Family Law

One of the best sources to find an

attorney is the State Bar website. The State Bar of California maintains a list of members who are Certified Specialists in their area of law. Each attorney has met substantial law practice and educational requirements in addition to receiving favorable evaluations by other attorneys and judges familiar with their work in a particular legal specialty.

3. Assess Chemistry

Relationships that work on paper don't always do so in real life. That's why, no matter how well a divorce attorney may be rated, you need a sit-down to see if you "click." As with a personal relationship, make sure your values and expectations are in sync. If not, you may be dealing with a professional divorce—along with your marital one.

4. Discuss Money

Before committing to marriage, it's common for couples to talk about how they will handle finances. This can be uncomfortable, but it's an issue that must be faced head-

on to avoid long-term problems. Likewise, when talking with an attorney, fees and expenses must be addressed up front. Also, don't be fooled by what appears to be a low hourly rate. An inexperienced attorney may charge less by the hour but require more time to accomplish what a more skilled and expensive lawyer could do in far less time.

5. Exchange Vows

Once you and your selected attorney are ready to commit, it's time to exchange vows. Although these don't yet have the traditional caché of "to love, honor and cherish," they nonetheless express the ideal behaviors to which both parties should aspire:

• Lawyer's Vows:

- ✓ I vow to advocate for your position zealously and effectively.
- ✓ I vow to maintain confidentiality 'til death do us part.
- ✓ I vow to interact with

opposing counsel in a dignified, yet assertive manner.

✓ I vow to provide direct and unambiguous advice.

✓ I vow to take reasonable legal positions based on the law as it is or should be.

• Client Vows:

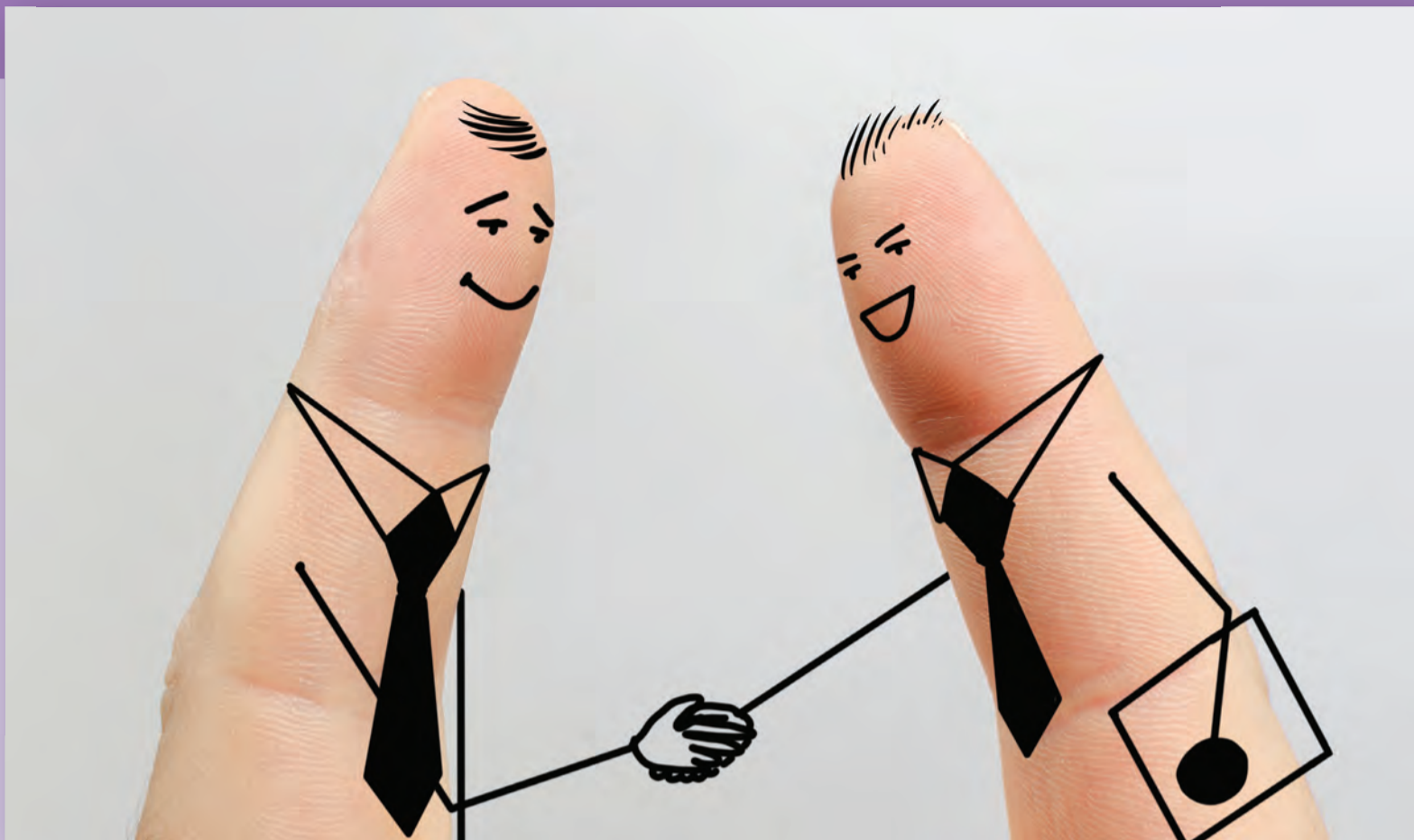
✓ I vow to be honest with my attorney.

✓ I vow to collect and share information with my attorney.

✓ I vow to adhere to instructions on behavior in and out of court.

✓ I vow to be responsive to my attorney's requests.

A divorce is a painful and demanding process that can trigger extreme emotions. Yet if you have an attorney whom you trust, you can minimize the discomfort and emerge in a better position to start the next phase of your life.



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Local Legal Professionals Advocate for Progress through Orange County United Way's Alexis de Tocqueville Society



Setting the standard for charitable giving, Orange County United Way's Alexis de Tocqueville Society members are at the forefront of improving lives through generous financial gifts, volunteerism, and advocacy. Across the United States, there are nearly 27,000 members working together to make a difference. Here in Orange County, this elite group of local philanthropists is an alliance of nearly 400 successful, community-minded individuals and business leaders who are dedicated to tackling the most critical issues and creating lasting change right here in Orange County.

Alexis de Tocqueville Society: Improving Lives through Generosity and Passion

Alexis de Tocqueville Society members magnify their local impact by supporting United Way's mission to lead the fight for equity by removing barriers, closing gaps, and leveling the playing field for everyone who lives in Orange County. They are Doing MoreSM for our community by working together to ensure our students succeed, our families gain financial security, and our homeless neighbors find a place to call home.

Tocqueville Society members come from a variety of backgrounds and industries, including law, which brings together attorneys from top law firms across a variety of disciplines—corporate, health care, real estate, labor litigation and more—as well as in-house counsel from top corporations in technology, sciences, and international business.

We'd like to highlight two prominent local attorneys who are taking a stand for the next generation and advocating for positive change in Orange County.

Ken Parker, Partner, Intellectual Property, Gibson, Dunn & Crutcher LLP



Ken Parker
Partner, Gibson, Dunn & Crutcher LLP

Ken joined the Alexis de Tocqueville Society in 2020, eager to help those adversely affected by the COVID-19 pandemic. His contribution to Orange County United Way's Pandemic Relief Fund helped local families who were struggling to pay rent or buy food by supporting much needed relief efforts. "During a time of crisis, it's important that we think of ways to contribute to others," said Ken. As a Tocqueville Society member, Ken enjoys the camaraderie and is honored to join forces with other local philanthropists to improve lives and make a positive impact. Passionate about Orange County United Way's United for Financial

SecuritySM initiative, he is now able to more actively support the goal of reducing financial vulnerability for everyone who lives in Orange County. Ken also leads the annual workplace giving campaign at his practice and looks forward to inspiring his fellow attorneys to continue serving their community. In addition to workplace giving, Gibson, Dunn & Crutcher LLP has been an important ally to Orange County United Way through event sponsorship and volunteer engagement, making a significant impact on our community.

Chris McGrath, Partner, Litigation Department, Paul Hastings LLP



Chris McGrath
Partner, Paul Hastings LLP

A Tocqueville Society member since 2018, Chris is a steadfast proponent of United to End HomelessnessSM, an initiative that especially resonates with Chris as a result of the pro bono work his firm provided to ensure its success, and he looks forward to diving deeper into targeted campaigns that address this issue. "The idea of combining much of our charitable giving through the United Way, its array of deserving programs, and the opportunity to meet fellow members of the Orange County Tocqueville Society at events made a lot of sense," said Chris, who was a strong supporter of Orange County United Way's Pandemic Relief Fund and the Class of 2021 e-Mentorship Program, which helps high school seniors from low-income families and underserved OC communities to stay on track



Antonella Castro, an Alexis de Tocqueville Society member and real estate and business attorney, lending a helping hand at the Class of 2021 e-Mentorship Program laptop distribution event. An e-Mentor herself, Antonella is also the Chair of the United for Student SuccessSM Leadership Council and a President's Circle member.

and graduate on time. Chris also appreciates the opportunity to participate in events like the Women's Philanthropy Fund Breakfast—one of the most significant fundraisers in the local business community. "As a Tocqueville member, I get to be a part of one of Orange County's leading philanthropic providers and difference makers and it offers a different way of meeting fellow professionals with shared goals."

A special thank you to Ken Parker, Chris McGrath, and all of the Alexis de Tocqueville Society members who have joined together in support of our work to build and sustain an inclusive, responsive, and equitable Orange County.

Want to make an impact in your community? Join the Alexis de Tocqueville Society today. For more info, please contact Mike Olson, Senior Manager of Individual Giving, at MikeO@UnitedWayOC.org or 949.263.6127.

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Presented by the Alexis de Tocqueville Society
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To RSVP or learn about sponsorship opportunities, please contact Tami Thompson at TamiT@UnitedWayOC.org | bit.ocuw.org/takingflight

Orange County United Way is committed to leading the fight for equity by removing barriers, closing gaps, and leveling the playing field for everyone who lives here. More than a fundraiser, we're hands-on, delivering more than 50 programs countywide to improve lives in our community. Every day we are doing more for the Education, Health, Housing and Financial Stability of people in Orange County. We are working to ensure our students succeed, our struggling families gain financial security, and our homeless neighbors find a place to call home. To learn more or discover how you can help, visit www.unitedwayoc.org.



Tocqueville

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Getting Your Patent Application Into the Fast Lane

By Mikhael Mikhalev and Stefan Lehnardt

Patent prosecution moves far too slowly for the needs of some California companies. Applicants for patents wait, on average, 16.9 months to receive a first office action from the USPTO and 28.1 months before either receiving a patent or receiving a final decision. Waiting upwards of two years before receiving a patent is simply not feasible for many innovative businesses. Fast-moving technologies do not wait for a USPTO resolution. Thankfully, there are ways of expediting patent prosecution.

Track One Prioritized Examination

Track One is a program where applicants pay the USPTO for a faster disposition of their patent applications. Anyone can get Track One status for their patent application by paying \$4,200 (reduced for smaller companies and individuals) at the time of filing the patent application. Track One sets a goal for the patent office to give a final disposition within one year. In fiscal year 2021, the average time until final disposition was 5.6 months. Applications in Track One take priority over other applications and receive prompt replies. Patent Examiners tend to be more engaged and more willing to work with patent applicants in Track One. However, applicants must reciprocate in promptly replying to the patent office. If an applicant extends any deadline in the examination process, Track One status is lost.

Patent Prosecution Highway

Patent Prosecution Highway (PPH) is a program that helps applicants applying for patents in multiple countries. If applicants have allowed claims in a participating patent office (Office of Earlier Examination “OEE”), they can point to those claims when obtaining a patent on the same invention in another participating patent office. For example, an applicant with allowed claims in Europe would provide a table showing correspondence between the European claims and the US claims, an Information Disclosure Statement disclosing cited references, and a translation into English, if needed, of the office action allowing the European claims. The USPTO then examines the patent, assisted by the work done by the European examiner. PPH requires no fee, results in slightly faster prosecution, and has an 84% allowance rate as compared to 74% for all patent applications.

One disadvantage of PPH is that the application is bound by the allowed claims in another patent office. The claims allowed in the first patent office may thus restrict the scope of the claims allowed in the second patent office. However, the previously allowed claim scope is no guarantee of allowance in the US. The USPTO may still find prior art and make new rejections. In addition, the USPTO does not have a one year final disposition goal as it does for Track One applications. For this reason, PPH applications do not proceed through examination as quickly as Track One applications.

A potentially effective international strategy may involve filing a Track One application in the US to obtain rapid allowance, and then filing PPH applications abroad in participating countries with the allowed claim in the US.

Petition to Make Special

A petition to make special expedites examination based on an inventor’s age or a health condition. Such petitions do not require a fee but require evidence of the inventor’s age or health condition. For inventor age, an attorney’s certification of the inventor being older than 65 is sufficient to qualify. For inventor health, a doctor’s certificate or other medical

certificate may be required. However, any personal medical information submitted to the USPTO will be made public on the record. Petitions to make special typically result in examination timelines very similar to those achieved under the PPH program. Applications are taken out of turn and extra effort is expended in quickly reaching a final disposition. Again, the USPTO does not have a one year final disposition goal as it does for Track One applications.

Accelerated Examination

Accelerated Examination (AE) involves obtaining a faster disposition by aiding the patent office by providing a pre-examination search. In essence, applicants speed up the process by performing the first part of the USPTO’s examination. To participate in the program, an applicant must file a petition with a \$130 fee and an Examination support document (ESD) and conduct a pre-examination search. This low fee may make AE appear to be a cost-effective option; however, the pre-examination search has stringent requirements so AE may end up costing as much as Track One, with additional hoops to jump through.

For the pre-examination search, the applicant must perform a detailed search and must cite all the references relevant to the claims in an information disclosure statement, identify all limitations in the claims that are disclosed by those references, and specify where the limitations are disclosed in the references. Additionally, the applicant must include a detailed explanation that describes with particularity how the claims are patentable over the references cited with particularity. The concern with AE is it requires the expense of a search, as well as significant attorney time to evaluate the prior art with respect to the claims. Most importantly, AE requires the Applicant to characterize its claims as well as the prior art, which may result in prosecution history estoppel by disclaiming what is in the prior art, or may give rise to potential inequitable conduct issues for failure to disclose relevant art. For these reasons, Track One is almost always preferable over AE.

Conclusion

The USPTO has several options for expediting prosecution for Applicants in fast-moving technology areas that cannot wait several years to obtain a patent. If an applicant is willing to pay to expedite prosecution, the best option is Track One. It results in quickest examination and is generally limited only by a willingness to pay the relatively high fees. PPH and Petitions to Make Special are also helpful options and do not require fees, however, Applicants must qualify for their narrow eligibility criteria.



Mikhael Mikhalev, a partner in the Park City office of Maschoff Brennan, assists clients in defending their research and development investments by ensuring their Intellectual Property is protected.

Stefan Lehnardt focuses his practice on patent prosecution and intellectual property litigation in support of a variety of technologies.





Congratulations 2021 Nominees

The 2021 General Counsel Awards will be presented at a gala dinner celebration for GC's who have made a significant contribution to the success of their companies.

Ambry Genetics Corporation / **Michelle Smith**
 Anduril / **Babak Siavoshy**
 Arbonne International / **Bernadette Chala**
 Artemis DNA / **Margaret Kivinski**
 Automobile Club of Southern California / **John Beckley**
 Avanir Pharmaceuticals / **Aneta Ferguson**
 Banc of California / **Brian Farrell**
 Banc of California / **Ido Dotan**
 Beacon Pointe Advisors / **Janet Hathaway**
 Broadcom Inc. / **Robyn Babcock**
 BSH Home Appliances Corporation / **Eli Ticatch**
 Clean Energy Fuels / **Nathan Jensen**
 Cloudvira / **Maria Moskver**
 Commercial Bank of California / **Raj Shukla**
 Core Strategic Group / **Jerry Amante**
 Earth Friendly Products / **Amber Enriquez**
 Edwards Lifesciences Corporation / **Linda Park**
 Enevate Corporation / **Noel Whitley**
 Ethika / **Kenneth White**
 Evolus / **Jeffrey Plumer**
 Happy Money / **Jason Altieri**
 Hyperice Inc. / **Jon Howell**
 Indie Semiconductor / **Ellen Bancroft**
 International Vitamin Corporation / **Bence Rabo**
 Landsea Home / **Franco Tenerelli**
 MBK Real Estate Cos. / **Anita Hsu**
 Microsoft Corporation / **Njeri Mutura**
 Morten & Fairchild, PC / **Warren Morten**
 New American Funding / **Ken Block**
 ocVIBE Sports & Entertainment LLC / **Katie Rodin**
 Orange County Rescue Mission / **Christopher Ferebee**
 Össur / **Alex Coffin**
 Pacific Life Insurance Co. / **Audrey Cheng**
 Petalfast Inc. / **Arun Kurichety**

Pinner Construction Co., Inc. / **Newt Kellam**
 Powerstone Property Management / **Karen Kannen**
 Professional Plastics Inc. / **Jonathan Gulsvig**
 Prospera Hotels / **Wendy Huang**
 Providence St. Joseph Health / **Yemi Adeyanju**
 PSOMAS / **Chad Wilson**
 Real Estate Law Group / **Joseph Rogoff**
 Realty ONE Group / **Alexandru Mihai**
 Rivian / **Serafin Tagarao**
 Seven Gables Real Estate / **Michael Hickman**
 SmartStop Self Storage REIT Inc. / **Nicholas Look**
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 Tarsus Pharmaceuticals / **Bryan Wahl**
 ThreeSixty Group / **Adam Gromfin**
 True Family Enterprises / **Claire Ambrosio**
 Ushio America Inc. / **Ako Williams**
 Viant Technology LLC / **Lisa Harrington**
 VIZIO / **Scott Becker**
 West Coast University / American Career College / **Scott Casanover**
 Western Growers Association / **Jason Resnick**
 Word & Brown General Agency / Word & Brown
 Insurance Administrators Inc. / **Jeffrey Compangano**

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2021 General Counsel Bios

Yemi, Adeyanju, Vice President & Associate General Counsel

Providence St. Joseph Health, Irvine

Today, Yemi Adeyanju works in the Orange County corporate office of Providence, serving as the principal legal advisor to the regional chief executive, management teams and boards of directors of the Northern California Region of Providence, which includes Providence Santa Rosa Memorial Hospital, Providence Queen of the Valley Medical Center, Providence St. Joseph Hospital, Providence Redwood Memorial Hospital, Petaluma Valley Hospital, Healdsburg Hospital as well as Providence Medical Foundation, St. Joseph Home Care Network, philanthropic foundations, and related medical facilities. Her responsibilities include providing legal oversight and guidance on hospital operations, physician practices, mergers and acquisitions, regulatory compliance (including Federal and State fraud and abuse laws, such as the Stark Law, Anti-kickback Statute, False Claims Act, Civil Monetary Penalties Law, HIPAA etc.), and corporate compliance as well as providing advice concerning hospital and health system policies and procedures on all health care matters except labor & employment for her region.



Jason Altieri, General Counsel & Chief Compliance Officer

Happy Money, Tustin

A seasoned C-level executive with deep experience in legal, compliance, and operational matters for public and private companies, Jason Altieri serves as Happy Money's general counsel and chief compliance officer. As a strategic and creative legal thinker, Altieri considers the balance between risk and business opportunity and helps arrive at innovative, scalable solutions. He has over two decades of experience in all aspects of securities law, private and public transactions, governance, and consumer lending. In 2020 alone, Altieri played an instrumental role in Happy Money's success. Last year, Happy Money's platform facilitated the origination of more than \$1 billion in loans to help more than 100,000 consumers eliminate high-interest rate credit card debt faster, more affordably, and in a more empathetic way. Moreover, Altieri is a true leader in how he approaches relationship building across stakeholders, whether it's partners, investors, fellow fintechs and industry regulators. Altieri brings a collaborative approach to his work, one that seeks to understand and to promote open dialogue about the realities, successes and challenges facing the technology and financial services industries today.



Jerry Amante, SVP & General Counsel

Core Strategic Group, Anaheim

For the last nine years, Jerry Amante has been working at Core Strategic Group, previously FSB Core Strategies, where he began as a senior vice president and general counsel. CSG has rapidly expanded into a national holding company currently comprised of 10 different subsidiary companies. For the last two years Amante has continued his work as a general counsel for the Parent and each subsidiary company, providing legal services, corporate advice and strategic counsel. Amante has played an integral role in helping to transition the company from a small local public affairs company into the holding company it is today with its 10 diverse subsidiaries, building new companies from the ground up.



Claire Ambrosio, General Counsel

True Family Enterprises, Foothill Ranch

Claire Ambrosio currently runs a legal department for a family office of 50 private companies. She is a highly successful general counsel of 20 years, with experience in various industries including entertainment, printing, computer technology, and cosmetics. She has been extremely active and a leader in the Italian American community, Italian American business community, Los Angeles County Bar Association and affiliated affinity bar associations, and Orange County Bar Association and affiliated affinity bar associations.



Robyn Babcock, Associate General Counsel

Broadcom, Irvine

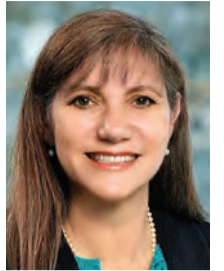
Robyn Babcock oversees global employment law operations at NASDAQ-listed Broadcom Inc., a leading semiconductor and infrastructure software solutions company. She has been with the company for more than eight years. She oversees all employment litigation, employee training, counseling and discipline matters, and compliance with both US and international employment laws. Equipped with a vast knowledge of complex legal issues, a superb business acumen, an ability to think critically and create effective solutions, and a steadfast dedication to acting with integrity- Babcock is an outstanding leader in both the legal profession and the semiconductor industry as a whole. Over the past five years, Babcock has helped Broadcom grow from 8,200 employees to 21,000 employees through the successful integration of employees from Broadcom's acquisition of Brocade Technologies, CA Technologies, and Symantec Enterprise Security.



Ellen Bancroft, General Counsel

Indie Semiconductor, Aliso Viejo

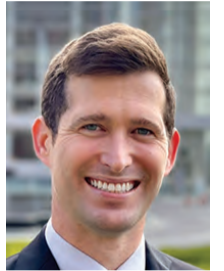
Ellen Bancroft has extensive experience representing issuers and underwriters in initial public offerings and registered follow-on public offerings, as well as emerging growth companies, venture capitalists and corporate investors in venture capital and private equity financings and mergers and acquisitions. She has worked on more than 70 public and private mergers and acquisitions ranging in size from several million to more than \$1 billion and more than 50 public offerings. Her practice includes a broad range of corporate and securities transactional matters, SEC regulatory matters, NYSE and Nasdaq compliance matters, general corporate counseling and corporate governance compliance.



Scott Becker, Director, Corporate Counsel

VIZIO, Irvine

Scott Becker is the lead corporate and securities attorney for VIZIO. He joined VIZIO after an illustrious start to his career at Latham & Watkins, where he developed a well-rounded practice as a corporate associate for six years. At Latham, Becker's practice focused on mergers and acquisitions (both private and public) across a wide range of industries, including pharmaceutical, electronics, telecommunications, health care, gaming, apparel, energy and real estate; capital markets, representing issuers and investment banks in connection with equity and debt transactions; public company representation; corporate governance; and general corporate matters. His most significant business accomplishment was quarterbacking VIZIO's initial public offering earlier this year. His strong corporate and securities background along with his astute business acumen helped VIZIO's legal and business teams navigate the IPO process in a timely manner and ensure a smooth transition to a public company. As lead corporate and securities attorney at VIZIO, Becker partners with and advises board members, senior management, and employees at all levels across the company on a broad range of issues while driving business goals and managing legal risk. He is responsible for SEC/securities compliance and disclosures, corporate governance, strategic transactions, board support, and a wide array of corporate matters.



John Beckley, Deputy General Counsel

Automobile Club of Southern California, Costa Mesa

Since 1997, John Beckley has built the in-house litigation unit at the Auto Club while also balancing many contracts, employment, management, and compliance matters. The emphasis is on business, class action, insurance, contract, real estate, and labor and employment law. A majority of the litigation is now handled in-house. He is responsible for all corporate litigation, especially in California, Texas, and Missouri. For nearly twenty-five years, he and his teams have favorably disposed of hundreds of cases. He has led appellate teams, defending the Auto Club's business models, name, and brand, at the California Supreme Court, the United States Court of Appeals, and the California Courts of Appeal. This has resulted in at least sixteen federal and California published cases, some of which are class actions, regarding the Fair Credit Reporting Act, the Americans with Disabilities Act, insurance, membership practices, battery program, corporate governance, expert fees, employment, installment fees, unfair business practices, and service of process.



Ken Block, General Counsel and Chief Compliance Officer

New American Funding, Tustin

Ken Block serves as general counsel and chief compliance officer for New American Funding and oversees all aspects of legal risks and supervision of the company's in-house lawyers. He joined the company as sole in-house counsel in 2014, grew legal department to a seven-lawyer team covering legal, litigation, contract administration, loan origination issues, loan servicing issues, corporate governance and compliance. Block brings over 22 years of mortgage compliance experience, and 26 years of real estate related legal experience. Block received a Certified Mortgage Banker "CMB" designation from the Mortgage Bankers Association in 2013. Block received his J.D. degree from Loyola Law School, Los Angeles and received his B.A. in English from the University of California at Irvine.



Scott Casanover, General Counsel/Sr. Vice President of Government Affairs

West Coast University/American Career College, Irvine

In 2020, Scott Casanover successfully challenged the California Student Aid Commission's attempt to deny West Coast University's eligibility in the Cal Grant program, effectively preserving access to \$9 million in Cal Grants for over 8,000 WCU students. In 2020, Casanover successfully interpreted and guided navigation of the over 900-page CARES Act bill in 48 hours to allow ACC and WCU to distribute over \$20 million in federal CARES Act funds to students. In 2021, he effectively built an "in-house" litigation team, to begin trying some cases in-house.





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2021 General Counsel Bios

Bernadette Chala, Chief Legal Officer/General Counsel

Arbonne International, Irvine

Bernadette Chala is an exemplary attorney who demonstrates business acumen, professionalism, and leadership in her work. She is a skilled litigator and legal statesperson committed to the charitable causes she supports - including her work for the Arbonne Flourish Foundation. Chala led governance matters for her company while taking the lead in converting her company to a public benefit company in 2019, which has since become independently certified by B Labs in 2020. She also demonstrated leadership in managing evolving COVID-19 rules and regulations both nationally and internationally and supporting business needs both for business continuity, compliance, and for employee support. Chala oversaw, negotiated and successfully managed the acquisition of Arbonne International in 2018 by Groupe Rocher whose sales amounted to more than € 2 billion.



Audrey Cheng, Counsel

Pacific Life Insurance Company, Newport Beach

This past year, Audrey Cheng worked closely with investment advisers to launch a suite of ESG mutual funds (environmental, social, governance), including one of first impression in the industry. This required several board prep sessions and board meetings, investment adviser and sub-adviser prep sessions and working on an evolving subject matter in the fund industry, ESG investment strategies and their regulations. With the large network of external sub-advisers that manage funds, this past year Cheng also navigated successfully various large mergers and acquisitions in the mutual fund industry and their impact on the management of our funds, including Franklin Templeton's acquisition of Legg Mason and its managers and Macquarie Group's acquisition of Waddell and Reed and its managers.



Alex Coffin, Vice President, Legal Americas

Össur, Foothill Ranch

In his role as vice president, legal americas, Alex Coffin manages a wide range of legal matters at Össur Americas, including litigation, strategic transactions and regulatory and compliance matters. His litigation work has included managing a broad range of employment matters, product liability cases, shareholder disputes and intellectual property litigation. Coffin oversees the legal aspects of an active corporate development strategy in Össur Americas and has led Össur through a number of acquisitions, divestitures and integrations. Coffin has also advised on and managed the company's regulatory filings and interactions with a number of federal and state agencies.



Jeffrey Compangano, General Counsel & Vice President

Word & Brown General Agency / Word & Brown Insurance Administrators Inc., Orange

Jeffrey Compangano (Jeff) was the first general counsel for The Word & Brown Companies. The history of the organization dates to the establishment of the Word & Brown General Agency, by John M. Word III and Edward J. "Rusty" Brown, Jr., in 1985. Today, the Word & Brown General Agency has grown to be one of the nation's most successful insurance general agencies. Compangano has served in the general counsel role since April 2000, proactively organizing and managing all legal matters including intellectual property and transactional and corporate law, such as contract drafting and negotiation. In 2021, he assumed responsibility for and actively manages the HIPAA Privacy & Data Security Department, which is integral to protecting the data of the clients of The Word & Brown Companies. During his tenure, in which the organization has grown substantially, Compangano has worked with an exceptional degree of diligence to ensure the businesses that are part of The Word & Brown Companies are positioned for sustained growth, while also successfully protecting the companies from liability.



Ido Dotan, General Counsel & Corporate Secretary

Banc of California, Santa Ana

Since joining Banc of California ("Banc") in May 2019, Ido Dotan has guided the legal department to become an integral and strategic partner to all of the business units, operations groups and corporate support functions of the Banc. Mr. Dotan has made significant contributions to the successful transformation of Banc in a short period of time. During the COVID-19 pandemic, Mr. Dotan showed strong leadership by guiding the Banc and its employees through a comprehensive response plan to the pandemic, and by being a key advisor on the Banc's rollout of the Paycheck Protection Program to support the Banc's clients in an unprecedented crisis. Mr. Dotan has concentrated on making programmatic improvements to Banc. For example, Mr. Dotan made numerous corporate governance improvements, including enhancements to Board Committee Charters, Corporate Governance Guidelines, the Code of Business Conduct & Ethics and the Whistleblower Policy. Finally, Mr. Dotan is currently leading the effort to acquire Pacific Mercantile Bancorp, an Orange County-based bank with approximately \$1.5 billion in total assets. The transaction is expected to close in the third quarter of 2021.



Amber Enriquez, General Counsel

Earth Friendly Products, Cypress

Amber Enriquez serves as general counsel and corporate secretary for Earth Friendly Products, the privately held American manufacturer of the environmentally friendly cleaning products brand ECOS, based in Cypress, California. Since her graduation from Chapman University Fowler School of Law in 2009, she has quickly risen to the highest-level legal position in the company, directing legal strategy and managing legal operations for the company's four U.S. manufacturing facilities, global operations in Europe, and sales in over 65 countries. Earth Friendly Products is a leader in the fast-paced and quickly growing green cleaning products industry, affording Ms. Enriquez the unique opportunity to consistently learn and build on her experience in her capacity as general counsel. In this role, she is one of the key C-suite executives tasked with taking the zero waste, climate positive, and water neutral company to new heights.



Brian Farrell, Senior Vice President & Associate General Counsel

Banc of California, Santa Ana

As the attorney managing the Bank's litigation portfolio, Brian Farrell has successfully resolved several material defensive matters, as well as led offensive litigation matters that resulted in significant recoveries for the Bank. In addition, Farrell has personally handled sensitive vendor disputes, customer complaints, government and regulatory requests, and employment investigations. As the lead counsel for the Bank's Operations group, he recently led efforts in revising the Bank's customer-facing disclosures, as well as drafting disclosures related to new product offerings. In addition, he is assisting with the conversion and integration-related aspects of the previously announced potential acquisition of Pacific Mercantile Bancorp, an Orange County-based bank with approximately \$1.5 billion in total assets. Finally, Farrell provides guidance on Bank investments and Cyber-Security readiness.



Christopher Ferebee, Nonprofit Counsel

Orange County Rescue Mission, Tustin

Chris Ferebee serves as the secretary and treasurer on the board of directors for Orange County Rescue Mission, Temporary Shelter, Inc., Laurel House Inc., dba Hope Harbor, and Inland Empire Rescue Mission. Through these various board positions, Ferebee has been a true leader in advancing services to homeless men, women, children, and veterans in Orange County.



Aneta Ferguson, J.D., Vice President, General Counsel & Corporate Secretary

Avanir Pharmaceuticals Inc., Aliso Viejo

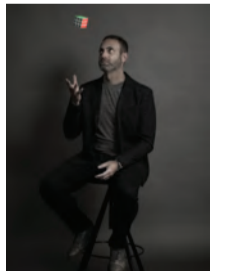
Aneta Ferguson has practiced at Latham & Watkins in the area of mergers and acquisitions and throughout that time, she worked on a number of industry altering acquisitions in the pharmaceutical and other industries. In 2015, Ferguson joined Avanir Pharmaceuticals, Inc. and led the company's integration efforts into the greater Otsuka enterprise. Throughout her time at Avanir, she served as trusted advisor to the commercial teams in the promotion and sales efforts of Avanir's flagship product and launch of the company's second product. Ferguson has been instrumental in refining the company's framework in anticipation and preparation for an expected launch of Avanir's product candidates. In 2019, Ferguson assumed the role of a head of legal and has since re-built the legal department function and served as a trusted legal advisor to the executive team and a member of the executive team. Ferguson had a significant role in the resolution of a number of significant matters for Avanir, including a government investigation and disposition of a significant company asset in 2019. Ferguson has co-leads the company's business continuity efforts in light of the COVID-19 pandemic.



Adam Gromfin, Chief Legal Officer & EVP M&A and Strategic Partnerships

ThreeSixty Group, Irvine

Adam Gromfin has advocated and led a substantial complexion change in the ThreeSixty Group's development and management of IP, keeping space with more inventive and transformational products. He also developed a investment model justifying the global registration of hundreds of patents and trademarks, while managing an enforcement regime to protect commercial prospects. Gromfin took part in MerchSource's acquisition of its long-time sourcing partner ThreeSixty Sourcing, forming ThreeSixty Group. He led all post-merger integration efforts, tasked with unlocking critical business efficiencies by consolidating their once-siloed business divisions into "one company" (at a systems, process, and departmental levels). Gromfin managed the entirety of the Company's 2015 sale of the majority of their stock to AEA as private equity sponsor — from identifying investment bankers, developing positioning materials and our "book," shepherding an extensive diligence process, and managing all internal and external legal documentation. In addition, Gromfin launched and managed the early stages of their aggressive from-scratch Amazon initiative, with ecommerce (both Amazon and "brick and click") now a core business channel for the Company.





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From compliance advice and counseling on the constantly-changing COVID laws at the federal, state and local levels, to defending employers against pandemic-related employment litigation, CDF protects our clients' interests so they can focus on surviving this unprecedented time.

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2021 General Counsel Bios

Jonathan Gulsvig, General Counsel

Professional Plastics, Fullerton

Jon Gulsvig has been instrumental in two acquisitions and one business sale in the last couple of years. He has represented Professional Plastics in several litigations bringing positive results for the company. He has overseen outside counsel in many local and state regulatory issues and protected them from over invoicing those services as well as making sure they kept on track with their representation of the company's interests. He has dealt with a serious issue regarding the company's manufacturing plant in the Philippines as well as the succession plans for one their partners there that passed away, learning very quickly the ins and outs of Philippine law. Gulsvig's business acumen and experience with labor and contract issues has been spot on to guide the company and protect them from harmful issues.



Janet Hathaway, General Counsel

Beacon Pointe Advisors, Newport Beach

Since being hired in May 2019 as the first internal legal counsel at Beacon Pointe Advisors, LLC, a multi-billion-dollar registered investment advisory firm, Janet Hathaway has built out her role as the primary source of legal oversight and advice to senior management. She handles all general corporate matters, including the formation of new corporate entities to support the Company's growth, routinely negotiates important complex contracts such as services and engagement agreements, leases, employment agreements and private equity investment documents, and handles pre-litigation investigations and settlement negotiations. She counsels departments across the firm including but not limited to operations, human resources, mergers & acquisitions, regulatory compliance, and information technology. Hathaway is responsible for the Company's intellectual property matters, insurance claims, and she keeps abreast of applicable laws and regulations, including those related to privacy and to the COVID-19 pandemic, across the 13 states where the Company operates. Hathaway worked with and oversaw external counsel to accomplish the Company's restructuring and recapitalization with private equity investment in March 2020. During her tenure, she has played a key role in the acquisition and subsequent integration of nine new partner offices (and Company growth from 185 to 265 employees and counting), creating and rolling out firm-wide standardized contracts, policies, and procedures.



Lisa Harrington, Chief Legal Officer & Corporate Secretary

Viant Technology LLC, Irvine

Lisa Harrington has been CLO/GC and corporate secretary of two prominent Irvine-based public companies (Viant, ChromaDex), as well as general counsel of Irvine-based ASICS Americas (publicly traded in Japan). Harrington was also special counsel at Cooley, where she represented public companies throughout Southern California and across the country. She also held legal leadership positions other prominent public companies including Comcast/NBCUniversal, UNUM, and CIGNA. Harrington obtained her CIPP-US (privacy) certification in 2019 and has deepened her business knowledge and abilities by taking MBA courses and executive leadership trainings as well as ongoing corporate governance and board director education. She has led bet-the-company litigation and strategic international and domestic transactions. Harrington has made significant improvements to compliance and governance processes at several companies. She also spearheaded a women's affinity group at ChromaDex to support and advance women in leadership roles, and has spoken on many panels in recent years about diversity issues. While at Cooley, Harrington mentored associates in several offices and trained them in client relations and business development from the perspective of a GC.



Michael Hickman, General Counsel & Branch Manager

Seven Gables Real Estate, Huntington Beach

Michael R. Hickman's most significant business accomplishment was becoming in-house general counsel for Seven Gables Real Estate. He is proud to always maintain a "presence in mind" of the company's 500 agents and employees. Hickman has been able to navigate the challenges and delicate balance between compliance and business success. His mindset and demeanor are at the forefront of his success and contribute daily to the successful resolution of disputes and a path forward for solutions. While these factors may seem cliché, they are crucial to underscore the success achieved within the delicate balance of being pro-business as well as compliant with a mindset of diagnosing an issue or problem and then providing a solution for the betterment of all involved. This requires a thorough understanding of the industry and transactional law, which he gained from his previous experience within a Newport Beach law firm.



Jon Howell, General Counsel

Hyperice Inc., Irvine

Jon Howell oversaw the acquisitions of three major companies within the last 18 months. In March 2020 Hyperice acquired Normatec, innovators of cutting-edge dynamic compression systems. In December 2020 they acquired RecoverX, pioneers of intelligent thermal technologies, to deliver next-generation performance and wellness solutions. Lastly, in July 2021 the company acquired Core, both an app and a handheld meditation device designed to track heart rate and stress levels. In addition, Howell oversaw numerous partnerships



with championship level professional leagues, teams and athletes: NBA, NFL, MLB, PGA Tour, UFC, FIBA, US Soccer, USA Gymnastics, USA Track and Field, USA Volleyball, New York Yankees, San Diego Padres, Los Angeles Lakers, Kansas City Chiefs, Seattle Seahawks, Dallas Cowboys, LAFC, Olympian Laurie Hernandez, MLB Superstar Fernando Tatis, Tennis Champion Naomi Osaka, NFL Stars Christian McCaffrey and Patrick Mahomes, and so many more.

Anita Hsu, Senior Vice President & General Counsel

MBK Real Estate Companies, Irvine

Anita Hsu is senior vice president, general counsel of MBK Real Estate Companies. She currently oversees all related legal matters for MBK Real Estate and its subsidiaries, MBK Senior Living, MBK Rental Living, MBK Homes and MBK Industrial Properties. 2020 was a difficult year for everyone, but it was particularly tough for those in certain sectors such as senior living. As the global coronavirus pandemic unfolded, it highlighted the vulnerable health status of seniors and posed unprecedented challenges to the senior living industry. As the situation rapidly evolved, Hsu had to quickly and repeatedly work with her team to escalate safety and infection control protocols regarding visitor restrictions and screening processes, provide transparent communication to residents and their family members, and respond immediately to ever-changing local mandates and regulations. From verification of essential workers, to community-wide COVID-19 testing and the issuance of a COVID-19 vaccine mandate, Hsu continues to play a crucial role in managing the challenges during this pandemic. As the coronavirus led MBK's senior management and key executives through uncharted territory and uncertainty, Hsu's strong leadership allowed her to be on the front lines of response and recovery.



Wendy Huang, General Counsel

Prospera Hotels, Orange

Wendy Huang has close to three decades of experience in real estate law, and over 20 years of general counsel experience. For over 10 years, Huang was executive general counsel of Crown Realty and Development. Prior to that, she was general counsel of Olen Properties. Prior to her current role, she was a litigator specializing in complex commercial disputes. As both an accomplished litigator and transactional attorney, Huang has successfully litigated over 50 cases. Huang has served as an officer and board member of many bar and civic organizations. For the past four years, she has been co-editor-in-chief of the California Litigation Review. She has also been appointed to the executive committees of the State Bar of California's Litigation Section, and the California Lawyers Association's Litigation Section. She also served on the board of directors of Southern California Chinese Lawyers Association, Women Lawyers Association of Los Angeles, Los Angeles Lawyer Magazine, and as president of the Organization of Chinese Americans, Los Angeles Chapter.



Nathan Jensen, Senior Vice President, Co-Head Renewable Fuels & Chief Legal Officer

Clean Energy, Newport Beach

Nate Jensen's background is in corporate law, with a focus on mergers and acquisitions and securities. Since becoming general counsel and chief legal officer of Clean Energy in March 2011, Jensen's practice has significantly expanded to include, among other things, corporate governance and public company compliance, litigation, employment, regulatory, intellectual property, real estate, commercial contracting and various laws applicable to operations in Canada, China, Colombia, Italy, Peru, and Bangladesh. Clean Energy is the leading provider of renewable and conventional natural gas as a vehicle fuel in North America. The company was founded by legendary energy entrepreneur and dealmaker T. Boone Pickens. Jensen also serves as SVP Corporation Transactions, and in that role he identifies, structures and negotiates all significant transactions involving Clean Energy. He has honed management and business skills, is a member of Clean Energy's senior executive team and fully participates in business, operations and strategic matters. Jensen is a strategically astute attorney (a combination of business savvy, knowledge of black-letter law, judgment and wisdom) who significantly contributes to Clean Energy achieving its business and strategic goals.



Karen Kannen, General Counsel & Executive Vice President

Powerstone Property Management, Irvine

Karen Kannen joined Powerstone in 2018 just as Powerstone Property Management was beginning a steep growth trajectory and of course with growth, comes liability. They recognized a real and urgent need for in-house counsel to help navigate the ever changing laws that impact community association clients. Kannen took on the role and not only performs all corporate counsel responsibilities for the company, but she also immediately implemented risk management policies and procedures to reduce the company's and clients' exposures. She created and supervises a compliance department for risk management and co-founded the Powerstone Academy- the in-house professional training and internal growth program - where she trains managers and conducts workshops for client board members on legal issues. Kannen's desire to expand her scope and value to the company also included taking over the supervision of the associate manager department.





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2021 General Counsel Awards
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2021 General Counsel Bios

Newt Kellam, Chief Administrative Officer

Pinner Construction Co., Anaheim

Newt Kellam has led an in-house legal team at Pinner Construction to win a number of memorable legal battles. His work is continuously positioning the company for greater future success. Some of his recent victories include, but are not limited to: playing a key role in obtaining new construction contracts through bid protests; forcing a multi-million-dollar settlement from a local community college district for damages his client incurred resulting from delay; obtaining a multi-million-dollar settlement from a surety company that issued a performance bond to one of his client's subcontractors, which, research shows, is the highest payment above the penal sum against a surety in California history; obtaining a third multi-million-dollar settlement from another local community college district for damages his client incurred resulting from delay; and working in conjunction with the Pinner team to safely and productively navigate through the ever-changing CDC and CAL OSHA regulations during the COVID-19 pandemic. Kellam's approach and strategies have saved Pinner Construction both a substantial amount of time and millions of dollars in the past year alone.



Margaret Kivinski, General Counsel

Artemis DNA, Irvine

In merely three months as general counsel for Artemis DNA, Margaret Kivinski accomplished significant achievements for the company. For example, she defended the company in disputes with various vendors, competitors, and individuals. She ensured thorough review and compliance of agreements, all the while assisting with vendor management and the contract management processes. She also oversaw HR and provided legal oversight, advising Artemis DNA on employment actions and the implementation of the best practices and policies. In this way, she also helped the company become community- and environmentally-friendly as a whole. To clarify, she implemented recycling programs, added solar energy as one of Artemis DNA'S power, and reduced their use of plastic waste. Furthermore, she installed an internship program that helped both high school college students learn about the genetic testing industry and the various vocational opportunities within it.



Arun Kurichety, Chief Operating Officer & General Counsel

Petalfast Inc., Irvine

Arun Kurichety is a seasoned leader, corporate executive, and attorney with an entrepreneurial mindset. He possesses extensive experience in corporate transactional and restructuring experience, with a focus on the cannabis and cbd industries. As a cannabis industry "veteran," he has advised numerous cannabis companies, from start-ups to publicly traded companies, in an ever-shifting regulatory landscape. He is highly regarded for his capital markets and debt restructuring knowledge, while regularly advising on corporate governance, compliance/regulatory matters. As the former general counsel and executive vice president of KushCo Holdings, Kurichety oversaw and managed the legal, compliance, corporate governance, and business affairs functions. He served as a trusted advisor on the executive team and executed several industry-first transactions, including the company's \$50 million asset-based credit facility. With more than thirteen years of corporate transactional experience with two top international law firms, Kurichety guided and advised companies in various growth stages, from start-ups to businesses seeking to restructure or exit. He led or participated in more than 15 complex large U.S. and foreign debt restructurings totaling \$12+ billion in funded debt.



Nicholas Look, General Counsel

SmartStop Self Storage REIT Inc., Ladera Ranch

As SmartStop Self Storage REIT's general counsel, Nick Look has built up a significant list of accomplishments in a short amount of time. Some of his major achievements include overseeing SmartStop Self Storage REIT, Inc.'s (previously known as Strategic Storage Trust II, Inc.) 2019 acquisition of the self storage platform of SmartStop Asset Management LLC, its former sponsor. This transaction made SmartStop Self Storage REIT a self-managed and fully integrated self storage REIT, as well as the owner of the SmartStop® Self Storage brand, related trademarks and over 250 domain names. Earlier in 2019, SmartStop Self Storage REIT completed a merger transaction with Strategic Storage Growth Trust, Inc., adding 29 properties in 10 states and the Greater Toronto Area of Ontario, Canada. Look provided legal oversight for this transaction, including the simultaneous closing of approximately \$525 million of indebtedness to help finance the transaction. In March 2021, he provided legal oversight of SmartStop Self Storage REIT's completion of an approximately \$380 million merger with Strategic Storage Trust IV Inc., which effectively grew SmartStop's portfolio by 24 wholly-owned self-storage facilities located across nine states and six real estate joint ventures (consisting of three operating properties and three properties in various stages of development) throughout the Greater Toronto Area of Ontario, Canada.



Alexandru Mihai, General Counsel

Realty One Group, Laguna Niguel

Alexandru Mihai established and initiated Realty ONE Group's legal department in 2015. He has been on the National Association of Realtors General Counsel's Advisory Board Members, since 2017. In 2019, Mihai oversaw sale of all Realty ONE Group CA operations (seven offices, 1300 real estate agents). In addition, Mihai oversees international expansion



around the world and franchising of the brand and protection of IP. Realty ONE Group ranks in the top one percent in the nation by REAL Trends, has been recognized by Entrepreneur Magazine as a Top 5 Real Estate Franchise and has been on Inc. 500's list of the Fastest-Growing Companies for seven consecutive years.

Carissa Mijares Chandler, Senior Corporate Counsel

Tanvex BioPharma USA Inc., Irvine

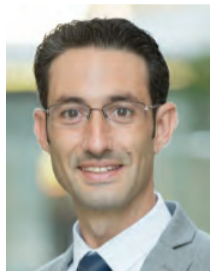
Carissa Chandler has been serving as in-house corporate counsel for over six years for Tanvex BioPharma USA Inc., a biopharmaceutical manufacturing company that produces biosimilar drug products in the area of oncology. She joined the company in its infancy and developed the legal department's process and procedures. As the sole in-house attorney in her company, she collaborates with outside counsel to manage the company's contract life cycle, commercial transactions, immigration petitions, employee matters and employment litigation issues. Chandler is the current secretary/treasurer for the Orange County Bar Association (OCBA) Corporate Counsel Section & serves as an arbitrator for the OCBA Mandatory Fee Arbitration Committee.



Warren Morten, Managing Partner

Morten & Fairchild PC, Irvine

Warren Morten's career began as a transactional associate affording him significant experience in several complex commercial transactions. He then transitioned to a litigation at a busy complex business litigation firm in Irvine, giving him a tremendous amount litigation and trial experience. Thereafter, and prior to starting Morten & Fairchild, PC, Morten worked as AGC for a multinational sales, marketing, and manufacturing company with over \$2.5 billion in annual revenue. Last year alone, Morten was able to help clients create over 40 long term and well-paid Jobs in Orange County. He has have helped at least four different clients form their business and sell their business for more than \$5 million, since founding the firm in 2014. Morten has helped clients negotiate contracts worth \$20 million or more, and recently secured a licensing deal with Disney for a client's music catalog. Essentially, Morten helps privately held businesses, from formation through acquisition with transactional and outside general counsel services. Currently he is working with a new OC based Alcohol brand which just got into Total Wine and More this year, and a Golf Technology Brand that he helped restructure and now is in its first round of fundraising for its Trophy project in the Coachella valley, a 200,000+ sq/ft facility with bars, restaurants, and the ability to play a full 18 holes, from tee to green, indoors.



Maria Moskver, President & Chief Legal and Compliance Officer

Cloudvirga, Irvine

Maria Moskver is an industry veteran in the fintech and compliance world with more than 20 years of experience. She has always led by example. As president and chief legal officer, Moskver played a pivotal role in the successful acquisition of Cloudvirga by Stewart Title, named a top financial technology company, earlier this year. Moskver was instrumental in both the deal structure and the successful transition. In previous years under Moskver's leadership, Cloudvirga secured strategic investments and developed a Wholesale TPO platform to address this gap in the industry and to streamline the interaction between large wholesale lenders and their broker clients. Currently, Moskver manages more than ten divisional units in her day-to-day activities and fosters a diverse team of talented employees who are revolutionizing the digital mortgage process.



Njeri Mutura, Managing Senior Counsel

Microsoft Corporation, Irvine

Njeri Mutura is a respected global legal and business professional, called upon by top corporations to provide counsel on legal and regulatory issues pertaining to emerging technologies. Ms. Mutura is passionate about bringing the power of technology to bear, recognizing its potential to transform organizations, communities, and individual lives. Ms. Mutura built and led the legal team based in Irvine, that represents and supports the Microsoft Business throughout the Western Region of the United States. Within a period of four years, she grew the presence and impact of Microsoft in the region and contributed to local businesses by facilitating the closure of transactions that enabled them to acquire empowering technology solutions. Currently, Ms. Mutura leads a team of accomplished and high performing attorneys across the Americas, while providing direction on structuring, negotiating, and managing some of the most strategic, lucrative, and complex technology transactions at Microsoft Corporation, many of which are valued at upwards of \$1 billion.



Vanessa Novak, Corporate Counsel

Synoptek LLC, Irvine

As the sole in-house counsel at Synoptek, a multi-state and international information technology company, Vanessa Novak leads the legal and contracts department, comprised of herself and one contracts director, who contributed to Synoptek's closing of 54 new customer contracts in the 2020 calendar year, and 39 new customer contracts in 2021. In October 2021, Ms. Novak negotiated and closed the largest customer transaction in Synoptek's history with a total contract value of \$41,034,956. In



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2021 General Counsel Bios

July 2021, Ms. Novak negotiated and closed a merger and acquisition transaction for Synoptek with \$2 million annually in revenue. In addition to consulting with and advising corporate officers of Synoptek, Ms. Novak advises internal stakeholders in U.S., Canada, and India and across all the company's management teams, including sales, finance, human resources, operations, information security, and customer advisory.

Linda Park, Vice President, Associate General Counsel & Corporate Secretary Edwards Life Sciences Corporation, Irvine

After starting her legal career at Gibson, Dunn & Crutcher in 2003, Linda Park has continuously demonstrated her exceptional ability to understand complicated legal issues while serving as a trusted business advisor to senior leadership at some of the county's largest companies. Before making the transition to an in-house counsel role in 2013, Park spent a decade working at some of the country's most prominent law firms. In July of 2013, Park started her first in-house counsel position as assistant general counsel at Western Digital Corporation, one of Orange County's largest companies. In October 2017, Park joined Edwards Lifesciences Corporation as vice president, associate general counsel and corporate secretary, where she is responsible for a broad range of legal operational issues at the company, including SEC regulatory compliance and disclosure matters; oversight for all Board and Committee issues; M&A and corporate development activities; capital raising and finance-related activities; corporate secretarial functions, including all foreign and domestic subsidiaries; and many others. During Park's time at Edwards, she has overseen some of the company's high-profile transactions, which have improved Edwards' financial position and increased its ability to finance future operational and research efforts.



Jeffrey Plumer, General Counsel

Evolus, Newport Beach

Jeff Plumer serves as general counsel of Evolus, Inc based in Newport Beach, California. Evolus is a performance beauty company with a customer-centric approach focused on delivering breakthrough products. In 2019, the U.S. Food and Drug Administration approved Jeuveau® (prabotulinumtoxinA-xvfs), the first and only neurotoxin dedicated exclusively to aesthetics and manufactured in a state-of-the-art facility using Hi-Pure™ technology. Jeuveau® is powered by Evolus' unique technology platform and is designed to transform the aesthetic market by eliminating the friction points existing for customers today. Plumer first joined and served as the vice president of legal since Evolus' initial public offering (IPO) in 2018. Plumer transferred to Evolus upon its IPO after serving as the vice president of legal



to Evolus' sole stockholder from 2014 to early 2018 and was promoted to General Counsel in October 2020. Earlier in his career, Plumer practiced as a corporate securities and mergers & acquisitions attorney at K&L Gates LLP. Plumer has been instrumental in achieving key Company milestones including the Evolus IPO and subsequent financing rounds to fund the commercial launch of Jeuveau®.

Bence Rabo, General Counsel

International Vitamin Corporation (IVC), Irvine

As general counsel of a private company which has been growing quickly and relies on a global supply chain, Bence Rabo has played a key role in making that growth sustainable and profitable. International Vitamin Corporation (IVC) has been able to leverage its global supply chain and expand its investment and business footprint in Southern California and throughout the United States. This is in large part a result of the exceptional leadership and guidance that Rabo has delivered to IVC since he joined the company as its general counsel in 2017. Since joining IVC, Rabo has been at the heart of the company's key strategic decisions. Within the first six months of joining IVC, Rabo was instrumental in executing IVC's plan to reorganize operations by closing its primary plant in New Jersey while simultaneously acquiring Delavau Pharmaceuticals' OTC drug manufacturing plant in Philadelphia. These steps allowed IVC to add and shift production to its most efficient facilities. The Delavau plant in Philadelphia is a pioneer facility producing OTC drugs and supplements using efficient cutting-edge continuous manufacturing technology. Soon after closing these projects, Rabo led the negotiations and subsequent execution of IVC's innovative \$ million JV ("JV") with GNC Holdings, Inc., the largest specialty retailer of nutritional products in the world.



Jason Resnick, Senior Vice President & General Counsel

Western Growers Association, Irvine

Jason Resnick joined the company in 2003 as a staff attorney and today, as senior vice president, general counsel and corporate secretary, he manages all of Western Growers Family of Company's legal affairs. Western Growers Family of Companies consists of Western Growers Association (one of the largest agricultural trade associations in the country); Pinnacle Claims Management (a leading third-party administrator for employers who self-fund their health care benefits); Pinnacle Rx Solutions (a fast-growing Pharmacy Benefits Manager); Western Growers Assurance Trust (the largest provider of health benefits for the agriculture industry); Western Growers Insurance Services (full-service insurance brokerage); and Western



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2021 General Counsel Bios

Growers Financial Services (registered broker dealer). In 2013, Resnick led the legal department's work in crafting the successful proposal by Pinnacle Claims Management to secure the contract with Covered California to administer its Small Business Health Options "SHOP" program (since rebranded Covered California for Small Business program "CCSB"), to manage all administrative and marketing functions of their plans, beating out much larger players, including a Fortune 500 company, to win the contract. Resnick has been involved in subsequent negotiations to extend and renew the lucrative contract, which was recently renewed for several more years.

Katie Rodin, Chief Legal Officer

ocV!BE Sports & Entertainment LLC (ocV!BE, Anaheim Ducks, Honda Center, etc.), Anaheim

As chief legal officer of ocV!BE Sports & Entertainment, Katie Rodin prepares enterprise for the operation of the multi-use, multi-billion dollar community surrounding the Honda Center; creation of robust data privacy plan including complete data mapping and compliance protocols for entire enterprise; formed inaugural legal department supporting all aspects of the enterprise; navigate and advise enterprise through the COVID-19 pandemic, including the safe re-opening of the Honda Center to guests. For the past 12 years, Rodin has served the sports and entertainment arm of the Samuelli family of companies, including the Ducks, Honda Center, The Rinks and San Diego Gulls. As general counsel, Rodin oversees all legal activities of the sports and entertainment organizations. Those activities include the development and implementation of legal strategies and initiatives, negotiating of stakeholder agreements, managing enterprise-wide deployment of legal services, collaborating with all business units, managing litigation and ensuring compliance in all aspects of the organizations' operations.



Joseph Rogoff, General Counsel

Real Estate Law Group, Newport Beach

Joseph A. Rogoff is a shareholder and founder of Real Estate Law Group, PC. Mr. Rogoff has over twenty-five years of experience in complex real estate transactions, including the acquisition, disposition, financing, development and leasing of real estate projects. He also has extensive experience with joint venture arrangements. Prior to forming RELG, Mr. Rogoff practiced with large law firms (having begun his real estate practice with the Newport Beach office of O'Melveny & Myers) and real estate boutique firms specializing in the representation of developers, investors and landowners. Rogoff functioned as the general counsel for Premier Workspaces (a Bascom Group Company) from 2003 to 2010. During



that period of time, he instrumental in facilitating rapid growth from 14 locations in mid-2003 to 50 locations in mid-2010. Rogoff negotiated all agreements where they acquired existing shared workspace locations and new master leases for locations we developed from scratch. In addition, Mr. Rogoff established standard documentation to be used for future acquisitions and negotiated dozens of master lease renewals.

Robert Saman, Vice President & General Counsel

Syntiant, Irvine

Irvine-based Syntiant Corp. is a leader in moving artificial intelligence and machine learning from the cloud to edge devices. It's advanced chip solutions merge deep learning with semiconductor design to produce ultra-low-power, high performance, deep neural network processors for always-on applications across a wide range of consumer and industrial use cases, from earbuds to automobiles. Over the past three plus years, Robert Saman has been instrumental in helping Syntiant navigate this explosive growth, from investor financing to product introductions to strategic partnerships. Most notably, he led the legal negotiations and documentation of the company's \$25 million Series B, and most recently, the \$35 million Series C financing. To date, the company has raised more than \$65 million and is now backed by several of the world's leading strategic and financial investors including Intel Capital, Microsoft's M12, Applied Ventures, Robert Bosch Venture Capital, the Amazon Alexa Fund and Atlantic Bridge Capital. Mr. Saman has led all negotiations of Syntiant's commercial agreements, including those production software license and master supply agreements that have facilitated Syntiant's growth and success in shipping more than 15 million units of its machine learning Neural Decision Processors™ to customers across the globe.



Raj Shukla, General Counsel & Executive Vice President of Corporate Development

Commercial Bank of California, Irvine

As the GC and EVP of Corporate Development, Raj Shukla has supported Commercial Bank of California (CBC) in all of its business activities. CBC is a privately-held full-service bank serving the business communities in LA County and Orange County. Because CBC is a community bank that specializes in small business lending, it was uniquely situated during the pandemic to help small to medium size businesses secure PPP loan. CBC was able to coordinate almost \$400 million in loans for small-to-medium sized business as part of this program. A corporate acquisition that Shukla was involved with a few years ago relating to ACH processing services has resulted in an important revenue stream for CBC this year, and a source of low cost funding (deposits). While he handles legal matters for the bank operationally, in implementing inorganic growth through M&A - he is the business and strategic lead. Shukla also wrote the bank's three year strategic plan, which was approved by the bank's BOD and regulatory oversight agencies (FDIC, DBO, FRB).



Babak Siavoshy, General Counsel

Anduril, Irvine

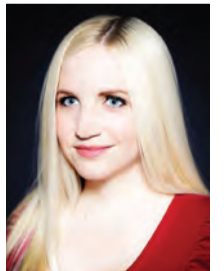
Babak Siavoshy is VP and general counsel at Anduril Industries, where he advises Anduril's board and management on legal and policy matters and leads the company's legal, regulatory, and procurement functions. Prior to joining Anduril, Siavoshy served in a number of roles at data analytics firm Palantir Technologies, most recently leading Palantir's global data compliance team and managing key commercial and government contracts. Before joining Palantir, Siavoshy worked in various roles focusing on the law and policy of emerging technologies: at the Berkeley Samuelson Law and Technology Clinic; at Georgetown's Center on National Security and the Law; and as an advisor to California Attorney General's office on consumer privacy and technology policy issues. As an associate at O'Melveny & Myers, Siavoshy co-authored the winning brief in *United States v. Jones*, which resulted in one of the Supreme Court's most notable privacy rulings in a decade. Siavoshy also served as a law clerk to the Honorable John T. Noonan, Jr., on the United States Court of Appeals for the Ninth Circuit in San Francisco.



Michelle Smith, General Counsel

Ambry Genetics Corporation, Aliso Viejo

Michelle Smith is general counsel and corporate secretary of Ambry Genetics Corporation ("Ambry"). Smith's tenure as general counsel of Ambry began in 2017 where she initially oversaw a three person department. Later that year, she successfully guided Ambry's sale to Konica Minolta and has since continued in that role post-acquisition in addition to taking on ever-expanding responsibilities in the new management structure, including being responsible for Ambry's compliance function. In 2020, Smith played an instrumental role in Ambry's acquisition of GenomeSmart, Inc., as well as Ambry's response to the COVID-19 pandemic both internally and externally, including providing legal advice regarding Ambry's COVID-19 test offerings, which included a partnership with the Orange County Health Care Agency to provide testing to Orange County residents. Under her leadership, Ambry's legal and compliance department has matured into a nine person team. Smith and her team oversee all legal and compliance matters for Ambry and its subsidiaries, including providing guidance to Ambry's board of directors and executive management team on a diverse array of matters spanning M&A, commercial transactions, employment law, corporate governance, intellectual property, regulatory compliance, and managing litigation.



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JEFFREY M. VERDON
LAW GROUP, LLP

Securing Your Retirement: Best Asset Protection Your Lawyer Never Told You About

By Jeffrey M. Verdon, Managing Partner, Jeffrey M. Verdon Law Group, LLP

Life is full of little surprises. Wondering whether your retirement plan is “bullet proof” from future lawsuits and bankruptcy should not be one of them.

Imagine this...

You’ve worked your entire life to build a successful business re-investing into your company all along. Your long-term plan was to sell the company when you turned 60 to retire to a life of leisure, living on the proceeds. Then disaster strikes. You and your company get sued resulting in a devastating multi-million dollar judgment. There aren’t enough assets to pay off the debt and it’s going to wipe you and your company out. Because you never saved for retirement you don’t have enough protectable assets, such as a healthy IRA, to start over. And that “sell the company” retirement plan you worked so hard for? It’s gone without a net.

Luckily, there is something you can do to avoid this fate.

If you live in California, you can create a Private Retirement Plan (PRP) to secure your retirement. PRPs are used for retirement savings and because it is statutory law, it is entirely exempt from judgments and bankruptcy. Sound too good to be true? Well, there is a catch. To qualify as a PRP, the plan must be operated strictly for retirement purposes and misuse of the plan disqualifies it.

Here’s how it works: A business owner or professional with a successful company establishes a retirement plan funding it with company assets. Because a PRP is not an ERISA qualified retirement trust and does not enjoy any special tax treatment,



Jeffrey M. Verdon
ATTORNEY AT LAW

contributions to and earnings inside the PRP are unlimited. Your company can fund a PRP with a lump sum contribution or it can secure the funding commitment with its accounts receivables, real estate holdings, and intellectual property, to name a few. This prior lien for the PRP takes

priority over any of the company’s future claims including judgment creditors.

The real beauty of securing your retirement through a PRP is that the trust’s assets are protected when you and your company are making contributions, and when you commence withdrawing your benefits when you retire. Hello peace of mind, goodbye future unforeseen creditors! This is a handy safety-net indeed.

PRPs are inexpensive to create and even less to maintain, especially when you consider the unlimited creditor protection it offers. PRP’s are coordinated with your current qualified retirement plans.

If you’re interested in learning more about Private Retirement Plan contact your legal or financial advisor, and if he or she isn’t familiar with the PRP, contact our firm for a complimentary phone consultation. We would be pleased to help you secure your retirement.

Jeffrey M. Verdon Law Group, LLP is a boutique law firm specializing in Comprehensive Estate Planning and Asset & Lifestyle Protection. For over 30 years we have assisted affluent families and business owners with their comprehensive estate plans, maximizing wealth transfer opportunities, and providing “firewall” asset protection planning to protect estates and family legacies.



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The Fusion of Planning and Protection.

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2021 General Counsel Bios

Serafin Tagarao, Counsel, Labor and Employment

Rivian, Irvine

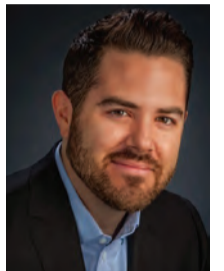
As an earlier member of the in-house employment practices group, Serafin Tagarao collaborated closely with the people team and other cross functional stakeholders, including executives, to draft company-wide policies and agreements to develop employment infrastructure and provide legal, strategic, and business guidance to minimize employment law risk for a fast-growing global company. He also partnered with and trained Rivian’s recruiting and talent acquisition teams regarding best practices for hiring employees under federal and state laws allowing the company to double its workforce in only six months. Tagarao conducted proactive internal audits and partnered with management teams to identify potential compliance issues and develop best practices to mitigate them while enabling the company to continue its growth trajectory.



Franco Tenerelli, Chief Legal Officer & Executive Vice President

Landsea Homes, Newport Beach

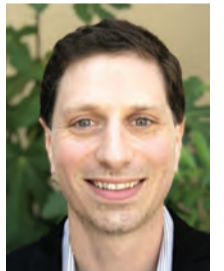
In 2020, Franco Tenerelli led his team at Newport Beach, California-based Landsea Homes in its proposed combination with LF Capital Acquisition Corp., a special purpose acquisition company, in a transaction valued at \$510 million. Under the agreement, LF Capital bought Landsea Homes for \$344 million through more than 32.5 million shares of newly issued stock. This was a significant business accomplishment for Tenerelli as becoming a publicly listed company in the U.S. was a major milestone for Landsea, and solidified the company’s position as one of the top homebuilders in the industry. As of the start of the year, LF Capital has been renamed “Landsea Homes Corporation” (“Landsea”) and its common stock and warrants began trading on The Nasdaq Stock Market (“Nasdaq”) under the ticker symbols “LSEA” and “LSEAW” on January 8, 2021. Tenerelli has served as Landsea Homes’ executive vice president, chief legal officer and Secretary since 2016. He previously served as regional counsel for Toll Brothers, a publicly traded homebuilder, from 2013 to 2016, managing the company’s legal affairs for the western region and helping guide the successful acquisition and integration of Shapell Homes. Prior to Toll Brothers, he was a lawyer with Holland & Knight LLP, where he served as counsel to a variety of public and private companies.



Eli Ticatch, General Counsel, Vice President & Corporate Secretary

BSH Home Appliances Corporation, Irvine

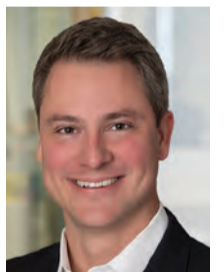
As general counsel and vice president and corporate secretary at BSH Home Appliances, Eli Ticatch has reduced BSH’s risk profile with training programs for business managers regarding communications, compliance, complaints and internal investigations and other core legal issues with a focus on practical advice and best practices. He has also helped reduce costs and increased efficiency by revamping BSH’s processes for contract execution and record-keeping, dispute intake, insurance tenders and Human Resources’ complaint investigation process. Ticatch successfully steer BSH’s varied functions (including factory workers, service technicians, sales personnel, office workers, and customer service representatives) located throughout the U.S. through the web of varied federal, state and local COVID-related restrictions, facilitating BSH’s ability to produce and distribute home appliances that were essential to U.S. citizens sheltering at home during the pandemic.



Chris Updike, General Counsel

Stretto, Irvine

As general counsel at Stretto, Chris Updike has played an instrumental role in the expansion of the company as a market-leading bankruptcy technology and case-management services firm serving the corporate restructuring and consumer bankruptcy sectors. Stretto recently elevated Updike to Stretto’s executive committee where he provides legal and strategic insight to guide the company on its growth path. During the last year, he counseled the company through two mergers and successfully lobbied the Federal Deposit Insurance Corporation (FDIC) regarding the classification of Chapter 7 bankruptcy deposits resulting in a more favorable treatment of these deposits for Stretto’s clients and its industry as a whole. He manages outside counsel in more than a dozen areas of law including corporate governance, employment, immigration, M&A, IP, real estate, banking, bankruptcy, litigation, data privacy, and international law.



Bryan Wahl, General Counsel & Head of Business Development

Tarsus Pharmaceuticals, Irvine

Dr. Bryan Wahl has 16 years of legal experience and 21 years of medical experience as both a practicing attorney and physician, respectively. His unique combination of legal and medical expertise and breadth of experience in strategic transactions and intellectual property (IP) have been invaluable to Tarsus, as the company has successfully expanded its innovative product pipeline. Dr. Wahl joined Tarsus in January 2021 as general counsel and head of business development, and in this role, has expanded Tarsus’ IP portfolio, led contract negotiation, compliance, and corporate governance legal functions, and partnered with the finance team on public company SEC filings. He also leads business development at Tarsus, including the evaluation of external and internal innovation and pipeline opportunities. A significant milestone for Dr. Wahl was in March 2021 when he and the Tarsus finance team co-led the negotiation and signing of Tarsus’ Greater China strategic partnership with LianBio Ophthalmology to expand Tarsus’ global footprint into the world’s second largest healthcare market.



2021 General Counsel Bios

Lucas Wenthe, Vice President, Corporate Development

Sweegen, Rancho Santa Margarita

Lucas Wenthe is vice president of corporate development at Sweegen where he has managed to protect the organization from many external intellectual property threats. Wenthe has also help create and develop a sales program, corporate development, program and a growth strategy that included a potential equity transaction.



Kenneth White, Vice President of Legal and Business Affairs

Ethika, San Clemente

At Ethika, Kenneth White is in charge of building and leading the legal department and collaborating on daily operations strategy during a period of rapid company growth. He reports directly to CEO and supervises over 30 employees. White's responsibilities include negotiating, drafting and reviewing a wide range of commercial agreements; overseeing and advising on corporate governance, finance, investments, marketing, advertising, L&E matters; managing risk and litigation; overseeing the vast IP portfolio; and supervising outside counsel. He has also launched the company's HR department, including hiring multiple HR professionals and resources, and implementing HR policies and procedures. In addition, he assisted in the creation and development of the company's new music division, including drafting agreements for artists, producers and songwriters, and procuring and preparing publishing and distribution deals.



Noel Whitley, General Counsel

Enevate Corporation, Irvine

Noel Whitley negotiated a production license agreement with EnerTech International to commercialize Enevate's battery technology in the transportation, mobility and reserve power markets. In addition, he helped secure an \$81 million Series E funding led by Fidelity Management & Research Company, providing the company with additional new resources aimed at accelerating global mass adoption of Enevate's unique battery technology in electric vehicles. Whitley has more than 23 years of experience representing technology companies in the semiconductor, memory, and wireless industries. Prior to Enevate, he was vice president of intellectual property and licensing at Netlist, where he represented the company in all legal matters, including worldwide licensing and enforcement. Whitley also served as vice president of intellectual property for Broadcom, where he acted as the principal legal and business advisor to the company on matters related to patent portfolio development and monetization. Whitley began his legal career in private practice with Cooley LLP, and Sterne, Kessler, Goldstein & Fox PLLC.



Ako Williams, Vice President, General Counsel & Corporate Secretary

Ushio America Inc., Cypress

Ako Shimada Williams is vice president, general counsel and corporate secretary of Ushio America, Inc., in Cypress, California and General Counsel of Ushio Europe B.V. in the Netherlands, leading providers of light sources and solutions for a variety of applications including scientific, medical, infection prevention, semiconductor, entertainment, horticulture, and architectural applications. Ushio America and Ushio Europe are subsidiaries of Ushio Inc., a publicly traded global manufacturer in Tokyo, Japan. In her role as general counsel and corporate secretary, Ms. Williams oversees the company's legal, compliance, risk management, and corporate governance matters. Ms. Williams also serves on the board of directors of KA Imaging Inc. in Kitchener, Canada, a developer of cutting-edge multi-energy X-ray detectors and micro-CT scanners for a wide variety of applications. Given the increasing breadth of the Ushio Group's global offerings, the legal, compliance, and business issues the group is faced with have become more complex. Yet Ms. Williams has been able to find opportunities for cost savings and pursue actions to recover losses in an effort to turn the legal department into a profit center. As an example, she successfully obtained a significant amount of recovery in an antitrust class action lawsuit. Other examples of Ms. Williams' accomplishments include: guiding the company through significant IP litigation matters and bankruptcy adversary proceedings; serving as an integral member of the group's product branding project; closing several M&A deals and continuing to assist with post-merger integration efforts; implementing robust legal and compliance training and an ethics hotline; and providing better oversight of compliance matters (product compliance, regulatory compliance, insurance/risk management, cybersecurity, etc.).



Chad Wilson, General Counsel

PSOMAS, Santa Ana

Chad Wilson took on his current role at Psomas just two months before the start of the COVID-19 pandemic—a true test of his ability to “sink or swim.” In spite of the timing of events, Wilson has helped the firm to navigate the unprecedented legal and risk-related challenges presented by the pandemic in addition to his day-to-day duties. As chair of the Hybrid Work Committee for the last 18 months, he is leading the company's phased return-to-office plan and the creation of a long-term hybrid work program. Wilson also chairs the Enterprise Risk Management Committee and is an active member of the company's Quality Committee. He has consistently worked to improve business-related processes including revising and updating of the employee handbook, corporate governing documents, and contracting templates. In addition to his role as general counsel, Wilson serves as the corporate secretary for the company and an advisor to three of the Board's committees: Audit, Finance & Risk, Governance, and Retirement). Prior to joining Psomas, he was a litigator and trial attorney for more than 10 years representing design professionals, construction contractors, and sureties throughout California.



The Private Retirement Plan:



Best Asset Protection Your Lawyer Never Told You About

Fiercely committed to protecting your company's business assets from financially ruinous lawsuits. The Private Retirement Plan is a statutory based risk mitigation strategy very few know about.

*Hello peace of mind,
goodbye unforeseen creditors.*



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2021 In-House Legal Team Bios

Alorica Inc., Irvine

Dan Montenegro, EVP/General Counsel, Head of Legal
Emily Kilgore, SVP Deputy General Counsel, NA
Employment

Ammie Harris, Associate General Counsel, Corp
Contract Administration

Danielle Evans, Litigation and Regulatory Counsel

Jennifer Tennant, Sr. Corporate Counsel, NA

Employment Litigation

Maureen Ong, Associate General Counsel, Asia

Lisette Gonzalez, Corporate Legal Counsel, Latin
America

Jordan Vandiver, Sr. Corporate Legal Counsel, Corp Contract Administration

Carrie Bauccio, Legal Counsel, Contracts

Chandrika Shori, Compliance Management Program Manager

R. Glenn Knirsch, Director, Corporate Compliance & Regulatory Affairs

Alorica provides a host of world class services, including logistics and fulfillment. They're proud to passionately serve clients as diverse as they are—automotive, financial services, healthcare, retail and tech companies, many in the Fortune 1000. Alorica has more than 100,000 employees in 100 locations across the globe. The legal team proudly has an average benchmark of 8.7 attorneys for \$1 billion in revenue. In addition, they support 2 billion insanely great customer interactions every year with a global reach of 15 countries.

Arbonne International, Irvine

Bernadette Chala, Chief Legal Officer & General
Counsel

Jacintha Parker, Sr. Director Ethics & Compliance

Reynaldo Pitpit, Sr. Director Regulatory &

Scientific Affairs

Carmen Wasserman, Associate General Counsel

Donna Finegan, Legal Operations

Bianca Sole de Cortes, Manager, Ethics &

Compliance (digital)

Kristi Wray, Manager, Ethics & Compliance (training)

Christine Long, Manager, Regulatory & Scientific Affairs (foods & nutrition)

Kari Serruys, Manager, Regulatory & Scientific Affairs (personal care and topical care)

Daryl Martin, Contracts Counsel

Pheng Seng, Technical Program Manager

The Arbonne Legal, Regulatory and Compliance team consistently execute with excellence. This team sets the standard for not only innovation in new ways to push the business forward, but also collaboration, effective communication, and teamwork. The team consistently pushes to be at the forefront of new technologies that might enhance efficiencies and continue to add value to the company and its stated purpose to empower others to flourish through sustainable, healthy living. The team converted the company to a Delaware public benefit company in 2019 and lead by example by implementing CSR goals



for all legal and compliance vendors utilized by the company. Leads governance matters for her company with took the lead in converting her company to a public benefit company in 2019, which has since become independently certified by B Labs in 2020. The team also supports regulatory compliance of the entire product portfolio of Arbonne International, including cosmetics, health and wellness, and nutrition products. Reviews marketing claims and teaches and coaches the marketing team to help foster understanding of relevant regulations. Most recently, the team has worked to support public policy and governance work to support changes resulting from recent increased regulation of the direct selling industry, including ongoing monitoring of key actions from the Federal Trade Commission that have broadly impacted the direct selling industry.

Chipotle, Newport Beach

Roger Theodoreis, Chief Legal Council

Helen Kaminski, Vice President, Deputy General
Counsel, Compliance & Securities

Michael McGawn, Vice President, Deputy General
Counsel, Operations

Ryan Guthrie, Senior Director, Government Affairs

Ashley Coleman, Assistant General Counsel,
Litigation and Employment

Angel Lee, Director of Ethics and Compliance

Isabel Zavala, Senior Corporate Paralegal

Betsy Waterman, Assistant General Counsel, Real Estate

Ami Rodriguez, Assistant General Counsel, Privacy

Seth Ort, Senior Manager, Litigation and Employment

Patti Mann, Risk Manager

Emily Drake, Senior Analyst, Workers Compensation and Risk Manager

Andrea Andrade, Senior Counsel, Employment Practice

Chelsea Williams, Paralegal, Litigation

Fernando Jimenez, Manager, Workers Compensation

Cara Loftus, Executive Assistant



In 2018, Roger Theodoreis joined Chipotle Mexican Grill's executive leadership team as chief legal officer. Following the appointment of Brian Niccol as CEO and member of the Board earlier that year, Theodoreis was the final appointment to the world-class executive leadership team tasked with supporting and accelerating the brand's strategic goals. During his tenure, Theodoreis has built a 16-member, Orange County-based team focused on operations, compliance, litigation, employment law, real estate, privacy, and government affairs for Chipotle's growing global presence. While managing every aspect of the brand's legal function, the in-house legal team embodies Chipotle's mission to cultivate a better world. Notably, the team has fostered a company-wide culture of compliance, rewriting the brand's code of ethics and ensuring its values are shared by all employees from the executive level to in-store team members. Chipotle's revamped legal team has developed an analytical approach to litigation where they spend their legal budget as efficiently as possible. As a result, the company has substantially lowered its legal costs as a % of revenue.

CONGRATULATIONS
FRANCO TENERELLI

From all of us at Landsea Homes



Thank you for your continued leadership as we became a publicly traded company, Nasdaq: LSEA, in 2021 and as we expand our footprint, now building new homes in the California, Arizona, Texas, Florida and NYC Metro markets. You exemplify what it means to **#LiveInYourElement**.

LANDSEA
HOMES
Live in your element®
 LandseaHomes.com



CONGRATULATES NICHOLAS LOOK

ON HIS NOMINATION TO

ORANGE COUNTY BUSINESS JOURNAL'S GENERAL COUNSEL AWARD
FOR GENERAL COUNSEL OF A PUBLIC COMPANY



2021 In-House Legal Team Bios

Realty One Group, Laguna Niguel
Alexandru Mihai, General Counsel
Myga Rock, Corporate Counsel

Running the legal team of an international company that is continuously expanding, including more office, more agents, more locations in and outside the US. Realty One Group (ROG) has an amazing “coolture,” where they encourage each and every person that works for ROG as an individual with a voice. They are always pushing boundaries to “disrupt the industry” in a positive way. Further, they give back to the community on a regular basis. The legal team at ROG is a backbone to this effort.



Smile Brands, Irvine
Victoria Harvey, Esq., SVP & Chief Legal Officer
Nick Chang, Associate General Counsel
Joseph Hernandez, Director of Compliance
Alex Kim, Corporate Counsel
Melanie Gomez, Senior Risk Manager
Allison Campbell, Legal & Professional Services Manager

The Smile Brands Inc. Legal team takes pride in making sure that it's responsive, and expedient, with internal clients' requests. In providing service, team members always take the organization's G3® (greeting, guiding and gratitude) service platform to heart, as they deliver smiles to their colleagues, and strive to reflect the department's motto – Culture Drives Compliance. 2020 was a challenging year for the dental sector. Although dental was deemed an “essential business,” dental offices were mandated to close except for providing emergency treatments, and the industry was significantly impacted across all states. Being involved with Government Affairs and educating legislators and the public that “dentistry was safe” was one of the initiatives that the team assisted with to bring back the industry to full strength. Keeping track of COVID mandates in 18 states for dental and healthcare companies kept the team extremely busy. Constant changes in healthcare mandates required the team to prepare and revise ever-evolving policies and procedures. The team also assisted with renegotiating and revising 200+ leases across the country and resolving numerous COVID-19 landlord/tenant disputes. When the company resumed its M&A activity in the 2nd half of 2020, the team assisted with eight acquisitions. And in December 2020, SBI completed the largest merger in the DSO industry by acquiring Midwest Dental and expanding to approximately 700 locations in 30 states.



Toshiba America Electronic Components Inc., Irvine
Suzy Lee, Vice President & General Counsel
Joseph Cockman, Managing Counsel
Thomas Kao, Senior Counsel
Roy Kwong, Senior Trade Compliance Manager

Toshiba America Electronic Components, Inc. (TAEC) is the North America electronic

components business of Toshiba. TAEC offers a broad IC and discrete product line including high-end microcontrollers, ASICs and ASSPs for automotive, multimedia, industrial, telecoms and networking applications. The company also has a wide range of power semiconductor solutions as well as storage products including Enterprise and Consumer HDDs. TAEC was established in 1989, providing design, manufacturing, marketing and sales, with offices in United States and Latin America. A new legal department for Toshiba was established after a spin off of Memory business. The team also established a new Ethics & Compliance program, optimized the company footprint to save approximately \$4 million and established a new COVID-19 Protection and Management program.



VIZIO, Irvine
Jerry Huang, General Counsel, Head of Human Resources, Corporate Secretary
Dennis Yeoh, VP, Deputy General Counsel
Scott Becker, Director, Corporate Counsel
Joe Visaya, Contractor, Corporate Paralegal
Caitlin Sanchez, Senior Director, Compliance and Policy Counsel
Deborah Sheasby, Counsel
Ken Lowe, VP and Co-Founder
CJ Utter, Director, Privacy Counsel
Mariah Ahmed, Privacy Analyst
Yanni Guo, Senior Counsel
Esther Lee, Senior Counsel
Jenna Le, Associate Counsel
Matthew Wolski, Attorney (outside in-house)
Charles Koole, Attorney (outside in-house)
Evan Scher, Contract Attorney



VIZIO's legal department, based at its headquarters in Irvine, California, is managed by Jerry Huang (General Counsel, Head of Human Resources, Corporate Secretary) and Dennis Yeoh, vice president, deputy general counsel. Huang and Yeoh lead a dedicated team of 11 attorneys and 3 non-attorneys navigating VIZIO's transformation over the past several years from a hardware-centric business to a multifaceted consumer product, data driven software and advertising enterprise, leading the company to a successful IPO in early 2021. As a result of VIZIO's successful IPO and shift to a data-driven company, VIZIO is one of the few employers that is significantly expanding both its geographic footprint and its employee headcount during the pandemic, resulting in a 60% increase in VIZIO's employee headcount across the country and a 25% increase at its Irvine headquarters alone. VIZIO's legal team seamlessly on-boarded this workforce and facilitated the company's physical expansion, managing human resources, real estate transactions, and related issues. VIZIO's legal team has successfully guided the transition of VIZIO's business from a primarily hardware-driven company to a data-driven company, leading industry conversations on hot-button issues in data privacy and licensing.



CONGRATULATIONS!

Bryan Wahl, MD, JD
General Counsel at Tarsus Pharmaceuticals Inc.
2021 General Counsel of the Year Nominee

The entire Tarsus family thanks you for your daily commitment and guidance as we achieve our goal of revolutionizing treatment for patients in need!

Scan here to learn more about Bryan Wahl and the Tarsus leadership team.

