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To promote legal excellence, high ethical standards and professional conduct in the practice of law; to improve access to legal services for all people in Ventura County; and to work to improve the administration of justice.

CITATIONS

AUGUST - TWO THOUSAND THIRTEEN



Part 2 of What Every Lawyer Should Know About Electronic Evidence

Page 5

By John Troxel

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PRESIDENT'S MESSAGE: FAREWELL NORDMAN CORMANY HAIR & COMPTON	3
UNIQUE PROGRAM GENERATES REFERRALS FOR LOCAL ATTORNEYS	6
WE READ SO YOU DON'T HAVE TO:	9
THE JEROME H. BERENSON AMERICAN INN OF COURT—COME JOIN US	11
LETTER TO THE EDITOR	12
BRINGIN' IT BACK	13
NEGATIVE VALUE CLAIMS: RECENT DEVELOPMENTS AND STRATEGIES	16
EAR TO THE WALL	18
SPECIAL ANNOUNCEMENT FROM THE BARRISTERS!!	23
CLASSIFIEDS	25
EXEC'S DOT...DOT...DOT...	26

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PRESIDENT'S MESSAGE: FAREWELL NORDMAN CORMANY HAIR & COMPTON

by Joel Mark



"We've hit an iceberg, Captain Smith." I can only imagine how he felt as he went down with the Titanic.

By the time you are reading this president's message, Nordman Cormany Hair & Compton will also have faded into Ventura County history. Its demise occurred on the exact 13th anniversary of my joining NCHC. Fortunately, unlike many of the passengers on the Titanic, it appears that all of our survivors will have landed reasonably well. At least that is my wish.

NCHC was one of Ventura County's oldest and, for quite some time, largest law firms. It was founded in 1939 by **Ben Nordman**, using a Port Hueneme house that he rented for \$1 a month as his office. I never knew Ben, but by all accounts he was a special human being. He established a tradition that permeated NCHC's entire 74-year existence – a tradition of community service, volunteerism, and excellent legal professionalism.

But, let's clear one thing up before we go any further. The "Nordman Award" is not named after NCHC. It is named after Ben Nordman, who established and funded the award. By all accounts, he very well deserved that honor. So, regardless of the fortunes of NCHC, that award must always remain in his name.

Making my decision to move from the Old Country to Ventura County took some thought and investigation. The Old Country's attorney community service award was named in the honor of one of the founding partners of my very first law firm. When I discovered that the same award in Ventura County was named after the founder of NCHC, the decision to join NCHC became so much easier.

Following Ben's leadership, NCHC was a long-time leader in Ventura County. It provided excellent legal service to a wide range of clients, and it supported all the Ventura County communities with its civic involvement. It represented corporations, families, leading individuals and local governmental entities. It helped bring the water that was vital to the County's growth and prosperity. It was a leader in the founding of the United Way of Ventura County, the Ventura County Community Foundation and Cal State Channel Islands. For my entire 13 years at NCHC, it always was a source of great personal pride that I was associated with such a fine law firm.

Everyone has a theory about why NCHC came to its end, but one thing is clear. Its tradition for excellence was its blessing and its curse. Because of its strengths, NCHC tutored many fine attorneys over the years, a great number of them becoming sitting

judges. On the other hand, because it produced so many excellent lawyers over the years, too many were able to seek their fame and fortune elsewhere. In the end, NCHC contributed so much talent to so many other law firms and institutions that NCHC was no longer viable as an economic entity.

The sad part for me is that I will miss all the attorneys and staff whom I was fortunate to work with over the past 13 years – just under one-third of my entire legal career. While there were times that some of NCHC's population could not play as nicely as they might have in our sandbox, overall it was a great group of people to have been associated with. And, I wish all of them much success and happiness in their endeavors after NCHC.

This, I guess, will be a short president's message, as there really is not much more to say. It is a sad thing, but we all know that life goes on, and so will ours. I just regret that such a valuable Ventura County institution is no more. In all events, however, I remain very proud to have been a part of it for as long as I was.

Joel Mark was the managing partner at Nordman Cormany Hair & Compton LLP, in Oxnard, and did go down with the ship. It was quite a ride, except for that darned iceberg.

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Part 2 of What Every Lawyer Should Know About Electronic Evidence

Part 1 was published in the July edition of CITATIONS and can be viewed at www.vcba.org by John Troxel



The Examination

There are several phases to the process when conducting a computer forensics examination:

Evaluation – This focuses on the direction of the investigation, the types of data sought, where the data resides, hardware considerations, how to obtain the data, and financial considerations.

Collection & Preservation – Data must be acquired in a forensically sound manner, and preserved in a format that prevents changes to the data. That means bit-by-bit copies. Sometimes it happens at night after employees go home, or at times it is taken back to the examiner's office for copying. The chain of custody starts here. This phase is critical due to the volatility of electronic data.

Analysis – The data is processed into a forensics application, making it searchable as well as putting the files in categories such as image, spreadsheet, email, etc. The results of analysis must be thorough and repeatable by opposing counsel's expert. A variety of tools are available for analysis and the examiner should use any court-tested tool.

Reporting – This phase usually involves the examiner's report on findings addressing what was discussed at the evaluation phase, as well as other key observations.

The report contains evidence as well as a discussion of the evidence.

Potential Concerns

There are a several issues to be aware of when examining Electronically Stored Information (ESI), which are grouped into Technical and Legal Issues:

Technical issues

Lawyers and employers must have an appreciation for the technical challenges involved with the analysis of computer evidence as it goes well beyond simple data recovery.

Encryption – Encrypted files or hard drives can be impossible for investigators to view without the correct key or password. A password could reside in RAM, which is a reason to do a live acquisition, if possible.

Timeliness – Data is volatile. When files are deleted, they are recoverable until they are overwritten. Continued operation of a computer results in overwriting deleted files.

Hard drive sizes – They continue to get much, much larger. Copying a hard drive, and verifying the copy's integrity, takes about one minute per Gigabyte. That was not a big deal when the average size was 80GB, but now the average is 300-500GB. Processing that much data is time intensive as well.

Data storage – Data is typically stored on a computer's hard drive, but it can often be stored on a network server. More and more people are employing cloud storage, which is online and offsite, and makes recovery of deleted files unlikely. Data is also stored on USB flash drives, SD cards, PDAs, and many other types of devices.

Anti-forensics – There are programs that are designed to defeat potential forensic analyses, such as Evidence Eliminator and Ccleaner.

Legal issues

The Trojan Defense – the user will assert that his computer was hacked by a malicious code that caused certain actions to occur without his knowledge, such as becoming a repository for pornography.

Wasn't Me – the user will state that he left his computer on and logged in, yet unbeknownst to him, someone accessed his computer and initiated the suspected activities.

Some Considerations

Demand for Inspection – When going after data on a subject's computer, consider first the reciprocal demand. Is there anything on your or your client's computer that may prove detrimental to your case? Examine your computer first.

Timeliness – ESI is volatile, so capturing the data as soon as possible is critical to the success of evidence recovery. If the allowance of forensic analysis is being disputed, then at the very least make certain that a forensic copy of the hard drive is made early on to prevent the possibility of evidence being destroyed. Previously deleted files will remain on the hard drive until they are overwritten. If a person downloads movies through iTunes, (very large), then deleted files have certainly been overwritten. Also, hard drives work until they fail, they are like light bulbs. Addressing a failed hard drive can be expensive and sometimes will destroy data.

Continued on page 7

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Unique Program Generates Referrals for Local Attorneys*

by Rachel Coleman

A unique pilot program between the Ventura County Lawyer Referral and Information Service ("LRIS") and the Conejo Valley Chamber of Commerce brings new opportunities to local attorneys and business owners. **Steven Lehat** spearheaded this stimulating program to create a bridge between the needs of local business owners and to generate attorney referrals.

The program provides chamber members referrals to local attorneys through the "Affinity Program," a win-win for business owners and attorneys. Many business owners do not consult with an attorney until there is a problem. The program allows business owners to develop relationships with attorneys to seek guidance throughout the growth of their businesses. Attorneys will also gain the ability to mingle with Chamber members at monthly events such as "Jump Start Networking Breakfasts," "Lunch and Learn" and "Networking at Night Mixers."

To receive referrals from Chamber members, attorneys must be a member of the LRIS. Next, attorneys should contact Nadia Avila at the VCBA at (805)650-7599 and obtain the application for the Conejo Valley Chamber of Commerce Pilot Program. Once enrolled, attorneys will be eligible to receive referrals from Chamber members. In exchange, attorneys should be committed to giving a

discount to Chamber members on a case-by-case basis so that everyone is comfortable based upon their own area of practice and type of legal expertise required.

Attorneys enrolled in the pilot program will also have access to specific programs targeted at the business aspect of building and running a law practice. Each quarter will bring a different state of the art program focused on assisting law firms to function as a business. Attorneys will also have the opportunity to make thirty minute presentations directly to Chamber members at "Lunch and Learn" events based on each attorney's area of expertise. Participating in this unprecedented program will create great opportunities for attorneys not only to obtain new clients, but also to build relationships within the local business community as more than just an attorney, but a long-term trusted advisor.



Rachel Coleman is an associate attorney at David Lehr Law, where she handles criminal and juvenile matters. She is a member of the CITATIONS editorial board.

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Part 2 of What Every Lawyer Should Know About Electronic Evidence

Continued from page 5

Preservation Letter – This plays an important role in a judge considering whether a party acted in good faith in preserving ESI. Directions to not delete anything are inadequate. The key is to make sure that a copy of the hard drive is made immediately. There are numerous examples of preservation letters floating around the Internet, which you should review, but here are a few thoughts:

ESI is not well suited for being printed, so it must be preserved in original format. For example, an Excel spreadsheet when printed will show the data, but it will not show any formulas that may be assigned to certain cells.

The data on hard drives is volatile, and data, such as deleted files, can be easily destroyed by unrelated operations. Mere normal computer use runs the risk of spoliation. In fact, viewing data can effect changes.


Storage media types are always changing. How many 100MB or 250MB ZIP drives are still out there? Bernoulli drives? 3.5” or 5.25” floppies? They have morphed into USB flash drives, digital cameras, PDA/cell phones, etc. The issue coming up now is cloud storage.

One may open and edit files, without deleting them, however, the data can be changed. Unlike editing serial hardcopies, drafts are not always kept on the computer.

The preservation form must be addressed. A forensic copy is best. Get back-ups, if available, as well as passwords for encrypted files.


Analysis may be disputed, so at least get the data copied. Opposing counsel can retain that copy, as can a third-party examiner.

Remove the burden of production by providing a third-party examiner to forensically (and non-invasively) copy opposing litigants’ computers. The examiner can obtain the copies at times that are convenient, such as after employees leave for the day.



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Civil Action H-11-4431

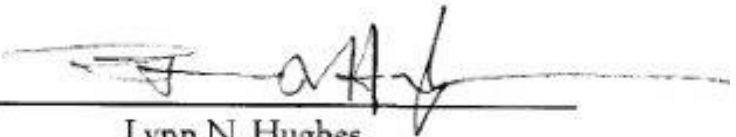
Order Striking Report

The court ordered First Time Videos to report by March 7, 2012. When it had not reported by March 15, the court called its counsel to ask on the status of the case. A few hours later, First Time sent an e-mail to the court's case manager attaching a three week old report. The next day, First Time filed it without a caption or a signature by counsel.

The court is not an ex-girlfriend's Facebook wall. All documents must be filed with the court, captioned, signed by counsel, and with service certified.

The report filed by First Time on March 16, 2012, is struck.

Signed on March 16, 2012, at Houston, Texas.



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THE JEROME H. BERENSON AMERICAN INN OF COURT – COME JOIN US

by Lindsay F. Nielson

“Whatever their contribution to our society, lawyers could be an important source of protein.”

Where can you have a great meal at a wonderful country club, earn CEB credits and mingle with some of the finest lawyers and judges we have here in Ventura County? Ventura County’s Jerome H. Berenson American Inn of Court is a professional organization of about 80 members of the county bar and bench. We are dedicated to advancing competence, civility and camaraderie through our eight monthly meetings a year at Saticoy County Club.

We form eight teams, each of which write and perform an entertaining skit that highlights a legal issue through creativity and good acting. We’ve had Galileo tried (and convicted) under modern evidence law; we’ve had the trial of Lincoln’s assassins; the legal fight over the estate brought by the heirs of Socrates and we’ve had all sorts of small plays that presented with music and with great talent, including **Judge Walsh** in a judicial wig as a judge in 1765 deciding the first freedom of the press case in America.

It is wonderful fun with the opportunity to become acquainted as friends and mentors with many senior members of the bar and several judges who enjoy the experience with the appropriate glass of wine.

If this professional experience appeals to you, please call **Steve Henderson** at the Ventura County Bar Association for more information or see the flyer inside this edition of Citations. Our first meeting for the new year will be on September 26th.

Lindsay F. Nielson is President of the Jerome H. Berenson American Inn of Court and a Ventura-based attorney in private practice.

LETTER TO THE EDITOR

Several attorneys from the Central Coast Chapter of the California Applicants' Attorneys Association, whose members – myself included – represent Californians injured on the job, held a news conference outside Ventura County District Attorney **Greg Totten's** office calling for criminal charges to be filed against a claims adjuster for Sedgwick Claims Services, and against Sedgwick itself, for their cruel indifference to, and reckless disregard for, the health and welfare of Charles Romano, a Ralph's Grocery Co. worker.

Mr. Romano was only in his 40s when he was injured on the job. He had surgery to repair his injuries and afterwards contracted a highly resistant staph infection that attacked his lungs and kidneys and paralyzed him. Sedgwick claims adjuster Teresa McDivitt said the infection was unrelated to Mr. Romano's work injury and refused to pay for necessary care. This lack of needed care led to a horrific downward spiral in his health and ultimately to his death.

Even after a judge determined Mr. Romano's illness was a result of his work injury, the insurance carrier, Sedgwick, continued to refuse medical care.

Why is this not criminal?

The Workers' Compensation Appeals Board (WCAB) found that Sedgwick Claims Management Service, a third-party claims administrator, defied a judge's order to provide needed medical care. Sedgwick faces only a relatively small monetary penalty.

Again, I ask, why is this not criminal?

The WCAB wrote: "We have rarely encountered a case in which a defendant has exhibited such blithe disregard for its legal and ethical obligation to provide medical care to a critically injured worker," the [Workers' Compensation] Appeals Board said. "Sedgwick CMS, acting as claims administrator for the Kroger Co./Ralph's Grocery Co., demonstrated a callous indifference to the catastrophic consequences of its delays, inaction and outright neglect. ..."

To read the Romano decision, visit this web address: <http://www.workcompcentral.com/pdf/2013/misc/RomanovKroger.pdf>.

The fact that Ms. McDivitt's employer profited from Mr. Romano's death makes criminal sanctions even more important. Instead of paying for court approved medical care, Ms. McDivitt's employer is now free of any obligation, as Mr. Romano is dead.

Ms. McDivitt, who has more than 30 years' experience in this field, knew that Mr. Romano's injury included the lungs; that liability for medical care cannot be apportioned; that, even if a medical condition was not occupationally related, the employer must provide care if such care is necessary to cure or relieve the industrial injury; and that she, as a lay insurance claims examiner, could not refuse to authorize medical treatment under the Utilization Review statute on grounds that it was not necessary to cure or relieve Mr. Romano's

injury. Despite all that, Ms. McDivitt and Sedgwick unilaterally denied authorization for a BiPAP, even though she knew that without it, he could stop breathing and die.

Why is there no criminal sanction for defying a judge's order that results in the death of a disabled patient known to be in extremis? When a drunk driver kills a pedestrian, it's manslaughter. When a physician overprescribes painkillers and the patient dies, it's criminal. Similarly, when a workers' compensation insurance carrier acts the same way, it should be a criminal act.

Jill Singer is a Workers' Compensation insurance attorney, and Central Coast CAAA Chapter President.

To read the entire letter to the District Attorney, or for more information, please visit: www.caaa.org

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BRINGIN' IT BACK

by Adam Pollock

With Twinkies hitting the store shelves again, we are reminded that some great things can make a comeback.

In the not so distant past, the Ventura County Bar Association had a Solo/Small Firms Section that served several members. While the section has been dormant recently, it is primed for a comeback and will assume its role in benefitting practitioners in the solo and small firm arena.

Much like other bar sections, the Solo/Small Firm Section aims to help practitioners network and develop relationships with other section attorneys and with the hope that certain skills and knowledge will be shared back and forth. This will not only help us develop strong personal relationships within the legal community, but it will also enhance our ability to more competently serve the community at large (including our clients).

In addition, the section will offer CLE opportunities, with the focus of improving

the practitioner's awareness of ethical issues, legal developments and practical practice management skills, while fulfilling State Bar CLE requirements.

We also hope to use our talents to help the community and will attempt to organize opportunities to serve and uplift those individuals within the county.

The deconstruction of the "big law" model over the last five years has prompted many of us to either downsize to small or boutique firms, or even, as in my case, hang out that shingle and take a crack at being a solo practitioner. This influx has added to the number of already established solo practitioners and small firms that have years of experience and models that work.

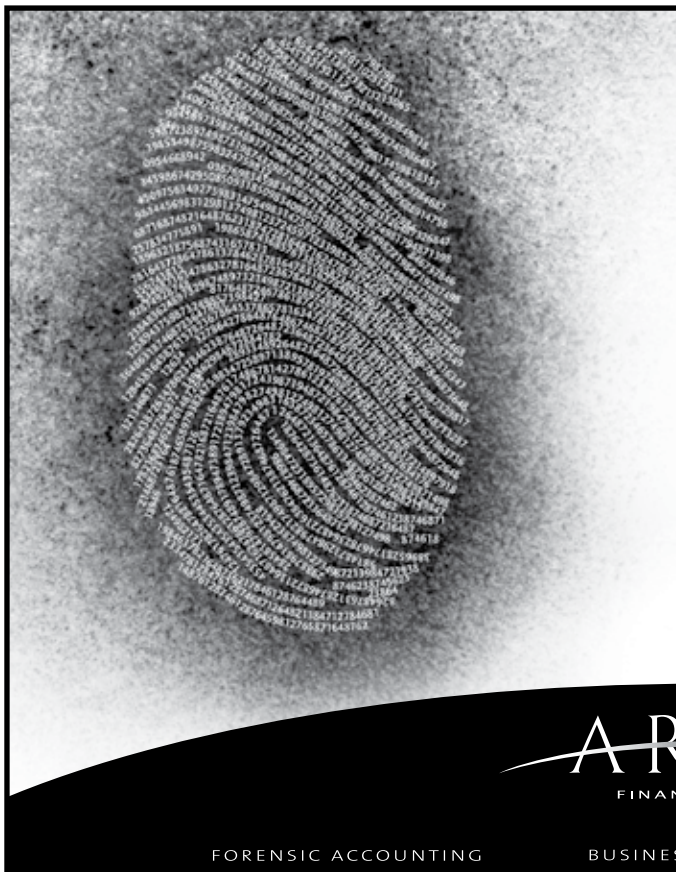
Opportunities are more abundant now than ever to connect with practitioners who are similar to you. The Solo/Small Firm Section not only allows for these connections, but can also offer more opportunities to share experiences, information, and business for

solo practitioners and small firms alike.

We are looking for attorneys to both join the Solo/Small Firm Section and serve on its planning committee. Whether you are a new attorney or one that has been around awhile, you can both contribute to and benefit from the Solo/Small Firm Section. Please consider joining our section (it's free!), becoming a member of the planning committee, and participating in our quarterly events. Help us bring back this great resource and let's get together to laugh, learn and connect with one another.

If you are interested in joining the Solo/Small Firm Section, please email **Adam Pollock** at adam@pollocklawfirm.com or call (818)991-7760 ext. 3.

Adam Pollock was raised in Ventura County and now lives in the area with his wife and twin boys. He is the owner of and sole attorney with the Pollock Law Firm, located in Westlake Village. He is a lifelong Manchester United supporter and an avid California history connoisseur.



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NEGATIVE VALUE CLAIMS: RECENT DEVELOPMENTS AND RISK MANAGEMENT STRATEGIES

by David Laufer, Esq. and Sara Laufer, M.A.

Armed with the class action mechanism, lawyers have recovered billions of dollars for class members, and billions of dollars for themselves. As with any activity where potentially billions of dollars are at stake, all is not well with the class action device. To address class action abuses, Congress enacted the Class Action Fairness Act (CAFA) in 2005, 28 U.S.C. §§1332(d), 1453, and 1711-1715, to “curb perceived abuses of the class action device.” (*Tanoh v. Dow Chem. Co.* (9th Cir. 2009) 561 F.3d 945, 952.)

Of particular concern are settlements where claimants receive little or no compensation for valid claims. 57-89 percent of class actions are resolved by a stipulated judgment according to recent research.

This article discusses recent developments in retail class actions and risk management strategies to reduce the costs of resolving these actions.

Standing Under State Unfair Competition and Advertising Laws

In re Hinojos v. Kohl Corp. (9th Cir. 2013, No. 11-55793); 2013 WL 2159502:

Plaintiff alleged that Kohl’s falsely advertised “on sale” discount prices for goods, but instead charged its regular prices in violation of California’s Unfair Competition Law (UCL), Bus. & Prof. Code §17200 et seq; Fair Advertising Law (FAL), Bus. Prof. Code §17500 et seq; and Consumer Legal Remedies Act (CLRA), Civ. Code §1750 et seq. Kohl’s removed the action to federal court pursuant to the CAFA. The District Court dismissed all claims, determining that Hinojos did not have standing. It held that Hinojos had acquired the merchandise he wanted at the price advertised, and entered judgment for Kohl’s.

Following that dismissal, the California Supreme Court reviewed the standing requirement of the UCL, FAL, and CLRA in *Kwikset Corp. v. Superior Court* (2011) 51 Cal.4th 310, 330. It held that when

a defendant makes a false and material misrepresentation to induce a consumer to purchase its product, there is an economic injury supporting standing. In *Kwikset*, the plaintiff alleged it would not have purchased defendant’s lock set had it known it was not “made in the U.S.A.”

As a result of *Kwikset*, the Court of Appeals reversed the *Hinojos* dismissal:

Hinojos has done everything *Kwikset* requires to allege an economic injury under the UCL and FAL. He alleges that the advertised price discounts conveyed false information about the goods he purchased, i.e., that the goods he purchased sold at a substantial price at Kohl’s in the recent past and/or in the prevailing market. He also alleges that he would not have purchased the goods in question absent this misrepresentation. This is sufficient under *Kwikset*...In sum, price advertisements matter. Applying *Kwikset* in a straightforward manner, we hold that when a consumer purchases merchandise on the basis of false price information, and when the consumer alleges that he would not have made the purchase but for the misrepresentation, he has standing to sue under the UCL and FAL because he has suffered an economic injury.

Copycat Class Actions

Thorogood filed a putative class action for consumers in 29 jurisdictions under laws prohibiting misleading advertising and unfair labeling. He alleged that Sears misled consumers to believe that Kenmore clothes dryer drums were 100 percent stainless steel when a facing on the drum was coated with a ceramic compound and the drum contained “mild” steel that could rust and stain clothes. (*Thorogood v. Sears Roebuck & Co.* (7th Cir. 2012) 678 F.3d 546.)

The district court certified the class. The Seventh Circuit reversed class certification,

and ultimately the case was dismissed, the dismissal affirmed and certiorari denied.

Sears was frustrated. It filed a motion to enjoin any member of the decertified class and its counsel from filing new actions against Sears.

The district court denied the injunction and Sears appealed. The Seventh Circuit reversed. The U.S. Supreme Court granted certiorari, vacated the Seventh Circuit’s order and remanded in light of *Smith v. Bayer* (2011) 131 S.Ct. 2368, which held that denial of a class certification motion does not preclude a state court from ruling on a class certification motion filed by a plaintiff who was not a party to the decertified federal class action.

Judge Posner ordered the district court to vacate the injunction barring new actions, commenting, “Sears will have to tread one or more of these paths if it wants relief from this copycat class action and perhaps more such actions to come; we can’t save it.”

Murray v. Sears, Roebuck & Co., No. 09-05744 CW was filed by the lawyers representing Thorogood, on behalf of a putative member of the *Thorogood* class. District Judge Wilken allowed the plaintiff to file an amended class action complaint which “includes allegations sufficiently different from the *Thorogood* complaint.” Murray’s motion for class certification remains under submission.

Attorney Fees in Coupon Settlements

In Re: HP Inject Printer Litigation (9th Cir. 2013, no. 11-16097); 2013 WL 1986396.)

Plaintiffs in consolidated class actions alleged that HP marketed and sold printer cartridges by misleading consumers. After five years of aggressive litigation, the parties proposed a stipulated settlement that provided \$5,000,000 in e-credit redeemable for printers and supplies at HP’s web site; additional disclosures to remedy the

business practices challenged; payment up to \$950,000 for class notice and class administrative costs; and up to \$2,900,000 in attorney fees and litigation expenses.

Over formal objections, the district court modified and approved the settlement as modified, but the Ninth Circuit reversed because “[u]nder Section 1721 of CAFA, a district court may not award attorneys’ fees to class counsel that are ‘attributable to’ an award of coupons without first considering the redemption value of the coupons. A district court may, however, award lodestar fees to compensate class counsel for any non-coupon relief they obtain, such as injunctive relief.”

Attorney Fees in Attorney General Enforcement Action

In Re Tobacco Cases I (2013) 216 Cal. App.4th 570:

R.J. Reynolds appealed from orders finding the People prevailed in an action to enforce a consent decree that provided for attorney fees to the prevailing party, and awarding contractual attorney fees of \$2,943,920.63. The Court of Appeal held that the People were entitled to attorney fees calculated at market rates for the San Francisco Bay Area, where the assistant attorney generals’ offices were, instead of the market rates of attorneys in San Diego where the enforcement action was tried. The Court of Appeal also held it appropriate to compare the fees sought by the Attorney General to the amount the defense attorneys billed.

Retailers’ Voluntary Recall and Replacement of Defective Product Bars Class Certification

In Re Aqua Dots Products Liability Litigation (7th Cir. 2011) 654 F.3d 748:

A putative class of purchasers of contaminated children’s toys moved to

Continued on page 19

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NEGATIVE VALUE CLAIMS: RECENT DEVELOPMENTS AND RISK MANAGEMENT STRATEGIES

Continued from page 17

certify the class. In opposition, defendants submitted evidence that as soon as they learned of the contamination, they published a recall notice, offered to replace the defective toys, and gave refunds to purchasers who demanded them. The District Court denied class certification because the substantial costs of the legal process made a suit inferior to a recall as a means to set things right.

The Court of Appeals affirmed, noting that “[a] representative who proposes that high transaction costs (notice and attorneys’ fees) be incurred at the class members’ expense to obtain a refund that already is on offer is not adequately protecting the class members’ interests..”

Risk Management Strategies for Retailers

Here are several suggestions to explore for reducing the risk of retail class actions:

1. Modify credit card agreements and expand the arbitration clause to include the retailer.
2. Identify decision makers who are in control of activities that are likely to cause consumer complaints, implement accountability metrics and institute in house customer complaint resolution procedures that maintain the customer’s good will.
3. Monitor retail class actions filed against your competitors; review and change as necessary business practices alleged to be unfair, deceptive, and a violation of law in the competitor’s lawsuit.
4. Monitor and respond to all pre-litigation notices alleging violation of consumer laws and consider voluntary compliance.
5. Review a product satisfaction guarantee program that requires notice of any defect or claim of misrepresentation, opportunity to cure, and informal internet-based resolution as a condition precedent to legal actions.
6. Secure indemnity agreements, become an added insured under all vendors in the distribution, supply and manufacturing chain and purchase advertising, label and packaging insurance.

Conclusion

The myriad substantive laws that plaintiffs allege as violations that catalyze class actions require due diligence in a firm’s distribution and marketing procedures to make management accountable not only for sales but also for the costs of errors resulting in the defense and resolution of class actions.

David Laufer is a former general counsel of a public company now focusing his practice at Burke, Williams Sorensen LLP on class actions, franchise disputes, insurance coverage, Prop 65 and risk management.

Sara Laufer is a demographer researching disparities in justice, and the socioeconomic and health policy implications of hearing loss among the non-elderly population.

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8:30 - 9:15 a.m.	Registration & Continental Breakfast		
9:15 a.m.	Announcements		
9:30 – 10:30 a.m.	Keynote Speaker: Dr. Stuart Banner, Norman Abrams Professor of Law, UCLA School of Law Topic: “The Baseball Trust: Testing the Commerce Clause” [1 hour ETHICS MCLE]		
10:30 – 11:00 a.m.	Vendor Viewing		
11:00 - 12:00	Breakout Session 1A Lori Edmonds, Paralegal The Walt Disney Company Topic: “The Glamorous? World of Motion Pictures/ Entertainment Law”	Breakout Session 1B The Honorable James E. Herman, Judge of the Santa Barbara County Superior Court Topic: “E-filing and Technology Updates in SB Superior Court and Judicial Council of California”	Breakout Session 1C Paul A. Graziano, Partner Allen & Kimbell, LLP Topic: “Trustee’s Fiduciary Duties, Including Duty to Inform Beneficiaries & Trust Accountings”
12:00 - 12:45 p.m.	Picnic Lunch & Vendor Viewing		
12:45 - 1:45 p.m.	Breakout Session 2A Bradley E. Lundgren, Partner Allen & Kimbell, LLP Topic: “The California Revised Uniform Limited Liability Company Act: Who Should Care and Why?”	Breakout Session 2B Susan F. Petrovich, Partner Brownstein Hyatt Farber Schreck, LLP Topic: “Top 10 Things That Trigger a Legal Malpractice Lawsuit” [1 hour ETHICS MCLE]	Breakout Session 2C Jackie Coash, Paralegal & Naomi Dewey, Principal Buynak, Fauver, Archbald & Spray LLP Topic: “The Art of Civil Discovery – No Bullies Allowed”
1:45 - 2:15 p.m.	Vendor Viewing		
2:15 – 2:30 p.m.	Vendor Prize Drawings		
2:30 – 3:30 p.m.	Breakout Session 3A The Honorable Thomas P. Anderle, Judge of the Santa Barbara County Superior Court Topic: “What the Family Law Judge Wants You To Know”	Breakout Session 3B Rachel Van Mullem, Sr. Deputy County Counsel, County of Santa Barbara Topic: “CEQA and EIRs”	Breakout Session 3C Barbara L. Liss, Paralegal Law Office of Christopher C. Jones Topic: “Climate Changes in the Law and How They Affect You”
3:35 – 4:35 p.m.	Wrap Up Session: The Honorable Paul H. Coffee, Retired Associate Justice of the California Court of Appeal, Second Appellate District, Division Six Topic: “The Duty of Candor in the Appellate Court” [1 hour ETHICS MCLE]		
4:35 – 5:35 p.m.	Wine and Cheese Reception / Docent Led Private Courthouse Tour		

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Special Announcement from the Barristers!!

by Brier Miron

The Ventura County Barristers Board is happy to announce the following additions to the legal community:

Eloise Zucca Adams was born on March 11, 2013 to parents Tom and Kelly Adams. Baby Eloise weighed 8 lbs 10 oz. **Tom Adams** is the partner of Law Offices of Thomas G. Adams in Ventura.

Jackson McCallum Purcell was born on May 2 to parents Matt and Leanne Purcell. Baby Jackson weighed 8 lbs 2 oz. **Matt Purcell** practiced law in Ventura County, but recently moved to Washington.

Hazel Lorraine Wood was born on May 4 to parents Stephen and Jana Wood. **Stephen Wood** is an associate at Cunningham Legal in Camarillo.

Benjamin Zachary Hopstone was born on May 30 to parents Joshua and Michelle Hopstone. **Joshua Hopstone** is an associate at Ferguson Case Orr Paterson LLP in Ventura.

And see Execs... on page 26 for other VCBA birth announcements.

Upcoming Barristers Events for August:

The next Barristers event will be the Wine and Cheese Mixer on August 22 at 5:30 pm held at Ferguson Case Orr Paterson, LLP at 1050 S. Kimball Road, Ventura. The Wine and Cheese Mixer is an event that introduces Barristers seeking mentorship and guidance to experienced attorneys. The wine and beer will be provided compliments of The Wine Rack and Anacapa Brewing Co.

On September 19, the Barristers will hold their annual Judges Pizza Night from 5:30 to 8:00 pm at Café Fiore at 66 S. California Street in Ventura. Judges Pizza Night is an opportunity for Barristers to meet and mingle with the judges and justices of Ventura County. This is a Barristers-only event.

Brier K. Miron is an associate at LightGabler in Camarillo, practicing employment law.

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Will for Eugene Henry Bakke / Dawn Vasina sought – DOB: 5/11/1928, DOD 4/12/2011. Mr. Bakke was a long time resident of Oxnard prior to his death. He was retired from the Navy and worked at Raytheon as a master engraver during most of his adult life, and was an avid sailor and golfer. At the time of his death he was married to Patricia Lucille Bakke, his second wife. He had one daughter of his first marriage, Donna "Dawn" Jean Bakke, later known as Dawn Vasina. Ms. Vasina was told prior to her father's death that he had prepared a Last Will and Testament, and she is now attempting to locate that document as evidence in a quiet title action involving Mr. Bakke's former residence at 2251 Natalie Place, Oxnard, CA 93030. If you or another attorney in your office prepared the Last Will and Testament of Eugene Henry Bakke or have any knowledge regarding this missing Will, please contact Deborah Meyer-Morris of the DK Law Group at (805)988-4848 or dmm@dk4law.com, so that we may obtain a copy of the Will. Thank you.

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And where did they land? **Bill Hair** is Of Counsel at Musick, Peeler & Garrett. *w.hair@mpglaw.com* or 418.3100...**William Winfield** is at Lowthorp, Richards and may be reached at 981.8555 or *wwinfield@lrmmt.com*...**Ramon Guizar** also has accepted a position at Lowthorp and can be reached at *rguizar@lrmmt.com*...**Ken High** will be Of Counsel there. **Brier Miron** and **Anne Larsen** snagged associates' roles with LightGabler and their respective contact info is *bmiron@lightgablerlaw.com* and *alarsen@lightgablerlaw.com*, 248.7418...**Sylvia Soto** and **Laura Withrow** are now partners at **Nelson Comis Kahn & Sepulveda**. Both may be reached at 604.4100...Starting in August, **John Andersen** will be a partner at Ferguson Case Orr & Paterson, LLP... Billing rates increased 3.1 percent for law firm partners last year, while associate rates jumped 7.4 percent. The average 2012 hourly billing rate was about \$536 for law partners and \$370 for associates, according to the analysis by TyMetrix Legal Analytics and CEB. Partners in New York City had the highest average billing rate – about \$756 per hour – while the practice area with the highest billing rate was finance and securities...Long time family law attorney **Judith Wong** passed July 1, and Judy's "Luau of a Lifetime" was held July 6...

California Young Lawyers Association representatives for the State Bar of California include two from Ventura County – **Katie Hause Becker** and **Alfonso Martinez**... Indiana University's Robert H. McKinney School of Law is planning to remove the name of benefactor William Conour from its atrium after the lawyer pleaded guilty to federal wire fraud July 15. Conour was accused of diverting \$4.5 million in client money for personal and business expenses. IU announced they intent to give

\$450,000 in donated funds from Conour to a compensation fund for his victim...In addition to all the Barristers births (see p. 23), **Andres Garcia** became a daddy again June 29 with a newborn lad named Christian Roberto and weighing 8 pounds and 1 ounce, with "Michael Phelps hands and feet." Momma Veronica and big brother Gabriel doing well too...

Adam Pollock has agreed to chair and revive the Solo/Small Firm Section and is seeking a few other lawyers to serve on the steering committee. Contact Adam at *adam@pollocklaw.com* or 818.991.7760. This may be a great resource for lots of folks, so contact Adam...The bar's Director of Member Services, Nadia Avila, also coordinates our Mandatory Fee Arbitration Program. She is in some need for lawyers to serve as volunteer arbitrators assisting in the settlement of fee disputes between lawyers and their clients. Reach out to Nadia at 650.7599 or *bar@vcba.org*...Grennier Law, PC is now located at 5700 Ralston Street, Suite, 202, Ventura, 93003. Phone and emails remain the same...**Mark Barney** is the proud poppa of a strapping 8 pound 14 ounce boy named Duncan James. Lawyer mom, **Ellen Murphy**, doing fine and quips, "Keep your hands and feet away from his mouth while he is eating."...

Maria Godinez, paralegal extraordinaire with A to Z, has been named Paralegal of the Year by the Ventura County Paralegal Association. She has been with the firm since 2008 serving primarily the Probate and Estate Planning Department...The Southern California Institute of Law is seeking a lawyer to teach Legal Research for the Fall Term beginning August 20. There are 15 weeks of classes that meet once per week and pays \$125 per class. Opening in Santa Barbara as well. Contact Stanislaus Pulle at *stanpulle@yahoo.com*...A Tennessee lawyer has filed a federal products liability lawsuit against Apple Inc., contending that the company is strictly liable for selling "unreasonably dangerous or defective" electronic devices that lack pornography filters and do not adequately warn customers about the dangers of surfing the Internet. Chris Sevier says in the complaint he filed in June in Nashville that he inadvertently made a typographical error when typing Facebook.com into the Mac Book Pro he had purchased at an Apple store in Tennessee. As a result, he alleges, he was connected to F**kbook.com,

an adult site that "appealed to his biological sensibilities as a male and led to unwanted addiction with adverse consequences," according to the *Huffington Post*. His suit, which also asserts claims for fraudulent misrepresentation and emotional distress, seeks jurisdictional damages of more than \$75,000, medical expenses, attorney's fees and a court order requiring Apple to install porn blocking software on all Apple devices that could not be removed by anyone under the age of 18...

Philip Garrett Panitz is now a published author. His first novel, "Lost in Key West," was released in June and is available online through Barnes and Noble and Amazon. It is a fictional story of two people running away from their lives, who meet up in Key West, Florida. Ultimately their past catches up with them. It is a story of suspense, mystery, adventure, love, lust, alcohol and starting over. Or as Phil says, "It was my first and maybe only novel so I had to throw in the kitchen sink."...Deputy District Attorney **Erik Nasarenko** has announced his candidacy for the Ventura City Council which will be decided November. He has been a DDA for five years. *eriknasarenko.com*...

Ted England is currently playing on an Over 65 slow-pitch softball team named the Tequila All-Stars and has been playing for this team for 30 years at a local, regional and national level including winning a National Championship in Phoenix in 2008. When asked what position he played, Ted quipped, "anywhere they let me." The local league has six teams from all around the county, so if you are interested Ted may be reached at 659.6800 or *tengland@scoplw.com*. I'm told **Anson Whitfield** was a "geriatric marvel" and played softball past his 80th birthday, hanging up the cleats recently...

Steve Henderson has been the executive director and chief executive director of the bar association and its associated organizations since November 1990. He recently spent his son Sean, 21st birthday in Las Vegas and only regrets one evening. Henderson may be reached at *steve@vcba.org*, FB, Twitter at *stevhendo1* and *vcba1*, or better yet, 650.7599.

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Wifey the day before
Baby Victoria!



Joey celebrating his
new baby sister's
Arrival with some cake!



Baby #9 – Victoria Kathryn Joy Lehr arrived early on May 6 at 8:15 pm! She weighed in at 6 pounds, 3 ounces. After a brief stay in the NICU, Mom and Baby are at home!

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