

*An Orange County Business Journal Special Report & Custom Content*

# GENERAL COUNSEL AWARDS

## Where Are They Now?

*Paul Bokota  
Stacey Jue  
Bruce Larson  
Troy McHenry  
Aimee Weisner*

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*Awards Ceremony  
at Hotel Irvine*

**November 13, 2019**

**General Counsel Award Nominees START ON PAGE 72**

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# GC 2018 Winners Witness Big Deals, Executive Changes

## Firms See Growth, New Faces

*From watching companies make executive changes to property deals in the hundreds of millions of dollars to unloading noncore businesses, it's been quite a year for the 2018 Business Journal winners of the ninth annual General Counsel Awards. Here's a review of some of the major actions by companies that employed our winners from last November.*

—Peter J. Brennan

### REIT Records

Since **Troy McHenry**, executive vice president, general counsel and corporate secretary of **HCP Inc.**, won in the Public Company category of the GC Awards, his company has made deals worth hundreds of millions of dollars.

Last December, it sold an 800,000-square-foot office campus on 51.8 acres in Mountain View to **Alphabet Inc.** unit **Google** for \$1 billion.

HCP made nearly \$700 million on the deal, one of the more profitable real estate transactions of the past year in California.

HCP, an Irvine-based health facilities real estate investment trust, remains a buyer, too.

In September, it said it will buy a 224,000-square-foot life sciences building in Cambridge, Mass., for \$332.5 million. The **Alewife Research Center** is 2 miles from **Harvard University** and fully leased to five companies for weighted average terms of more than 10 years.

The deal works out to an eye-opening price of nearly \$1,500 per square foot, nearly five times what a traditional office in OC would trade for.

HCP also recently bought a nearby building and a development site for another 214,000 square feet; its life sciences holdings in Boston exceed 1.3 million square feet.

The REIT can afford to make a deal or two. The firm's share price (NYSE: HCP) has been up almost 50% in the past year. It now sports a \$17.9 billion market cap, making it the third most highly valued publicly traded company in Orange County.



McHenry

### Team Turnover

Irvine-based **Edwards Lifesciences Corp.** (NYSE: EW), the highest-valued publicly traded company in Orange County, last year won a GC award in the category of In-House Legal Team.

"You can't do this alone. I am really proud of this team ... and shining light on the whole team is really special," said **Aimee Weisner**, Edwards' general counsel. She had previously won a separate GC award from the Business Journal in 2014.

Weisner departed in July and was replaced by **Arnold "Arnie" Pinkston**, who left **CoreLogic Inc.** after 18 months as the Irvine-based real estate technology and data firm's chief legal officer.

Pinkston is best known as the general counsel at **Allergan** where he successfully helped the company stymie the hostile takeover bid by **Bill Ackman**.

Pinkston has more than 30 years of experience as a lawyer and business leader in the medical industry including serving as general counsel at **Beckman Coulter**, and deputy general counsel at **Eli Lilly and Company**.

Weisner is still involved in another high-flying medical device company, San Clemente-based **Glaukos Corp.**, where she's been on the board since 2014.

The share price of Edwards, a maker of heart stent valves, kept plowing ahead, rising about 61% in the past year; it now sports a \$46.8 billion market cap, more than twice the value of No. 2 **Chipotle Mexican Grill Inc.** (NYSE: CMG).



Weisner



Pinkston

### Maintaining Growth

**Stacey Jue**, assistant general counsel of **ABM Industries Inc.** (NYSE: ABM), earned a GC award in the Specialty Counsel category.

Her company, which provides maintenance services, has 140,000 employees in more than 350 offices. It generated \$6.4 billion in sales in 2018. It's based out of New York, but has a 40,000-square-foot operations support outpost in Tustin, its main West Coast base.

In the past year, the company has made significant executive changes such as naming a new treasurer, chief revenue officer, and chief facilities services officer, as well as two new members of the board of directors.

Jue, who is the assistant counsel in charge of its business and industry group, has kept busy providing advice on litigation, labor and employment, and other related matters throughout the U.S.

Its share price rose about 5% in the past year; it has a \$2.3 billion market cap.



Jue

### Stars on Display

**Bruce Larson**, vice president and assistant general counsel at Irvine-based **Advantage Solutions**, won a GC award in the Rising Star category.

He provides counsel on all litigation and employment-related issues for a company with 95,000 employees globally and manages a four-person litigation team.

Advantage is a collective of agencies with expertise spanning brand creation and design, retail and consumer experiences, data and digital design, consumer and shopper marketing, and food-service marketing.

In a sign of its fast growth, the company grabbed the No. 40 spot on Adweek's 100 list of the fastest-growing agencies worldwide. One of its units, **AMP Agency**, was No. 88 on the list.

It's also ranked No. 15 on the list of the World's Largest 25 Agency Companies by another trade publication, Advertising Age.



Larson

### Spectrum of Activity

Since last year's GC Awards win by **Paul Bokota**, division vice president and division general counsel of **Spectrum Brands Inc.**'s hardware and home improvement division, his company has been involved in a whirlwind of activity, including the naming of a new chief financial officer last month.

Spectrum (NYSE: SPB), a global consumer products company offering a broad portfolio of brands, sold a couple of its units to **Energizer Holdings Inc.**: the Global Auto Care (GAC) business in a transaction valued at \$1.25 billion; and its Global Battery and Lighting Business for \$2 billion.

It also had a \$2.12 billion debt reduction initiative that included prepaying in full its term loans totaling \$1.23 billion from cash proceeds received from the divestiture of its Global Battery and Lighting business.

After these transactions, the company said it will focus on its core businesses.

That apparently includes Bokota's Home and Hardware \$1.3 billion unit, based out of Lake Forest. The group includes brands such as Kwikset, Baldwin, Weiser and EZSet locks, Pfister faucets and National Hardware. Bokota, who manages attorneys in the U.S. and Asia, oversees all aspects of HHI's legal functions, including transactions, mergers and acquisitions, labor and other areas.

Its share price has dropped about 35% in the past year and now sports a \$2.3 billion market cap.

Bokota remains busy with his second job, too: board member for Irvine's school district.



Bokota





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### Preparing for an IPO and Life as a Public Company

An initial public offering (IPO) is one of the most exciting and transformative transactions that a company can undertake. In addition to providing capital, taking a company public can raise the company's public profile and prestige, facilitate future access to capital markets, and make the company's stock a more attractive and viable option as currency in future acquisitions and other strategic transactions.

Even with recent changes in law intended to streamline the IPO process and ease the burden of being a public company, conducting an IPO and operating as a public company can seem daunting. As a result, early preparation and planning are critical to facilitating a successful process. With that in mind, we recommend that companies contemplating an IPO begin to assess their readiness by considering the following:

- **Market Reception.** In our experience, key business attributes of a company that is ready for an IPO typically include:
  - A leading market position with a compelling investment thesis
  - An attractive financial model
  - Appropriate and foreseeable revenue growth and profitability
  - An established quarterly forecast process and reliable financial reporting controls
  - A proven management team
  - A robust corporate governance framework
- **Auditor Qualifications and Experience:** Public company auditors must be registered with the Public Company Accounting Oversight Board (PCAOB), and conduct audits in accordance with PCAOB standards. Public company auditors must also meet the SEC's and the PCAOB's independence standards, which are more rigorous than those for private companies. Private companies with smaller auditors sometimes find that their existing auditors are not experienced in these matters or are not enthusiastic about the prospect of their audit being part of a public registration statement. Some private companies decide to switch to a larger accounting firm in order to gain from the experience the larger firm has amassed. Obviously, these decisions have timing and cost implications.
- **Required Financial Statements Availability:** Before starting the IPO process in earnest, a private company should identify which financial statements it will need to include in a registration statement (the document relating to the IPO that is publicly filed with the Securities and Exchange Commission, or SEC). Typically, the company will need to include at least two (and possibly three) years of audited financial statements plus the most recent interim financial statements. Additionally, the SEC's financial statement requirements impose reporting obligations on top of US GAAP requirements for private companies. Topics such as financial statements for recent significant acquisitions, financial statements for certain significant subsidiaries, and segment treatment take time to address. A company's ability to timely prepare and update the required financial information can be a critical factor in the successful execution of an IPO.
- **Internal Control Over Financial Reporting (ICFR) and Disclosure Controls and Procedures Status:** The SEC requires public companies to: (a) put in place a system of financial controls that provide reasonable assurance that the financial statements are accurate in all material respects; (b) provide management assertion on ICFR effectiveness each year; and (c) obtain an annual audit opinion attesting to ICFR effectiveness. Public companies must also maintain controls and procedures designed to ensure that required information is (i) timely recorded, processed, summarized, and reported, and (ii) accumulated and communicated to management to allow for timely decisions about disclosure. While SEC rules provide a post-IPO phase-in period for ICFR attestation, a company considering an IPO should begin evaluating the sufficiency of personnel, systems, and processes while still a private company.
- **Board Composition:** A public company board of directors generally must consist of a majority of directors who are considered "independent" under applicable stock exchange standards. SEC and stock exchange rules also require that a public company's board maintain certain committees, which must generally be composed entirely of independent directors, with some committees (e.g., audit committees) subject to heightened standards for qualifying as "independent." Although these rules provide a post-IPO phase-in period, identifying appropriate candidates can be challenging and time-consuming. Moreover, a public company can benefit significantly from the various perspectives and insights provided by a board with diverse gender, ethnic, and cultural backgrounds. To that end, it is important to consider these independence and composition requirements, together with board diversity and industry, public company and other experience, in advance of an IPO in order to create an optimal board dynamic.
- **IPO and Public Company Communications Readiness:** SEC rules impose strict limitations on communications around a planned IPO and on ongoing communications once a company is public. These rules can cause significant friction, especially for companies that are used to being transparent and have active PR programs. For example, violations of the SEC's communications restrictions during the IPO — often called "gun jumping" — can delay an offering for weeks or even months. Preventing unauthorized public statements during the public offering process will entail careful planning.

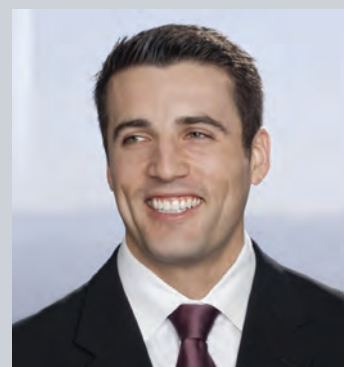
Of course, this list represents only a small sampling of the key issues that each IPO company will face. Early implementation of a plan to address each of these items can provide a solid foundation upon which to launch the IPO process. Even with advance planning, the IPO process is intense and can impose a significant burden on management, which must be actively involved in the process while continuing to run the business. A strong, experienced legal team can significantly reduce the burden on management. A pre-IPO company should endeavor to engage a law firm with the right cultural fit and the right IPO experience.

Latham & Watkins is dedicated to working with clients to help them achieve their business goals and overcome legal challenges anywhere in the world. Clients depend on Latham to find innovative solutions to complex business issues, and Latham lawyers leverage the firm's global platform of nearly 30 offices to help clients handle these challenges. Latham is a single, integrated partnership focused on providing the most collaborative approach to client service.

**Shayne Kennedy** is Office Managing Partner of the Orange County office and a former Global Co-Chair of Latham & Watkins' Capital Markets Practice. Mr. Kennedy's practice focuses on capital markets transactions, with a particular emphasis on representing issuers and underwriters in initial public offerings. In the past five years he has advised on more than 30 IPOs. Mr. Kennedy also provides public company representation and advises management and boards of directors on corporate governance and other corporate matters. He can be reached at shayne.kennedy@lw.com.



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Carothers DiSante & Freudenberger LLP ("CDF") is proud to celebrate its 25th anniversary as one of the leading law firms dedicated to providing California employers with practical, cost-effective, and first-rate legal counsel and defense. As an homage and thanks to all the employers who have trusted CDF with their legal needs, CDF offers these 25 tips for California employers based on recent and proposed changes in the law in California:

1. **"ABC" Test for Independent Contractors.** California now applies the "ABC" test for independent contractors, which is substantially different from the federal test and the one used in 47 other states. The most difficult hurdle is that the putative contractor must provide services substantially different from those provided by the company. The contractor must also have an independent business, which preferably includes its own license, marketing and employees.
2. **Background Check Disclosures.** To comply with the federal Fair Credit Reporting Act ("FCRA") and the California Investigative Consumer Reporting Agencies Act ("ICRAA"), employers must distribute two separate consent forms to applicants. They can no longer be combined in one document.
3. **California Consumer Privacy Act ("CCPA").** The law (effective January 1, 2021) requires the disclosure, and, upon request, the deletion, of personal information collected for business purposes (e.g., addresses, social security and drivers' license numbers).
4. **Americans with Disabilities Act ("ADA") Claim for Morbid Obesity Uncertain.** Morbid obesity is not a disability (unless the obesity is caused by an underlying medical condition) under the federal ADA, but in California, it likely is (or is a medical condition requiring the same accommodation).
5. **English-Only Workplace Rules.** Do not impose an "English-only" workplace rule simply to promote "business convenience" or "customer or co-worker preference." There must be a legitimate safety or customer service basis.
6. **Ethnic Hairstyles.** Update any workplace dress code and grooming policies that prohibit natural hairstyles, including afros, braids, twists, and dreadlocks.
7. **FEHA Statute of Limitations.** It is highly likely that California's Fair Employment and Housing Act ("FEHA") will soon provide more time to file a lawsuit against an employer for discrimination (up to four years after the alleged unlawful act).
8. **Lactation Accommodations.** Implement a written lactation accommodation policy, respond to employee requests for lactation accommodations within five days, and provide accessible refrigeration, and a private space for nursing mothers (not a bathroom) with electricity, a table, and a place to sit.
9. **Liability of Payroll Services Providers.** Monitor the services provided to you by third party payroll processing companies, because your employees can sue you (and not them) for any errors caused by the payroll company (i.e., inaccurate wage statements). Require an indemnification agreement from your provider.
10. **Fair Labor Standards Act ("FLSA") Exemption.** Effective January 1, 2020, the minimum salary for a white collar worker to be exempt from overtime compensation under the FLSA will increase to \$35,568 per year. California already requires a higher minimum salary of \$49,920.
11. **Minimum Wage.** Effective January 1, 2020, California's Minimum Wage will increase to \$13.00 per hour (for employers with at least 26 employees).
12. **Eliminate Procedural Unconscionability Claims Against Arbitration Agreements.** Revise arbitration agreements and procedures to ensure that the text is non-complex, clearly visible (8.5 font is too small), and provide employees with a copy of the agreement, opportunity to review, and the ability to ask questions, before signature.
13. **Private Attorneys' General Act ("PAGA").** Relief in a PAGA-only action is now limited to fixed civil penalties. Employees cannot recover individual unpaid wages under *Labor Code* section 558.
14. **Rounding.** For payroll purposes, rounding to the nearest quarter hour is lawful (nearest tenth is preferable), but review your policies and conduct a self-audit to ensure that rounding does not result in loss of wages.
15. **Sexual Harassment Prevention Training.** Employers with at least five employees must provide sexual harassment training to all supervisory employees (at least two hours) and nonsupervisory employees (at least one hour) by 2021, and every two years thereafter.
16. **Non-Solicitation Agreements.** Review and update any trade secret or non-so-

licitation agreements to ensure they do not restrain employees from engaging in a lawful profession, trade or business.

17. **Disclosure of Sexual Harassment.** Eliminate language in any contract or settlement agreement that prevents an employee from testifying about criminal conduct or sexual harassment in an administrative, legislative, or judicial proceeding.
18. **Criminal Background Checks.** Implement procedures for pre-employment but post-offer background checks that include: (a) an individualized assessment of each applicant's criminal conviction history and (b) legally-compliant notice that provides a five-day response period, copy of the report, and explanation of the basis of any decision.
19. **Employment Arbitration and Opt-Out Provisions.** Consider amendments to existing arbitration agreements to reflect that the agreement is governed by the Federal Arbitration Act ("FAA") given the California Legislature's repeated efforts to eliminate employment arbitration agreements.
20. **No Rehire Provisions.** Consider amending any standard settlement or severance agreement that states an employee is ineligible for rehire (if pending Legislation is approved by the Governor).
21. **Sexual Assault Victims.** Implement effective policies and procedures to respond to reports by an employee that he or she is the victim of sexual harassment, domestic violence, sexual assault, or stalking, and ensure no retaliation occurs.
22. **Class Action Waivers.** Make sure to include a valid class action waiver in arbitration agreements, so any alleged class claims are compelled to individual arbitration.
23. **Call-In Pay.** Update scheduling policies that require employees to call in prior to the start of their shift to determine if work is available. Even if employees are not required to work, they must receive at least two hours of "call-in" pay.
24. **Audit Employee Pay.** Perform a self-audit (with counsel) to ensure that employees with similar duties (anywhere in the state) are paid the same regardless of gender or race.
25. **Marijuana in the Workplace.** Update policies specifically to preclude the possession or use of medical and recreational marijuana (or any product containing THC), in the workplace. California does not require employers to accommodate marijuana use in the workplace (although the underlying medical condition needs to be otherwise accommodated).

### Todd R. Wulffson, Esq.

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## LATHAM & WATKINS<sup>LLP</sup>

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# Knobbe Martens

## Protecting The Crown Jewel Of BJ's – The PIZOOKIE® Dessert

By Kendra Miller and Jonathan Hyman

Founded as a local pizzeria in Santa Ana, California in 1978, BJ's Restaurants, Inc. has steadily grown to over 207 locations in 28 states. BJ's is now a publicly traded company with annual revenues in excess of \$1.1 Billion.

In 1992, BJ's created its signature PIZOOKIE® dessert – a deep dish pizza pan stuffed with cookie dough, baked to perfection, and topped with ice cream. Since its debut, BJ's has expanded the dessert from its initial flavor to over 10 flavors.

The often imitated, but never duplicated, PIZOOKIE dessert is a high point of any BJ's experience. The PIZOOKIE dessert is also the focus of one of BJ's charitable efforts, as sales from the PIZOOKIE dessert help fund the Cystic Fibrosis Foundation. BJ's and its Foundation have donated millions of dollars to the Cystic Fibrosis Foundation over the years. BJ's Cookies 4 Kids program, which was created in 1998, is the heart of BJ's continued financial support of the Cystic Fibrosis Foundation.

Protecting the PIZOOKIE trademark is one of the many responsibilities that falls on BJ's legal department. The BJ's legal team, including our outside counsel, Knobbe Martens, use a multi-pronged approach to protect the PIZOOKIE trademark.

### Federal Registration

Trademarks are a symbol of assurance to consumers that a product sold under a mark is of the same consistent quality no matter where the consumer purchases the product. Thus, a consumer buying a PIZOOKIE dessert at BJ's in California is assured that it looks identical to, and is as delicious as, the PIZOOKIE dessert she buys at a BJ's in Florida. The true value of a trademark is in its ability to act as a beacon of brand integrity.

The PIZOOKIE mark was registered in 2000 with the U.S. Trademark Office on the Principal Register. A mark registered on the Principal Register provides significant benefits and can make it easier to enforce the mark against infringers. A federally registered mark is presumed to be a valid mark, and the registrant is presumed to have the exclusive right to use the mark throughout the United States on the goods or services listed in the registration. In addition, a registration constitutes constructive notice to third parties of the registrant's rights in the mark, is readily revealed in trademark clearance searches conducted by others, can block confusingly similar marks from being registered, allows the registrant to use the ® symbol, can be registered with U.S. Customs and Border Patrol to help block the importation of counterfeit goods, and may enable the registrant to recover damages such as attorneys' fees in infringement cases. After five years, the registration can become incontestable, which significantly limits the grounds on which competitors can challenge the registration.

Without a registration, trademark rights under the U.S. common law system may be limited only to those geographic areas where the mark is sufficiently used to be recognized as a brand. Additionally, when relying only on common law rights, the owner of the mark must prove that the mark is valid and protectable in order to prevail in a claim of trademark infringement.

There is no limit on the duration of trademark protection, so long as the owner of the mark can demonstrate continuous use of the mark in commerce. A federal trademark registration must be renewed every ten years and can be renewed indefinitely as long as the registrant attests to continued use and has appropriate examples of such use.

### Watching Services

To guard against unauthorized use of the PIZOOKIE mark, BJ's uses a service that monitors the U.S. Patent and Trademark Office. The company is notified of any filings for marks that are similar to the PIZOOKIE mark, so it can defend its rights and object to the federal registration of such marks.

The company is also on the lookout for any third parties misusing the PIZOOKIE mark. BJ's loyal guests and fans routinely bring knock-off PIZOOKIE desserts to the company's attention. These unsolicited tips come through a number of channels, including the company website and social media. BJ's marketing department is especially attuned to these communications and ensures that any such information is sent on to the company's legal department.

Once BJ's identifies a potential misuse, the company reviews the misuse for potential action according to its enforcement protocol. There is no one-size-fits-all response, and different situations require different actions by the company.

In some instances where the PIZOOKIE mark, or a variation thereof such as PIZ-ZOKIE, is being used for a similar product, the company is likely to send a cease and desist letter to immediately stop the infringing use. In most instances, the offending restaurant promptly apologizes and agrees to change the dessert name.

BJ's monitors those restaurants for compliance. Other situations may require a more nuanced approach. For example, if a school bake sale misuses the mark, the company may correspond directly with the school and request that they not use the PIZOOKIE mark on anything that is not a BJ's dessert. By tailoring its action to fit each situation, the company hopes to avoid potential negative press or a negative social media response.

### Generic Use

Another issue that is top of mind for BJ's is ensuring that the PIZOOKIE mark does not become the generic name for the specific dessert. If consumers were to refer to all similar desserts as "pizookies" then BJ's could lose its trademark rights. The company proactively reviews corporate communications and promotions to ensure that the company itself does not misuse PIZOOKIE as a generic term.

In addition, BJ's is also on the lookout for instances where the PIZOOKIE mark is being used in a generic, non-infringing manner (e.g., not by another restaurant). For example, if a website promoting healthy recipes includes one for a "pizookie dessert," BJ's will likely try to educate the company misusing its mark. The company will reach out and notify them that PIZOOKIE is a registered mark and a protected brand name, and advise them that the correct generic name for the dessert is a "skillet cookie."

### The Future Is PIZOOKIE

The future for the PIZOOKIE trademark looks bright.

BJ's has recently implemented a brand expansion program for the PIZOOKIE dessert to increase its fan base through co-branded PIZOOKIE flavors. The company negotiated licenses with General Mills and Post to bring its guests the "Cinnamon Toast Crunch™ Cereal" PIZOOKIE (in honor of National Cereal Day!), the "Count Chocula™ Cereal" PIZOOKIE, and the "Fruity Pebbles™ Cereal" PIZOOKIE flavors for lovers of breakfast cereals.



Guests who have not tried the delicious PIZOOKIE dessert should try one today.

### Kendra Miller

Kendra Miller is the Executive Vice President & General Counsel of BJ's Restaurants, Inc. She joined the company in 2011. Previously, she was a partner at Crowell & Moring LLP and Carothers, DiSante & Freudenberger LLP. She began her legal career as an associate at Paul Hastings. She graduated from Dartmouth College & University of Michigan Law School. She lives in Huntington Beach with her husband, Dan, and daughter, Hadley.



### Jonathan A. Hyman

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## 2020 Will Be Another Big Year for Privacy

By Michael Hellbusch

2020 is shaping up to be another monumental year in privacy law. Internationally and domestically, regulators and lawmakers are enacting broader and more protective consumer privacy provisions which will affect how or whether at all businesses will operate in the digital landscape. This article discusses three areas where the legal and operational landscape is most likely to change.

### California May Expand Consumer Privacy Protections Even More in 2020

In late September, the original proponent of the California Consumer Privacy Act ("CCPA") proposed new ballot initiative called the California Privacy Rights and Enforcement Act of 2020. The initiative, already being dubbed "CCPA 2.0," would significantly expand the CCPA's protection for consumer and corresponding obligations on businesses. The law would, among other things:

- Create a new category of personal information called "sensitive information," which includes a consumer's social security number, financial account numbers, credit/debit card number, precise geolocation, biometric information, health data, and personal information that reveals a consumer's, racial or ethnic origins, religion, sexual orientation, and other information. Consumers would be permitted to opt-out of the use of their sensitive information for commercial purposes.
- Create a right to rectify personal information, *i.e.*, to correct inaccurate personal information.
- Require opt-in consent for the collection of personal information from children under 16.
- Provide broader rights to consumers regarding the disclosures of their personal information collected by businesses.
- Provide notification to the consumer and the State when a consumer's personal information is used to advance the business's political interests.

In addition, the ballot initiative proposes the creation of the "California Privacy Protection Agency." The independent executive agency would have authority to promulgate regulations, provide consumer education, and enforce the law. Currently, the California Attorney General is charged with these obligations.

Proponents of the ballot initiative argue the CCPA is a solid foundation for privacy rights, but does not go far enough in protecting the rights of California consumers, especially children. If the ballot initiative receives the requisite number of signatures within the applicable deadline, it will be voted on in the 2020 election. While there is a possibility that the initiative's proponents could strike a deal with the California Legislature to convert the initiative into an assembly bill, as it did with the CCPA, at least one proponent has said he is not interested in that approach this time around.

Meanwhile, businesses are gearing up to comply with the CCPA before it becomes operational on January 1, 2020. The California Legislature passed multiple amendments to the CCPA in September which will vastly impact the compliance efforts for some businesses. However, those amendments won't become law until they are signed by the Governor. In addition, most are anticipating the arrival of regulatory guidance by the Attorney General on how to implement certain aspects of the law. Initial draft guidance is expected sometime this month, and enforcement by the Attorney General will begin on the earlier of six months after *final* regulations are issued or July 1, 2020.

The cost for compliance with the CCPA is high. According to a survey conducted for TrustArc, a privacy compliance company, 71% of companies expect to spend more than six figures to comply with the CCPA while 20% expect to spend more than \$1 million. Business can expect to spend even more in 2020 if CCPA 2.0 is approved by the voters.

### Children's Privacy Will Be At The Forefront in 2020

Children's privacy was a major topic in 2019 and that emphasis is expected to grow in 2020. This year saw major regulatory action against companies who failed to protect children's privacy. The video-sharing app TikTok (formerly Musical.ly) was fined \$5.7 million for collection of personal information about children under the age of 13 without parental consent. In September, Google and its subsidiary, YouTube, agreed to pay a record \$170 million to settle allegations by the Federal Trade Commission and the New York Attorney General that the YouTube service collected

personal information from children without parental consent for the purposes of targeting advertisement. The fine against Google and YouTube was the largest amount ever obtained under the Children's Online Privacy Protection Act ("COPPA") which requires certain websites and online services that collect personal information from children under the age of 13 to provide notice to and obtain consent from parents before collecting, using, or disclosing personal information from those children.

In October, 2019, the FTC held a workshop for the purposes of expanding application of COPPA sometime in 2020. The workshop will include discussions about whether to expand to COPPA Rule to include the various forms of smart home devices (like Alexa and Google Home) within the scope of application. Another topic of consideration is to increase the age-limit of COPPA to protect children under the age of 16 rather than 13. In California, the CCPA prohibits the selling of personal information of children between the ages of 13 and 16 unless the child opts-in to the sale. Under the California Privacy Rights and Enforcement Act of 2020, businesses would need to obtain opt-in consent before *collecting* personal information under the age of 16. Businesses who collect data from children or have children included as part of their targeted audiences would be well advised to follow these developments closely.

### Expect to See More Pop Up Banners in 2020

The use and placement of cookies will be another major area of regulatory action in 2020. By now most people have experienced the cookie banner pop-up fatigue, having to click through a cookie banner when first navigating to a web page, resulting from businesses attempts to comply with European law. Under the GDPR and related laws, businesses must acquire freely given, informed and specific consent before they collect personal information via non-essential cookies. In a recent decision, the EU's Court of Justice of the European Union (CJEU) recently ruled that pre-checked cookie consent boxes are impermissible as a means to demonstrate active consent to the use of cookies. Moreover, the CJEU ruled that cookie notices must have clear and comprehensive information sufficiently detailed so as to enable the user to comprehend the functioning of the cookies employed. In other words, cookies banners are going to get a lot more detailed.

In addition to the GDPR's cookie consent banners, we may also see additional banner pop-ups as a result of the CCPA. The California law may prompt additional banners or other prominent indicators to inform consumers of their rights to opt-out of the sale of their personal data. The CCPA requires any business that sells personal information about consumers to third parties to provide notice to consumers about their ability to opt-out of the sale. Businesses that engage in interest based advertising, which involves the collection and sharing of personal information about consumers to third parties in order to serve them a relevant advertisement, would be required to provide that opt-out notice in addition to notice that the information is being collected in the first place. Additional guidance on the implementation of these notifications is expected from the California Attorney General.

### Conclusion

Privacy-related legislation is expected to grow leaps and bounds in 2020 and beyond. In addition to California, consumer privacy laws are being considered in Arizona, Hawaii, Illinois, Maryland, Massachusetts, Missouri, New Jersey, New Mexico, New York, North Dakota, Oregon, Rhode Island and Virginia. Nevada has already passed its own limited CCPA-like law that has become operational as of October 1<sup>st</sup>. All business will be affected by these laws in one way or another so it is important to be prepared.

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## The ABC Test Is Here to Stay: California Governor Signs AB 5

By Alexander Chemers, Hera Arsen and Vince Verde

On September 18, 2019, Governor Gavin Newsom signed Assembly Bill (AB) 5, which codifies last year's Supreme Court of California decision establishing a new test to determine whether a worker is an independent contractor or an employee. In addition to codifying the ABC test, AB 5 contains carve-outs for several industries and professions including professional services, doctors, lawyers, real estate, insurance, referral agencies, and others, which will be subject to the multi-factor *Borello* test (or similar tests if they meet the conditions of the carve-outs). Several industries including the gig economy and trucking did not receive express carve-outs.

### What Is The ABC Test?

Under the ABC test, as established in a 2018 Supreme Court of California case, a worker is an independent contractor only if the company hiring the worker establishes the following:

1. the worker is free from the control and direction of the hiring company "in connection with the performance of the work, both under the contract for the performance of the work and in fact";
2. "the worker performs work that is outside the usual course of the hiring company's business"; and
3. the worker is "customarily engaged in an independently established trade, occupation, or business of the same nature" as the work performed for the hiring entity.

A company's "failure to prove any one of these three prerequisites will be sufficient in itself to establish that the worker is an included employee, rather than an excluded independent contractor, for purposes of the wage order," the state's highest court stated.

Although the ABC test already applied in some contexts, AB 5 expands its scope to all of California's wage-and-hour laws, as well as determining coverage under the state's unemployment insurance statute.

### *Borello* Test For Carved-Out Industries And Professions

For those certain industries and professions carved out of the ABC test, courts will continue to apply the multi-factor *Borello* test to determine whether an individual is an independent contractor. Not all of the factors have to be met in order to establish independent contractor status. The *Borello* test involved the principal factor of whether the "person to whom service is rendered has the right to control the manner and means of accomplishing the result desired." Nine additional factors were also considered such as:

(1) right to discharge at will, without cause; (2) whether the one performing the services is engaged in a distinct occupation or business; (3) the kind of occupation, with reference to whether, in the locality, the work is usually done under the direction of the principal or by a specialist without supervision; (4) the skill required in the particular occupation; (5) whether the principal or the worker supplies the instrumentalities, tools, and the place of work for the person doing the work; (6) the length of time for which the services are to be performed; (7) the method of payment, whether by the time or by the job; (8) whether or not the work is part of the regular business of the principal; and (9) whether or not the parties believe they are creating a relationship of employer-employee.

### Key Takeaways

In his signing message, Governor Newsom stated that AB 5 "will help reduce worker misclassification . . . which erodes basic worker protections like the minimum wage, paid sick days and health insurance benefits." Governor Newsom also expressed an intent to extend bargaining and organizing rights to workers:

Assembly Bill 5 is an important step. A next step is creating pathways for more workers to form a union, collectively bargain to earn more, and have a stronger voice at work—all while preserving flexibility and innovation . . .

While some media outlets are reporting that this statement is aimed at the gig economy, California's support of organizing efforts should be expected to extend to trucking and other industries as well. As a result, businesses may be faced not only with the operational and litigation challenges presented by AB 5, but also increased union activity as organized labor seeks to leverage the new law.

### Next Steps

AB 5 takes effect on January 1, 2020. The ABC test, however, already applies to several minimum labor standard requirements as a result of the state supreme court's 2018 decision.

*This article was drafted by attorneys at Ogletree Deakins, and is reprinted with permission. This information should not be relied upon as legal advice.*

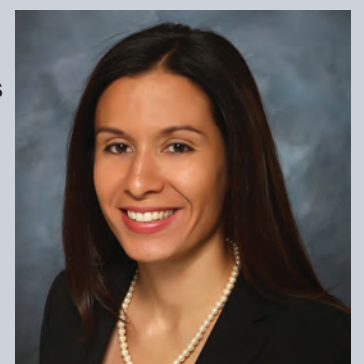
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# PAYNE & FEARS

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## What Employers Should Know about California's New Independent Contractor Classification Landscape

By Matthew C. Lewis and Eric C. Sohlgren

Businesses with workers not falling under one of the exemptions of California Assembly Bill 5 ("AB5") will be at an increased risk of claims of misclassification beginning in January 2020. Employers will want to use the next few months to analyze the effect AB5 may have on their businesses, and whether it may be prudent to change to certain relationships with their workers in light of the new law.

Some employers may be exempt. Some may decide that they need to reclassify certain workers as employees. Others may determine that the benefit of continuing to classify workers as independent contractors outweighs the risks of doing so. Whatever your company decides, you'll want to make any decisions with eyes wide open. Does your company have all the required information to mitigate the risks associated with these changes?

### Background:

On September 18, 2019, Governor Gavin Newsom signed AB5, controversial legislation which will have a substantial impact on California employers when it goes into effect on January 1, 2020.

AB5 enacts into a statute last year's California Supreme Court decision in *Dynamex Operations West, Inc. v. Superior Court*, 4 Cal. 5th 903 (2018), and the Court's three-part standard (the "ABC test") for determining whether a worker may be classified as an employee or an independent contractor.

### Who will be considered an independent contractor under the new law?

Under the ABC test established in *Dynamex* and now under AB5, a worker may be properly considered an independent contractor only if the hiring entity establishes *all three* of the following:

- (A) that the worker is free from the control and direction of the hirer in connection with the performance of the work, both under the contract for the performance of such work and in fact;
- (B) that the worker performs work that is outside the usual course of the hiring entity's business; and
- (C) that the worker is customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed for the hiring entity.

### What is changing?

While the *Dynamex* decision applied to workers in all industries, it only governed claims falling under a wage order, as opposed to claims brought solely under the Labor Code or Unemployment Insurance Code. AB5 expands the ABC test to non-wage order claims as well, and makes the test the standard for determining whether workers must be provided with minimum wages, overtime pay, workers' compensation, unemployment and disability insurance, paid sick days, and family leave. The ABC test will govern these items because *employees* are entitled to these things, while independent contractors are not.

### Many industries and positions are exempt

The law contains exemptions for numerous industries and positions due to intense

lobbying prior to AB5's ultimate passage. Examples of exemptions include doctors, dentists, psychologists, attorneys, architects, engineers, accountants, brokers, investment advisors, direct salespersons, private investigators, commercial fishermen, select professional service providers that meet a series of specific requirements, real estate agents, estheticians, electrologists, barbers, cosmetologists, and many more.



Lewis



Sohlgren

Exempted industries or positions will continue to be subject to the longstanding multi-factor test for determining independent contractor vs. employee status as described in *S.G. Borello & Sons, Inc. v. Dep't of Industrial Relations*, 48 Cal. 3d 341 (1989).

Importantly, however, AB5 does *not* include exemptions for many "gig economy" businesses, most notably in the ride-sharing space.

This is certain to lead to continued and perhaps escalating disputes pertaining to the classification of workers in these gig economy positions. For example, Uber announced prior to AB5 even being signed by the governor that its drivers "will not automatically be reclassified as employees, even after January of next year," and that the company "will continue to respond to claims of misclassification in arbitration and in court as necessary, just as [the company] does now." Other businesses may very well follow Uber's lead over the coming months.

### What should your company do to prepare?

Businesses with independent contractors should evaluate whether those contractors are in positions that are subject to an exemption under AB5. They should reevaluate their classifications of any

workers not falling under an exemption to determine if those classifications are supportable under the ABC test. Businesses may also want to update arbitration provisions in independent contractor agreements to include express class action waivers in order to limit class or representative actions alleging misclassifications.

If you would like more information on how to prepare your company for these important changes, please contact us.

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# The Ever-Changing Privacy Landscape in California: Recent Developments on the California Consumer Privacy Act

by Scott W. Pink

The California Consumer Privacy Act (CCPA) was passed with much fanfare in June of 2018, and ushered in a new era of privacy rights for California residents and privacy obligations for companies doing business in California.<sup>1</sup> The law, which takes effect in January 2020, gives California residents the right to know what personal information has been collected about them, the right to access that information, the right to request deletion of that information, the right to say no to the sale of that information, and the right not to be discriminated against if they exercise any of these rights. It also provided a new private right of action for security breaches involving certain kinds of sensitive information.

The initial version of the CCPA was rushed through the legislature to preempt a proposed ballot initiative and was immediately criticized for inconsistencies and a lack of clarity. An intense lobbying effort by both the technology industry and privacy advocates was initiated to amend the law. An initial set of clarifying amendments was passed in September 2019, but they did not make any major substantive changes. However, in the past 30 days, there have been two major developments that could significantly impact the law moving forward: (a) a series of amendments passed on the last day of the 2019 legislative session and which are awaiting the Governor's signature; and (b) a ballot initiative proposed by Californians for Consumer Privacy, the nonprofit group behind what became the CCPA.

**The following are some of the key changes to the law resulting from the legislative amendments:**

## Temporary Employee Exemption

The amendments exempt, until January 1, 2021, from most provisions of the CCPA, any personal information (including emergency contact information and information necessary to administer benefits) from a job applicant that is collected by an employee of, owner of, director of, officer of, medical staff member of, or contractor of a business to the extent related to such roles.

## Temporary Exemption for Certain Business-to-Business Information

The amendments exempt, until January 1, 2021, from most provisions of the CCPA, personal information reflecting a written or verbal communication or a transaction between the business and a person acting for another business or governmental agency if the communication or transaction occurs solely within the context of the business conducting due diligence regarding, or providing or receiving a product or service to or from, such other business or governmental agency.

## Procedures for Requests

The amendments provide that a business that operates exclusively online and has a direct relationship with a consumer from whom it collects personal information is only required to provide an email address for submitting requests for information required to be disclosed. In addition, the amendments allow a business to require authentication of the consumer that is reasonable in light of the nature of the personal information requested in order to make a verifiable consumer request. It also provides that if the consumer maintains an account with the business, the business may require the consumer to submit the request through that account.

## Exclusions from the Definition of Personal Information

The amendments expressly provide that personal information does not include: (a) consumer information that is de-identified or aggregate consumer information; and (b) information that is "publicly available" i.e., information that is lawfully made available from federal, state, or local government records.

## No Opt-Out Right for Sharing of Information for Vehicle Recall or Warranty Repairs

The amendments provide that the consumer's opt-out from sale right does not apply to vehicle information or ownership information retained or shared between a new motor vehicle dealer and the vehicle's manufacturer for warranty or recall purposes.

On the heels of these legislative amendments, the Californians for Consumer Privacy filed a ballot initiative on September 25, 2019, "The California Privacy Rights and Enforcement Act of 2020" (CPREA). CPREA is intended to significantly revamp and strengthen the CCPA. If passed, the law would require California to establish a new data protection agency (California Privacy Protection Agency) with broad powers and responsible for enforcing privacy violations and issuing new regulations. In addition, CPREA would add new restrictions or obligations to CCPA, including opt-out rights regarding targeted advertising, opt-in requirements for the sale of sensitive information, disclosure requirements for use of sensitive information for political purposes, an expanded definition of public information and a clarification of what constitutes de-identified information, a new right of rectification, and greater protection of minors. If passed, the CPREA will become effective on January 1, 2021, but will only be applicable to personal information collected by a business on or after January 1, 2020, the date the CCPA will become effective.

<sup>1</sup> Pink, Scott W., "California Companies Face Increasing Data Privacy Compliance Obligations: GDPR and the California Consumer Privacy Act," *Orange County Business Journal*, October 2018



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*This memorandum is a summary for general information and discussion only and may be considered an advertisement for certain purposes. It is not a full analysis of the matters presented, may not be relied upon as legal advice, and does not purport to represent the views of our clients or the Firm. Scott W. Pink, an O'Melveny senior counsel licensed to practice law in California, contributed to the content of this article. The views expressed in this article are the views of the author except as otherwise noted.*



# SMITH DICKSON

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## Fraud in the Workplace

*By Deborah Dickson, CPA, CFF, MAFF, Smith Dickson, An Accountancy Corporation*

Most employers never would expect that a trusted employee might commit fraud, yet every year numerous businesses are forced into bankruptcy due to fraud. Even when it isn't that extreme, the Association of Certified Fraud Examiners' (ACFE) 2018 Global Fraud Study revealed that the typical organization loses a median of 5% of revenues each year due to fraud.

### The Fraud Triangle

Employers can utilize the "fraud triangle" to monitor and identify factors in the lives of key personnel that can lead to fraud. The fraud triangle is a model for explaining the factors that cause someone to commit occupational fraud. It consists of three components which, together, lead to fraudulent behavior: pressure, perceived opportunity and rationalization.

Pressure originates from a financial problem (personal or professional) that the individual is unable to solve through legitimate means, so he may consider stealing cash or falsifying a financial statement. Next comes opportunity, using a position of trust to solve the financial problem with a low risk of getting caught. It is worth noting that many white collar crimes are committed to maintain social status and pay for lavish lifestyles. The final step is rationalization - fraudsters typically do not see themselves as criminals, instead feeling that they are caught in a bad set of circumstances. They may even justify it by thinking that the employer underpaid them or is dishonest and deserved it.

### Forensic Accounting Support

Forensic accounting engagements can be specifically tailored to discover fraud and

sometimes even to prevent it. Attorneys engage forensic accountants to determine whether fraud occurred, estimate the extent of monetary loss, and uncover who committed the fraud. When litigation is selected as a means to recover losses, forensic accountants prepare reports on the damages and render expert testimony. At Smith Dickson, our forensic accounting specialists have logged thousands of hours of forensic accounting, deposition and trial experience, both as expert witnesses and consultants in matters ranging from economic damages to fraud and embezzlement. Smith Dickson's forensic accounting specialists will support your case with the highest level of expertise available.

**Deborah Dickson, CPA, CFF, MAFF** is President of Smith Dickson, An Accountancy Corporation ([www.smithdickson.com](http://www.smithdickson.com)) based in Irvine. The firm's Litigation Support Services include: damage calculations; lost profits; forensic accounting; expert testimony; intellectual property; fraud & embezzlement; real estate; trust & estate beneficiary disputes; tax controversy; and business dissolution. Thousands of hours of forensic accounting, deposition and trial experience. Ph. (949) 553-1020.



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# Stradling

## Attorneys at Law

### Has China Become a Viable Venue for Patent Enforcement?

Contrary to conventional wisdom, Chinese patent litigation is growing in popularity, predictability, and sophistication. While US District Court patent litigation is declining, patent litigation in China is on the rapid rise. Indeed, US businesses have discovered that Chinese courts merit strong consideration as a venue for enforcing their patents, for a number of compelling reasons.

First, is speed. Chinese cases are typically tried to judgment within six to twelve months of filing, while the typical US patent case takes 3.5 years. Appeals also appear to be moving considerably faster in the Chinese court system. And because Chinese patent litigation is faster, it is also cheaper. A major reason for the higher speed and lower expense of Chinese patent litigation is the lack of traditional discovery. But this means that a patent plaintiff must have all of its critical evidence in hand when it commences the case. More on that below.

Perhaps the most important reason that Chinese courts provide a strong enforcement alternative is the much higher likelihood of getting an injunction that bars the manufacture and sale of an infringing product. In the United States, the likelihood of getting an injunction in patent cases decreased dramatically after *eBay v. MercExchange, L.L.C.*, 547 U.S. 388 (2006), which did away with the presumption of irreparable harm for patent infringement. In China, an injunction is almost guaranteed when a plaintiff proves patent infringement. And the win rate for plaintiffs in Chinese IP lawsuits is quite high. Surprisingly, this high win rate is even higher for non-Chinese businesses than for Chinese domestic businesses. It would be naïve to believe that all bias in favor of Chinese businesses has been eliminated from the Chinese court system, but these results suggest that China has heard the criticisms from foreign businesses and politicians. Indeed, Chinese President Xi Jinping publicly stated in 2017 that China “must step up efforts to punish illegal infringement of intellectual property rights and force infringers to pay a heavy price.” More recently, China publicized a four-month nationwide campaign, coordinated across 12 government agencies to protect the IP rights of foreign firms. And China now has a specialized IP court system including 17 regional IP-specialized tribunals, three intermediate IP courts in Beijing, Shanghai and Guangzhou, and the Supreme People’s IP Court, also in Beijing.

Yet another factor increasing the likelihood of an injunction in China, is that patent validity cannot be challenged in the infringement case. Rather, invalidity challenges are decided in separate proceedings by the Patent Review Board of the Chinese patent office. And Chinese courts thus far appear unlikely to stay an injunction while invalidity challenges are decided.

With the size of the Chinese market and the dominance of Chinese manufacturing, a Chinese injunction can have an enormous commercial impact on an infringer. Case in point, *Qualcomm v. Apple*, where a Chinese court found that seven different iPhone models infringed two of Qualcomm’s software patents forcing Apple to implement a costly software update for all of its iPhones in China. For the reasons above, we can expect many more high-profile patent fights in the Chinese courts in the years to come.

So, with many factors making Chinese patent litigation a powerful threat, should every business with Chinese patents and global sales consider China as a primary choice to commence patent enforcement efforts? Not necessarily. While there is an indication that damage awards in Chinese patent cases may be increasing, thus far, damage awards have been nowhere close to the nine-figure awards in the biggest US patent cases. Further, as mentioned above, a patent plaintiff has no rights to discovery similar to what is available in US cases. It is

typically the plaintiff’s burden to come to court ready with all the necessary evidence, and to go through a fairly rigorous process of “legalizing” all evidence for use in the Chinese courts. This includes using only original evidence, notarizing everything, and processing all US evidence through the US State Department and the Chinese Embassy. Evidence gathered in China must also be carefully notarized. And plaintiffs must be on the ball; late filing of pre-existing evidence is generally not permitted.

In sum, US businesses with Chinese patents should no longer dismiss the possibility of enforcing their patents in China. And US businesses manufacturing or selling in China must be aware of the substantial risks of being sued for patent infringement in China, and plan accordingly, along with their legal teams.

And what does all this mean for US patent litigators? For example, will China be the next Eastern District of Texas for patent lawsuits filed by non-practicing entities (NPEs), sometimes referred to as patent trolls? With the reduced threat of injunctions, the stricter venue rules after *TC Heartland*, and the power of US *inter partes* review to invalidate weak patents before they can be monetized, US patent litigation has become less attractive for NPEs. Chinese patent litigation presents the converse: higher threat of injunctions and invalidity proceedings that lag behind the infringement case. And damage awards in Chinese patent cases are rising. These factors may signal the rapid rise of NPE lawsuits in China.

But regardless of how NPE litigation in China develops, US patent prosecutors and litigators need to get smart about Chinese patent litigation — and patent litigation in other countries — and to develop relationships with foreign patent attorneys, in order to advise their clients in a global economy and on a global patent battlefield.

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CORPORATE RESTRUCTURING AND BANKRUPTCY

## Corporate Principles for Thriving and Avoiding Bankruptcy

We're always reminded to pursue preventative healthcare for ourselves and maintenance for our prized possessions. Those same principles should be pursued by business owners and operators. Many distressed companies could avoid severe losses and often the loss of the business itself by following some elementary business principles. By ignoring them, ownership and management risk the survival of the business.

### 1. Prepare, Maintain and Update a Business Plan.

A proper business plan includes plans for sales, marketing, operations, capital-expenditure budget, and a cash-flow projection. It is the roadmap and primary tool that should guide every aspect of the business.

### 2. Achieve Cash-Flow Stability.

Planning and executing balanced cash flow is critical to the success of a well-run company. When financial conditions deteriorate or fluctuate, owners and operators must actively manage and adjust cash flow.

### 3. Prepare Accurate and Meaningful Financial Reports.

Inaccurate financial reporting is considered a symptom of a much larger problem, such as mismanagement. All financial reports should be as close to error free as possible and meaningful to reflect the information necessary to profitably operate the business.

### 4. Constantly Evaluate Revenues and Expenses.

Maximizing corporate efficiencies such as managing expenses, inventory levels, and capital expenditures, while making hard day-to-day decisions, often determine the difference between success and failure. Assess and reconsider historical, business-as-usual allegiances to people, products and processes.

► Continued on page A-68

## ARE YOU READY?

The California Consumer Privacy Act is enforceable on January 1, 2020 and carries class action statutory penalties for data breaches of \$100 and \$750 per consumer per incident.

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# GIBSON DUNN

## ‘What Should We Do with an Artificial Inventor?’

*This article is an excerpt from a longer article originally published in the August 10, 2017 edition of Law360.*

What should we do when a new drug is discovered, perhaps a cure or treatment for a particularly problematic disease, if that drug and its use were never conceived by any human, but instead were entirely conceived by machines? What if, with no human interaction, one AI decides to try to cure this disease, and, either by itself or by controlling additional AI implementations, decides on the set of data to analyze, performs an analysis, and develops and invents the proposed new cure or treatment all on its own?

While such a scenario may (or may not) be a long way off, assuming the invention is novel, non-obvious, and does not run afoul of other patenting requirements such as § 101, is the new cure or treatment a patentable invention? And if so, who is the inventor? Or is it not patentable simply because there is no human who meets the standards we require for inventorship?

Under existing case law, the inventor of a patent is the individual or individuals who conceives of the invention. Conception of an invention happens at the point at which the invention is definite and permanent such that only ordinary skill is necessary to reduce the invention to practice. To be named as an inventor, a person must have materially contributed to the conception of the invention, not just efforts made to reduce the invention to practice after conception.

But the Federal Circuit also has stated that inventors must be natural persons and cannot be corporations or sovereigns. One might think this ends the question for whether a machine, such as an AI, could ever be deemed a patent inventor. The Federal Circuit’s commentary, however, was premised on the fact that a corporation cannot contribute to the conception of an invention, which is an imaginative, creative act, and did not consider whether a non-human entity that actually contributed to the conception of an invention could be named as an inventor. As a result, whether, and to what extent, a machine that can conceive of a patentable idea might qualify as an inventor has never been directly addressed by either the patent office or any Federal Court.

Interestingly, as AI technologies continue to evolve, cases are likely to arise in which it becomes harder to identify any individual as one who provided a material contribution to the act of conception. There have been proposals to allow an AI to be deemed an inventor of a patent when the AI is at least partially responsible for conceiving of an otherwise patentable invention, either under an expansive interpretation of the existing laws or through future legislative revisions. In part, these proposals view AI-created inventions as inevitable, and suggest that the owner of the AI should reap the benefit of any patentable inventions conceived by the AI in order to incentivize people to proliferate innovations not just by humans but also by machines. While, right now, it is an open question whether a machine is eligible under the existing patent laws to be a named inventor of a U.S. patent, we are nearing the time when exactly who, or what, qualifies as an inventor of AI-created inventions is going to be put to the test.

But, before we get there, we need to ask whether an AI ever should be legally recognized as an inventor for a patent. Suppose, in an even more extreme example of machine invention, the AI is a more general intelligence, truly independent and fully

self-directing. Once the creators have engaged the AI, it does not need a user for training or direction, or even to frame a problem that needs solving. The AI itself can decide upon a problem to pursue, come up with an approach, identify the data it requires, and develop a solution all without any human input. In effect, there is no human responsible for monitoring, controlling, or in any way directing the inventive activities of the AI. In such cases, just as a matter of public policy, we should not be encouraging undirected, unsupervised innovations by AIs without some form of significant human oversight and responsibility. Thus, to discourage the creation of undirected AIs, there may be an argument for not providing patents to anyone for inventions even partially conceived by an AI.

Instead there should be a middle ground under which patent rights remain generally available for human co-inventors to incentivize humans to remain involved and materially contribute to the conception of an invention. Conversely, as machines do not require incentives to innovate, but are simply created or instructed to do so, there is no need to grant inventor status to an AI for its role in the conception process. In this way, patents would remain available for all patentable inventions created with the aid of an AI except, perhaps, in the very extreme cases of inventions wholly conceived by self-directing AIs. Without this exception, however, there would be no incentive for humans to maintain direct oversight and responsibility for the control of a creative AI when such individuals could simply sit back and be rewarded with patent rights for an invention for which they had no part in conceiving. Instead, by refusing to allow a patent for inventions conceived wholly by AIs, we would avoid overly-rewarding human owners of AIs simply for owning a creative machine, and would simultaneously encourage their more active participation in and control of the process should they not want any resulting inventions to fall to the public domain.

A separate, perhaps less important, benefit of limiting inventorship to human activity is that, under such an approach, existing patent laws seem well disposed to handle questions of inventorship on a case by case basis. Evaluating each case individually, we should be able to consider the circumstances and identify which, if any, of the humans responsible in whole or in part for the AI’s discoveries qualify as inventors.

1. See *Burroughs Wellcome Co. v. Barr Laboratories, Inc.*, 40 F.3d 1223, 1227–28 (Fed. Cir. 1994) (“Conception is the touchstone of inventorship, the completion of the mental part of invention.”).

2. See *Hybritech, Inc. v. Monoclonal Antibodies, Inc.*, 802 F.2d 1367, 1376 (Fed. Cir. 1986) (quoting 1 *Robinson on Patents* 532 (1890)); *Burroughs Wellcome*, 40 F.3d at 1228.

3. See *Board of Educ. v. American Bioscience*, 333 F.3d 1330, 1342 (Fed. Cir. 2003) (“[T]eaching skills or general methods that somehow facilitate a later invention, without more, does not render one a coinventor.”).

4. See *Sewall v. Walters*, 21 F.3d 411 (Fed. Cir. 1994) (holding that a person that follows another’s instructions to implement an invention is not a co-inventor).

5. See *Board of Educ. v. American Bioscience*, 333 F.3d 1330, 1342 (Fed. Cir. 2003).

6. *University of Utah v. Max-Planck-Gesellschaft Zur Forderung Der Wissenschaften EV*, 734 F.3d 1315, 1323 (Fed. Cir. 2013); see also *Beech Aircraft*, 990 F.2d at 1248 fn. 23 (Fed. Cir. 1993).

7. While an open question in the patent context, it should be noted that the Copyright Office has issued a regulation stating that it will not register “works produced by a machine or mere mechanical process that operates randomly or automatically without any creative input or intervention from a human author,” (Copyright Office, *Compendium of U.S. Copyright Office Practices* (3d ed. 2014) § 313.2) (a ruling which is subject to debate in its own right); see also *Naruto v. Slater*, No. 15-cv-4324, 2016 WL 362231, at \*3–4 (N.D. Cal. Jan. 28, 2016) (challenging the standing of a non-human animal to raise a claim of copyright infringement).

8. See Ryan Abbott, *I Think, Therefore I Invent: Creative Computers and the Future of Patent Law*, 57 B.C.L. Rev. 1079 (2016), <http://lawdigitalcommons.bc.edu/bclr/vol57/iss4/2>; see also Erica Fraser, *Computers as Inventors – Legal and Policy Implications of Artificial Intelligence on Patent Law*, (2016) 13:3 *SCRIPTed* 305 <https://script-ed.org/?p=3195>.

9. This scenario requires significant advancement in the state of AI technologies from where things stand today, but is by no means out of the realm of future possibility.

10. Of course, even without patent rights, the owner of an AI may still have available other forms of intellectual property ownership and protection, such as trade secret rights, for inventions wholly-conceived by an AI.

**H. Mark Lyon** is Chair of the firm’s Artificial Intelligence and Automated Systems Practice Group, and brings nearly three decades of experience as a trial lawyer and trusted corporate legal advisor to companies in a wide range of technology areas. As practice group chair, Mr. Lyon has extensive experience representing and advising clients on the legal, ethical, regulatory, and policy issues arising from emerging technologies like artificial intelligence.



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## Family Law Issues for High Net Worth Individuals and Entrepreneurs

Divorces involving high value assets frequently present more complex and highly contested issues. While every marital dissolution can be multifaceted and emotional, divorces involving businesses, outside financial interests, multiple real estate holdings and other large assets and debts can be especially intricate.

### Retain Just One Attorney for Family Law and Civil Issues

Most family law attorneys do not possess both extensive civil litigation and family law litigation expertise. However, this experience is often essential in high asset divorces. It is important to retain such counsel so that they have foresight to plan for, avoid, and/or litigate related intermixed family, business, and civil litigation issues that may arise concurrently in Family Law and/or Civil Court. The retention of one attorney that is well practiced in all such issues, will have a superior tactical advantage and be more cost efficient, than

the retention of multiple attorneys who will have to coordinate efforts.

### Assets Involved In A High Net Worth Divorce Can Often Include:

- Retirement and investment accounts
- Real properties including residential, commercial, and vacation homes
- Multiple businesses
- Luxury/exotic motor vehicles and water craft
- Fine collections of art, jewelry, antiques and the like

At Buncher Family Law, we have a network of highly skilled professionals to draw upon to help expedite the resolution of complex divorce matters. We can often resolve cases quickly and confidentially by settlement or acting as a mediator for both parties. However, for those cases where this is not possible, you will rest assured with the knowledge that you have an experienced trial lawyer who knows the way around both Family Law and Civil Courts.



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# PAUL HASTINGS

## Key Healthcare Compliance Governance Essentials for Small and Mid-Size Life Science Companies

### I. Importance of Healthcare Compliance Governance

Each year, federal and state enforcement of healthcare laws and regulations cost companies millions in fines and disgorgements of profits, and often subject them to aggressive monitoring after settlement. After pursuing larger companies for years, enforcement agencies have taken an active interest in small and mid-sized companies. As a former prosecutor out of the Boston U.S. Attorney's Office recently said, the "pattern that we saw more and more the last couple years was a small startup company doing everything they can to increase their revenues to make themselves an attractive acquisition target, but not paying enough attention to compliance problems."

In today's enforcement environment, life science companies face unique and significant compliance challenges, and must rely upon effective compliance programs to prevent and detect potential violations of applicable laws and regulations. Effective compliance programs begin with and rely upon a sound governance structure. Oversight, management, and execution of a company's compliance program requires well-defined governance principles that ensure alignment of responsibility and authority.

### II. Healthcare Compliance Governance Considerations

The Department of Health and Human Services' Office of the Inspector General ("OIG") released formal guidance describing the optimal compliance governance structure for companies subject to state and federal healthcare laws. Likewise, the Department of Justice's ("DOJ") recent Evaluation of Corporate Compliance Programs guidance provides insight into what compliance governance considerations DOJ will assess during potential charging decisions. This guidance sets forth the OIG's and DOJ's views on the interrelationship between the board of directors and the compliance, legal, and internal audit functions. It further describes principles related to the structure, reporting relationships, and roles of functions responsible for the management and oversight of the company's healthcare compliance program.

Both the OIG and the DOJ place particular importance on the board of directors' oversight role. The OIG opines that directors must "act in good faith in exercising [their] oversight responsibility" and should "receive regular reports regarding the organization's risk mitigation and compliance efforts—separately and independently—from a variety of key players, including those responsible for audit, compliance, human resources, legal, quality, and information technology." Similarly, the DOJ advises that directors should have established information and reporting systems that are "reasonably designed" to provide the board with "timely and accurate information sufficient to allow them to reach an informed decision regarding the organization's compliance with the law." The board and management should regularly discuss compliance issues and directives. For companies with larger boards, the best practice is to form a dedicated audit or compliance committee, consisting of independent and experienced board members, that holds regular meetings.

OIG and DOJ guidance explain the importance of an independent compliance function with a dedicated Chief Compliance Officer ("CCO"). The CCO should ideally have a direct reporting line to the board of directors. The OIG further believes that an organization's CCO "should neither be counsel for the [organization], nor be subordinate in function or position to counsel or the legal department, in any manner." For the OIG, the notion of separate compliance and legal functions "reflects the independent roles and professional obligations of each function." The DOJ's guidance takes a less rigid stance, instead focusing on the seniority, stature, experience, qualifications, and autonomy of the individual responsible for the compliance function, whether it be a dedicated CCO, GC, or another member of management. However, the DOJ's guidance is clear that there should be dedicated compliance resources, and that prosecutors should scrutinize why the company chose "the compliance structure it has in place."

A strong compliance program also requires that the organization have an independent audit function. DOJ guidance directs prosecutors to evaluate whether "internal audit functions are conducted at a level sufficient to ensure their independence and accuracy, as an indicator of whether compliance personnel are

in fact empowered and positioned to effectively detect and prevent misconduct." Both the OIG and DOJ expect companies to empower the organization's audit function to test and enhance the company's compliance controls.

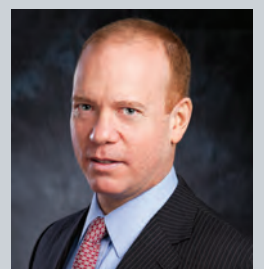
### III. Effective Governance for Organizations with Limited Resources

The structural considerations noted by OIG and DOJ guidance constitute "best practices," but all companies should assess how they can improve their compliance governance and oversight. Government enforcement agencies recognize that a company's compliance program strength, including its compliance governance structure, depends on factors such as its size, structure, and resources. Small and medium-sized life sciences companies may consider the following:

- If the board and executive team's size and time constraints make forming a separate compliance committee and holding separate compliance meetings impractical, companies can include compliance topics as a regular agenda item in board and executive team meetings.
- Companies that lack the resources to hire a dedicated compliance professional require more active oversight from their board of directors and may use external advisors and consultants to provide advice on their oversight functions.
- Companies with no dedicated compliance function may form a compliance committee, comprised of members of management, which share compliance oversight.
- If resources prevent companies from completely separating compliance and legal functions, companies may consider other measures to promote separation, such as by segregating compliance and legal budgets, by creating distinct compliance work plans, and by holding separate compliance meetings.
- Companies with joint GC and CCOs should consider creating distinct reporting lines to the board or board committee for the CCO function.
- When companies cannot afford dedicated internal audit staff, companies should hire external advisors to conduct regular audits and reviews of the compliance program.

All companies, and especially life science companies, should consider how they could improve compliance governance with existing resources. Companies seeking to improve their compliance programs can benefit from hiring experienced compliance counsel to evaluate and independently assess their compliance programs.

Paul Hastings LLP litigation partner **Gary Giampetrucci** and senior litigation associate **Jonathan Stevens** focus their national and international practices on regulatory and anti-corruption enforcement and counseling, particularly in the life sciences sector for biotech, pharmaceutical, healthcare and medical device companies.



Giampetrucci

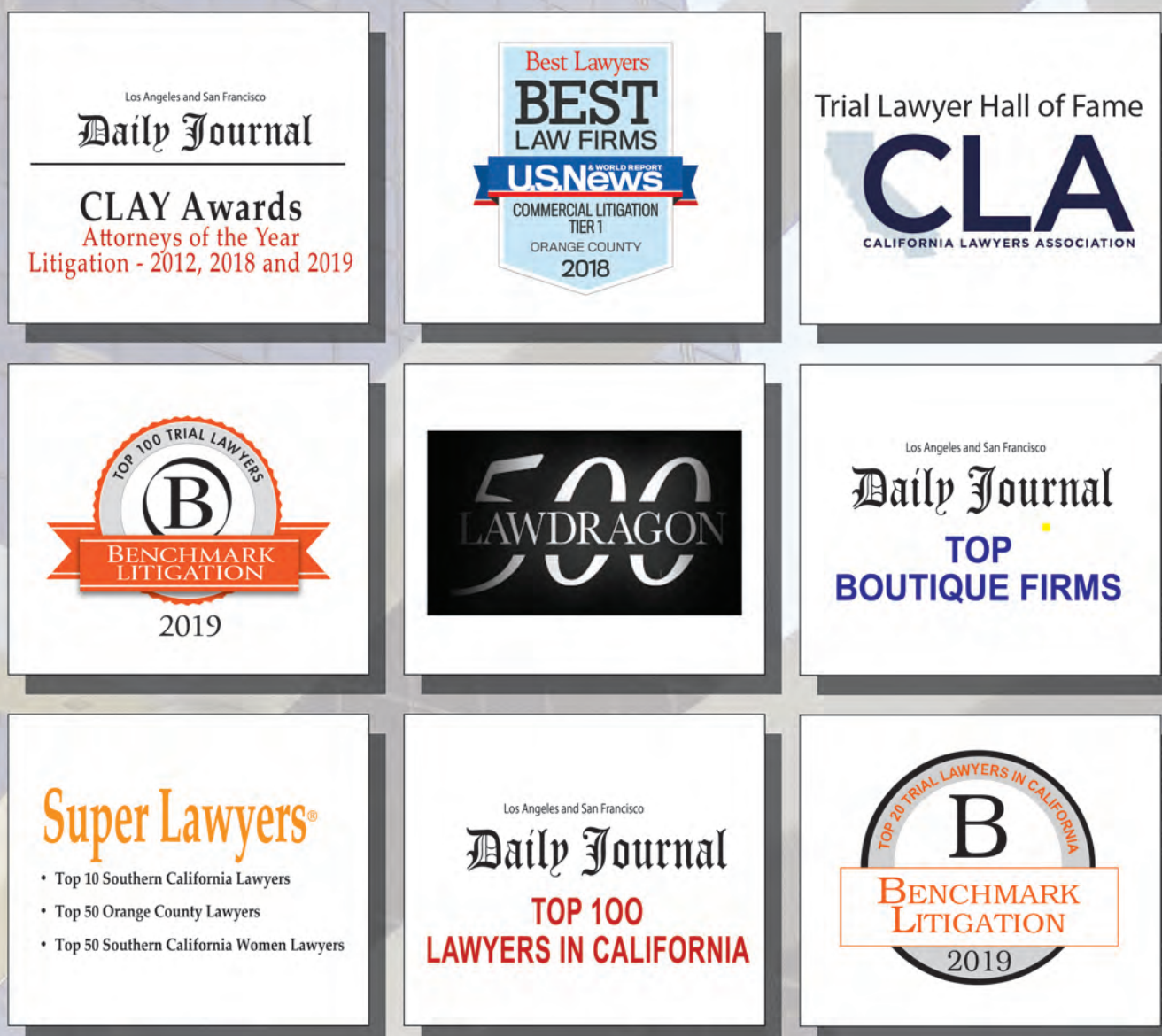
Mr. Stevens is based in the Firm's Orange County Office. Mr. Giampetrucci is based in the Firm's New York Office. Orange County litigation associates Mark Carper and Carl Hudson assisted with this article. If you have any questions regarding these issues, please to not hesitate to contact Mr. Stevens at (714) 668-6201 or jonathanstevens@paulhastings.com.



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## Data Privacy Considerations in M&A Transactions

*By: John Bradley and David Rosenfield, Troutman Sanders LLP*

Data privacy regulations, high-profile data security breaches, and fines and other regulatory enforcement have significantly affected mergers and acquisitions (M&A) transactions in recent years. M&A participants are well-advised to focus on data privacy early and throughout an M&A transaction, given the potential adverse consequences of a security breach, which include reputational damage, fines and other regulatory enforcement, loss of business, class action lawsuits, and resulting damages.

### Legal Environment

Data privacy is implicated under numerous regulations. The Federal Trade Commission, for example, uses its general regulatory and enforcement authority to pursue actions in data security breaches. Some data privacy regulations, such as the EU General Data Protection Regulation (GDPR) and the most recently enacted significant data privacy regulation, the California Consumer Privacy Act (CCPA), which will take effect January 1, 2020, are specifically directed at data privacy, and impose, or will impose, extensive obligations on virtually all businesses within their geographic scope, most particularly in the context of consumer personal information. Industry-specific data privacy regulations such as the Gramm-Leach-Bliley Act (GLBA), which applies to financial institutions, and the Health Insurance Portability and Accountability Act (HIPAA), which applies to the healthcare industry, also impose extensive obligations on businesses that fall within the industries covered.

The overall trend in the data privacy legal environment is decidedly toward more onerous and complex compliance obligations, higher compliance costs, more frequent enforcement, and greater consequences for noncompliance.

### Commercial Environment

In addition to complying with data privacy regulations, businesses must comply with the terms of their commercial contracts pertaining to data privacy, which dictate how data that flows between contracting parties may be used, handled and stored. These commercial terms increasingly extend beyond customary nondisclosure obligations, and often include a litany of data privacy-related obligations, such as requiring specific data security processes, reporting and audit obligations, data security breach procedures and notification requirements, and special indemnities.

### Due Diligence

Buyers, sellers and M&A practitioners should approach data privacy diligence in the same way they approach similar critical M&A issues. This approach should include identifying the seller's key risks that flow from its industry, its geography, the types of data collected or obtained, and how that data is used, handled and stored. M&A participants also should ensure that the seller has the right to make available to the buyer and its representatives information of a sensitive nature, the disclosure of which may trigger violations of data privacy regulations or a breach of contract.

Due diligence should include examination of the seller's privacy policies, data security programs and processes, both qualitatively and from an information technology (IT) perspective, to ensure that appropriate processes and sufficiently robust IT assets are in place to protect data. A buyer should also evaluate the seller's breach history and response times. Buyers should engage a dedicated team of data privacy and IT experts to assist with this diligence.

Overall, the buyer's due diligence review should enable the buyer to assess data privacy risks associated with the seller's business and identify any outstanding or potential liabilities that may impact valuation or require special indemnities.

### Representations and Warranties, and Indemnities

M&A transactions involving businesses that handle sensitive data should employ carefully drafted data privacy representations and warranties. In addition to legal and commercial compliance, savvy buyers will use data privacy representations and warranties as a risk allocation tool to fix liability for failures of IT system design, poor information handling processes and even certain post-closing data privacy security breaches. Well-drafted, comprehensive data privacy representations and warranties should address at least the following areas, where applicable:

- ▶ General legal compliance (e.g., GDPR and, after January 1, 2020, CCPA compliance);
- ▶ Industry-specific data privacy regulatory compliance (e.g., GLBA or HIPAA compliance);

- ▶ Disclosure of arrangements under which data is shared with third parties;
- ▶ Data privacy security breach history;
- ▶ Regulatory notices, and both external and internal data privacy investigations;
- ▶ Suitability of data privacy processes and related IT infrastructure;
- ▶ Employee data privacy training;
- ▶ Description of the types of personal information collected and maintained; and
- ▶ Security assessment reports and related remediation of data security gaps.

In private-target M&A transactions, buyers may seek special line-item indemnities and longer survival periods for data privacy security breaches, whether known or unknown at the time of signing or closing. Data privacy issues in many M&A transactions are best handled on a customized basis depending on a variety of factors, including those discussed above.

### Post-Closing Integration

Post-closing integration may involve the mass transfer of data from the seller to the buyer, implicating numerous data privacy considerations. Even if personal information is not formally transferred, a buyer will have access to and may seek to obtain, handle and use the personal information held by the target company post-closing. A buyer should be mindful of the need to maintain strict controls on its access to, and handling and use of, personal information held by the target company. A post-closing integration plan developed concurrently with the due diligence phase of the M&A transaction is essential in situations in which data privacy is of particular concern. A buyer should charge its team of data privacy and IT experts engaged in the diligence process to work with the buyer's integration team to ensure regulatory compliance, appropriate regulatory and consumer notices, and other proper steps are taken to limit post-closing integration risks.

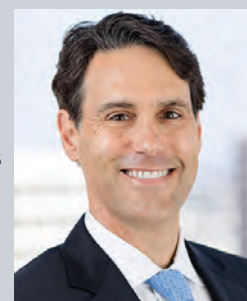
### Conclusion

The data privacy legal environment is developing rapidly, and the attendant risks and potential adverse consequences will impact M&A transactions for years to come. Data privacy should be among the critical M&A issues addressed early in and throughout an M&A transaction's life cycle, from structuring the deal to due diligence and documentation, and to post-closing integration. Buyers should engage a dedicated team of data privacy and IT experts to assist from the commencement of an acquisition transaction, and should keep them involved throughout the transaction and through post-closing integration.

**For more information about the legal developments affecting U.S. mergers & acquisitions, you may access a complimentary copy of Troutman Sanders' M&A Perspectives online at <https://online.flippingbook.com/view/701714/>**

#### John Bradley

John Bradley's two decades of experience and in-depth knowledge enable him to effectively represent public and private companies in a wide variety of corporate and securities matters. His 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. He also counsels clients on a broad range of other business-related matters.



#### David Rosenfield

David Rosenfield focuses his practice on the representation of public and private companies in connection with corporate governance, mergers and acquisitions, securities offerings, securities regulation, and general corporate law.







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## How to Compete for Top Talent in a Tight Labor Market

By Kevin Dupree, Mike Jacob and Matt Farrell

By now, most of us have heard, perhaps numerous times, that we're experiencing record-low unemployment numbers and that the job market is incredibly competitive. In fact, you might have experienced the challenge of attracting key people, or worse, you've lost those key people to a competitor. While many companies offer 401k plans with strong matching contributions as a method of attracting and retaining employees, the reality is that, for high income earners, those additional dollars to a qualified plan (401k, 403(b), etc.) likely won't move the needle much and don't ensure that key person stays in his or her seat. In addition, qualified plans are governed under ERISA and don't provide much flexibility in determining who participates in the plan and who does not.

### Non-Qualified Planning

Enter the "non-qualified plan." Non-qualified plans resulted out of necessity as legislation and tax reform constrained employers' ability to "discriminate" amongst employees and employees' opportunity to contribute to their qualified plans. Whereas ERISA-based plans mandate a certain level of participation from the employee base, non-qualified plans allow employers to be selective in making that determination. Additionally, non-qualified plan contributions aren't bounded by ERISA limits and can be structured to achieve a specific purpose.

### Elective Deferred Compensation

A common example of a non-qualified plan is what's called an Elective Deferred Compensation (EDC) plan. In this arrangement, an employer provides key personnel the opportunity to defer additional money (salary and/or bonus) beyond what the 401(k) allows to be paid out at some point in the future. That money grows most typically by a fixed rate, i.e. 5% per year, and without tax, but can also be tied to the 401k investment lineup or some other benchmark. Oftentimes these plans are utilized by "Top-Hat" employees to restore their 401k contributions after receiving a year-end refund, by top salespeople to mitigate tax liabilities, and high wage earners to save for specific events, i.e. college, weddings, retirement, etc.

### Supplemental Executive Retirement Plan

Another example of a non-qualified plan is a supplemental executive retirement plan (SERP). This type of plan is often used to attract, retain and reward key executives by allocating an amount of money to a participant's account based on achieving certain metrics. Those metrics can be set to incent revenue growth, profitability, or any other pertinent and controllable measure of success. And, the employer can include a vesting schedule on any benefit accrued

(think: "Golden Handcuffs") to ensure the executive remains with the company for the desired period of time.

If you're struggling to attract the top talent, you're worried about competitors poaching a key person, or you want to reward an executive for their years of service, a properly structured non-qualified plan can help achieve the desired result.

For more information about DJM Financial Wealth Management & Insurance Services, please call 949-622-7200 or visit [www.djmfinancial.com](http://www.djmfinancial.com).



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## Leveraging Diversity: Lessons from War and Diplomacy

Orange County's businesses operate in a diverse environment as part of a global market. This often means working with employees and partners from different cultures and backgrounds. Business leaders must develop a cross-cultural advantage to stay competitive. Corporate counsel also have an ethical obligation as members of the California Bar to advance diversity and eliminate bias in the legal profession.

Nearly a decade as a diplomat with the U.S. State Department showed me that diversity isn't a challenge to be managed, but an asset to be leveraged. From Baghdad to Budapest, working with both civilian and military colleagues taught me that building and participating in diverse teams developed transferrable skills like flexibility and the ability to manage uncertainty.

Your team will make better decisions and respond more effectively to change and challenges if it comprises people with different experiences and different perspectives, *who have learned to come together and work as a team*. It's not enough to take a bunch of people who don't look like each other, or who grew up in different places, throw them together, and hope they become a cohesive unit. You have to build trust, create a culture of respect, and identify a core mission that can unite a team.

### **Build Trust**

Trying to see things from the other person's perspective goes a long way in building trust. In the State Department, we spent up to a year preparing for a foreign assignment, including learning the local language, customs, and culture. And when we arrived "in country," we traveled outside the major cities to meet people we wouldn't normally interact with as part of our diplomatic work. Doing so reaped enormous dividends. My foreign counterparts appreciated my effort to learn not just about their history, language, and culture, but about how things looked from their perspective. The effort showed I was serious about building a relationship and considering their viewpoints, which made it easier for us to solve shared problems. And it made it easier when I needed to ask our friends and allies for help – whether that was in fighting Ebola or combating the Islamic State.

The same bridge building worked in reverse. Our strongest advocates in many foreign governments were officials who had spent a significant amount of time in the United States. The more we understood about each other's backgrounds, the easier it was to establish trust and find common ground.

Business leaders don't have the luxury of taking months out of their schedule to learn a new language or immerse themselves in another culture, but the same lessons apply whether you are entering a new foreign market, plugging into an international supply chain, or building cross-cultural teams. Succeeding in these tasks requires the same understanding, openness to new experiences, and willingness to listen.

### **Create a Culture of Respect**

A perceived lack of respect will prevent trust from being built and can erode any existing trust quickly. As diplomats, we learned to not take offense where none was intended and to avoid accidentally giving offense. The flexibility demanded of us in working in cultures with different norms made us more adaptable to challenging circumstances. Making respect a core value also made our teams stronger.

A common experience for diplomats who don't have "American sounding" names was to be greeted with disbelief when introducing ourselves. On more than one occasion, I was asked by someone coming in for an appointment if they could speak to a "real" American. As a diplomat, I understood these to be opportunities to demonstrate how American identity transcends race, religion, or national origin.

But not all potentially offensive comments came from the well-meaning, but unaware. At a dinner with top defense officials, a counterpart from another Western country began telling us all about how the West needed to unite to

keep out Middle Eastern immigrants, who couldn't assimilate to Western society, and who were violent and superstitious. I shared with him my own story as the daughter of Iranian exiles who completely assimilated into American society and was immediately supported by all of my military and civilian colleagues from the embassy.

Sharing my story was something I chose to do. But most people don't want to be ambassadors for their particular affinity group, and they shouldn't have to do so. Building a culture of respect within your organization and across your key partnerships will help ensure everyone is supported and will help your organization confront bias as a *team*. When team members respect each other, they become better allies and can foster a culture of respect through mutual expectations instead of dictates from above.

### **Unify Your Team Behind a Common Mission**

Teams work better when they share a purpose. Building that purpose, however, can be more difficult when your team members come with differing expectations and assumptions. There can be a tendency to consider some team members' concerns or viewpoints as niche interests and deprioritize them. But when people don't feel connected to the purpose of their work, we rarely get the best out of them. And when we don't value their input, we lose out on opportunities to improve and innovate.

One of the things I admire most about the U.S. Armed Forces is their ability to unify people from every walk of life behind a common mission. The military calls this "One Team. One Fight." Getting everyone to work toward a common purpose requires looking beyond what makes us different, which we can do once we've built trust and respect. Once we all understand the shared goal that we are committed to, we can bring our diverse experiences and perspectives to accomplishing that goal.

### **Conclusion**

I was fortunate to be able to bring these experiences back with me into the practice of law in Orange County, where I work with an incredibly talented, diverse team of attorneys to serve clients whose interests span the globe. In business and law, these lessons can help us move beyond simply managing diversity to building extraordinary, high achieving teams.

**Nahal Kazemi** served as a Foreign Service Officer from 2009 to 2017. Her assignments included serving as Special Assistant to the U.S. Ambassador to Iraq, Watch Officer in the State Department's Operations Center, NATO Desk Officer, and Political Military Affairs Officer in Budapest, Hungary. The opinions expressed in this article are her own and do not necessarily reflect the views of the United States Government or the Department of State. Contact her at (949) 476-8700 or [nkazemi@kelleranderle.com](mailto:nkazemi@kelleranderle.com).







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At Chapman University's Dale E. Fowler School of Law, we prepare graduates to become effective attorneys and excel in their legal careers. We're proud to recognize the accomplishments of our alumni, including those nominated for 2019 General Counsel Awards:

**Amber Enriquez (JD '09)**

General Counsel,  
Earth Friendly Products

**Richard Tilley (JD '01)**

Vice President, Secretary and General  
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Congratulations to Richard and Amber, as well as all Chapman alumni and other honorees being recognized at this year's awards ceremony.

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# Stuart Kane LLP

## Keeping Your Cannabis License

Cannabis businesses must demonstrate they have the capability to be legally compliant as a condition to issuance of their state and local licenses. That compliant moment is only a glimpse of the business's life, but it cannot be a fleeting thing, as periodic inspections can make or break your business.

Depending on the license type, the cannabis business can be inspected at any time by the Bureau of Cannabis Control (BCC), the California Department of Food and Agriculture (CDFA) or the California Department of Public Health (CDPH). Cal. Code Regs. tit. 16, § 5800. Inspections by one or more of those licensing agencies can occur unexpectedly and often, which means the business must strive to maintain compliance at all times to avoid any operational stoppages, expenses associated with resolving notices to comply and other citations, and ultimately failure.

The cannabis industry shifted from operating under the loose laws of the Compassionate Use Act to a detailed set of regulations under the Medicinal and Adult-Use Cannabis Regulation and Safety Act (the "Regulations"), requiring compliance throughout the entire supply chain. Following the relatively new and detailed Regulations is understandably difficult, and that difficulty is compounded with the struggle to navigate the Regulation's ambiguities.

To mitigate the compliance difficulties, cannabis businesses are required to adopt and follow "standard operating procedures" (SOPs), a phrase straight out of the Regulations. Cal. Code Regs. tit. 16, § 5700. Some SOPs are treated as mere paperwork that is submitted and ignored, or as impediments that fail to mesh with actual operations.

Instead, SOPs should be built to allow successful implementation and concurrent continual improvement of the SOPs. The center of this article displays an example of a compliance system.

Although the example system components are shown separately, the components are carried out concurrently. The cyclical system continually improves the SOPs and the associated processes. Additionally, the employees must be educated on the SOPs to strengthen the interlocking of the SOPs and operational processes, with a monitoring system in place to ensure adherence.

### • Study and Test Current Processes for Feasibility

If there is a beginning and end to the above compliance system, this is it. The company processes must first work. Once a process works, it should be continually tested and evaluated for feasibility and adjusted as better methods to accomplish tasks, new situations or needs are identified.

### • Draft SOPs Compliant with Law and Cohesive with Current Processes

Properly drafted SOPs should, (1) include, and require compliance with, the processes required by law, (2) maintain flexibility to allow for situations not contemplated by the Regulations or cannabis businesses, (3) be customized to match the unique aspects of each cannabis business and help guide the processes to achieve the most efficient and effective result, and (4) be relatively straightforward and easy to understand.

### • Refine Processes to Match SOPs

Occasionally, the SOPs can accommodate the unique aspects of the current processes of the business; however, if the items in the SOPs that are required by law (as opposed to a discretionary item) are inconsistent with the current processes, the processes must be modified to meet legal requirements. In order to optimize SOP effectiveness and expedite the implementation of a solid

compliance system, it is crucial that during the first three stages above, the employees carrying out the processes work closely with counsel in drafting and revising the SOPs.

### • Educate Employees on SOPs

The importance of maintaining compliance with state and local law as a cannabis business cannot be stressed enough. Falling out of compliance can result in fines, imposition of required corrective measures, license suspension or revocation, and removal of any potential state protection from federal enforcement. The foregoing enforcement actions could end a business and all of the jobs it created.

Management should emphasize that no single person in the business is responsible for all compliance; *everyone* in the business has compliance responsibility to some degree. Therefore, employees must be regularly educated and reminded of the importance of compliance—their job is dependent upon it. At minimum, the education should be conducted (1) upon any legislative change affecting the SOPs, (2) as part of any internal SOP update, (3) as part of the employee onboarding process, and (4) on a regular schedule (we recommend at least every six months).

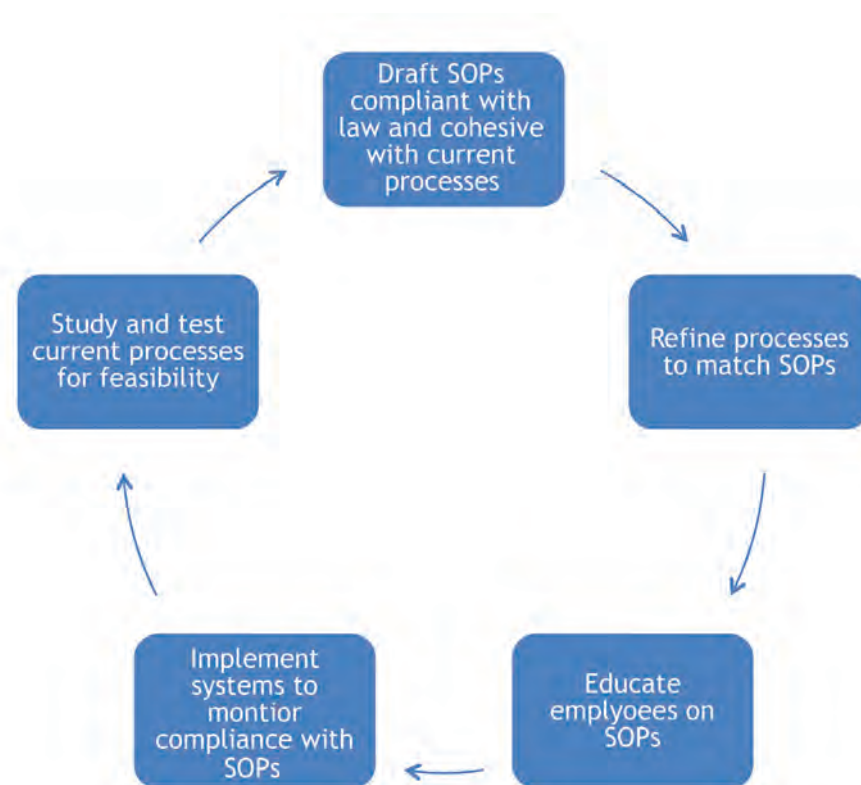
### • Implement Systems to Monitor Compliance with SOPs

Audits by licensing agencies are occurring with more regularity. The more vigilant the compliance, the less chance the cannabis company has of failing an audit. Compliance monitoring systems can include internal audits in preparation for inspections. We recommend internal audits be conducted monthly, with each audit focusing on a particular aspect of the business.

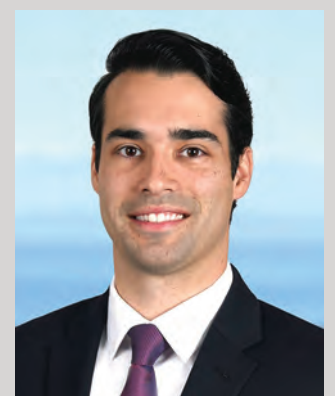
In addition, a reporting system should be implemented that causes any irregularity to be identified and brought to the attention of management.

The report should quickly funnel up to counsel or the compliance manager to ensure it is addressed correctly and as quickly as possible. Linger issues create situations that can be cited by the inspecting governmental agency.

In sum, the cannabis compliance system should be developed as a foundation upon which a company can grow with the goal of being a "living" system. Continual improvement, and the ability to adapt to changing laws and processes, should be built-in. Every cannabis business will encounter adverse compliance issues during its life; those businesses with proper systems will mitigate the adverse compliance effects and continue to thrive.



**Cole Morgan** is an attorney with Stuart Kane LLP and focuses his practice in the areas of commercial real estate and corporate law, including the negotiation and drafting of purchase and sale agreements and leases, and advising clients on due diligence and compliance issues. He has extensive experience working with clients in the cannabis industry, including vertically integrated companies, with their commercial real estate and corporate needs. Mr. Morgan can be reached at (949) 791-5128 or [cmorgan@stuartkane.com](mailto:cmorgan@stuartkane.com).







## Premier Commercial Contingency Law Firm Shines Spotlight on Partner Michele Vercoski

McCune Wright Arevalo, LLP (MWA) Partner Michele M. Vercoski is an accomplished lawyer. Leading the firm's Orange County office and contingency commercial practice group, Michele has obtained substantial and significant results for her clients. One of her many accomplishments is belonging to the elite club of lawyers admitted to the United States Supreme Court and arguing a business issue on her case before nine justices in the highest court in the land.

Michele's other accomplishments include her role in the recent settlement of a \$70 million class action against TD Bank for unfair overdraft fees assessed against small business owners and consumers. Litigation was waged against one of the country's largest national banks and was hard-fought over four years of intense litigation before it was settled, after Michele and MWA were able to obtain an order from the Court certifying the case as a class action. This kind of tenacity displayed by Michele is the same kind of representation she provides each of her clients.

Another case highlighting Michele's passion is her representation of over 100 service members in our military branches who were on the front lines in combat and training, yet suffered hearing loss or damage from defective 3M Combat Arms Earplugs™, which were standard issue for service members during 2002 to 2015. Her continued fearlessness in taking on large Fortune 500 companies on a contingency basis is what sets her apart in the legal field.



Michele's successes include numerous additional contingency cases. Among her representative commercial contingency successes includes litigating and obtaining damages arising out of misrepresentations and breaches of contract from the buyers of a tech business as well as a breach of contract and intentional interference with contractual relations in a commercial litigation matter, which resulted in the successful recovery of damages for her client.

Michele has been with MWA for over 14 years. MWA has obtained over \$1 billion for its clients and has over 100 cases where it has obtained over \$1 million for its clients. MWA successes include a \$203 million verdict against Wells Fargo. The firm's Orange County office is located in the prestigious Boardwalk building in Irvine. There, Michele is accompanied by some of the highest caliber attorneys in Southern California. This office primarily focuses on representing mid-sized businesses in commercial litigation cases having claims for damages of over \$5 million but desire a contingency fee arrangement over an hourly fee rate to allow our clients to monetize their litigation assets. You pay us only if we win. Contact us today for a free consultation by calling (949) 326-9300 or visit [McCuneWright.com](http://McCuneWright.com).

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## New facilities, student credentials, record gifts contribute to momentum of Fowler School of Law

In the world of legal education, Chapman University's Dale E. Fowler School of Law is relatively young—next year marks its 25th anniversary—but the Orange, California institution has experienced growth and success in several areas that finds it outpacing many of its well-established peers.

Named one of preLaw Magazine's Best Law Schools for Practical Training, the Fowler School of Law has distinguished itself by providing a personalized and practice-focused approach to legal education. Its student competition teams are among the best in the country, tying for fifth place out of 154 law schools in the American Bar Association's 2018-2019 Competitions Championship. The law school's alumni include judges, law partners, corporate executives, civil servants and general counsel. And several graduates have ascended to top positions in the sports and entertainment fields, including an agency founder who Forbes named one of the "World's Most Powerful Sports Agents."

The law school's most recent incoming class is one of its most well-qualified, with a median LSAT score of 158 and median GPA of 3.49—indicators of student preparedness that have sharply risen over the last three years, more so than almost any other U.S. News & World Report-ranked law school. The new crop of Fowler Law students is also one of its most diverse, with 42% minority representation and 26% first-generation college students.

"This is one of the strongest classes in the history of the Fowler School of Law," said Dean Matt Parlow. "Their impressive credentials speak to the momentum we're experiencing, and we look forward to providing these students with our trademark individualized support to help them achieve their academic and professional goals."

The class of 2022 is among the first to enjoy the benefits of new investments into the facilities at the Fowler School of Law, including the recently opened Center for Student Engagement. Made possible by Chapman University capital funding and a generous donation by Fowler School of Law Board of Advisors Chairman Park Kennedy, the Center houses the law school's Career Services, Student Affairs, and Academic Achievement offices.

"This suite is a one-stop shop for students to access the services we provide that support them in achieving success and happiness in law school," Parlow said. "We hope that by bringing these different areas together, we can build on creative synergies that will help us achieve greater levels of personalized student support and engagement and, ultimately, student success."

In addition to providing new offices, the renovated suite includes a reception area, a conference room, and three interviewing rooms, all in a bright, modern setting bathed in natural light—making the space open and inviting to students and employers alike.

The construction and opening of the Center for Student Engagement is just the latest in a series of enhancements to both the law school's facilities and programs, which have been made possible by a record number of gifts over \$1 million received by the Fowler School of Law in the last several years.

"Gifts at this level are rare in legal education," said Parlow, "and our receiving

four of them within the past two years is a testament to the belief, support, and confidence that donors have in the important and impactful work that we do with our students."

Those contributions from donors such as Park Kennedy, James M. Bergener, and alumnus Samuel Mirejovsky (JD '14) have established professorships, created scholarships, and helped fund such projects as a high-tech renovation of the Wylie A. Aitken Trial Courtroom, an update of the Hugh & Hazel Darling Law Library, and a full remodel of the Bergener Mirejovsky Student Lounge.

"We are always looking for ways to keep Kennedy Hall one of the best and most up-to-date law school buildings in the country," Parlow said.

The most recent \$1 million gift establishes a new endowed professorship that will help expand the institution's innovative bar exam preparation program. Made by a donor who was moved by a family member's experience with the program, the new endowment recognizes the success of all of those involved, including its executive director, Professor Mario Mainero, Professor Tom Caso, adjunct professors John Bishop and Kent Sommer, and the many Fowler School of Law alumni and friends who grade students' work in the program.

"This endowment reflects our unparalleled efforts in developing resources to support our students, as well as the dedication and hard work of the entire Fowler School of Law bar prep team," Mainero said. "The endowment will, over the years, be instrumental in giving students the additional assistance they need in meeting the challenges of the nation's most difficult bar exam."

For more information about the Fowler School of Law, please call (714) 628-2500 or visit [www.chapman.edu/law](http://www.chapman.edu/law).



Recent enhancements to the Fowler School of Law's home inside Kennedy Hall include a \$1 million renovation of the Wylie A. Aitken Trial Courtroom.





## Branding your CBD Business

Until recently, companies marketing cannabidiol-based products (commonly referred to as CBD; a non-intoxicating cannabinoid found in cannabis) have been limited with respect to the scope of federal trademark protection available to their CBD brands. Prior to the passage of the 2018 Farm Bill, signed into law on December 20, 2018, the federal government treated CBD as illegal under the Controlled Substances Act (CSA), and therefore, the United States Patent and Trademark Office ("USPTO") issued trademark registration refusals to most trademarks that identified goods encompassing CBD on the basis of unlawful use or lack of bona fide intent to use in lawful commerce under the CSA.

Under the Farm Bill, however, the federal government removed "hemp" from the CSA's definition of marijuana, thereby removing CBD from the controlled substances list. With this change in the law, on May 2, 2019, the USPTO issued updated guidelines for reviewing trademark applications listing CBD-related goods and services.

The first thing to note in the updated USPTO guidelines is that certain types of CBD-related goods and services will still cause a trademark application to receive an unlawful use refusal, as other federal laws, such as the Food Drug & Cosmetic Act ("FDCA"), continue to ban foods or dietary supplements containing added CBD. However, trademark applications designating goods or related services that fall outside of the FDCA ban, such as CBD-infused skincare products, cosmetics, and other non-ingestible topicals, are likely to be approved for federal trademark registration by the USPTO.

With these new trademark registration rules and opportunities, companies operating in the CBD space should consider filing for registration of their key brands, not only at the state level, but also federally in the USPTO for at least those goods and services that are no longer considered "unlawful" under the Farm Bill revisions. Consult a trademark attorney to discuss branding strategies for your CBD business.

*Sarah Bro is the managing partner of the Orange County office of McDermott Will & Emery. Her practice focuses on the protection, management, and enforcement of domestic and international trademarks and copyrights, and strategic guidance in the areas of unfair competition, right of publicity, social media, digital marketing, domain name management, corporate transactions, licensing, and intellectual property litigation support.*

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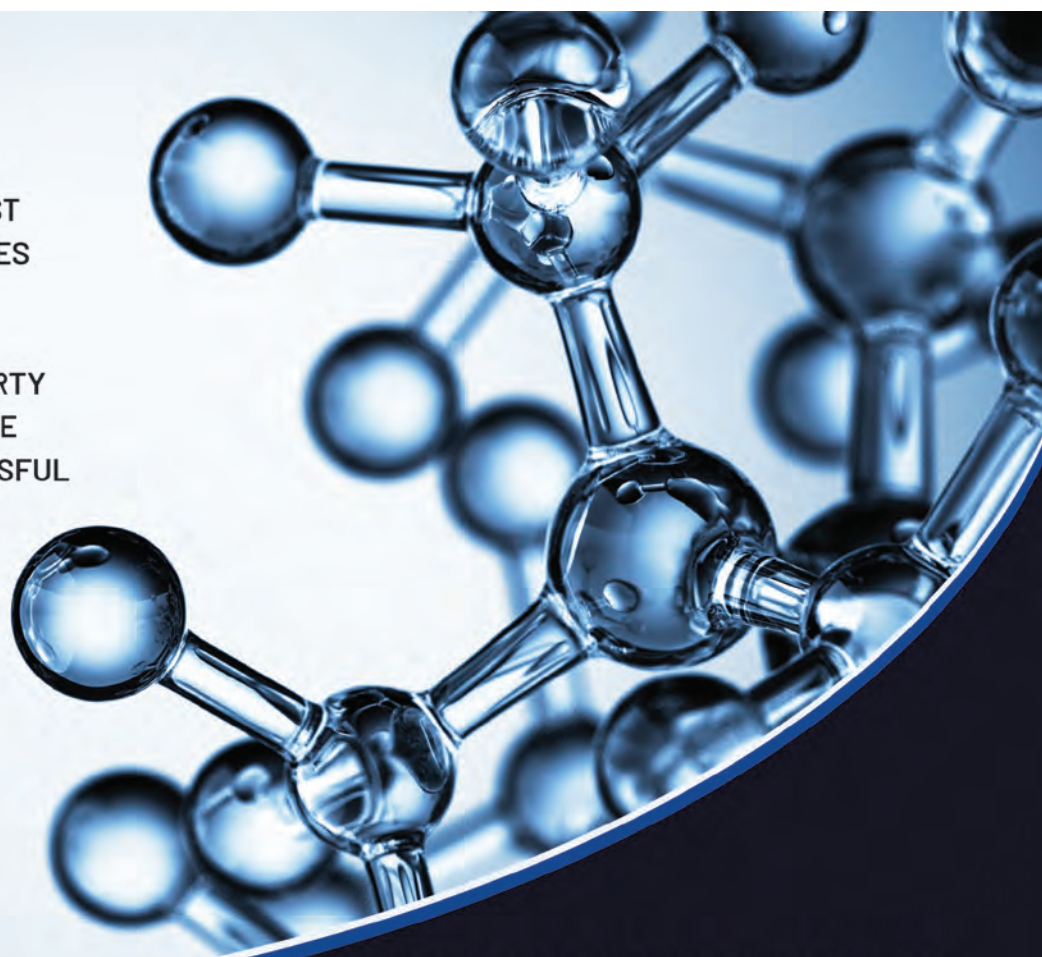


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# Alexis de Tocqueville Society's Bench & Bar Affinity Group

## Local Legal Professionals Practice Collegiality with a Cause



Attorneys, like all professionals, want to spend their limited time wisely. For many, pro bono work and giving back to their community are a priority. The best-case scenario: a cause that speaks to their passion, accommodates their busy schedule and incorporates some fun.

For more than 400 people in Orange County, United Way's Alexis de Tocqueville Society fits that bill. These philanthropic visionaries and volunteers represent all sectors of business and community leadership. They show their enthusiasm for United Way's local mission through their generosity and advocacy. In addition, they can join special groups such as the President's Circle and the Women's Philanthropy Fund that give them more opportunities to maximize their participation.

### Affinity Groups Take It Further

What's more, Alexis de Tocqueville Society members can connect their personal passion for making a difference with their profession by joining an Orange County United Way affinity group, including the Real Estate Community Builders and the Bench & Bar.

The Bench & Bar 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.

### Activities Appeal to A Wide Membership



**John Simonis,**  
Partner, Paul Hastings

**John Simonis**, partner in the real estate practice of Paul Hastings in Costa Mesa, was a past co-chair of the Tocqueville Society and has been an active member for more than 20 years. Throughout that time, he has also devoted his time to Bench & Bar, including leadership positions.

He says the programs are timely and interesting to lawyers. "They give us a reason to get together, to celebrate, to learn something and to give back to a worthwhile cause."

Industry news may spark an event. Presentations by key industry leaders provide "insider" views of how peers have successfully navigated operational issues, worked with in-house counsel and outside lawyers, and more. Mixers are always popular. All Bench & Bar meetings allow networking time to foster current relationships and create new associations.

An upcoming program is a perfect example. Bench & Bar and the Real Estate Community Builders are joining together for "The Changing Law Firm Workspace: How It's Impacting the Legal Sector." This highly anticipated

event will feature a panel discussion on the challenges and research findings spanning the two industries along with drinks and appetizers. All interested professionals are welcome at this event on Thursday, October 17th at 5:30pm in Irvine. Register at [bit.ocuw.org/lawfirmdesign](http://bit.ocuw.org/lawfirmdesign)

### Broader Impact

Building business relationships based on shared professions and a mutual dedication to giving back is the foundation for Bench & Bar. But for Simonis, his long-standing commitment to Orange County United Way has even deeper meaning.

He explains, "I choose to be involved because I want to impact my community in more ways than just one simple cause. At any given time, United Way has many substantial local programs going on. It's a way for your time and your dollars to have a much broader impact."

Currently, Simonis and his firm are supporting Orange County United Way's United to End Homelessness initiative and its Welcome Home OC program. By lending their expertise and drafting legal documents, they're helping property owners and various agencies to collaborate—work that's both necessary and integral to the program's momentum. Welcome Home OC incentivizes private market rental property owners to open critically-needed rental housing units to formerly homeless individuals or families with vouchers and provides wraparound supportive services to ensure housing stability.

"When you're looking at pro bono legal work, you're looking for something that's going to produce great results. We're very moved by this cause. It's going to have a very big impact on homelessness in Orange County!"

### Join Bench & Bar and Be a Part of Doing More

John Simonis—and many other attorneys like him—share a vision for an Orange County where every person receives a quality education, is financially stable, is healthy and thriving, and has a place to call home. They also share a unique camaraderie that welcomes new members who would like to join them in driving social change.

Whether you're an in-house counsel or practicing in an Orange County firm, consider Doing More by joining the Alexis de Tocqueville Society Bench & Bar.

Learn more about our October 17th Bench & Bar and Real Estate Community Builders special event at [bit.ocuw.org/lawfirmdesign](http://bit.ocuw.org/lawfirmdesign)

For more information on becoming a member of the Bench & Bar affinity group and Orange County United Way's Alexis de Tocqueville Society, contact Kalina Covello at [KalinaC@UnitedWayOC.org](mailto:KalinaC@UnitedWayOC.org) or call 949.263.6154.



# DOING MORE™ WITH THE TOCQUEVILLE SOCIETY'S BENCH & BAR

Orange County United Way is dedicated to providing local responses to the most pressing, interconnected challenges we face.

**We are grateful to our Alexis de Tocqueville Society's Bench & Bar members.**

With their generosity, volunteerism and advocacy, we are Doing More to fulfill our mission. This affinity group is comprised of leading local attorneys who are taking a stand for our next generation.

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# Buchalter

## Great Advice Comes from Happy Lawyers: Interpreting Law Firm Rankings on the OCBJ's "Best Places to Work" List

By Paul J. Fraidenburgh and Martin P. Florman

We've all heard the California dairy industry's charming slogan: "Great cheese comes from happy cows. Happy cows come from California." Perhaps this slogan appeals to us because it evokes imagery of green pastures and sunshine. Perhaps it touches home because, as Californians, we know how lucky we are to live here. The more likely explanation for this slogan's success is that it somehow makes sense that happy animals produce a better product. This begs the question: does the same principle apply to attorneys?

It is a well-documented fact of the legal community that happiness in law firms is on the decline. A 2016 American Bar Association and Hazelden Betty Ford Foundation study found that a staggering 28% of licensed, employed lawyers suffer from depression.

Notwithstanding the trend, happy lawyers do exist, and they bring significant advantages to the table for their clients. Happy lawyers work the same long hours as other lawyers and navigate the same high-pressure and high stakes situations, but the happy lawyer brings energy where the jaded lawyer brings cynicism. Happy lawyers are confident where unhappy lawyers are disheartened. Happy lawyers are creative, nimble, and resourceful where burnt-out lawyers are unimaginative and uninspired. Though there are plenty of Scrooges out there who have found success notwithstanding their emotionally draining workplace, the traits of a happy lawyer translate directly into tools for better advice, representation, creativity and client service.

And when it comes to happy lawyers, not all law firms are created equal. There are firms full of highly skilled lawyers who are miserable and there are firms that work hard to create and protect a culture that fosters happiness and success. Like cows, happy lawyers herd together.



Paul J. Fraidenburgh



Martin P. Florman

\* Paul J. Fraidenburgh (OC Litigation Chair) and Martin P. Florman (OC Managing Shareholder) are Shareholders in Buchalter's Orange County Office. Buchalter has been named on the OCBJ's Best Places to Work List every year for the last four years.



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## Learning the Legal Process: The Irvine Valley College Paralegal Studies Program—a Pathway to Success

It was happenstance that brought Oscar Arce into the legal profession, but it was Irvine Valley College that gave him the credentials he needed to excel in his career.

Arce's introduction to the law began in 2005. "A member of my family had a legal matter to discuss with a lawyer, and I went along as an interpreter," Arce recalls. "This was a firm of eight lawyers and none of them spoke Spanish, yet many of their clients spoke no English. They asked me several times to come back as an interpreter, and pretty soon I was working there on a part-time basis."

When the firm disbanded, Arce joined one of the lawyers as an administrator. He loved the work from the very beginning. "I had been in sales, so I have no fear of talking to people," he says enthusiastically. "I'd be the one contacting clients, visiting them in prison, or even going on radio to do a marketing spot for the law firm." The firm handled criminal, immigration, and family matters, and Arce's bilingual skills were still very much in demand.

"I was like a kid in a candy store! I loved what I did, and I was getting paid to do it," he says.

### Going Back to School

But as much as he learned firsthand, Arce knew he could only go so far without some credentials behind him, since only paralegals can work on legal matters. The lawyer he worked for encouraged him to return to school and get his associate degree, so Arce researched colleges in the area and found Irvine Valley College. It was one of the few that had a program in paralegal studies.

"The program taught me the intricacies of working in a law office, like the process of starting and finishing a case, and how to conduct yourself with sensitive information. Before, I could get sloppy, but my professors taught me discipline and the process and manner in which the court expects you to follow up. We learned how to protect a client's electronic information, like files and emails, and safeguarding information if you need an outside consultant to come in to fix your computer." He earned his Associate in Science degree in Paralegal Studies in 2017.

"I loved the fact that my professors came from all different areas of the law. One was a district attorney, another a public defender, and another in law enforcement. A couple of them had their own firms. A lot of their advice was practical and came from their own personal experience."

### An ABA-Approved Program

Irvine Valley College's Paralegal Studies program has gone through the rigorous approval process by the American Bar Association (ABA), which ensures that the paralegals it graduates have received the highest standard of training.

Students take courses in legal writing, contracts and torts, and legal research that give them skills that are not only applicable to a career in a law firm, but are transferrable to insurance, business, or a government agency that has a compliance department.

That's good news for graduates, as well-paying paralegal jobs are expected to grow by 15 percent within the next few years.

Arce, of course, had many years of firsthand experience under his belt before he enrolled in Irvine Valley College. But for those who haven't had that experience, the college strives to find them college-credit internships. They may assist with research, for example, or collect information to support an investigation, all under the supervision of attorneys. Many of these internship opportunities come from faculty, all of whom are deeply connected within the community.

### Looking Ahead

"Most people at some point in their lives have a need to talk to an attorney, so I realized there was great opportunity for my services out there," Arce says. Several years ago, he opened his own business, Legal Process Center, in Orange, providing legal services for attorneys — like research, interpreting, transcribing, and marketing. He and his wife, Linda, recently bought a house for themselves and their three children in Riverside county.

"I've found a niche. This is my place," Arce says of his career. "There are risks and responsibilities I take every day. I love the thrill of it, and I love working with attorneys. At one point I thought about going to law school, but then I would have to look for an Oscar, and there's not a lot like me out there!"

So how much does this paralegal professional love Irvine Valley College? "I've probably driven at least five people up to the registrar's office and helped them get started," he says. "It's a great campus, a beautiful school, and it offers wonderful support."

*For more information about Irvine Valley College, visit [ivc.edu](http://ivc.edu).*



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*continued from page A-45*

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The presentation of reports to senior or secured creditors should be treated with extreme care. Management must emphasize timeliness and transparency.

#### 6. Be Honest with Yourself and Others.

The sooner management faces the reality of a challenging situation, the better prepared it will be to obtain a solution. If you try to fool yourself and those around you, you'll ultimately experience failure. While painful, recognizing and dealing directly with the problems at hand lead to a better result.

#### 7. Be Open to the Assistance of Professionals.

It is near impossible for businesses to track and understand the increasingly complex factors affecting corporate finances, marketing, and virtually every other aspect of management. Seeking the advice and counsel of knowledgeable, experienced outside "specialists" such as counsel that specializes in financial restructuring can be crucial to a company's survival.

These principles form the foundation of a sound business that can adapt quickly to the unexpected. Business owners and operators should view these fundamentals as guidelines to follow at all times, irrespective of whether the company is in trouble.

**Richard H. Golubow** is a founder and managing partner of Winthrop Couchot Golubow Hollander, LLP, a law firm devoted to complex bankruptcy, insolvency and financial restructuring. For more information, contact Mr. Golubow at (949) 720-4135 or [rgolubow@wcghlaw.com](mailto:rgolubow@wcghlaw.com).



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## In Honor of the Pacific Dental Services® Legal Team

Pacific Dental Services congratulates Daniel J. Burke, Senior Vice President, Platform Strategy & General Counsel, and the PDS legal team on their nomination for the 2019 In-House Legal Team award.

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## Taco Tuesday Anyone?

By Tyson K. Hottinger and Aditi Rijhsinghani

Lebron James' love for Taco Tuesday is well-known among his fans. The craze began in May when he posted a video of his family getting ready for Taco Tuesday. Since then, King James has posted weekly videos announcing to his fans "You know what it is! Taco Tuesdayyyyyy!" and has made special "It's Taco Tuesday" T-shirts. Fans are so accustomed to seeing his Taco Tuesday posts that when Lebron didn't post one Tuesday they bombarded social media conveying their disappointment and wondering if he was okay.

On August 15th LBJ Trademarks LLC filed an application with the U.S. Patent and Trademark Office (USPTO) on behalf of Lebron seeking a trademark on "Taco Tuesday." The application sought protection for the use of Taco Tuesday for "advertising and marketing services", "podcasting services", "online entertainment services", and "downloadable audio/visual works".

Lebron's attempt to trademark Taco Tuesday was met with criticism. Many fans, especially those in Los Angeles, claimed "he definitely doesn't know L.A." and "chalked up Lebron's move to a newcomer's naivete". They understood Taco Tuesday to be a national slogan and were unhappy with Lebron's attempt to trademark it.

But Lebron was one step ahead of the critics. He knew the importance of employing creative lawyers and implementing a forward-looking trademark strategy. He also likely knew about Taco John's in Wyoming who had obtained a registered mark on Taco Tuesday thirty years ago.

On September 11<sup>th</sup> the USPTO refused registration of the mark "Taco Tuesday" stating that "the applied-for mark is a commonplace term, message, or expression widely used..." The USPTO attached a number of websites and articles as evidence that "Taco Tuesday" is "used by a variety of parties to express enthusiasm for tacos by promoting and celebrating them on a dedicated weekday."

According to a spokesperson for Lebron, "finding 'Taco Tuesday' as commonplace achieves precisely what the intended outcome was, which was getting the U.S. government to recognize that someone cannot be sued for its use." Unlike what Los Angeles fans believed, the application was not filed to monetize 'Taco Tuesday', but instead "to ensure Lebron cannot be sued for any use of 'Taco Tuesday.'"

King James is a master on the court and a master of branding. He understands the value in protecting himself from trademark suits and performing due diligence up-front.

Many companies—even sophisticated ones—fail to perform adequate trademark searches to minimize the risk of infringement and maximize the chances of obtaining a valuable trademark. Make the small investment up-front and retain creative and experienced trademark counsel before naming your company, naming a new product, or using a new phrase in advertising.

Tyson K. Hottinger, a partner in the Irvine office of Maschoff Brennan, and is an experienced litigator in a variety of complex commercial litigation and pre-judgement remedies.

Aditi Rijhsinghani, is an litigation associate in the Irvine office of Maschoff Brennan.



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## 2019 Nominees

### **Yemi, Adeyanju, Vice President & Associate General Counsel Providence St. Joseph Health, Irvine**

In under 15 years of practice, Yemi Adeyanju has successfully propelled herself to become the vice president and associate general counsel for the country's third largest health system. She has earned a national reputation as an outstanding healthcare attorney and someone who can combine a keen understanding of the law, sound business judgment and an acute knowledge of health care to achieve exceptional results in the constant shifting sands of the industry. 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.



### **David Buckman, EVP & General Counsel Allied Universal, Santa Ana**

David Buckman, with over 15 years of security industry experience and over 30 years of legal expertise, is responsible for all legal affairs of the company, including strategic transactions, contracts, compliance, corporate governance, litigation, licensing, risk management and labor and employment. His most significant business accomplishments over the past 10 years include proposing, planning and leading AlliedBarton Security Services' (a predecessor to Allied Universal) strategic response to the Affordable Care Act. The ACA's requirements threatened to impose massive, unsustainable cost increases on the business. Working with benefits brokers and internal stakeholders, Buckman helped formulate a benefits strategy that complied with ACA requirements, met the benefits needs of their employees and met the company's financial objectives. The company's approach was featured on the front page of the Wall Street Journal. In addition Buckman led the integration of legal and risk functions of U.S. Security Associates, a company with over 50,000 employee acquired by Allied Universal in 2018.



### **Bernadette Chala, Chief Legal Officer & General Counsel Arbonne International LLC, Irvine**

Since joining Arbonne International in 2012, Bernadette Chala has seen the company double in size and now positioned to grow even further with the recent merger and acquisition by Groupe Rocher. Groupe Rocher is a private family-run business with nine additional and complimentary beauty and well-being products to Arbonne's botanically based beauty, personal care and nutrition products. Arbonne is a global business with sales revenue in excess of 600 million dollars a year. The acquisition of Arbonne strengthens Groupe Rocher's positioning with regard to direct selling channels and given Arbonne's network of over 250,000 active independent consultants. Both organizations are committed to sustainability and Chala has led the legal department to the cloud and away from paper. As general counsel, Chala oversees 25 people on three teams with a great diversity of issues from product compliance, regulatory issues, business ethics and standards, contracting and employment issues. She is a sought after speaker and has presented on issues emerging issues including data privacy, security and brand protection.



### **Alex Coffin, Senior Corporate Counsel Össur Americas, Foothill Ranch**

In his role as senior corporate counsel, Alex Coffin manages a wide range of legal matters at Össur Americas. Over the past year, Coffin led Össur through a number of restructurings and employment disputes, including successful dispute resolution processes. Coffin's litigation work has included managing product liability cases, shareholder disputes, and the recent successful settlement of trademark litigation. Coffin oversees the legal aspects of an active corporate development strategy in Össur Americas and has led Össur through a number of acquisition processes ranging from small asset acquisitions to material cross-border M&A. Coffin has also advised on and managed the company's interactions with a number of federal and state agencies and has proven his strong capabilities in multiple legal aspects.



### **James Dee, Vice President & Assistant General Counsel Pathway Capital Management LP, Irvine**

James Dee has made major contributions to Pathway Capital Management including the expansion of the legal department and deepening the relationship between the company and its Japanese strategic alliance partner; leading the drive among a seven-attorney team to certain conduct business deals in-house; and directing the formation of a dozen fund products for various investors, representing billions of dollars in new capital in the last three years. In addition, Dee has helped the number of lawyers grow from four to seven, and as a result Pathway's capacity to handle everything from private equity transactions to investment adviser regulatory compliance to international marketing efforts has greatly expanded. Dee has also served as the primary architect of nearly a dozen new funds representing major pension plan investments from all over the world. In other words, he designed the investment vehicles holding approximately five percent of the company's nearly \$50 billion of assets under management. Some of these designs involved novel approaches to structure around foreign tax related issues while balancing a portfolio of investments in different currencies.



### **Andrea Eaton, Chief Campus Counsel University of California, Irvine, Irvine**

Andrea Gunn Eaton has served as the chief campus counsel for the University of California, Irvine, since December 2017. In this role, she manages the legal operations for Orange County's second-largest employer, which includes a community of over 60,000 students, staff, and faculty. Eaton provides legal advice and counsel to the chancellor and his senior management staff in all areas affecting the university. Her work spans the central campus in Irvine, the UCI Medical Center in Orange, and related university and health operations throughout the region. In her brief time at UCI, she has overseen the successful resolution of several challenging and high-profile matters on terms favorable to the university. Eaton is also a member of the General Counsel of the University of California's leadership team, where she is able to provide UCI's perspective on matters of systemwide import. She recently expanded her team, which now includes five attorneys, with the objective of enhancing the provision of legal services throughout this complex enterprise.



### **Amber Enriquez, General Counsel Earth Friendly Products, Cypress**

Amber Enriquez serves as general counsel and corporate secretary for Earth Friendly Products, a privately held American manufacturer of environmentally friendly cleaning products 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, carbon neutral, and water neutral company to new heights.



### **Aneta Ferguson, Acting General Counsel 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, Ferguson 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. She has been instrumental in refining the company's framework in anticipation and preparation for an expected launch of Avanir's product candidates.



### **Gerald (Jerry) Flannery, Jr., EVP, General Counsel & Secretary Hyundai Motor America, Fountain Valley**

Jerry Flannery, who joined Hyundai in 1987, is the executive vice president and chief legal officer for Hyundai Motor America. He is responsible for all legal matters in the U.S. and during his tenure has guided Hyundai to the best trial record of any automotive manufacturer during the past 20 years. Flannery is widely recognized as an authority on automotive product liability, regulatory and safety matters. He created Hyundai's first safety office in North America and was responsible for developing Hyundai's government relations efforts in the U.S. His work in establishing the Hyundai safety office and increasing the company's focus on safety issues around the world makes him one of the leading experts in automotive safety and product liability in the country. Flannery's leadership at the company goes beyond the legal department. He has been a core part of the Hyundai Motor America leadership team and stepped in and served as interim president and CEO in 2017 when the company needed a leader during one of its most challenging times.



### **Stephanie Franco, Associate General Counsel Delaware Depository, Seal Beach**

Stephanie was the first general counsel at Sports 1 Marketing, where she established a name for herself in the world of sports. Upon her departure, she joined the legal team at Delaware Depository, an industry leader in providing precious metals storage and logistics services to commodity exchanges, IRA custodians, private wealth management firms, bullion suppliers and dealers, and refiners. Being new to the precious metals industry, Franco's role and responsibilities not only include legal, compliance, and business development matters, but she also works as a trader for parent company, FidelityTrade Incorporated and works in their marketing department.



### **Kristin Godeke, Senior Counsel Wells Fargo Bank, Irvine**

Kristin Godeke is the in house counsel at Wells Fargo Bank, starting in April 2016. Prior to joining Wells Fargo she was a partner and associate attorney at Prenovost, Normandin, Bergh & Dawe, APC for eight years. She now has more than 50 bench and jury trials and arguments in front of state appellate and supreme courts. Godeke earned her undergraduate degree from Occidental College and attended Western State University College of Law where she was valedictorian.





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Representation of Lucidworks in securing \$100 million from investors.



Representation of Aspen Medical Products, Inc., in its recapitalization by the Cortec Group Management Services LLC.



Representation of Oaktree Specialty Lending Corporation in its sale of Traffic Solutions Corporation to Sterling Partners.



Representation of AutoCanada in its acquisition of Grossinger Auto Group.



Representation of Cannalysis in connection with its \$22,600,000 Series A financing.



Representation of Microflex Technologies, LLC in a sale of its assets to an affiliate of Carco.



Representation of Ophthalmic Instruments, Inc. in its acquisition by Advancing Eyecare.



Representation of Pro-Dex, Inc. in connection with at-the-market offering of up to \$20,000,000.



Representation of Vereco, Inc. in its acquisition by Stella Point Capital.



Represented NextGen Healthcare in its acquisition of Inforth Technologies.



Representation of Performance Team in connection with its senior secured credit facility.



Representation of Stacy and Witbeck, Inc., in its acquisition of Rail Services Corp.



Representation of Southwind Foods, LLC's acquisition of Desert Gold Food Company.



Representation of Quality Systems, Inc. in its \$26,000,000 acquisition of EagleDream Healthcare Inc.



Representation of Hardin Holdings and Ancon Marine in a joint venture with Budway Enterprises to combine their trucking and logistics business under the MHX brand, and representation of MHX in its refinance with Comerica Bank.



Representation of Academy Medical Equipment, Inc. by United Seating and Mobility, L.L.C. dba Numotion.



Representation of Powersports Support in its sale to ARI.



Representation of Creative Bus Sales, Inc. in its acquisition of the assets of National Bus Sales Inc. and its senior secured credit facility.



Representation of Foundation Building Materials in 17 strategic acquisitions for aggregate consideration in excess of \$250,000,000.



Representation of MSI in its senior secure financing transaction.



Representation of Proof Positive ABA Therapies in its acquisition by Autism Learning Partners.



Represented Benjilock, LLC and its founder, Robbie Cabral, in connection with a Shark Tank equity investment by Shark Kevin O'Leary and a License Agreement with Hampton International.

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## 2019 Nominees

### Thomas Haldorsen, Associate General Counsel Lennar, Irvine

Thomas Haldorsen represents several of Lennar's western region divisions, including Orange County, San Diego, Los Angeles, Central Valley, Las Vegas, Reno, Phoenix, Tucson, Portland, and Seattle, in various matters, including pre-litigation disputes, litigation (e.g., construction defect, insurance coverage, OSHA, and general commercial), and transactional matters. Haldorsen started his legal career at Latham & Watkins LLP in Costa Mesa in 2009. After transitioning to Jones Day, Haldorsen joined the in-house legal department of Lennar, a Jones Day client, in 2014 as counsel. When he joined Lennar, Haldorsen was working primarily on litigation matters for a handful of homebuilding divisions in the western region. Over the past several years at Lennar, his responsibilities have increased dramatically such that he is now considered the point person in the Lennar legal department for numerous regional homebuilding divisions as well as a number of national issues, including safety issues and claims-related issues for Lennar's Multifamily Communities, which operates numerous communities across 19 states.



### Claire Hart, Chief Legal Officer Blizzard Entertainment, Irvine

In the past year, as Blizzard's CLO, Claire Hart has overseen all aspects of Blizzard's legal matters including commercial deals, litigation, privacy, data protection, and employment law related matters. Prior to coming to Blizzard, Hart spent 10+ years at Google in the legal department supporting all aspects of YouTube, Google Play, Google's charitable projects, and Google's emerging market first products. Prior to moving inhouse, Hart spent six years in New York and Silicon Valley with the law firm Weil, Gotshal & Manges LLP as a general commercial and IP litigator. In 2018, Hart was named one of the top 50 most powerful women in entertainment by the National Diversity Counsel. She also serves as an executive sponsor of Blizzard's Women's Council and is active in supporting Blizzard's diversity and inclusion initiatives.



### Burton Hong, EVP & General Counsel CoolSys, Brea

Since joining CoolSys in October 2017, Burton Hong has had a tremendous impact on the company. In less than one year, he settled major class action litigation for a very reasonable sum, played a critical role in the closing of four acquisitions, and is deeply involved in the diligence process of three more acquisitions which CoolSys is on target to close by the end of 2018. From a business process standpoint, Hong led a major overhaul of the contract review process to ensure compliance and mitigate risk for the entire company. Additionally, he developed and



executed a comprehensive national licensing strategy that encompasses all CoolSys companies, and developed corporate governance for all of our subcontractors. Hong's prior and vast experience dealing with large construction projects, human resources, labor relations, and wage & hour compliance, allow him to actively insert himself into strategic discussions and expand his value beyond legal counsel to that of a trusted member of the executive team. Further, Hong handles all of the real estate portfolio and all of the property/casualty insurance as well.

### Nathan Jensen, SVP Corporate Transactions & Chief Legal Officer Clean Energy, Newport Beach

Nathan (Nate) Jensen serves as senior vice president corporate transactions and chief legal officer at Clean Energy. In this role, Jensen identifies, structures and negotiates significant transactions involving Clean Energy and its operating subsidiaries. He also oversees all legal matters. His extensive experience includes particular emphasis on mergers and acquisitions, financing transactions, corporate governance and advising public companies. Prior to joining Clean Energy, Jensen practiced law at Morrison & Foerster LLP. He received a Juris Doctor, magna cum laude, from the J. Reuben Clark Law School at Brigham Young University, and a BA in History, magna cum laude, from Brigham Young University.



### Dimitri Karnezis, Assistant General Counsel Western Digital Corp., Irvine

Dimitri Karnezis is the lead attorney responsible for implementing, staffing, and managing Western Digital's newly-formed Contract Management Organization, which supports worldwide procurement, logistics, research/development, and related commercial transactions. Karnezis manages a 15-member team of attorneys, contract managers, and contract administrators. The Contract Management Organization is a critical project for Western Digital that directly affects the company's bottom line and is an ecosystem that similarly-situated organizations in OC should look to implement. Karnezis also provides support for worldwide sales, customer support, and quality transactions. He has successfully negotiated agreements with the following key business partners: Amazon, Best Buy, Cisco, Dell, Deloitte, Facebook, Fujitsu, Google, Huawei, IBM, Lenovo, Microsoft, NEC, Oracle, Office Depot, Salesforce.com, SAP, Samsung, Verizon, and Walmart.



### James Kuan, General Counsel Technogent, Irvine

James Kuan joined Technogent in April 2018 as general counsel, prior to this he served as executive vice president and general counsel at Greenwave Systems for almost four years. During his time at Greenwave Systems he managed legal function for rapidly growing 300 person market leading IOT SaaS scale up provider enabling network infrastructure connectivity through AXON Platform for global service provider clients through \$90 million VC expansion, corporate development and international expansion with offices in Singapore, Seoul, Copenhagen, and Irvine. In addition, he negotiated all landmark 360 model IP licensing structures with high profile telco clients and chipset vendors enabling smart home, IPTV, OTT, talk device, track my asset, and wireless use cases resulting in accelerated year over year growth. Kuan received his undergraduate degree in Economics/Finance from the University of Washington and also attended the University of Washington School of Law.



### Iris Leong, VP of Human Resources & General Counsel Tawa Supermarket, Inc. (99 Ranch Market), Buena Park

Iris Leong is the vice president of human resources & general counsel for Tawa Supermarket Inc., DBA 99 Ranch Market, in Buena Park, California. 99 Ranch Market is the largest Asian American supermarket chain, with over 6000 employees and 58 stores in seven states nationwide. In her role as the general counsel, Leong oversees all of 99 Ranch Market's legal, compliance and human resources matters. She is the lead counsel and corporate generalist to the C-suite executive officers and division vice presidents on business strategies, marketing initiatives, intellectual property, contract drafting, review and negotiation, and employment related matters in seven states (California, Nevada, Texas, Oregon, Washington, Maryland and New Jersey). Leong established company's first Legal & Compliance department, and oversees litigation management, licensing, food safety auditing, compliance, and loss prevention for the company. She has been with 99 Ranch Market for 11 years.



### Lee Leslie, Chief Legal Officer Auction.com, Irvine

For the past five years Lee Leslie has served as chief legal officer of Auction.com, the nation's leading online marketplace for residential bank-owned and foreclosure properties with over \$50 billion in transactions. Under Leslie's leadership, the company's legal department has evolved into a front office function recognized for innovating new services and helping expand the company's market share. By driving more elements of the real estate transaction online, Auction.com has benefited property owners and investors, and helped to stabilize neighborhoods. The company's profitability has vastly improved during Leslie's tenure and, in 2017, he helped manage the company through its acquisition by T.H. Lee Partners. Leslie is a licensed real estate broker in all 50 states and, after joining Auction.com, launched an internal real estate broker desk at the company to help expand its business and improve its compliance operations. Prior to joining Auction.com, Leslie was the founder and chief executive officer of online real estate services firm HouseTech Real Estate (now an Auction.com subsidiary). Leslie also served as the chief legal officer at LendingTree Loans and LowerMyBills.com.



# CONGRATULATIONS

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## 2019 Nominees

### Tara Martin, General Counsel

#### **Nutrawise Health & Beauty Corporation, Irvine**

Tara Martin is general counsel for Nutrawise Health & Beauty Corporation, a manufacturer and distributor of high quality dietary/nutritional supplements which are sold and marketed under the youththeory brand. She provides strategic and day-to-day legal and business guidance to senior management and staff on a broad range of business and legal matters including regulatory compliance, intellectual property, employment law, worker's compensation, contract management, corporate governance and compliance, sales practices, real estate, risk management and loss mitigation. Since joining the company as GC in July 2016, the company has grown from approximately 65 employees to over 200. Additionally, over that same time period, sales have increased nearly 10 times, and product sales have expanded internationally now selling their products in the UK, France, Spain, Iceland, Canada, and very soon in Japan and Taiwan. Martin is responsible for all aspects of all legal and regulatory compliance both domestically and internationally.



### Keith McGahan, Senior Vice President, Chief Legal Officer & Corporate Secretary

#### **Spectrum Pharmaceuticals Inc., Irvine**

Keith McGahan joined Spectrum Pharmaceuticals as the vice president, chief compliance officer and assistant general counsel in 2016. During his tenure, he has led the development of a best-in-class compliance department of spectrum pharmaceuticals by: implementing comprehensive enhancements to the company's compliance and ethics program, including improving the code of business conduct, involving more than 25 policies and procedures; created a corporate material review committee, publication steering committee, pricing committee, and grants, donations & sponsorships committee; and grew the compliance department from one to four full-time employees; Additionally, he created a corporate training department and strengthened the legal department by expanding the legal team and placing a substantial emphasis on IP and Patents. McGahan successfully negotiated and finalized terms of one of the company's most significant licensing agreements with premier cancer research institute MD Anderson, securing advantageous intellectual property rights related to one of Spectrum's most significant and promising drug candidates. McGahan also manages the company's compliance department, human resources, media, facilities and training departments and over 20 employees, and is deeply involved with the media and commercial teams in the management of the company's clinical assets.



### Alexandru Mihai, General Counsel

#### **Realty ONE Group, Laguna Niguel**

Alexandru Mihai is general counsel at Realty ONE Group, a rapidly-growing, innovative, global real estate franchisor dedicated to empowering real estate brokers and agents. There she established and initiated Realty ONE Group's legal department in 2015, overseen the sale of all Realty ONE Group California operations (seven offices, 1300 real estate agents) in 2019, and oversaw joint venture agreements between Realty ONE and Title, Escrow and Mortgage co's. Mihai has also been a part of the National Association of Realtors General Counsels' Advisory Board since 2017. Prior to joining Realty ONE Group Mihai was a partner at Lynberg & Watkins.



### Kendra Miller, Executive Vice President & General Counsel

#### **BJ's Restaurants Inc., Huntington Beach**

BJ's Restaurants has doubled in size since Kendra Miller started at the company a little over eight years ago. As executive vice president & general counsel, she oversees the Legal, Licensing, Team Member Relations, and Benefits departments. She assumed responsibility for the Loss Prevention Department last year. During her tenure, BJ's now has 206 restaurants in 28 states, hitting the \$1 billion annual sales mark in 2017. She is a director of one of BJ's non-profit organizations, Give A Slice, which provides grants to team members in their time of need. In 2011, she founded BJ's Women's Career Advancement Network (WeCAN), an organization focused on empowering and developing women leaders with the knowledge, skills, and network they need to expand their leadership potential and advance their careers at BJ's. Miller is especially proud of the work she did in evolving BJ's Promise Card and creating a Respectful Workplace training - helping to ensure that BJ's culture continues to be strong as the company grows.



### Michael Moad, Chief Legal Officer

#### **SeneGence International Inc., Foothill Ranch**

Michael Moad joined SeneGence in 2001 after 22 years in a private law practice in Orange County. Moad initially helped to consolidate the structure of the company and its independent distributor sales force, writing the company's policies and procedures and establishing a department to administer those policies fairly and consistently. Currently, Moad and his team oversee the all of the company's legal matters, including its patent rights, trademarks and copyrights. As former president, he worked alongside Founder Joni Rogers-Kante, to lead SeneGence to expand its product line and support its independent distributors in successfully managing and growing their independent businesses. SeneGence® is a privately owned, network marketing company that is in the business of developing and selling personal care products through an independent sales network. In April 1999, SeneGence started with LipSense® Long-Lasting Liquid Lip Color as its premier product. Initially, only six lip colors, a moisturizing lip gloss and a lip color remover were offered. SeneGence now has a complete line of long-lasting cosmetic colors and anti-aging skincare products as well as accessories and boutique items.



### Maria Moskver, Chief Legal & Compliance Officer

#### **Cloudvirma, Irvine**

Over the last 20 years, Maria Moskver has established and built strong legal frameworks at a number of startup companies. In February 2019, Moskver joined Cloudvirma, the leading provider of intelligent point-of-sale (POS) mortgage technology, as the first legal professional on the team. Over the last six months she has built out a legal framework from the ground up that sets a standard for Cloudvirma's legal and regulatory compliance across the industry and safeguards the company and its customers. In addition, she has implemented a compliance management program that holds Cloudvirma accountable for customer protection and developed processes for structuring and advising Cloudvirma on complex transactions, including SaaS agreements, master service agreements, statements of work, NDAs, licensing agreements, joint ventures and partnership agreements. Prior to Cloudvirma, Moskver worked at Covius (fka LenderLive), where she served as general counsel and enterprise compliance officer. Previous to Covius, she served as general counsel and chief compliance officer at Walz Group and helped facilitate its sale to LenderLive.



### Carol Newman, EVP, General Counsel & Corporate Secretary

#### **Confie Seguros, Huntington Beach**

Carol Newman is general counsel and corporate secretary for Confie. She is an action-oriented leader with deep experience in the private and public sectors and all facets of the property and casualty insurance business. Over the past 30 years, Newman has served as chief legal officer for major property and casualty companies including RLI Insurance Company and Chicago Insurance Company/Interstate Indemnity Company. From 1998 to 2007, Newman was the chief counsel for various business units at Allianz-Fireman's Fund Insurance Company. Newman has served as trusted advisor on compliance, governance, regulatory, corporate, litigation, reinsurance, employment and workers compensation. During her 12-year tenure at Chicago Insurance Company/Interstate Indemnity Company, Newman provided legal advice on non-standard automobile insurer, agency/broker and MGA business. She also led the stabilization of a \$20 billion company as acting president and CEO at State Compensation Insurance Fund during a time of transition for CEO, COO and CFO. Newman earned a bachelor's and Juris Doctorate from the University of Illinois. She is admitted to practice law in the states of Illinois and California.



### Linda Park, Vice President, Associate General Counsel & Corporate Secretary

#### **Edwards Lifesciences Corporation, Irvine**

In October 2017, Linda 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 her 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.

Park started her legal career at Gibson, Dunn & Crutcher in 2003 and then in July of 2013, she started her first in-house counsel position as assistant general counsel at Western Digital Corporation, one of Orange County's largest companies.



### Mohsen Parsa, General Counsel

#### **Orange County Soccer Club, Irvine**

Mohsen Parsa has served as the exclusive general counsel for the Orange County Soccer Club (OCSC) since 2013. OCSC is a professional sports organization that has brought both significant revenue to the area's businesses as well as excitement and entertainment to the growing population of soccer players and fans in the region. In addition to ensuring compliance with a series of complex federal, state, and local rules and guidelines applicable to OCSC's business, Parsa's other significant work on behalf of the organization includes, representation in the negotiation and execution of a comprehensive affiliation agreement between OCSC and LAFC, which is the new Major League Soccer expansion team in Los Angeles. Representation of OCSC's owner in a multi-year lease agreement with the City of Irvine regarding Championship Soccer Stadium at Orange County Great Park. As well as, representation of OCSC in sponsorship agreements with Adidas and Dr. Pepper.



### Guthrie Paterson, Chief Development & Legal Officer

#### **TRACE3, Irvine**

Guthrie Paterson is Trace3's chief development & legal officer, and is responsible for corporate development, business development, sales operations, legal and strategic projects. In this role, Paterson leads and empowers teams focused on advancing and growing Trace3's business, as well as securing new and mature business lines. Paterson joined Trace3 in 2010 as its first in-house attorney, and has served the company in a wide range of roles including COO, CFO, EVP, Operations and general counsel. Prior to joining Trace3, Paterson was vice president, general counsel of Comtex, a publicly traded provider of digital news and content technologies, where he led the company's going private transaction. He also served as vice president, general counsel for LeGarde Capital Management, an alternative investment fund utilizing proprietary, automated, quantitative algorithms and machine learning techniques. Paterson began his career as a senior mergers & acquisitions attorney with Jones Day, a global law firm, in its New York and Los Angeles offices, where he advised global public and private companies and alternative investment funds on transformative transactions, securities issuances and complex corporate and commercial matters.





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## 2019 Nominees

### Tracy Porter, Vice President, Legal HCP Inc., Irvine

Tracy Porter has been at HCP for five years, prior joining HCP she served as an attorney for companies such as O'Melveny & Myers, Allen Matkins and Latham & Watkins. HCP, an S&P 500 company, is a REIT that invests in real estate serving the health-care industry in the United States. HCP's portfolio is primarily diversified across the following segments: life science, medical office and senior housing. Porter is responsible for working collaboratively with business leaders and executive management to provide legal guidance on approximately \$1 billion of real estate and other strategic transactions per year. Likewise she guides the development of a healthcare regulatory compliance program for senior housing operating portfolio. In addition Porter selects and actively participates in the company's leadership committees and develops valued relationships with internal business leaders and external legal counterparts. She is effective at leading the team and providing communication, and is committed to supporting the values and culture of the organization.



### Bence Rabo, General Counsel International Vitamin Corporation, Irvine

International Vitamin Corporation (IVC) has been able to deftly navigate the complex issues arising out of the current bi-lateral trade tensions 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 Bence has delivered to IVC since he joined the company as its general counsel in 2017. For more than half a century, IVC has been producing some of the highest quality dietary supplements for leading retailers in the U.S. - as well as nutritional, prescription and OTC products for contract customers throughout the world. IVC's ability to deliver on innovation, quality and supply chain efficiency has enabled us to become one of the fastest growing companies in the nutritional market. Before his appointment as general counsel of IVC in 2017, Bence spent 15 years in the legal department of Danone North American Companies.



### Louis "Dutch" Schotemeyer, Vice President & Associate General Counsel

#### William Lyon Homes, Newport Beach

Louis "Dutch" Schotemeyer joined William Lyon Homes in January 2018 as vice president and associate general counsel. Prior to his position now he was an associate at Newmeyer & Dillion



for two and a half years, and before that Schotemeyer served in various roles for the United States Marine Corps. During his career he has supervised varied (Construction Defect, Bodily Injury, Breach of Contract, Employment, Insurance, etc.) and complex litigation across seven states and 10 different divisions, lead the reorganization of U.S. Marine Corps legal structure in 2011/2012 (400 + Attorneys at more than 17 locations worldwide), and served as head of the U.S. Marine Corps Witness Assistance Program. Schotemeyer received both his bachelor's degree and law degree from the University of Washington.

### Scott Schwartz, General Counsel Delaware Depository, Seal Beach

Scott Schwartz is the current executive vice president and general counsel of Delaware Depository and its affiliates including FidelityTrade Incorporated who provides wholesale and retail services for high net worth individuals, brokerage firms, and precious metals industry participants. Delaware Depository is an Exchange-approved, precious metals depository providing a full range of specialized precious metals custody, accounting and shipping services. Customers include IRA custodians, investment banks, brokerage firms, refiners, manufacturers, commodity trading houses, major retailers, coin dealers and individual investors. Schwartz is admitted to the New York State Bar and State of Arizona Bar, and is also admitted to the Federal Courts for the Southern and Eastern Districts of New York as well as the Second Circuit Court of Appeals.



### Michelle Smith, General Counsel Ambry Genetics Corporation, Aliso Viejo

Michelle Smith serves as general counsel of Ambry Genetics, where she oversees all legal matters for the company and its subsidiary software company (Progeny Genetics). She also provides wide array of legal advice to board of directors and executive management, including guidance on healthcare compliance, corporate governance, employment matters, commercial transactions, and intellectual property. Some of her accomplishments include being a key player in the sale to Konica Minolta in 2017 and post-acquisition integration. Additionally she helped lead the nomination, alongside CFO, of Ambry as the winner of the Association of Corporate Group Orange County's Spotlight M&A Award. Ambry Genetics is a leader in clinical diagnostic and software solutions, combining both to offer the most comprehensive genetic testing menu in the industry. Prior to joining the company, Smith practiced intellectual property law at the international law firm of Jones Day in Irvine, California, and general corporate law at The Patrón Spirits Company in Las Vegas, Nevada.



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Your accomplishments are impressive and we thank you for the significant role you play in the success of businesses within our community.

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*Law360* named Gibson Dunn a **2019 California Powerhouse**, noting that the firm "continued to stand out from the pack in both the litigation and corporate practice areas."



*BTI Consulting Group* named Gibson Dunn to "**The BTI Fearsome Foursome – the most feared law firms in litigation.**" The *BTI Litigation Outlook 2019* report also recognized the firm as one of five Complex Commercial Powerhouses, one of five Complex Employment Powerhouses and a Securities and Finance Standout.



## 2019 Nominees

### Gabriel Steffens, Managing Director & Head of Legal

#### **Nuveen Real Estate (a subsidiary of TIAA), Newport Beach**

Gabriel Steffens joined TIAA in 2006 as senior counsel, and now currently serves as managing director and head of legal for Nuveen Real Estate. Steffens manages a team that supports Nuveen, the 4th largest manager of real estate assets globally, with \$125 billion in real estate assets under management globally, \$75 billion in real estate assets under management in the US, and with professional staff of 300+ across nine domestic offices. Steffens coordinated legal support for the creation of Nuveen Real Estate resulting from TIAA's joint venture and subsequent acquisition of the RE business of Henderson Global Investors to create TH Real Estate, TIAA's acquisition of Nuveen and the embedding of TIAA's RE capabilities into Nuveen and re-branding as Nuveen Real Estate. In addition he oversees transaction platform executing on 100+ discrete transactions per year with average transaction value in excess of \$50 million, and some in excess of \$1 billion. Steffens manages a legal budget of \$15 million per annum.



### Franco Tenerelli, Chief Legal Officer

#### **Landsea Homes, Newport Beach**

Franco Tenerelli is the chief legal officer for Landsea Homes. He is responsible for all of the company's legal matters, and oversees Landsea's transactional, litigation, corporate, and risk management initiatives. In 2018 alone, Tenerelli personally managed and oversaw nearly a billion dollars in real estate transactions. As a result, the company now includes 43 active communities and 3,265 lots across Northern California, Southern California, Arizona and Metro New York. Recently oversaw the acquisition of Pinnacle West Homes, further strengthening the company's presence in Arizona. As a result, Landsea's balance sheet now rivals those of most mid-cap national homebuilders. Prior to joining Landsea Homes, Tenerelli served as regional counsel for Toll Brothers, managing the company's legal affairs for the entire Western United States. During his tenure, Toll Brothers experienced unparalleled growth in the West, and closed the largest transaction in the company's history: the successful \$1.6 billion acquisition of competing California homebuilder, Shapell.



### Robert Tennant, Chief Legal Officer

#### **Veros Credit, Santa Ana**

Robert M. Tennant is the chief legal officer of Veros Credit LLC, a leader in financing for consumers purchasing new and used motor vehicles in the non-prime and sub-prime space. Tennant began his role as in-house counsel for Veros Credit's predecessor, Credit One Corporation, building its Legal Department from scratch. Tennant helped form Veros Credit in 2010, which began as a regional company focusing on the Southern California market and emerged as a national competitor, operating in 18 states. He was promoted to vice president and general counsel of Veros Credit, and built a legal team of associate attorneys, specialists and staff, handling hundreds of litigation files, transactions, and all other legal issues. He also created and oversees Veros Credit's Compliance Department to ensure that the company successfully navigates the complex regulatory and legal issues in the consumer finance industry. As chief legal officer, Tennant manages legal matters and projects relating to the company's primary business, as well as its various affiliates.



### Eli Ticatch, Vice President, General Counsel & Corporate Secretary

#### **BSH Home Appliance North America, Irvine**

Eli Ticatch joined BSH Home Appliance in October 2019, taking the role of vice president, general counsel and corporate secretary. He was previously at Volcom from 2015 to 2019 and during his time he helped build the legal department after the company has been without a dedicated in house attorney for more than three years. In addition he reduced Volcom's risk profile with training programs for business managers regarding intellectual property, contract law, privacy law and other core legal issues with a focus on practical advice and best practices. Ticatch's other undertakings include, revamping Volcom's retail partner agreements and onboarding process, manufacturer agreements and onboarding process, and Human Resources' complaint investigation process. Ticatch also resolved a wide variety of offensive and defensive disputes at the pre-litigation stage, without need for outside counsel. Prior to Volcom, Ticatch worked for Kering, Dell and Latham & Watkins.



### Richard Tilley, Vice President, Secretary & General Counsel

#### **Foundation Building Materials, Tustin**

Foundation Building Materials (FBM) is a specialty distributor of wallboard, suspended ceiling systems, and mechanical insulation throughout North America. Based in Tustin, the company employs more than 3,500 people and operates more than 220 branches across the U.S. and Canada. As vice president, secretary and general counsel, Richard Tilley most recently helped re-finance the company's debt in August 2018 in addition to guiding the organization through its initial public offering in February 2017. Significant deals that Tilley helped orchestrate include, closing a \$325-million acquisition of Winroc Corp. in August 2016, closing a \$575-million bond deal in August 2016, and 12 other transactions ranging in size from \$1 million to \$50 million in 16 months.

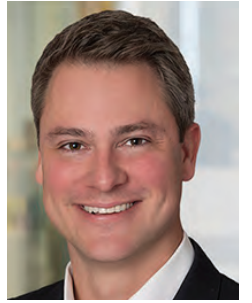


### Chris Updike, General Counsel

#### **Stretto, Irvine**

Chris Updike has nearly 13 years of experience as an attorney in both big law and in-

house roles. He was appointed general counsel at Stretto at age 37 and during the last year, he counseled the company through two mergers, a company-wide rebranding and the launching of a best-in-class claims and noticing business. 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. Previously, he was a senior member of the corporate restructuring groups at Debevoise & Plimpton and Cadwalader, Wickersham & Taft, where he represented various stakeholders in complex corporate restructurings, such as Lyondell, SunEdison and Sears. He is a member of the New York and New Jersey Bar and admitted to practice in the U.S. District Courts for the Southern and Eastern Districts of New York, the U.S. Courts of Appeals for the Second and Third Circuits, and the U.S. Supreme Court.



### Ako Williams, Vice President, General Counsel & Corporate Secretary

#### **Ushio America Inc., Cypress**

Ushio America is a leading provider of light sources and solutions, including general and special lighting, lasers, light sources for scientific and medical applications, semiconductor systems, and other related products and solutions. In her role, Ako Williams oversees all of the company's legal, compliance and corporate governance matters. Since taking on the general counsel position in April 2017, Williams has become an integral part of the company's executive team. As the company has grown in size and its business has become more complex, Ushio America required a GC who is not only a top-notch legal advisor, but also a keen strategist who contributes to achieving business objectives and helps drive the business forward. Williams regularly participates in business review and committee meetings as a trusted advisor to the executive team. She has successfully reduced outside legal costs and other expenses by bringing more legal work in-house, strategically selecting outside counsel, and by consolidating and automating corporate governance and IP portfolio maintenance. She has also boosted the company's compliance program by introducing online training and a compliance hotline system.



### Michael Williamson, General Counsel

#### **Axonics Modulation Technologies Inc., Irvine**

Michael Williamson is a lawyer and mechanical engineer by training, he is a founding member of Axonics management. Axonics is focused on the development and commercialization of novel implantable SNM devices for patients with urinary and bowel dysfunction. Williamson negotiated license agreement when forming Axonics, and recently was the company's principal for the \$138 million IPO in October 2018. He was previously General & IP and counsel at Vessix Vascular. An expert in medical device intellectual property, legal transactions, regulatory, product development and operations, Williamson worked previously at Cordis Corporation/Nitinol Devices and Components.



### Alteryx Inc., Irvine

Christopher M. Lal, Chief Legal Officer

Christina Whittaker, Senior Corporate Counsel

Paul Buccheri, Senior Corporate Counsel

Raphael Bailly, Senior Corporate Counsel, International

Flora Rostami-Bryan, Senior Corporate Counsel

Kim Pham, Corporate Counsel

Andrej Seidel, Corporate Counsel, International

Chris Lal and his team have been involved in many critically important initiatives over the past year. The team is building out a global legal organization capable of managing a rapidly scaling business, including developing customer contracting standards and playbooks and managing risk, compliance, regulatory and governance as a global, public company. More specifically, over the past year or so, the legal team successfully added five additional members to the team, filed the company's fifth patent application, launched an internal patent program to encourage and reward innovation and patent development within the Product department, completed an \$800 million convertible notes offering and partial repurchase of previously issued convertible notes, and completed their largest acquisition to date. The Alteryx business has grown over 50% per year since 2015 and its stock has appreciated over 230% in the past 12 months. Lal is a key member of the executive team driving the company's strategy through his legal organization.



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## 2019 Nominees

### Arbonne International LLC, Irvine

*Bernadette Chala, CLO*

*Karen Tegger, Corporate Counsel*

*Meredith Kohler, Commercial Counsel*

*Sharon Wang, Contracts Counsel*

*Rodney Jeu, Contracts Paralegal*

*Tamara Johnston, Paralegal*

*Donna Finegan, Legal Operations & Executive Admin*

The Arbonne legal team has been instrumental in leading positive change at Arbonne. Arbonne International, creates personal skincare and wellness products that are crafted with premium botanical ingredients and innovative scientific discovery. Arbonne was acquired last year by a European-based cosmetics company and the team has been at the forefront to lead change forward, including: working together to support and maintain core functions of the business, including licensing, notifications and legal compliance, to avoid disruption during times of change. The team also supports a holistic review of current processes and finding ways to optimize processes in light of new ownership and new vision, including process around new product initiatives, business simplification, and sales field engagement.



### Hyundai Motor America, Fountain Valley

*W. Gerald Flannery, Jr., Executive Vice President, Chief Legal Counsel*

*Thomas N. Vanderford, Jr., Associate General Counsel & Executive Director, Litigation*

*Ruth I. Eisen, Associate General Counsel & Executive Director, Corporate Law and Risk Management*

*Jason R. Erb, Assistant General Counsel & Executive Director, Litigation*

*Wilfredo Hernandez, Director, Franchise Law & Dealer Relations & Lead Counsel, Genesis*

*Kurt Beyerchen, Counsel, Privacy*

*Zhanna Bulkina, Senior Corporate Counsel*

*Jamie Giddens, Senior Counsel, Transactional Law*

*Meghan Hoffman, Senior Counsel, Dealer Relations, Business Litigation*

*Myra Kwak-Su, Counsel, Customer Claims*

*Alicia Lebar, Counsel, Risk Management*

*Geoff Moore, Managing Counsel*

*Karen Morao, Counsel, Consumer Litigation*

*Yavonna Morris, Corporate Counsel, Transactional Law*

*Alma Murray, Senior Counsel, Privacy*

*James Nah, Counsel, Litigation*

*Karin Oyadomari, Senior Counsel, Transactional Law*

*Jamison Power, Senior Counsel*

*Samantha Stolfi, Counsel, Litigation*

Hyundai Motor America is the largest automaker in Orange County and is supported by an in-house legal team of nearly 20 attorneys, paralegals and support staff that make it among the preeminent legal teams in the entire automotive industry. The team is responsible for managing all legal and liability aspects of Hyundai's business in the U.S. That includes litigation, corporate law, risk management, dealer franchise



relations, privacy and transactional law, among other disciplines. As Hyundai's business in the U.S. has grown since coming to the U.S. 33 years ago and the auto industry has evolved with more advanced technology and safety features, so has the variety and complexity of the legal matters the Hyundai Motor America team handles. Led by chief legal counsel Jerry Flannery, the team has been at the forefront of product liability, risk management, cyber security and other relevant areas and has successfully defended the company in a variety of high-profile legal proceedings. This has resulted in Hyundai having the best trial record of any automotive manufacturer during the past 20 years.

### Kofax, Irvine

*Greg Mermis, General Counsel & Senior Vice President, Legal Affairs*

*Peter Lawrence, Associate General Counsel*

*Katrina Lanfranco, Corporate Counsel*

*Christian Hefner, Vice President, Corporate Counsel*

*Michele Vitiello, Corporate Counsel*

*Alexander Langenbeck, Corporate Counsel*

*Mike Delaney, Senior Legal Counsel*

*Leona McConnon, Senior Contract Negotiator*

*Robin Visser, Contract Negotiator*

Kofax's in-house legal team has worked with senior business leadership to lead the company through several major ownership and strategic changes over the past several years. Kofax was delisted as a public company, then acquired three times, all while accomplishing its own strategic acquisitions of other companies. The rigors of being in constant due diligence mode, while maintaining the same level of dedicated support to internal clients on a day-to-day basis, is a credit to the Kofax legal department. The department rose to the challenge as their roles changed from being the company's sole corporate legal department, to being under another very large corporate legal department when Kofax was acquired by Lexmark, and then reverting back to being the sole corporate legal department again. During this time, the team supported a diverse and global business (with office locations and employees in over 30 countries), negotiated acquisitions that helped propel the company's growth, and still maintained and constantly refreshed the company's compliance regime (related to such things as FCPA, export control, GDPR, HR/training, product open source, etc.).



### NextGen Healthcare, Irvine

*Jeff Linton, Executive Vice President, General Counsel & Secretary*

*Jim Systma, Vice President, Associate General Counsel & Assistant Secretary*

*Shadi Bank, Vice President, Associate General Counsel*

*Bob Ellis, Senior VP, Associate General Counsel (Remote: East Coast)*

*Michael Schoen, VP, Associate General Counsel (Remote: East Coast)*

NextGen Healthcare is a software and services company that develops and sells electronic health record software and practice management systems to the healthcare industry. The legal team has completed the acquisition of three companies adding additional products and services to the company's portfolio: Entrada, Inc. - a leading provider of cloud-based mobile solutions that drive clinical efficiencies and physician satisfaction, Eagle Dream Health, Inc. - a cloud-based analytics company that drives meaningful in-



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## 2019 Nominees

sight across clinical, financial and administrative data to optimize practice performance, Inforth Technologies - a leading provider of clinical content and specialty-specific workflows for orthopedic and physical therapy practices.

### Pacific Dental Services, Irvine

*Daniel Burke, SVP Platform Strategy & General Counsel*  
*Sarah Petty, Associate General Counsel, Litigation & Employment*  
*Cara Cavanaugh, Associate General Counsel, Platform & Innovation*  
*Michael Williamson, Chief Compliance Officer; Senior Director, Compliance & Ethics*  
*Gary Pickard, Senior Director, Government & Industry Affairs*  
*Erica Fisher, Senior Corporate Counsel*  
*Matt Loecker, Senior Corporate Counsel*  
*Ivan Chen, Corporate Counsel*  
*Tami Santoni, Corporate Counsel*

The PDS Legal Team provides legal guidance and oversight to Pacific Dental Services (PDS), a leading dental support organization (DSO) recognized as one of America's Fastest-Growing Private Companies. The legal department supports over 740 dental practices in 21 states. In 2018 the PDS Legal Team coordinated over 100 litigation/pre-litigation matters related to patients of its supported offices and is on track to exceed that number in 2019. Despite growth, the PDS Legal Team focuses on each independently owned dental practice, one at a time, owner by owner. This involves the management of more than 800+ legal entities (including maintenance of officer consents and annual minutes), generating an estimated 5000+ provider agreements, and closing an estimated 400+ office level buy/sell transactions in 2019 alone. The PDS Legal Team is front line on supporting the Pacific Dental Services Foundation, a 501(c)(3) charitable organization committed to providing oral health care to those in need. Through the PDS Foundation, PDS-supported clinicians have provided more than \$25 million in donated dentistry to underserved patients in need.



### Palace Entertainment, Newport Beach

*Michael Baroni, General Counsel & Secretary*  
*James Boyajian, Sr. Counsel*  
*Holly Roberts, Manager, Risk & Litigation*  
*Tony Difrancesco, Sr. Claims Examiner*

Palace Entertainment owns and operates 22 parks in 11 states, with 600 rides and attractions that provide employment for 10,000 people and draw seven million visitors each year. When Michael Baroni joined the company in 2010, he worked to turn the legal department around and hire a corporate safety expert to focus on park safety matters and reduce the amount of lawsuits and incidents. The legal team at Palace Entertainment now continues to hold litigation costs at less than what the company paid in 2002 when it was half the size. They have continued to decrease workers comp costs and number of claims to an all-time company low. In addition the team works on numerous matters including employment/labor matters including ADA, discrimination and sexual harassment claims; security matters: media crisis management; animal law issues; real estate issues such as easements, permits, construction, environmental, hurricane and flood claims, etc.; safety of guests and employees; a huge array of copyright and trademark issues (ride names, etc.); and liquor license issues.



### Smile Brands, Irvine

*Victoria Harvey, Esq., SVP & Chief Legal Officer*  
*Nick Chang, Senior Corporate Counsel*  
*Joseph Hernandez, Director of Compliance*  
*Alex Kim, Corporate Counsel*  
*Melanie Gomez, Senior Risk 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, the 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. In 2018, the team assisted the enterprise in expanding with the addition of 13 affiliated practices, either through acquisition or opening de novo locations. The team contributes to the organization's bottom line by handling most matters internally, such as smaller acquisitions, contracts and lease review, corporate governance and maintenance of nearly 50 legal entities, investigations, and pre-litigation matters. The in-house legal team also effectively manages risk management,



workers' compensation and litigation costs, including successfully dismissing several frivolous class actions prior to filing responsive pleadings.

### Taco Bell, Irvine

*Julie Davis, Global Chief Legal Officer*  
*Jo Moyer, Executive Asst.*  
*Kerry Endert, Director & Contracts, Sourcing, and IP Counsel*  
*Eric Hayden, Director & Global Franchising Counsel*  
*Jason Oviatt, Director & Litigation, Employment, Real Estate Counsel*  
*Yolanda Karlen, Admin Asst. (Endert, Hayden, Oviatt)*  
*Anna Aberman, Sr. Legal Counsel, Contracts & Marketing*  
*Kristi De La Rosa, Legal Counsel, Franchising*  
*Neha Jaiswal, Legal Counsel, International Contracts & Patents*  
*Kimberly Bernstein, Legal Counsel, Employment*  
*Karen Aucutt, Litigation*  
*Dawn Beatty, Sourcing, Contracts & IP*  
*Carolyn Betpera, Franchise Domestic*  
*Cathy Carroll, Franchise International*  
*Dianne (Di) Errington, Real Estate*  
*Linda Folks, Sourcing*  
*Elba De La Herran, Contracts*  
*Jessika Guerrero, Franchise Domestic & International*  
*Amanda Hazleton, Franchise Domestic*  
*Bernadette Jones, IP*  
*Michelle Jones, HR*  
*Brandon Karkut, Sourcing*  
*Cindi Nichols, Litigation*  
*Angela Radovich, Franchise International*  
*Mary Seiffert, Property Mgmt. & ADA Compliance*  
*Jill Smith, IP*

In an ever-competitive quick-serve food market, Taco Bell is a standout both in the domestic restaurant industry and on the rapidly expanding international markets. Started in 1962 by Glen Bell, Taco Bell is a subsidiary of Yum! Brands Inc. Taco Bell serves more than approximately 2 billion customers each year at approximately 7,000 restaurants, more than 80 percent of which are owned and operated by independent franchisees and licensees. The hallmark of Taco Bell's in-house Legal Team is to deliver efficient, cost-effective services that meet the goals and objectives of the entire organization. Towards that end, the team's achievements include efficient litigation management, risk avoidance and outstanding early claim resolution; contract and sourcing expertise resulting in significant cost benefit; and a top notch franchise team responsible for refranchising, transfers and expanding international business development.



### VIZIO Inc., Irvine

*Jerry Huang, Senior Vice President, HR & General Counsel*  
*Dennis Yeoh, Deputy General Counsel*  
*Caitlin Sanchez, Director, Social Responsibility and Regulatory Affairs*  
*Charles Kooole, Senior Patent Counsel*  
*Aaron Fennimore, Senior Counsel, Trademark & Marketing*  
*Joel Teklu, Senior Counsel*  
*Nida Hasan, Associate Counsel, Privacy*  
*Belinda Jones, Legal Program Specialist - Sustainability*  
*Judy Chow, Litigation and IP Assistant*  
*Brittany Bossel, Social Responsibility Analyst*  
*Matt Wolski, Attorney*  
 2 additional contract attorneys

The VIZIO Legal team is centrally located at VIZIO's headquarters in Irvine, California. The team has grown in lock-step with the growth of the company, which includes: growth in revenue, increase of product features and functionality, and expansion of service offerings. Like many other in-house legal teams, the VIZIO Legal team was very busy this past year. The team saw continued success in its crusade against abusive patent holders, further expansion of their privacy program, and an exciting launch of a new initiative with America's top media and advertising companies in the advertising technology space. The VIZIO brand, including the reputation and quality it represents, is essential to the Company's success. The Legal Department works tirelessly to maintain and protect VIZIO's trademarks both domestically and abroad. While VIZIO has traditionally been a North American brand, it recently launched its first products in Europe. VIZIO may expand in other markets as well, so it is imperative that its trademarks are secured on a global basis. For that reason, VIZIO owns several hundred trademark filings in a hundred jurisdictions around the world.





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California may have great weather, but it's not a hospitable place for employers, with constantly changing laws, and some of the most employee-friendly court decisions in the nation. As CDF recognizes its 25th anniversary this year, we want to thank the individuals and businesses that have trusted the firm to guide them through the quagmire that is California employment law; and the firm looks forward to continuing to counsel and protect California employers for the next 25 years and beyond.



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