

VALLEY LAWYER

AUGUST 2018 • \$5

A Publication of the San Fernando Valley Bar Association

Remarkable Tails: Bar Members & Their Pets



**Gas Station
Franchises:**
Federal and California
State Regulations

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Election
Pamphlet
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Expand Your Horizons

THOUGH I TOUCHED ON THIS IN AN EARLIER column, I continue to get questions about what our Association does. So I thought I'd offer additional details.

The SFVBA exists to support you and other legal professionals in our Valley, to enhance the image of our profession, and to facilitate access to lawyers and the courts for members of our community. How does the Association do this? In myriad ways...

Practice Area Sections

There are eleven sections that convene regularly throughout the year—Bankruptcy Law, Business Law & Real Property, Criminal Law, Employment Law, Family Law, Litigation, New Lawyers, IP, Probate & Estate Planning, Taxation Law, and Workers' Compensation. The Section meetings offer opportunities to meet and mingle with other lawyers in specific practice areas and occasionally pick up MCLE credit.

Committees

The Attorney Referral Service, Bench-Bar, Budget & Finance, Editorial, Inclusion & Diversity, Mandatory Fee Arbitration, and Membership & Marketing Committees also meet regularly. The Association is always looking for members interested in working on committees and bringing new ideas to the organization. Committee work is a great way to contribute to the betterment of our profession and learn more about the SFVBA.

Valley Bar Network (VBN)

Valley Bar Network is a relatively new, and overwhelmingly successful, networking program sponsored by the SFVBA. Currently, the VBN meets the first Monday of each month, in an informal "happy-hour" setting from 5:30 to 7:00 p.m. and provides a great opportunity to visit, exchange leads, share anecdotes and, occasionally, hear guest speakers. The VBN is growing and soon expects to have additional groups meeting at different times and locations in the Valley. Guests are always welcome!

Attorney Referral Service (ARS)

Our Attorney Referral Service is a big part of what we do. Currently, we have over 100 ARS members with expertise in a wide variety of practice areas. On average, the ARS receives about 500 inquiries a month from members of the public, as well as other lawyers, looking for a referral to a qualified

ALAN E. KASSAN
SFVBA President



akassan@kantorlaw.net

attorney in a particular practice area. The ARS staff vets the inquiries and then refers them to ARS panel attorneys at the rate of approximately 175 referrals/month. If you are interested in joining the ARS referral panel, contact Rosie Soto Cohen at the Bar offices at (818) 227-0490, ext. 2104.


Board of Trustees

The SFVBA is governed by a Board of Trustees who meet monthly to manage the Association's business. In last month's *Valley Lawyer*, we introduced you to nine candidates running for Trustee in this month's election. In addition to encouraging all members to vote, I want to point out there is nothing mysterious about being a member of the Board of Trustees. If you would like to become more involved, and Committees or Sections don't sound like a good fit, jump right in and run for a seat on the Board next year.

Valley Community Legal Foundation (VCLF)

The VCLF is the charitable arm of the SFVBA. Its sole purpose is to raise funds for law-related programs and projects that benefit our community, while promoting our profession and expediting community access to the courts. VCLF programs include assisting children, families, and domestic violence victims; recognizing and honoring the achievements of law enforcement and firefighters; and providing scholarships to students who demonstrate a commitment to law-related studies.

In addition to the activities above, we publish the award-winning monthly magazine, *Valley Lawyer*, which offers opportunities for our members to publish learned articles, and free access to high-quality legal research through Fastcase, as benefits of membership. Our Valley Bar Mediation Center is on the cusp of becoming a significant provider of mediation services to litigants throughout Los Angeles County, while our Mandatory Fee Arbitration Program provides low-cost solutions to resolving attorney-client fee disputes.

The SFVBA is a busy and vibrant organization, with a multitude of opportunities for Bar members to break away from the day-to-day rigors of the office and become involved in our community. For more information about any of these activities, and to sign up or attend a meeting as a guest, call Liz or Linda at the Bar offices at (818) 227-0490. 



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A Dog's Tale

MICHAEL D. WHITE
SFVBA Editor



michael@sfvba.org

PETS HAVE AN UNTOLD POSITIVE INFLUENCE ON our lives and this month we've given SFVBA members the opportunity to tell us a bit about the dogs, cats, birds, geese, snakes, turtles and chickens (you'll see when you read the piece) that play such a big role in their lives.

While we're at it, let me introduce you to Sam, known over the years to my six grandsons as "Samdog" and "Woof Woof," the latter because of her trademark half-hearted rumble that's more of, well, a woof than a real bark. I have to say, it can be very entertaining when the mailman comes around—a rapid-fire staccato of muffled, deep-throated, monotone suppressions.

We rescued her from the clutches of a cretin in Riverside who had obtained her as a 5-month-old puppy, under the impression that she was a pure-bred Cocker Spaniel; she isn't and she paid the price by being, to say the least, poorly treated. She was underfed, flea ridden, and terrified to approach a food dish for fear of being bullied out of the way by the larger dogs she was caged with.

That was 13 years ago when I was working freelance at the time out of my home office, grinding away the hours moving words around on my computer for a variety of magazines. Sam would quietly pad into the room, slip under



my desk and lay across my stockinged feet. To this day, she lays her forehead on my foot every morning before she ambles off to spend most of the day napping—a pastime that has tempted me to have a sign reading "Warning! Don't Trip Over the Guard Dog" posted outside the house.

Not as spry as she used to be, she's got her issues to deal with, but she's a good old dog, a great listener, a game dame, and, all in all, the best dog in the world.

If gas prices at the pump are a concern, read this month's MCLE article on the state and federal regulations governing the operation of gas station franchises, while Angela Bandich's detailed look at the European Union's recently enacted GDPR rules and the best ways to comply with them is well-worth the time to absorb.

Be sure to invest some time to go over the Election Pamphlet to educate yourselves before you vote on those who've thrown their hats into the ring for a spot on the Bar's Board of Trustees, and take a break to enjoy the creative art

works that garnered well deserved honors in this year's *Valley Lawyer Art Contest*.

As we hope for every issue of *Valley Lawyer*, a good read all around. Woof! 🐾

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SUN	MON	TUE	WED	THU	FRI	SAT
			1	2	3	4
5	 6 5:30 PM CHABLIS RESTAURANT TARZANA	7	8	9 Multicultural Bar Alliance of Southern California Annual Summer Networking Reception LOCATION TBA	10	11
12	13	Board of Trustees 6:00 PM SFVBA OFFICES	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30 DINNER AT MY PLACE 6:30 PM	31

SEPTEMBER 2018

2	 3	4	5	6 Membership & Marketing Committee 6:00 PM SFVBA OFFICES	7	8
9	10 SFVBA ELECTION DAY	11	12 Workers' Compensation Section AME Cross-Examination 12:00 NOON MONTEREY AT ENCINO RESTAURANT New date for this month only due to the holidays. Certified Workers' Compensation Specialist Alan Fenster of Silver & Fenster will discuss the risks and rewards of the AME cross-exam. (1 MCLE Hour)	13 Business Law & Real Property Section Hot Topics 12:00 NOON SFVBA OFFICES The Real Property Section kickoff meeting. Janice Miller and Polina Ross will update the group on the latest going on with cannabis, drones and the recent California Supreme Court decision, <i>Dynamex</i> <i>Operations West v. Superior</i> <i>Court</i> , on independent contractors. (1 MCLE Hour)	14	15
16	17 Probate & Estate Planning Section 12:00 NOON MONTEREY AT ENCINO RESTAURANT New date for this month only due to the holidays. (1 MCLE Hour)	18 Taxation Law Section Taxation of Cryptocurrency Transactions 12:00 NOON SFVBA OFFICES Former DOJ Tax Division Attorney Stephen Turanchik will update the group on cryptocurrencies. (1 MCLE Hour)	19	20	21	22
23	24 Family Law Section Domestic Violence 5:30 PM MONTEREY AT ENCINO RESTAURANT The panel will discuss restraining orders, City Attorney interviews and criminal implications. Approved for Family Law Legal Specialization. (1.5 MCLE Hours)	25	26	27 DINNER AT MY PLACE 6:30 PM Studio City  \$25 to attend	28	29
30						



The San Fernando Valley Bar Association is a State Bar of California MCLE approved provider. Visit www.sfvba.org for seminar pricing and to register online, or contact Linda Temkin at (818) 227-0490, ext. 105 or events@sfvba.org. Pricing discounted for active SFVBA members and early registration.

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Contact Linda Temkin events@sfvba.org or (818) 227-0495 to purchase tickets and sponsorships.

Premier SFVBA

NOW IS THE TIME OF THE year to renew your membership in the San Fernando Valley Bar Association. I would like to share with you the new 2018-2019 membership dues schedule.

The dues table is the product of the Membership & Marketing Committee's months-long effort to streamline our dues structure and provide more value to members. The most noticeable change is the introduction of Premier Membership.

In addition to receiving the benefits available to all SFVBA members—such as subscriptions to Premium Fastcase and *Valley Lawyer* magazine—Premier Members receive membership in all practice area Sections and the Valley Bar Network (VBN), tickets to the Installation Gala and Judges' Night, free self-study MCLE and classified ads, invitation to exclusive events, and much, much more, all for one reasonable price of \$995. The estimated value is \$4,000.

The dues overhaul recently adopted by the SFVBA Board of Trustees also includes consolidating attorney membership categories; free Law Student membership; reduced dues if paid by the start of the fiscal year; and a dues increase for the first time in three years.

Questions about becoming a Premier Member or renewing your SFVBA membership should be directed to Member Services Coordinator Sonia Bernal at sonia@sfvba.org or (818) 227-0032.

SFVBA Bylaws

All attorney members are encouraged to vote in our upcoming Board of Trustees Election. In addition to casting a ballot for your Bar Leaders, next month SFVBA members will be asked to vote to approve the Association's amended Bylaws.

Last fall, President Alan Kassan formed an ad hoc committee to review the SFVBA Bylaws—which were last amended more than five years ago—to examine a few issues. What followed over many months was a dedicated Bylaws Committee—led by Immediate Past President Kira Masteller, Treasurer David Jones, and Trustees Heather Glick-Atalla, Allan Sarver, and Steve Sepassi—methodically combing through the Bar's governing document to not only answer big questions about our mission and governance but also ensure that our Bylaws conform to California's current nonprofit mutual benefit corporations code.

The overhauled Bylaws were approved by the Board of Trustees at its July 10 meeting and will be on the August 2018 ballot for adoption by the membership. In addition to many technical and regulatory updates, the amended Bylaws include the following new mission statement:

The mission of the San Fernando Valley Bar Association is to A.) Foster excellence in the legal profession; B.) Facilitate access

ELIZABETH POST
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Dues (paid by September 30, 2018)

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² SFVBA provides 10+ hours of sponsored MCLE sessions

³ Qualified attorney members pay additional dues of \$400

⁴ Non-Premier Members pay additional dues of \$400

In addition, the new Bylaws expand the SFVBA Board of Trustees

Ballots will be sent to all attorney members the second week of August. The amended Bylaws are available for review on the homepage of the sfvba.org website. I encourage you to take a look and if you have any questions, feel free to contact me at epost@sfvba.org. 

SFVBA Membership 2018-2019

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By reading this article and answering the accompanying test questions, you can earn one MCLE credit. To apply for the credit, please follow the instructions on the test answer form on page 22.

Gas Station Franchises:

Federal and California State Regulations

By David Gurnick and Matthew J. Soroky





In the 1970s, Congress passed the Petroleum Marketing Practices Act and the California Legislature enacted the Franchise Investment Law to safeguard the rights of gas station franchisees. Prior to their enactment, oil companies had leverage over franchise operators who made substantial investments and developed business that they depended on for their income, including unfair early terminations and refusals to renew franchises at the end of their durations.

IN 2013, MOTOR FUEL WAS AVAILABLE AT ABOUT 150,000 locations across the United States. This was a 25 percent decline from two decades earlier when the number of gas stations exceeded 202,000.¹ The number of gas stations is expected to continue to fall and there are many reasons why.²

A scarcity of real estate and rising property values, particularly in metropolitan areas, increasing fuel economy standards, rising fuel prices, alternative fuels, concern for the environment, more hybrid and all-electric vehicles, the growing use of mass-transit, and even motorized scooters,³ all encourage people to drive less and use less fossil fuel. An increasing number of gas stations at large retail stores like Walmart and Costco mean higher volumes of gas can be pumped at fewer stations, while a new app-based business provides delivery of fuel and fill-up at the customer's own location.⁴

For decades, motor fuel has been distributed largely by franchisees. ARCO, Chevron, Exxon, Mobil, Shell, Texaco and Union 76⁵ are readily recognizable franchise brands in California. Suppliers—typically oil refiners like Exxon, Shell and Standard Oil—grant franchises to retailers to operate and supply fuel to branded service stations. This model emerged in the early 1900s⁶ due to the many benefits of franchising the distribution of gasoline. As summarized by a Court of Appeals:

Every pumping station is an advertisement; each bears the name of the oil producer whose gasoline is supplied therefrom, if the retailer honestly observes his bargain. The system is a great convenience to the public; it has increased enormously the ease with which motor drivers may obtain "gas" even in remote and thinly settled districts. It is the only method known or suggested, of keeping before the consuming public the oil manufacturers' trade-mark, and it has largely succeeded the system of distributing oil in barrels, which barrels bore the maker's trade-mark and were practically loaned to the vendees, to be returned empty.⁷

In the 1970s, Congress and state legislators found that relationships between massive oil refiners and individual mom and pop franchise operators were unbalanced.⁸ Refiners had leverage they could use to take unfair advantage of franchisees who may have made substantial investments and developed business that they depended on for their income—including unfair early terminations and

refusals to renew franchises at the end of their durations. To address that imbalance and achieve uniform treatment of petroleum franchisees, in 1978 Congress passed the Petroleum Marketing Practices Act (PMPA).⁹ Eight years earlier, in 1970 California enacted the Franchise Investment Law to regulate offers and sales of franchises generally. This law was amended to apply to agreements between petroleum corporations and gasoline dealers starting in 1975.¹⁰ The state also enacted restrictions on the termination and nonrenewal of petroleum franchises, which took effect in 1976.¹¹

Petroleum Marketing Practices Act

PMPA's "overriding purpose" is to protect petroleum franchisees "from arbitrary and discriminatory terminations or nonrenewals."¹² The PMPA restricts oil industry franchisors in terminating a franchisee before the end of the term, or choosing to not renew a franchise at the end of its term. A franchisor may terminate or not renew a franchise only if there is good cause, prior notice, and opportunity to cure if the good cause is breach of the franchise agreement.

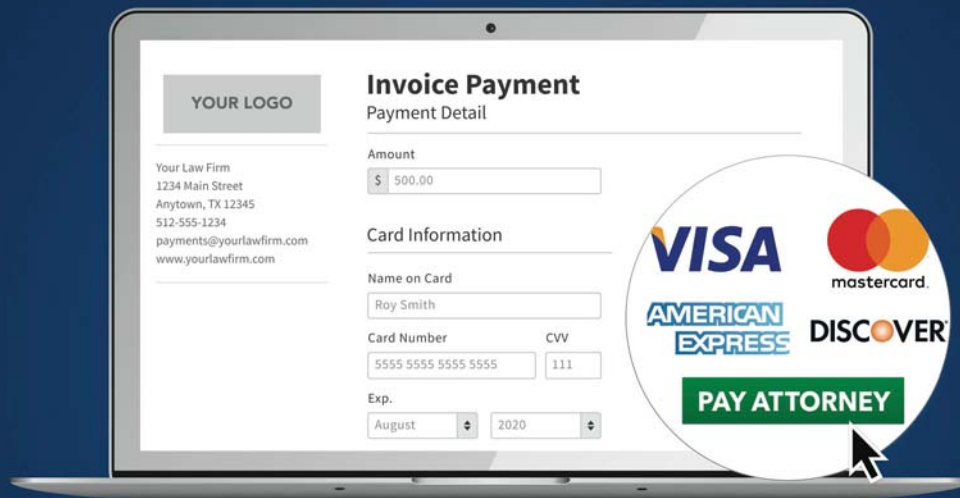
The PMPA creates a cause of action for termination or nonrenewal in violation of the restrictions. The action may be brought in federal court, though there is an unresolved split whether federal courts have exclusive jurisdiction over PMPA claims or whether state courts have concurrent jurisdiction. A federal district court in California has ruled that jurisdiction is exclusive to federal courts,¹³ while the state courts of appeal split on this question.¹⁴ The split of authority also exists in decisions outside California.¹⁵

The Act's remedies include actual and punitive damages, attorney's fees, the costs of expert witnesses and equitable relief.¹⁶ A court can grant a preliminary injunction to protect a franchisee from a wrongful termination or nonrenewal. The standard for granting an injunction is relaxed as a franchisee need only show that they have been terminated or nonrenewed, serious questions on the merits to make the questions fair ground for litigation (a lower standard than the usual probability of success on the merits), and that the hardship on the franchisor from issuing an injunction would be less than the hardship on the franchisee if the injunction were denied (which often can be shown in demonstrating that the franchisee faces loss of its business).¹⁷ The PMPA also preempts state petroleum marketing franchise law, unless the state law replicates the PMPA.¹⁸

Under the PMPA, a franchise is a contract between a "refiner and a distributor," a "refiner and retailer," a "distributor



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and another distributor,” or a “distributor and retailer,” where the refiner or distributor permits the retailer or distributor to use a trademark “in connection with the sale, consignment, or distribution of motor fuel.”¹⁹

A franchise also includes any contract under which a retailer or distributor is allowed to occupy leased marketing premises that are used to sell or distribute motor fuel.²⁰ A franchise also includes a contract pertaining to the supply of motor fuel and the unexpired portion of a franchise, which is transferred or assigned.”²¹

Though many gas stations include convenience stores, the PMPA does not cover “secondary arrangements” or other agreements between the franchisor and franchisee, such as a mini-market or convenience store operations.

The PMPA is structured such that a lawful termination is the exception rather than the rule. It generally prohibits a franchisor from acting to terminate or not renew a gas station franchise.²² The PMPA then provides exceptions under which termination or nonrenewal is permitted.

A franchisor may terminate a franchisee before the end of the agreement’s term in these circumstances:

- A franchisee is not complying with a reasonable, material term of the franchise. In this case, the franchisor must act on the non-compliance within specified time limits

(60 – 120 days). Belatedly raising stale grievances is not permitted.²³

- The franchisee is not implementing good faith efforts to carry out the terms of the franchise after being notified and given an opportunity to cure. The issue must also be recent (within the prior 180 days).²⁴
- An event occurs that is relevant to the operation of the franchise, making termination or nonrenewal reasonable. Examples stated in the PMPA include fraud or criminal conduct by the franchisee relevant to the business; felony of moral turpitude or knowingly breaking law relevant to the business; franchisee bankruptcy, insolvency or not staying current on amounts due to the franchisor; franchisee severe physical or mental disability (at least 3 months); franchisor loss of its underlying lease for the premises, if the franchisee was notified before the term started of the underlying lease term and that it might end and the franchisor offers to transfer to the franchisee any renewal, extension or purchase option (the franchisor is allowed to require a release from the franchisee); the government taking of the premises by eminent domain; the franchisor’s loss of the right to use the brand involved; the destruction of premises; the franchisee’s failure to operate for seven straight days (or shorter time that is unreasonable for the franchisee to have not operated); or if the franchisee adulterates or mislabels the product. The event must occur during the franchise term and the franchisor must act within specified time limits (60 – 120 days) after learning of the event.²⁵

- The parties mutually agree to terminate the franchise. The agreement must be for termination within 180 days and the franchisee must be given seven days to repudiate the agreement.²⁶
- The franchisor decides in good faith to withdraw from marketing through outlets in the area provided the decision was not made before the franchise was granted, was based on changes in circumstances after such date, and is not for the purpose of converting the station to a company location. The franchisor must offer to sell its interest in the premises or offer a right of first refusal to buy the franchisor’s interest, or for a sale of the premises, the buyer must offer a franchise to the franchisee.²⁷

A franchisor may elect to not renew a franchise at the end of its term in any of the above circumstances or these additional circumstances:

- The parties do not agree to modifications of the franchise at renewal if the changes are set by the franchisor in good faith. The failure to agree cannot be due to a desire

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by the franchisor to convert the premises to a company location.²⁸

- There have been numerous customer complaints to the franchisor about the franchisee's operation of the business. The franchisee had to be promptly informed of the complaints and did not promptly cure or address the basis of the complaints.²⁹
- The franchisee, has been notified of two failures to operate in a clean, safe, healthful way and fails a third time.³⁰
- The franchisor decides in good faith to change the premises to a business other than motor fuel, or to change or sell the premises, or decides renewal won't be economical despite any reasonable changes or additions that would be acceptable to the franchisee. Again, the determination cannot be for the purpose of converting premises to a company location. Within 90 days after notifying the franchisee, the franchisor must offer to sell to the franchisee the franchisor's interest in the premises or, if applicable, offer the right of first refusal of at least 45-days of an offer, made by another, to buy the franchisor's interest in the premises.³¹

A franchisor that makes the decision to terminate or not renew a petroleum franchise must offer to sell, transfer or assign its interest in the premises to the franchisee or offer the franchisee an opportunity to buy the premises on the same terms as the franchisor is selling to someone else.³²

Transferring a California Service Station

The PMPA applies when a franchise is terminated or not renewed. But it does not cover a situation where a franchise continues, such as when a franchisor sells, transfers or assigns ownership of a service station to a franchised service station operator.³³

This is addressed in California's Business & Professions Code §20999.25(a), which "facilitates the purchase of retail service stations by their independent lessee-franchisees in contexts outside franchise termination and nonrenewal."³⁴

Under §20999.25(a), an oil company that wants to sell a service station premises that it owns and leases to a franchised service station operator may make a bona fide offer to sell its interest in the premises to the franchisee; or give the franchisee "a right of first refusal (ROFR) of any bona fide offer acceptable to the franchisor made by another to purchase the franchisor's interest in the premises."³⁵

Section 20999.25(b) sets forth a similar duty when a franchisor leases the service station premises but owns improvements thereon and is selling those improvements. These disjunctive requirements are "minimal standards" to limit the government's foray into a franchisor's property rights.³⁶



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The purpose of §20999.25(a) is to ensure the public greater access to service stations and further a more dynamic and full-service oriented retail environment.³⁷ Like its PMPA-counterpart, the statute seeks to protect the franchisee's reasonable expectation of continuing its business, while at the same time, allowing the franchisor adequate flexibility to respond to changing market conditions.³⁸ Both the bona fide offer and the ROFR options "fully reserve the price determining function to market actors."³⁹

The price term of an offer to purchase the franchisor's interest in the premises is considered bona fide if it approaches fair market value under an objectively reasonable analysis.⁴⁰ The standard assumes that all non-price conditions of the sale are likewise reasonable.⁴¹ As a result of the reasonableness standard, the guiding principles to determine whether an offer is bona fide provide fertile ground for a service station franchisee to challenge the franchisor's terms and conditions as unreasonable.

Several unpublished decisions reveal the kinds of price and non-price terms that pass muster under §20999.25(a). For instance, a group of service stations survived summary judgment on a claim that the oil company's offers and ROFRs were "commercially unreasonable" by requiring completion of environmental due diligence during the same 45-day window required to evaluate the ROFR, accept the title commitment and title survey, secure financing and pay a non-refundable deposit to accept the ROFR—all of which raised a triable issue of fact whether the oil company's terms set the transaction for failure.⁴²

By contrast, where an oil company can show that other franchisees already accepted the same or similar offers, or there is mere disagreement between the parties' appraised values of the transaction, a court is unlikely to find that an offer or ROFR is not bona fide.⁴³

Enactment of the PMPA was important at the time and continues to be critically important in the automotive capital of Southern California,⁴⁴ as well as the rest of the state and the nation. Gas station operators serve their communities, providing the fuel that keeps people's cars operating, all while facing pressures generated by trends in transportation, energy and economics.

It is useful for lawyers, therefore, to be informed of rights that gas station operators may have against at least one of the pressures, which include unfair terminations or nonrenewals visited on them by some franchisors and the right to receive a bona fide offer or right of first refusal for the sale of a franchised service station. 

¹ Data from Nat. Assoc. of Convenience Stores (www.convenience.org/YourBusiness/FuelsCenter/Pages/default.aspx).

² See e.g., Michael Buhr, *Gas Stations Will Disappear Sooner Than You Think* (Oct 1, 2017) (available at <http://thehill.com/opinion/technology/352884-gas-stations-will-disappear-sooner-than-you-think>).

³ See e.g., *Bird is flying high with new funding*, L.A. Times (June 29, 2018)

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(discussing business start-up that places electric scooters in neighborhoods for anyone to use for \$1 plus 15 cents per minute, and when finished "abandon them wherever they choose.")

⁴ See www.trybooster.com.

⁵ Exxon and Mobil merged in 1998 to form ExxonMobil. Chevron and Texaco merged in 2000 to form ChevronTexaco.

⁶ See David Gurnick & Steve Vieux, *Case History of the American Business Franchise*, 24 Okla. City U. L. Rev. 37, 45-46 (1999).

⁷ *Standard Oil Co. v. FTC* 273 F. 478, 480 (2d Cir. 1921).

⁸ *DuFresne's Auto Serv., Inc. v. Shell Oil Co.*, 992 F.2d 920, 925 (9th Cir. 1993).

⁹ 15 U.S.C. Secs. 2801 – 2807; see also *Atlantic Richfield Co. v. Herbert* (In re Herbert), 806 F.2d 889, 892 (9th Cir.1986) ("In enacting the PMPA, Congress attempted to provide national uniformity of petroleum franchise termination law.")

¹⁰ Cal. Corps. Code §31005(b); *Davis v. Gulf Oil Corp.* 572 F.Supp. 1393, 1396 (C.D.Cal. 1983).

¹¹ Bus. & Profs. Code §20999.1; *Davis v. Gulf Oil Corp.* 572 F.Supp. 1393, 1398 (C.D.Cal. 1983).

¹² *Darling v. Mobil Oil Corp.*, 864 F.2d 981, 983 (2d Cir.1989)

¹³ *Ruston v. Atlantic Richfield Co.* 618 F.Supp. 210, 214 (1985) ("Congress intended to vest the federal courts with exclusive jurisdiction over actions brought under the PMPA").

¹⁴ Compare *Niakan v. Samaan* (1988) 199 Cal.App.3d 716, 720 (finding exclusive federal jurisdiction over PMPA claims) with *Union Oil Co. v. O'Riley* (1990) 226 Cal.App.3d 199, 204 (holding "state courts have concurrent jurisdiction with federal courts over claims made pursuant to the PMPA").

¹⁵ Compare, *Johnson v Mobil Oil Corp.* (Pa. 1990) 560 A.2d 124, 126 ("Congress intended to give the federal courts exclusive jurisdiction over PMPA actions") with *Grote myer v. Lake Shore Petro Corp.* (Ill. App. 1992) 602 N.E.2d 51 (finding concurrent jurisdiction).

¹⁶ In one case, the First Circuit Court of Appeals affirmed a \$2.5 million damages award against an oil refinery that stopped selling product to its dealer on credit and demand the dealer to cease using its trademark, finding that the refinery's acts failed to comply with the termination notice requirements of the PMPA. See *Seahorse Marine Supplies, Inc. v. Puerto Rico Sun Oil Co.*, 295 F.3d 68 (1st Cir. 2002)

¹⁷ 15 U.S.C. §2805(b)(2).

¹⁸ 15 U.S.C. §2806; see also, *Exxon Corp. v. Miro* 555 F.Supp. 234, 237 (C.D. Cal. 1983) (noting PMPA "preempts all state laws on the subject of terminating a

franchise or nonrenewing a franchise in the petroleum industry, including . . . the California Franchise Investment Law.")

¹⁹ 15 U.S.C. §2801(1)(A).

²⁰ 15 U.S.C. §2801(1)(B).

²¹ *Id.*

²² 15 U.S.C. §2802(a)(1).

²³ 15 U.S.C. §2802(b)(2)(A).

²⁴ 15 U.S.C. §2802(b)(2)(B).

²⁵ 15 U.S.C. §2802(b)(2)(C).

²⁶ 15 U.S.C. §2802(b)(2)(D).

²⁷ 15 U.S.C. §2802(b)(2)(E).

²⁸ 15 U.S.C. §2802(b)(3)(A).

²⁹ 15 U.S.C. §2802(b)(3)(B).

³⁰ 15 U.S.C. §2802(b)(3)(C).

³¹ 15 U.S.C. §2802(b)(3)(D).

³² *Id.*

³³ 15 U.S.C. §2806(b)(1); *Forty-Niner Truck Plaza, Inc. v. Union Oil Co. of Cal.*, 58 Cal. App. 4th 1261, 1275 (1997).

³⁴ *Forty-Niner*, 58 Cal. App. 4th at 1273.

³⁵ Cal. Bus. & Prof. Code §20999.25(a).

³⁶ *Light Petroleum, Inc. v. Exxonmobil Corp.*, 632 F. App'x 328, 329 (9th Cir. 2015).

³⁷ *Forty-Niner*, *supra*, 58 Cal. App. 4th at 1273.

³⁸ *Id.*

³⁹ *Id.* at 1274.

⁴⁰ *Id.* at 1281.

⁴¹ *Id.* (citing *Slatky v. Amoco Oil Co.* 830 F.2d 476, 830 F.2d at p. 485, fn. 7 (3d Cir.1987)).

⁴² See *Almasi v. Equilon Enterprises, LLC*, No. 10-cv-03458 EJD, 2012 WL 3945528, at *7 (Sept. 10, 2012).

⁴³ See *Light Petroleum, Inc. v. Exxonmobil Corp.*, 632 F. App'x 328, 329 (9th Cir. 2015).

⁴⁴ See e.g., Dennis Romero, *L.A. Is Still Car Crazy, and We Shouldn't Apologize For That*, L.A. Weekly June 2, 2014 ("This city is a world capital of car culture, and even in the age of global warming, we should never apologize for our four-wheeled lust.") (www.laweekly.com/news/la-is-still-car-crazy-and-we-shouldnt-apologize-for-that-4759210).



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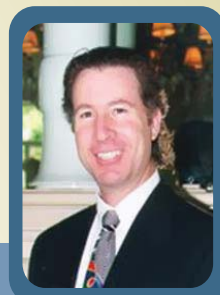


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Test No. 118

This self-study activity has been approved for Minimum Continuing Legal Education (MCLE) credit by the San Fernando Valley Bar Association (SFVBA) in the amount of 1 hour. SFVBA certifies that this activity conforms to the standards for approved education activities prescribed by the rules and regulations of the State Bar of California governing minimum continuing legal education.

1. Over the past two decades the growing population and growing number of cars has paralleled an increase in the number of retail gas stations in the United States.
☐ True ☐ False
2. The franchised model for distribution of motor fuel developed with the growing economy boom years of the 1950s and 1960s.
☐ True ☐ False
3. The Petroleum Marketing Practices Act, or PMPA, was passed to address an imbalance between franchisors and franchisees and help achieve uniform treatment of petroleum franchises nationwide.
☐ True ☐ False
4. The PMPA was a response from Congress to refiners engaging in unfair early terminations and refusals to renew gas station franchises.
☐ True ☐ False
5. When the California Franchise Investment Law was enacted in 1969, it included regulation of the offer and sale of petroleum franchises.
☐ True ☐ False
6. The PMPA's overriding purpose is to protect franchisees from arbitrary and discriminatory terminations or non-renewals.
☐ True ☐ False
7. The general rule of the PMPA is to restrict oil industry franchisors from terminating a franchisee before the end of its term, or choosing to not renew a franchise relationship at the end of its term.
☐ True ☐ False
8. A franchisor may not terminate or non-renew a petroleum franchise unless the franchisor has good cause and provides prior written notice to the franchisee.
☐ True ☐ False
9. An action for violation of the PMPA may be brought only in state court.
☐ True ☐ False
10. Actual damages are recoverable for violation of the PMPA but not punitive damages.
☐ True ☐ False
11. Injunctive relief is available under the PMPA to protect a franchisee from a wrongful termination or nonrenewal.
☐ True ☐ False
12. State law restricting termination or nonrenewal of petroleum franchises operates concurrently with the PMPA.
☐ True ☐ False
13. The PMPA regulates a franchise between a refiner and a distributor, between a refiner and a retailer, between a distributor and another distributor, or between a distributor and retailer.
☐ True ☐ False
14. The PMPA also covers convenience stores and mini-markets that are part of the gas station property.
☐ True ☐ False
15. Under the PMPA, a franchisor may terminate a franchisee before the end of the agreement's term if the franchisee is not using good faith to carry out the terms of the franchise, but the franchisee must be notified and given an opportunity to cure and the issue must be within the past 180 days.
☐ True ☐ False
16. Under the PMPA, an event that is relevant to the franchise, making termination or nonrenewal reasonable, is a lawful ground for termination.
☐ True ☐ False
17. Under the PMPA, the parties can mutually agree to terminate the franchise but the agreement must be for termination to take place within 180 days and the franchisee must be given seven days to repudiate the agreement.
☐ True ☐ False
18. A franchisor may refuse to renew a petroleum franchise if the purpose is a good faith intent to convert it to a company owned location.
☐ True ☐ False
19. The PMPA regulates and preempts state law on sales and transfers of gasoline franchises.
☐ True ☐ False
20. California law seeks to ensure greater public access to service stations and a more dynamic and full-service retailing atmosphere, complete with tires, batteries, tune-ups, etc. and to protect the franchisee's expectation of continuing its business.
☐ True ☐ False

MCLE Answer Sheet No. 118

INSTRUCTIONS:

1. Accurately complete this form.
2. Study the MCLE article in this issue.
3. Answer the test questions by marking the appropriate boxes below.
4. Mail this form and the \$20 testing fee for SFVBA members (or \$30 for non-SFVBA members) to:

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ANSWERS:

Mark your answers by checking the appropriate box. Each question only has one answer.

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| 20. | <input type="checkbox"/> True | <input type="checkbox"/> False |

SAN FERNANDO VALLEY BAR ASSOCIATION

ELECTION PAMPHLET

BOARD OF TRUSTEES ELECTION
SEPTEMBER 10, 2018

Dear SFVBA Member:

Attorney members of the San Fernando Valley Bar Association have the unique opportunity to elect their Bar Leaders by voting in our annual Board of Trustees election. By allowing members to choose from a ballot of candidates rather than a predetermined slate, our Board of Trustees is more representative of our membership.

Election Day is Monday, September 10, 2018. Ballots will be emailed to attorney members the second week of August and voting will be conducted online.

I encourage members to take a few minutes to review the following Election Pamphlet and read the candidates' statements. The nominees have contributed to the programs and success of our organization, and represent a cross-section of our Sections, areas of practice and our community.

Thank you for your support and membership this year. I appreciate you giving me the opportunity to serve you.

ALAN E. KASSAN

President

San Fernando Valley Bar Association



YI SUN KIM

PRESIDENT



RECOGNIZE THE ENORMOUS RESPONSIBILITY AND COMMITMENT REQUIRED AS THE President of the San Fernando Valley Bar Association, and I am prepared and honored to serve in that capacity this next term.

I have been an active member of the SFVBA since 2007, and I served as a Trustee and Officer since 2013. In that time, I witnessed a growing momentum within this organization to be inclusive and receptive to its members, provide greater benefits, adjust and modernize with how business is done today, and enhance the visibility and reputation of the lawyers in the San Fernando Valley. The SFVBA has thus strengthened its relationships with its members and the Valley's judicial officers, public leaders, and members at large.

Building on the leadership of its past presidents, section chairs, and committee chairs, I plan to continue these efforts to develop new programs, engage the community, increase commerce in the Valley, and elevate the amount and quality of public service we provide. This includes reviving the SFVBA's women's program, working with our sections to develop new ways to provide quality, cost-effective, and easy to access MCLE programs, building on our relationship with other bar associations to provide our members with further opportunities to collaborate and network, finding more ways to promote our Attorney Referral Service, and invigorating our alliance with our charitable arm, the Valley Community Legal Foundation.

I want the SFVBA members to truly benefit from their membership, in terms of networking, continuing education, social activities, and community engagement. I would appreciate your support, as well as any input you may have on how the SFVBA and I can help you and our legal community.

BARRY P. GOLDBERG

CANDIDATE FOR PRESIDENT-ELECT



IT IS WITH GREAT HUMILITY AND HONOR THAT I AM PLACING MY NAME FOR consideration as the President-Elect for the San Fernando Valley Bar Association.

Over the past several years I have had the privilege of serving as the Chairman of the Attorney Referral Service Committee. The ARS is an interesting and vibrant arm of the Bar Association which connects legal consumers with first-rate and highly qualified attorneys in the San Fernando Valley. I am so very proud of martialing the progress and transition of the ARS into the internet computer age. Our referrals are at an all-time high!

Two years ago, I was honored to be elected as the Treasurer of the Bar and this year I advanced to the position of Secretary. My ongoing theme and contribution to the Bar will be to modernize, use the internet and leverage social media. It is my sincere hope that I can continue on my journey by supporting the incoming President Yi Sun Kim in all of her endeavors and by making the Bar more relevant to all of the members.

Thank you in advance for your consideration and vote.

DAVID G. JONES

CANDIDATE FOR SECRETARY



I AM EXCITED TO BE NOMINATED FOR SECRETARY AND HAVE THE OPPORTUNITY to serve on the San Fernando Valley Bar Association Board. It is a true honor to have the opportunity to be involved in a leadership position.

I genuinely believe in the importance of our Bar Association as a means for connecting the attorneys of the San Fernando Valley.

I have been practicing in various areas of civil litigation for nearly twenty years, sixteen of which have been in the San Fernando Valley, in Woodland Hills. The primary emphasis for my practice has been employment law, advice and litigation. My firm, Santiago & Jones, specializes in employment law, transactional estate work, complex probate and estate litigation disputes and general civil litigation matters.

I am an active member of the SFVBA Attorney Referral Service for employment matters, and serve as a member of the Bar's Attorney Referral Service Committee. My involvement with the Bar referrals has been very rewarding, and is a highlight of my Bar activities. Clearly, the legal guidance and support that our Bar Association provides to Valley residents in need is one of SFVBA's lasting accomplishments.

My primary focus is to increase membership and energize member participation through social functions offered by our Bar Association. I believe that the ability to network with fellow Bar members with various areas of legal expertise can prove invaluable for both new members and established attorneys in the community. Given the relationships created at such events, our Bar should strive to create member friendly events which attract new members and encourage existing members' relationships.

So with this, I ask that you cast your vote for me, I will work tirelessly to bring energy and creativity to the SFVBA, in an effort to improve our Bar Association and honor your trust.

Thank you for your support and vote.

CHRISTOPHER P. WARNE

CANDIDATE FOR TREASURER



T HE NEXT FISCAL YEAR LOOKS TO BE THE FIRST OF A NEW TREND FOR THE SFVBA.

The efforts and insights of the Bar staff, Board of Trustees, Section Leaders, and dedicated members have created many new events and member resources. The Board and committees have numerous ideas in the works for more amazing events.

The next year will be a challenge for the Treasurer to be sure these member benefits become revenue, not cost, sources for the Bar. I look forward to a productive year working with an energetic Board and Bar staff to help continue the positive movement of the SFVBA.

KYLE M. ELLIS

CANDIDATE FOR TRUSTEE



AS THE SAN FERNANDO VALLEY BAR ASSOCIATION ENTERS THE NEXT decade, it has the potential to grow its membership, its mission, and the services it offers to both the legal community and the general public due to the incredible growth of the San Fernando Valley's economy and population. I want to be part of that growth, and I want to help the Association transition from the organization that it currently is, into one that participates more broadly in the community, with our elected representatives, and with its membership.

While I am a native of Southern California, having been born and raised in San Diego, I have to admit to being a more recent resident of the San Fernando Valley and member of the legal profession as compared to many of my more senior colleagues, having only two and a half years to my name for both.

In that time, however, I have been lucky enough to become a member of the Association's Membership & Marketing Committee, a Board Member for my local Neighborhood Council, participated in numerous events throughout the Valley, and secured a position as a civil research attorney for the Los Angeles County Superior Court. I am a firm believer that service and voluntarism are important parts of membership, and I look forward to continuing my participation with the Association regardless of whether or not I am elected to be a member of the Board of Trustees.

That said, I sincerely appreciate the opportunity to be a member of the Board of Trustees, and, if I am fortunate enough to earn your support, I will strive to improve upon the successes of the Association, look for new opportunities for our members, and do everything I can to continue the Association's tradition of being a welcoming, professional, and collegiate organization.

HEATHER GLICK-ATALLA

CANDIDATE FOR TRUSTEE



IT HAS BEEN A GREAT PRIVILEGE TO SERVE AS TRUSTEE THESE PAST TWO YEARS, and I hope to continue serving for another two-year term. During my initial term I enjoyed participating in the Membership & Marketing Committee, and I also spearheaded an overhaul of the Bar's Bylaws and the implementation of a Governance and Code of Ethics policy. As a nonprofit law attorney I typically serve as outside counsel for my nonprofit organization clients, and it has truly been an eye opening experience sitting on a board as an insider of the organization. If elected for a second term, I will continue to do my part to help the Bar grow and serve its members.

The SFVBA has incredible resources available to its members, such as Fastcase, networking opportunities, MCLE offerings, and more, and I would like to see greater member involvement in the Bar. Serving as Trustee has given me a unique perspective on all that the Bar has to offer, and my goal is to enable every member to take advantage of these fantastic benefits. In so doing, the members and the Bar as a whole would be greatly benefitted.

GARY J. GOODSTEIN

CANDIDATE FOR TRUSTEE



B EING NOMINATED TO SERVE AS A TRUSTEE FOR THE SFVBA IS AN HONOR AND a pleasure. I was lucky to begin my legal career under the guidance of mentors who taught me the importance of contributing time and energy in support of the legal profession.

Over the past 25 years as a business litigator and trial attorney, I have followed that advice by taking active leadership roles in numerous professional organizations, including the L.A. County Bar Association and the American Inns of Court. My experience includes everything from membership development and outreach to designing and moderating MCLE programs; from drafting proposed legislation to working with bench officers and court administrators seeking to restore court funding through the state budget. Along the way I have learned a great deal about organizational leadership and operational efficiency, two key components to a successful professional services organization.

The SFVBA is an important organization that does valuable work on behalf of Valley-based legal practitioners and on behalf of the residents and businesses who are our clients. My primary goal as a Board member would be to maximize the value of SFVBA membership to its members through the delivery of programs and services, and through improved communication and relations with the local judiciary. A further goal is to establish SFVBA as a leading proponent of civility and professionalism in the practice of law. With your support, I look forward to the opportunity to bring my considerable knowledge and experience, as well as my energy and positive attitude, to the SFVBA Board of Trustees.

AMANDA M. MOGHADDAM

CANDIDATE FOR TRUSTEE



S ERVING YOU ON SFVBA'S BOARD THIS PAST YEAR HAS BEEN A REWARDING and humbling experience. I found that SFVBA is full of wonderful people who truly care about our members, and their focus on building relationships and fostering involvement in the community is why I'm thrilled to be running for Trustee.

I have been a member of SFVBA for five years, and practicing law for seven. I am an active member of the SFVBA's Membership & Marketing Committee. I am a litigator and a lawyer for lawyers (the majority of my practice involves defending lawyers facing legal malpractice and related claims). I absolutely love what I do. Every day is a challenge and I am always learning and growing as an attorney by virtue of my interactions with my clients, who range from solo practitioners to large law firms. I think my practice area and experience defending lawyers provides me with a unique understanding of what lawyers are looking for from the SFVBA.

My goal as Trustee will be to continue expanding the services and resources that the SFVBA offers so as to meet the needs of our members in this fast-paced, rapidly evolving informational culture.

I thank you for your consideration. I truly want to continue serving and I'd appreciate the opportunity to do so.

SAMUEL R.W. PRICE

CANDIDATE FOR TRUSTEE



FOR THE LAST THREE YEARS I HAVE BEEN HONORED TO SERVE ON THE SFVBA Board of Trustees as the appointed liaison from the Santa Clarita Valley Bar Association, the SFVBA's sister organization. I am now honored to have been nominated to continue my service as an elected Trustee of the SFVBA.

In addition to my three years on the SFVBA Board, I have also served seven years as a Trustee for the Santa Clarita Valley Bar Association, including four years on the Executive Committee and two years as President.

Over my years as both a member and a trustee of bar associations, I have seen the many challenges such organizations face to remain relevant in a rapidly changing business environment. With the continued growth of networking and marketing groups, attorneys are much less reliant on their bar associations to be a source of business development. And with the barrage of emails that we all receive offering free or low-cost continuing legal education, a bar association's role as CLE provider is diminishing. How a bar association can continue to remain relevant in these changing times is a question confronting organizations around the country, and there is no easy or agreed-upon answer. One thing is certain: bar associations, like the SFVBA, must ensure that they are open to their members' thoughts, ideas, and concerns, and are willing and able to adapt to benefit their members in an evolving industry.

The leadership of the SFVBA Board of Trustees has been commendably proactive in addressing these questions over recent years, and I have been proud to be a part of, and bring my background and experience to, this ongoing discussion. I hope to be able to continue as a Trustee and, most importantly, to help ensure that the SFVBA remains a vital organization for many years to come.

Thank you for your consideration.

ALLAN D. SARVER

CANDIDATE FOR TRUSTEE



I AM TRULY HONORED TO HAVING BEEN GIVEN THE OPPORTUNITY TO SERVE THE LEGAL COMMUNITY for the past two years. I am hopeful that I will be re-elected to a second term and given the chance to serve again as a member of the SFVBA Board of Trustees. If re-elected, I will continue to work to expand the voice of our legal community which should have input on bar association issues of importance. By increasing participation in SFVBA events and programs, whether educational, social or political, the benefits of membership will be furthered.

The SFVBA has a substantial presence in our community. The Attorney Referral Service program and other outreach efforts exemplify the role our Bar Association plays. Emphasizing and seeking expansion of community outreach will contribute to solidifying the bond between the SFVBA and the community as a whole.

Thank you again for this important opportunity.

STEVEN M. SEPASSI

CANDIDATE FOR TRUSTEE



I HAD THE HONOR, AND WAS FORTUNATE TO JOIN THE BOARD OF TRUSTEES OF the San Fernando Valley Bar last year, and since then have come to realize how dedicated the staff and the members of the Board of Trustees are when it comes to service. As an example, the San Fernando Valley Bar, through its Attorney Referral Service (ARS) and other outreach programs, such as the Lawyers in the Library, strives to provide vital access to legal services for residents of the San Fernando Valley.

The staff takes these services seriously, and is constantly working to improve them, with the help of the dedicated members of the Board of Trustees. During the past year, I served on the Bylaws, as well as the ARS Committees of the San Fernando Valley Bar, and found the work quite rewarding.

As a civil litigator, mediator, and arbitrator for the past 23 years, I have been involved with many different types of cases, and have come to understand the difficulties of the practice of law, especially for solo practitioners, and how a bar association can help in alleviating some of those difficulties. Some ways that a bar association can help is by arranging networking events, as well as low cost MCLE events, so the members can exchange ideas and knowledge.

I hope you will give my candidacy serious thought, to allow me to continue to be of service to the membership at large, by serving again on the Board of Trustees. Thank you.

BENJAMIN E. SOFFER

CANDIDATE FOR TRUSTEE



I AM ABSOLUTELY THRILLED TO BE NOMINATED FOR A POSITION ON THE BOARD OF Trustees. It is a great honor to be given an opportunity to have a leadership role in our fine Bar Association and to be considered alongside the other well-qualified candidates running this year.

One of the first actions I took a few years ago right after I moved my practice to Warner Center, after 20 years in Century City, was to join the SFVBA and participate in the many professional and social opportunity afforded by the Bar. I found Bar activities to be very beneficial and rewarding and sought ways to be even more involved. This desire lead me to join the Bar's Membership & Marketing Committee, initially as a member and later as Committee Chair, a position that I am honored to still hold. The Committee's objective is to add value to SFVBA membership by conceiving and implementing new ideas for services and programs that improve the quality of our members' practices.

Another goal I have is to significantly grow Bar membership by making the Bar more visible and relevant to Valley attorneys. I believe this goal can be achieved by creatively promoting the Bar's professional development programs, business networking opportunities, and social events.

In addition to the aspiration to serve as Trustee on the SFVBA's Board, I also have prior experience serving on other civic-minded committees and boards: I served for a number of years as Chair of the Pro Bono Committee of the Los Angeles office of Perkins Coie LLP; and I also served on the Pro Bono Advisory Board of Shriver Housing Project Los Angeles.

As a Trustee, I would bring civic-mindedness, experience, a desire to grow the Bar and member participation, and creative thinking to the Board. Thank you for your consideration and I look forward to the possibility of serving you.

Remarkable Tails: Bar Members & Their Pets



OUTSIDE THE ENTRANCE TO THE SHIBUYA TRAIN station in Tokyo, Japan, is the statue of a dog. Though it seems an odd place for such an unusual memorial, the bronze sculpture was erected many years ago to pay tribute to the memory of a golden brown Akita named Hachiko, whose devotion to his master has become legend.

The companion of Ueno Hidesaburo, a professor at Tokyo Imperial University, Hachiko would leave his home every afternoon to amble his way to the station platform where he would wait to greet his master, commuting home after a day teaching at the school's agriculture department. The pair continued their daily routine for several years until one afternoon in May 1925 when Ueno did not return to the station, because while delivering a lecture at the university earlier that day, Ueno suffered a cerebral hemorrhage and died at his lectern.

Every day at 3:00 p.m. for almost a decade, the faithful Hachiko appeared at the station platform, anticipating his master's return and never giving up hope that he would. Time wore on and cared for by commuters and station staff, Hachiko's vigil finally ended in March 1935 when he died on a Shibuya street near the train station. To this day, an annual observance is held in Japan on the anniversary of Hachiko's death to commemorate the loyal Akita.

Steadfast devotion, loyalty, and nobility quite often comes on four legs with a wet nose, colorful feathers, scales, or with whiskers and an attitude. Whatever the case, we treasure our pets' company and value the solace, tranquility and diversion they provide in an increasingly frenetic world.

Following are stories of SFVBA members and their companions in their own words.



Calvin Hilton,
submitted by Cassandra Franco

Cassandra Franco submitted the image of Calvin Hilton, a 10-year-old Yorkshire Terrier on behalf of colleague Jacqueline T. Hilton.

“Jacqueline is my co-worker and friend who was diagnosed with a terminal illness and given a few months to live. She has been a member of the California State Bar since 1988 and practiced workers' compensation defense for the last 30 years in Southern California venues, mostly the Van Nuys Workers' Compensation Appeals Board.”

Joanne Williamson's
knitting helper,
Zoey



Bella,
submitted by
Robert Mandell

Doxies Fenway and Bowie, companions of David Kestenbaum

Fenway and Bowie are both longhaired Doxies. Fenway is seven and was obviously named after my favorite team's home, Fenway Park! He was rescued by my wife from a place in the mall and is known as a male model due to his eyeliner, distinctive coloring, and his blonde mohawk! Bowie (aka Bo, Beauregard) was born in Boston to my cousin's Doxie, Shea. In fact, he flew cross country with us when he was eight weeks old! His father lives in Connecticut and is named Stormy, so Bo's birth name was Lightning!

Bo is the perfect comfort dog as he will just lie with you in whatever position you put him in! He is the jock, however, having passed his big brother in weight and size by the time he was two. People often ask if he is a mini-Golden! As most doxies do, they burrow under our sheets and sleep at our feet! They make it next to impossible to leave for court each morning since by the time I get up, they are at the head of the bed looking at me! Fenway will be grooming Bo by cleaning his ears and eyes while Bo lies there in bliss!



When I give my seminar on competency, I always mention spending time with your pet at the beginning and/or end of the day is not just good for them, it helps us transition from the world of litigation to the joy of being home.

I enjoy taking them to the dog park where they roam as a gang intimidating all the larger dogs! Fenway and Bo give unconditional love to me and receive it back. They know when I am upset and when I am tired and act accordingly. Also, they talk! They both bark, but Fenway especially has an entire vocabulary of guttural sounds—moans, a little laugh sound and a low grumble when he is not getting his way... and Doxies always get their way. Bo tries, but his come out as little moans! They are probably the most stubborn breed and I wouldn't trade them for any other dog.”

Freckles, best friend of Tricia West

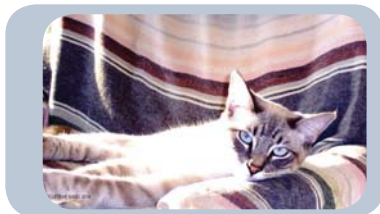
Legal Nurse Consultant Tricia West has been a puppy raiser for Guide Dogs of the Desert (GDD) since 2009 and has raised three guide dogs. PJ West and Associates' Administrator Donna Narvaez was eager to share Freckles' influence on their workplace and their clients.

Freckles is our newest co-worker and has gone with us to arbitrations, depositions, hospitals and nursing homes to visit our clients, family and patients. He's been to the theater, zoo, movies, and local restaurants—I think a favorite is the Lazy Dog Cafe—as well as the bank, post office, grocery store, and mall. Freckles also accompanies Tricia at home visits to evaluate clients when preparing life care planning.

Guide dogs are a wonderful addition to our mission of helping others in times of need. We have witnessed clients with traumatic brain and spinal cord injuries respond to the dogs with open arms, with a calming touch petting them putting a smile on their faces. The transformation of their body language is inspiring. The smiles are infectious.”



Luckee's Lazy Day, submitted by Steven Sadd



Otis Hayes' Labradoodle Magic



Oliver Wendell Holmes, staff member of Brent Vallens



My dog is Oliver Wendell Holmes. Oliver has been at work, in my law office, every day for the past 7-plus years. As our youngest staff member, Oliver provides onsite security, emotional support to clients and assists with mediation at times. Oliver is a Coton de Tulear.”

Suzy Q, Sophie and Rudy, companions of Dale Arens



Suzy Q is a pure bred Carin Terrier. She was the first of the trio, acquired at ten weeks old. Suzy Q is an alpha female with her own mind. Rudy is a rescue who was acquired next. Rudy is a Carin Yorkie mix. We acquired him from a rescue service organization that saved him from a pound just prior to his scheduled euthanasia. He loves to lick everyone. Rudy is very protective who acts like a large dog. Sophie was rescued last. She is a mixed breed, who is a lover.

The three are inseparable. My wife Barbara and I have owned these excellent companions for over nine years. They are all three playful and active. I had a major illness about eight years ago. They were with me always.”

Stanley and Cora, companion of Samantha Koopman



My husband and I currently have two dogs—Cora (miniature pinscher, age 12) and Stanley (dachshund, age 8), both pictured—and two cats—Ramsley (grey tabby, age seven) and Piper (tortie, age five). We recently lost our third cat, a beautiful long-haired calico named Maysie, at 22 years old.

I always loved animals and knew I wanted to rescue, but it wasn't until I became more involved with the local shelter and rescue groups that I started to understand the risks that senior and special needs in particular face.

Cora is our most recent addition. She is 12 years old (the end of the average life span for her breed) and blind. She was abandoned at the shelter by her previous owners. She was underweight and had significant skin and dental problems. She was spotted at the shelter by a local rescue group called Dogs Without Borders and became the first dog in their new hospice foster program. Through this new program, the rescue finds senior dogs with special needs/medical issues that make them particularly hard to adopt. The rescue offers to pay for all of the dog's future medical needs if a person is willing to foster the dog for the remainder of the dog's life.

My husband and I are so proud to be the very first foster parents of the program. I saw Cora's picture online and knew that we needed to be her family. She has undergone a great transformation in the four months she's lived with us. She had dental work to clean up her bad teeth, her skin is no longer flaky and itchy, she has at a healthy weight, and her confidence has skyrocketed. The vet says she's been blind since birth, so she doesn't know any different. Cora and her brother, Stanley, go to doggy daycare once a week to play with friends and get some exercise. I am fortunate that I am able to bring her with me to work most days. We also like to take the dogs on fun new experiences, like a Dodger game!

There are definitely some downsides of adopting senior animals, but the benefits to all involved are so great. To know that we can provide animals with comfort and love for their final days is incredibly rewarding. In my work as an estate planning attorney, I am trying to bring more awareness to planning for pets as well, so that animals like Maysie don't end up in the shelter if their owners pass away.”

Golden Retriever Abby, companion of Maya Shulman



Abby, seven and a half years old, born in October, is a Libra, a White Cream Golden Retriever with the heart of gold.

She makes all of our lives better; she is totally sweet, non-judgmental, loves being with family, absolutely hates being alone, which is almost never; when we're at work, she is with my parents, we call it grandparents' daycare.

She keeps us in shape, because of Abby, we all take turns being outside with her. The morning shift is my daughter's; my fiancé and I are in the evening; and during the day Abby is at my parents, and during the summer, she'd be swimming in a salt-water pool and playing catch with grandpa.

She is best friends with my parents' cat, Ziva. Who knew?”

Rescue kitten **Bogey**, companion of Jim Hoffman

Our 8-week-old rescue kitten Bogey was found in the back of a studio ambulance with four other kittens by a friend of mine. They appeared to be abandoned. He took them home and asked my wife if we wanted a cat or two. We have a large rescue cat and a Maltese and we weren't sure we wanted to introduce a new member to the crew.

We did have three cats, three dogs and three horses, but they all passed on and we started over again with the rescue cat, Tazmania, and Maltese, Luna. Bogey is the spitting image of the Russian Blue we had that was so friendly to all who entered the house. He would climb up onto you, put each paw on your cheek, and give you a nibble (kiss)...not your usual cat.

When I met Bogey I couldn't resist not taking him. Turns out I was making a good choice. He wrestles with our large cat Taz and tries to get Luna to play with him but she is still jealous and gives him the cold shoulder! So Bogey covers her food up with paper! Time will soften her. Bogey likes to sleep on my chest when I'm watching TV and nuzzles my cheek with his face and paws. He watches the Hummingbirds at our feeder and tries to get the Geckos that crawl up the screens. He is one of the family and a pleasure to us all.”

Charger, a German Shepherd, Labrador, and Great Pyrenees mix, submitted by KC Marie Knox



Star, the cat, and **Henry**, the dog, after a hard day, offered by Blake Rummel



Michael, Layla and Ari Fedalen and their extended family



My children, Layla and Ari, our dogs, a Boston Terrier named George and a Shiba Inu named Zev. I'm holding a Buff Goose named Lucy. In the grass in front are a ball python and turtle, while behind us are four chickens and a duck. My wife was behind the camera.”

Judge Elizabeth Lippitt and **Gracie**

I adopted Gracie last July at the Santa Monica Animal Shelter. My other little companion had passed a few months earlier and I guess my son thought I was too mopey around the house, so he said he would find one. And I told him I would only want another small dog, young, that doesn't shed. I thought to myself, that is a tall order that will be impossible to hunt down. He found her.... and then I said, only if you come with me to take a look. He did. She was about four months old at the time of her adoption.

When they brought her out to the meeting area, she came out flying to my son and wanted to be on his lap. That was it! She has done beginner and intermediate obedience and wasn't at the top of her class, by any stretch, like—she got through on her cuteness, because it wasn't her obedience acumen..... way too distracted by all the wonderful smells and pooches to play with out there in the world! But she is a promising agility prospect, she learns very quickly and is much faster than one would think! She loves it. She will run around on her own—I have a mini-agility set up at my house—and shows how fast she can peel around... it is the funniest darn thing.

I also am going to try out the scent class/sport, because it turns out that is part of her breeding/ancestry....How do I know that, you ask? My beau Tim gave me for my birthday this past April a doggie DNA test from the Cornell Veterinary School project called EMBARK. They do the testing. Tim said it was the best one he found online, and they also test for 165 different canine diseases. The results are used at the school for their medical research and the benefit is that I got to find out what, if anything, to look out for in the future to help me and my vet diagnose if she falls ill. I have to tell you, I was so fun—the process. And to learn her family tree and that she is “carrier/DNA free” of all 165 things they test for! Another good reason to adopt and not pay buckets for a pure bred! And she likes horses!”





Judge Mary Thornton House and **Kate** officiating a wedding

Her name is Kate. She is a rescue from the Pasadena Humane Society and they say she is part greyhound and black lab. We have been lucky to have her in our lives for 10 years.

Kate recently served as the bride's dog at a wedding performed at my home. ”

Sherlock Aloysius, companion of Lori Aronsohn

His name is Sherlock Aloysius. He is five months old, a rescue who I adopted when he was two months old. His mother—a cockapoo, they think—was surrendered to a shelter January 4, and on January 5 she delivered eight puppies—a pregnancy from two fathers!

He currently tips the scales at nine and a half pounds! He was so named because he is very smart and has a tendency to observe, listen to others opinions, and then choose his own course. ”



Alice Salvo and the Law Dog, **Buddy**

Buddy is an 8-year-old pug who comes to the office every day. We have an elder law practice and Buddy greets all the clients and barks when they leave because he doesn't want them to leave. ”



Golden Retriever **Fergus**, companion of Anngel Benoun

I would like to introduce you to Fergus, my Golden Retriever rescue, who is a survivor of third degree burns suffered at the hands of an abuser. He's quite famous and was trained by Cesar Milan, the Dog Whisperer, and has been featured on an episode of his show saluting Los Angeles Hero dogs with veterans groups, abuse victim groups, burn survivor groups and other groups who want to meet him in person.

The first day of his life as Fergus began on August 14, 2015. He wasn't born that day, we don't know when he was born or what his name was, but that was the day he was rescued at the Lancaster Animal Shelter by Southern California Golden Retriever Rescue. He was found on the side of the road by a Good Samaritan and taken to the shelter where he was expected to die. He suffered third degree burns caused by someone who doused him with battery or chemical acid from his head down along his spine to the base of his tail. He wasn't supposed to be released to anyone, but Southern California Golden Retriever Rescue wouldn't take no for an answer.

The dog you see now was released from the shelter into the arms of his rescuers and taken immediately to renowned veterinarian, Dr. Allan Schulman. He didn't look the way he looks now. The vet quickly calculated his age at 1 – 1.5 years. His weight should have been close to 70 pounds, but he weighed a skinny 48 pounds and had likely been a stray for some time. Fergus went through multiple surgeries and treatments and experienced trauma seizures.

A local television station ran the story of Fergus on their nighttime newscast and we couldn't take our eyes off of him. At the time, we had an old Golden named Sammy, who was terminally ill. I told my husband if our Sammy passed away, Fergus was going to be ours. Sammy passed away in our arms two weeks later and I truly believe he sent Fergus to us.

Seeing Fergus in person for the first time is a moment we will never forget. We saw before us the most trusting, loving and funny dog and would never have known the abuse he had suffered. Honestly, though, we weren't even sure he was a Golden Retriever because he was so skinny. In fact, my husband believed he was a coyote!

Best of all he had filled out to a whopping 65 pounds. Fergus is now a certified therapy dog for Love on A Leash and visits senior assisted living facilities, the Ronald McDonald House, the Motion Picture Television Fund Hospital, Brandin's Village, and numerous schools and children's reading groups.

Fergus is not only the face of animals who have suffered abuse, but he is the face of hope and healing for all those that have been victims of burns and trauma. He is the mascot of USC Hospital Burn and Trauma Unit and is their first therapy dog. His good nature and constant smile is the best medicine for all of us to overcome any adversity or challenge in our lives. ”

Fergus was recently named the cover boy for the 2019 Southern California Golden Retriever Rescue calendar.



Odin and Penelope, aka Hilarious and Fun, companions of Lauren Peterson



Who in their right mind would live without canine companionship? My husband and I are huge animal lovers and we are big advocates for animal rescue.

The value of having a dog in your life is immeasurable. But for me, coming home to my dogs, Odin and Penelope, after a tough day of litigation helps remind me what really is important in life. Odin and Penelope are hilarious and fun and the minute I walk in the door, their wagging tails dissolve any stress I dealt with during my work day.

They always make me laugh, whether Odin is unabashedly opening the refrigerator to fetch his own snacks or Penelope is jumping up onto precarious high spots like the picture I've attached from a recent camping trip on the Oregon coast. They are just fantastic."

Charles and Jeanne Domokos with **Wallace** and **Sushi**, enjoying a day in Santa Ynez



Harbiks Garabedi and his Cavachon puppy, **Isabelle**



Isabelle is a Cavachon puppy. She seeks hugs when she wants, barks when she needs something immediately, and pulls on clothing when she wants to play tug of war. She reminds me to be aggressive, to be direct in my communication, and to ask others for help when I need it, even if that includes an end of the day hug."

An old-school noir image of **Gracie**, submitted by Bernal Ojeda



SFVBA Member Services Coordinator Sonia Bernal's playmates **Sebastian** and **Dexter**



John Horn and the "best dog ever"



R. Grace Hernandez and an unnamed **blue fin tuna** caught off San Diego

Caleb, Merrick, Asher and Lucas White, grandsons of Editor Michael White, with their Yorkie, **Chewy**



Foxy Cohen, companion of ARS Director Rosie Soto Cohen



GDPR:

New EU Regulations on Data Privacy

By Angela A. Bandich

THE EUROPEAN UNION'S (EU) new data privacy rules went into effect on May 25, 2018 and have already impacted how U.S. businesses collect and use the personal data of their customers and business partners.

Called the General Data Protection Regulation (GDPR), the new rules were implemented to give EU residents more control over their data privacy and to create a more uniform structure to the data privacy laws that were previously enacted across the EU.

Geographical Scope of the GDPR

Despite it being a European regulation, the scope of the new rules extends far

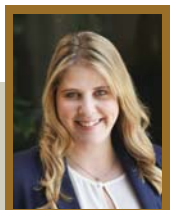
beyond just the geographic borders of the 28-member nation political and economic union. In fact, any company that offers goods or services to individuals, or data subjects, who are located in the EU must comply with the GDPR.

The GDPR applies to a company even when there is no payment or fee involved in transactions between data subjects and the company for goods or services.

Additionally, any company that monitors the behavior of data subjects in the EU will be subject to the GDPR if the company collects and processes their personal data. This broad scope means that a large number of companies have been revising their

privacy policies to try to comply with the GDPR, even when they are not located in the EU.

The GDPR broadly defines personal data as “any information relating to an identified or identifiable natural person (‘data subject’); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.”¹ This means that a person’s email address, username or even data about their physical attributes is also



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considered personal data within the GDPR.

As such, the GDPR likely applies to most companies, particularly those in the e-commerce, travel, research, software, or media industries that are global in their reach. Consumers may have noticed over the last several months that they have received emails or other notifications about updated privacy policies from platforms such as Facebook, LinkedIn, PayPal, Venmo and others. These revised policies are likely in response to the GDPR as these companies implement privacy policies and procedures to comply with the new regulations.

Obligations of Companies

Companies need to ensure that the collection and processing of the personal data of data subjects meets several criteria:

- Personal data must be collected for specified, explicit, and legitimate purposes. General phrases in a company's privacy policy like "data may also be used for other business purposes" are no longer valid under the GDPR.
- The personal data collected must be limited to only what is necessary in relation to the stated purpose.
- The personal data that is collected must be accurate and kept up to date.
- The personal data collected by the company must be retained no longer than necessary for the stated purpose.
- The company must collect and process personal data in a secure manner.

Lawful Collection and Processing

Furthermore, a company's collection and processing of personal data must satisfy at least one or more

conditions under the terms of the GDPR. The data subject must have either provided consent to the collection and processing of their personal data for the specific purpose(s) identified by the company or the company must be able to show that the collection and processing of personal data is necessary for a particular reason. These reasons could be the performance of a contract for which the data subject is a party, compliance with a legal obligation, to protect the vital interests of a data subject or other natural person, to validate the performance of a task carried out in the public interest or under official authority, or to fulfill legitimate interests, except where such interests overridden by the fundamental rights and freedoms of a data subject that requires protection of a person's personal data.

A Question of Consent

If a company claims that the personal data was collected and processed based on consent from the data subject, the company must be able to prove it, rather than relying on passive opt-out language. Also, if a request for consent is included in a written document given to the data subject that covers other matters, then the request for consent must be clearly distinguishable from the other matters in the document and be presented to the data subject intelligibly and in clear and plain language. The data subject also has the right to withdraw their consent at any time and must be informed of such right prior to giving consent.

Finally, the GDPR states that consent must be freely given, particularly in situations where the performance of a contract, including providing services, is conditional on the data subject giving consent to the collection and processing their personal data. This is especially important when the collection and processing of personal data is not directly related to the performance of the contract.

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There are, in addition, specific rules in the GDPR related to the collection and processing of data of children, requiring parental consent if a child is 16 years old or younger. The GDPR also outlines in Articles 9 and 10 additional compliance requirements for companies collecting and processing special categories of personal data that include data related to race or ethnic origin, political affiliation, religious beliefs, biometric data, and criminal convictions.

The GDPR also requires that each company and any third-party representatives that assist with the processing of personal data maintain records of processing activities, unless the company qualifies for a small business exemption by employing fewer than 250 people. This small business exemption, however, does not apply if the small business collects and processes personal data in a manner that is “likely to result in a risk to the rights and freedoms of data subjects, the processing is not occasional, or the processing includes special categories of data.”²

Security Measures and Reporting Breaches

Companies are also required to implement technical and organizational security measures proportionate to the likelihood and severity of any impact of any breach on the rights and freedoms of data subjects and other natural persons.

Designating a Data Protection Officer may be required under Articles 37–39 where the company’s processing activities require regular and systematic monitoring of data subjects on a large scale or of special personal data categories.

If there is a breach of personal data, a company is required to notify the appropriate EU supervisory authority within 72 hours after becoming aware of the breach, unless a data subject’s rights and freedoms are not at risk as a result of the data

breach. If there is a likelihood of a high risk resulting from a data breach, the company must notify also the data subject of the breach without excessive delay. This means that companies and their IT teams must be able to quickly evaluate every breach to determine which level of notification, if any, is required.

Rights of Data Subjects

Data subjects have specific entitlements under the GDPR, including, but not limited to:

- ***The Right to Access Data (Articles 12 – 15).*** Data subjects can obtain free of charge—with some exceptions—information about their personal data, if requested. Companies should also be aware that some information should also be provided to the data subject at the time when the personal data is collected, such as the identity and the contact details of the personal data’s controller; the contact details of the Data Protection Officer; the purpose of the personal data processing; the recipients of the personal data, if any; and whether the personal data is to be transferred to another country.
- ***The Right to Rectify (Article 16).*** Data subjects have permission to request that a company rectify, without undue delay, any inaccurate personal data that the company previously collected on the data subject.
- ***The Right to Be Forgotten (Article 17).*** Data subjects can request that their personal data be erased, without unwarranted delay.
- ***The Right to Restrict (Article 18).*** Data subjects can restrict the processing of personal data by the company or other third parties.

- **Data Portability (Article 20).** Data subjects have the right to obtain the collected personal data in a commonly used, machine-readable format that allows the data subject to be able to transmit the personal data elsewhere.
- **The Right to Object to Profiling (Article 21 – 22).** Data subjects can object to the processing of their personal data, particularly if the company is making decisions about the data subject based on profiling processes or automatic processing.


Penalties for Non-Compliance

Data subjects also have the right to file complaints with EU supervisory authorities, as well as the right to receive compensation for damages suffered as a result of non-compliance with the GDPR.

Administrative fines may also be levied, depending on the specific circumstances of each individual case. Depending on the type and severity of the non-compliance, companies can be fined as much as €20,000, or four percent of the company's total

worldwide annual revenue, whichever is higher. How the EU plans to enforce such penalties against non-EU companies is, to date, not clear.


As a result of the GDPR, companies should implement changes to their data collection and data privacy policies that allow for enough flexibility for them to be able to analyze and report security breaches, as well as respond to requests by data subjects.

Companies should also understand what types of personal data is being collected from data subjects, where the personal data is being stored, what the security measures are in place around the personal data and who has access to it. 

The full text of the GDPR can be found online at <http://data.consilium.europa.eu/doc/document/ST-5419-2016-INIT/en/pdf>.

¹ Council of the European Union, "Article 4 Definitions," *REGULATION (EU) 2016/... OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL*, April 6, 2016, accessed at <http://data.consilium.europa.eu/doc/document/ST-5419-2016-INIT/en/pdf> on May 2, 2018.

² Council of the European Union, "Article 30 Records of Processing Activities," *REGULATION (EU) 2016/... OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL*, April 6, 2016, accessed at <http://data.consilium.europa.eu/doc/document/ST-5419-2016-INIT/en/pdf> on May 2, 2018.



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ART THE BAR

Winners of the Valley Lawyer Art Contest

The judges of the Editorial Committee were struck by the level of talent displayed by all members who entered their artwork into this year's Valley Lawyer Art Contest. The following photography and poetry so impressed the judges that they have been chosen to be featured in this issue. We hope their works will move readers as well.

1ST PLACE

Peacock Dialogue | Sandra Knapp

ARTIST'S INSPIRATION

"The peacock is a wild bird who lives in our neighborhood. We always know when he is around because we hear his distinctive cry. I live part-way up a mountain in Newbury Park, California, so he wanders around every day and we often get to see him. In fact, when I came home one day, he was in the entryway to my house.

When this happens, or when I see him on one of my neighbor's wooden fences when I am leaving home, I stop to talk to him. He often listens, then either walks or flaps away. Right now, he's molting, losing his long tail feathers, which are about four and a half to five feet long.

I see many wild animals where I live, raccoons, white-tailed bunnies, various forms of wild cats—not house kitties—and road-runners.

I have been a writer since I first learned to spell, about age seven, and thought I would write novels when I grew up, but poetry is where I excel. There are many poetry venues now in Thousand Oaks, Newbury Park, Ventura and Malibu."



SANDRA KNAPP has been a practicing attorney for more than 30 years in the area of family law, the area of the law, she says, where "water isn't wet and gravel isn't gritty."

PEACOCK DIALOGUE



*The peacock has disappeared again,
No recent conversations with him while he
Sits on wooden fence, colorful feathers
Hanging to ground and he cocks his ears
Toward my salutations in soft lilt
And kitten-purr.*

*We understand each other, he and I,
In early morning or late afternoon light,
Drifting into or out of shadow, hint of moon
Hanging above us past full and leafy trees.*

*He does this, now and then,
Explores other streets, perhaps
Seeking a hen, or better talk than mine.
Although I've done fairly well, given differences
In language, and my lack of flight.*

*He only speaks of dawn, of afternoon sky.
I speak of little but him, and say good-bye.*

2ND PLACE

Crags at Monterey | Arthur Paul Berg



ARTIST'S INSPIRATION

“It’s impossible to say too much about America’s scenic wonders. I’ve always loved being surrounded by those wonders, whether forests, lakes, oceans, or mountains. Almost 40 years ago I started trying to capture in photographs both the beauty I saw and the emotions that beauty evokes. I’m transported into another world when my camera and I hike up mountains, walk along shady forest paths, or just immerse ourselves in nature’s bounty. I’m in ‘camera mode.’ I look left and right, up and down—even backwards—for something I can compose that will convey my emotions. To be completely honest most often I fail. When I still was shooting film I once computed that my success rate was about 2 percent.

This photo is one of the 2 percent. One summer I was driving down the Pacific Coast near Monterey. The coastline is jagged and rocky crags jut out from the water. Scrawny trees manage to grow out of the rock. It’s a lovely sight, but this morning it was especially beautiful. The fog had not yet burned off; the tree topped crags presented a ghostly pictures. I was entranced. I framed the image by contrasting the fog-shrouded rock with the clear green of the tree tops just in front of my vantage point. It’s not easy to photograph foggy scenes, but this one time I got what I wanted. Success! Not only did I get to experience nature’s beauty but I knew that I would never forget it for this photo would transport me back to that morning for years to come.”



ARTHUR PAUL BERG practiced personal injury, products liability, insurance coverage, and bad faith law for almost 40 years before taking up semi-retirement in a small town in Indiana. He currently writes trial and appellate court briefs for several prominent Los Angeles firms.

WORK BY SFVBA PRESIDENT

Bodie Ghost Town | Alan E. Kassan



ARTIST'S INSPIRATION

“Really, I’m a frustrated painter/sculptor. Since my painting and sculpting talents exist only in my imagination, I turned to photography as a creative outlet that I seem to at least have some aptitude for.

Photographing landscapes is probably my favorite pastime. Partly because I so enjoy the process, but also because I love capturing the beauty in nature and then displaying it in ways people may not otherwise see.

The Bodie Ghost Town image was the result of almost 1 ½ hours of exposures allowing the rotation of the earth to be etched onto my camera’s sensor by the light of the stars in our Milky Way.”



ALAN E. KASSAN is a Senior Partner at the law firm of Kantor & Kantor in Northridge. His law practice has spanned more than 30 years, with a focus on ERISA and helping people recover their health-related insurance benefits.



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IT'S CRITICALLY IMPORTANT for small business owners to understand that in California, the failure to maintain accurate payroll and time records of non-exempt employees usually results in a favorable verdict for employees in wage and hour claims, even if the claims are exaggerated, as was the case for Gabriela (a pseudonym).

Gabriela runs a small group home for disabled and dependent young people in the San Fernando Valley. In early 2017, she received a wage and hour claim from an ex-employee who made demands for hours not worked. Fortunately for Gabriela, ARS attorney Lee A. Miller has more than 25 years of experience advising employers in a wide range of employment law matters.

"When you have exaggerated claims of hours worked and a lack of documentation by the employer, you have to get creative on behalf of the employer as to how you are going to defend against the claims," says Miller.

The base claim was that the employee worked slightly more than eight hours a day, five days a week for three consecutive years between 2013 and 2016.


Even though Gabriela didn't have accurate time records, she had taken the trouble to archive

email exchanges that showed the employee had frequently asked for time off to perform his stand-up comedy routine and had even requested vacation time to travel. The email evidence put into question the employee's credibility.

The next issue was the hours being claimed. Miller was able to prove that the employee worked eight hours a day only three days a week, and he had actually resigned and was not employed by the company for extended periods of time between 2013 and 2016.

The hearing was short, with most of the time spent proving beyond a reasonable doubt that the employee's claims were unrealistic. "His [the ex-employee's] claim was extremely inflated as it turns out through the evidence we were able to bring forward. His creditability was non-existent," says Miller.

Responding to a recent survey of ARS clients, Gabriela thanked the ARS for having referred her to Mr. Miller and expressed her satisfaction with having hired him.

Lesson learned: Although it may seem like a tiresome task, preserving accurate payroll and time records can go a long way to help protect a business from embellished wage and hour claims. 

“
Preserving accurate
pay and time
records can
go a long
way to protect
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Supporting Our Future!

DUE TO YOUR SUPPORT, THE VALLEY COMMUNITY Legal Foundation (VCLF) was honored to recognize nine remarkable scholarship recipients this year. Awarding these scholarships of recognition to these bastions of our young society has truly been the highlight of my tenure at the Foundation.

Each one of these extraordinary students deserves our accolades and our support, as they are truly inspirational. For example, meet Oswaldo Cota, recipient of the 2018 Lewitt Hackman Shapiro Marshall & Harlan VCLF Student of Distinction Award Scholarship and winner of the Foundation's Defamation: Experience (the Play) Essay Contest.

The oldest child of undocumented immigrants, he understood from an early age the risks his parents had taken in order for Oswaldo and his siblings to reach for the American dream. Throughout his childhood his family moved regularly to avoid immigration authorities, even once abandoning their home because of an Immigration and Customs Enforcement (ICE) raid next door.



Because of their limited English, his parents struggled to find steady work. After losing his job three years ago, his father developed Bell's Palsy from the stress, which plunged him into depression. To help his parents, Cota cared for his younger

LAURENCE N. KALDOR
President



phenix7@msn.com

siblings and focused on his schoolwork to repay them for the sacrifices they had made on his behalf.

Seeing the toll that continually hiding from the authorities had taken on his parents, Cota was facing his own personal demons relating to his sexual orientation. Influenced by Latino culture and its strong religious beliefs, and overcome by the first-hand experience of living the life of the undocumented, he struggled with coming out to his family and confronting the harm done by existing in the shadows.

After he became involved in the speech and debate program at James Monroe High School's Law Magnet, he began to build the confidence to express himself and confront his own sexuality. While he could not alleviate his parents' pain, he has been able to use his voice to create change for the LGBTQ, a genuine minority group within the Latino community.

Cota's experiences as part of the Law Magnet have taught him the importance of fearlessly taking a stand and expressing himself. "I am living my version of the American dream," says Cota. "I do not want to live in secrecy; I want to demonstrate to my younger siblings that our parents have given us the opportunity to transcend society's limited expectations of Latinos."

His parents' strongly-held beliefs and continuing social constraints have shown him that there is still a long way to go, but, he says, "This realization intensifies my interest in pursuing a legal career to help initiate social justice and progress for all of society."

Upon receiving his VCLF Scholarship and Essay Prize Money, Cota expressed how truly appreciative he is. "I am beyond honored, ecstatic, and grateful for having received this scholarship on behalf of the Valley Community Legal Foundation," he said. "Through this platform, I hope to acquire the necessary skills to help ameliorate the injustices that are occurring in our own backyards. So be on the lookout [for me to be] opening up my non-profit and starting my career as a civil rights attorney."

The VCLF is proud to share Cota's award winning essay:

Establishing the validness of a defamation claim is challenging to both the judge and the jury as they attempt to separate their own internalized prejudices from the facts

In Loving Memory



Judge Richard G. Kolostian, Sr.

December 2, 1931 — June 9, 2018

On February 2, 1980, Richard G. Kolostian, Sr. was appointed by Governor Jerry Brown as a judge in the Los Angeles Superior Court. During his first year on the bench, he served at Juvenile Hall in Sylmar. After that year, he transferred to Van Nuys, where he served the remainder of his career. Judge Kolostian started in Van Nuys as a felony criminal judge, then in later years transitioned to handle civil cases. He served as Supervising Judge of the Northwest District (Van Nuys) in 1988. Judge Kolostian retired in 2006, number one in seniority of all judges in the entire Los Angeles Superior Court.

After suffering a stroke in early May 2018, Judge Kolostian was brought home to Calabasas to live out the remainder of his life in hospice care. He passed away peacefully on June 9. He is survived by his wife of 54 years, Joan; his sons Richard Jr. (Michele) and Jon; and his wonderful grandchildren Peter, Ava, Zachary, and Conner.

During his time on the bench and throughout his retirement, he was active and supportive of the Valley Community Legal Foundation of the San Fernando Valley Bar Association and the Armenian Bar Association.

In lieu of flowers, the family requests donations in the name of Judge Kolostian to the following organizations: Valley Community Legal Foundation of the SFVBA (www.thevcflf.org), Armenian Bar Association (armenianbar.org), and the Constitution Rights Foundation Mock Trial Program (crf-usa.org; please specify "Mock Trial Program").

Donations to the **VCLF Hon. Richard G. Kolostian, Sr. Fund** can be made online at thevcflf.org/hon-richard-g-kolostian-fund or mailed by check, made payable to the VCLF, to 5567 Reseda Blvd., Suite 200, Tarzana, CA 91356.

of the case. However, in the work "Defamation," the attorneys exploit these prejudices through convoluted arguments. These types of arguments appear on the outside as cohesive but when analyzed closely they are more than problematic for the justice system. It is problematic because throughout the play the attorneys focused more on tearing each other's witnesses apart instead of disproving or proving the issue of defamation. The audience (jury)—according to the post-play interactive discussion—felt more sympathetic to the African-American woman after the attorney unveiled her background of economic instability and her living in the slums.

Similarly, when the attorney borderline-badgered the rich Jewish man witness, the attorney's goal was to prove that the man inherently was racist for his membership at a Jewish only country club. By proving this he would establish reasons for the Jewish man to make a false accusation that the woman had stolen the watch solely for the color of her skin. It is a highly effective form of priming or framing that would call to action the "lean-in" effect. That implies if one were to still support the Jewish man after being shown as a racist—though, not proven the impression is still there—they would be an accomplice to racism. It has a massive influence on a jury; not a judge as they are experts in reading between the lines. Especially with the current political climate at its highest with racial and social tension, it is rather easy to fall into these either too nuanced or too broad of a stereotype.

I found myself getting sucked into the quagmire or the fear of supporting a racist man. It made me ponder about what I would do if I were the judge. If I were a jury member for this play (if it were a real case), I would have allowed for my prejudice get the best of me. It made me question all of these things.

This struck a personal chord with me because I am not only Mexican-American but also I am a legal field impassioned gay teen attempting to fit into three different types of cultural systems that clash time and time again. The person I am raised my prejudice. Though I do not intend to come off as a cynic but rather an optimist because this was an eye-opening experience. It made me more self-conscious about my own inherent prejudices. My two cents when it comes to issues such as these is that when politics and social issues are placed aside, the courts, similar to the Constitution, are a living and breathing function and it has the inherent ability to evolve and change as proven throughout American history. All it needs is an impassioned voice willing to rally a movement to change it. 🏴‍☠️

ABOUT THE VCLF OF THE SFVBA

The Valley Community Legal Foundation is the charitable arm of the San Fernando Valley Bar Association, with a mission to support the legal needs of the San Fernando Valley's youth, victims of domestic violence, and veterans. The VCLF also provides scholarships to qualified students who wish to pursue legal careers. The Foundation relies on donations to fund its work. To donate to the VCLF and support its efforts on behalf of the Valley community, visit www.thevcflf.org and help us make a difference in our community.

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