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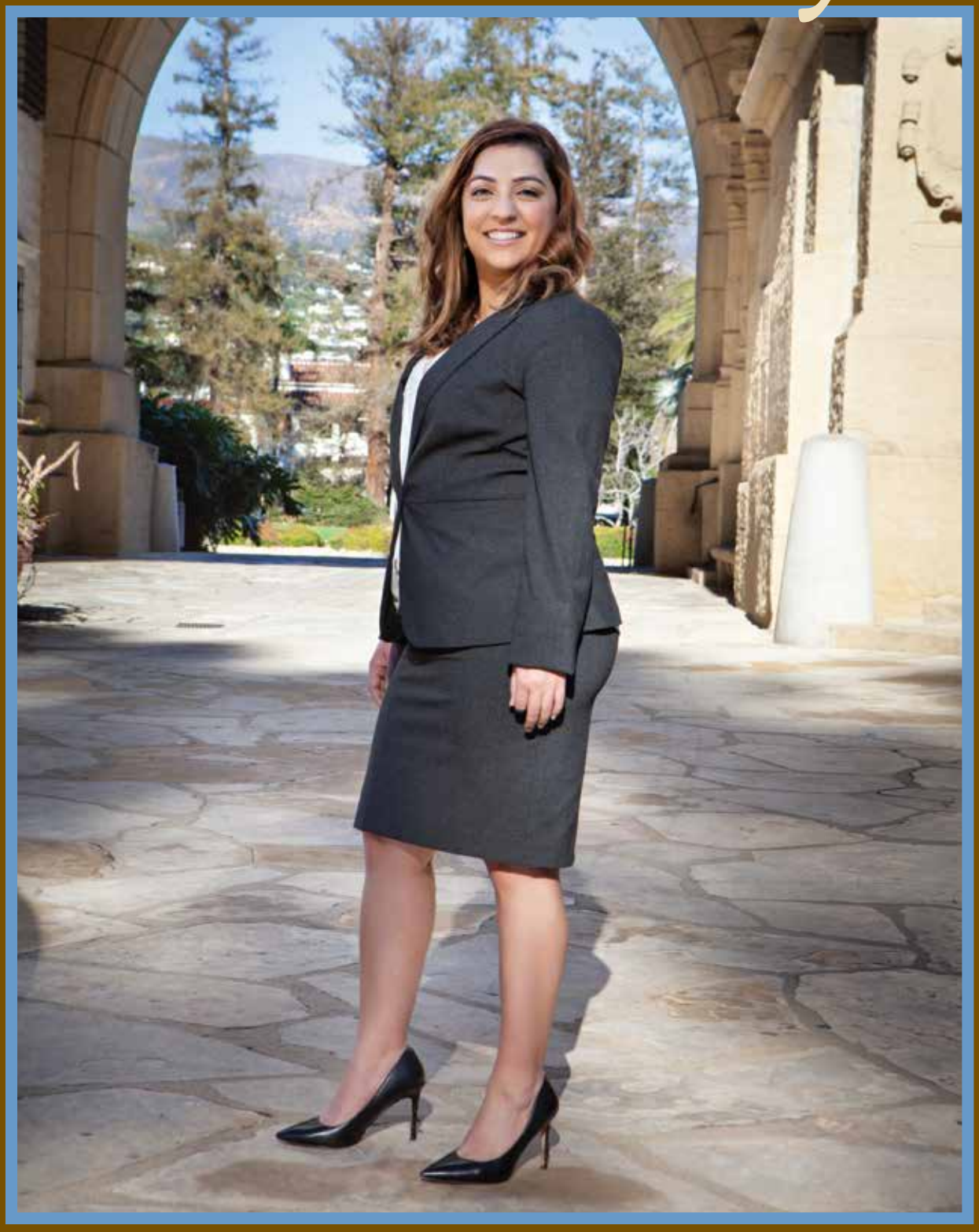

Modest Means Attorney Spotlight: *Guneet Kaur*

Relocation Expenses Found to be Constitutional / Requiem for a Friend: Sue Dodds AKA Mrs. Bruce Dodds Ret. / California Supplemental Sick Leave Resurrected / Preparing Clients for the Approaching CalSavers Deadline / Forensic DNA Phenotyping and Facial Recognition

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Santa Barbara County Bar Association

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On the Cover

Guneet Kaur

Modest Means Attorney Spotlight

By Guneet Kaur

The Santa Barbara County Bar Association (SBCBA) sponsors a Lawyer Referral Service (LRS) that assists people in Santa Barbara County who have legal problems and seek the advice of qualified attorneys. The LRS offers a Modest Means Program for low-income individuals with family law issues. Qualifying applicants may retain an attorney like Attorney Guneet Kaur, spotlighted in this column.

What influenced you to become a lawyer?

My family is of Sikh background and immigrated to the US from Punjab, India, when I was ten-years-old. I was 17 when I started working at a national drugstore chain as a cashier. The store policy back then for any charge over $50 was to cross reference the credit card with the customer's ID. No one seemed to have an issue with this, however, one day a customer questioned why I had requested it. I simply responded with, "Well, it's the law."

Back then, I did not know the difference between "store policy" vs. "the law". In return, the customer told me he would not provide his ID card and added, "What does an immigrant like you know about the law? I know the law because I am an attorney. An immigrant like you knows nothing about the law."

I was shocked, scared, and I cried after his comment. I was upset that someone tried to make me feel inferior as an immigrant and as a person of ethnicity. That moment, however, inspired me to learn all I could about "the law." It inspired my mission to help other immigrants and ALL people, no matter their race, orientation and/or religious background.

The legal system can be daunting. If I can help someone understand the legal process so that they do not have to live in fear of it - that is my goal. The law has become my vessel to help others.

What drew you to practice in Santa Barbara?

I attended UCSB and received my undergraduate degree in Religious Studies and Sociology. I fell in love with Santa Barbara. After graduating, however, I moved back to the Bay Area (where my family resides) to study for the LSATs. I was accepted into law schools in the Bay Area, but I couldn't resist the urge to return to Santa Barbara and attend the Santa Barbara College of Law ("SBCOL"), where legal education was, and continues to be, affordable compared to many other law schools throughout the state.

Guneet Kaur

Towards the end of law school, local family law attorney, Matthew Long, became my mentor. After passing the bar exam, I worked with Mr. Long in his practice, which gave me the confidence to start my own practice here in Santa Barbara.

How/why did you get involved with the SBCBA Lawyer Referral Service Modest Means program?

I first became involved with the SBCBA Lawyer Referral Service Modest Means program while still working as an associate attorney for Mr. Long.

As an immigrant, I have seen the struggle it takes to make ends meet after moving from your home to a new country. I know it can be difficult for many people to retain an attorney due to lack of finances or otherwise, so I decided early on in my career that while making money is a nice goal, providing access to affordable legal assistance as a Modest Means attorney meant more to me. Since 2015, I have been, and will continue to be, a Modest Means attorney in order to provide access to an affordable family law attorney.

What do you do when not practicing law? How do you balance work life?

Oh, boy! Anyone who knows me knows I cannot talk enough about riding my *Peloton* indoor exercise bike! For me, to create a balance between work and life, I need to take care of not only my physical well-being, but my mental well-being as well. Dealing with the emotional complexities of being a family law attorney can be challenging at times.

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Ninth Circuit Decides: Relocation Expenses are NOT a Taking

By Michelle E. Roberson

Approximately six months ago, I wrote about the different perspectives on whether or not a relocation expense is a constitutional taking for this magazine. On February 1, 2022, the Ninth Circuit decided this in *Ballinger v. City of Oakland*, No. 19-16550, 2022 WL 289180 (9th Cir. Feb. 1, 2022): legislation requiring the monetary payment of money is *not* a taking because these ordinances are a regulation of the landlord-tenant relationship.

The facts in *Ballinger* involved a couple that leased their home in Oakland to fulfill their military assignments on the east coast. They rented their house for an initial year that subsequently converted to a month-to-month tenancy to a couple that was in the high-tech industry. Once reassigned to the Bay area, they wished to move their family back into their home and learned they had to pay the tenants $6,582.40 due to a new ordinance enacted in Oakland.

The relocation fee in Oakland at issue is based on the type of unit and is regardless of the tenants' income or whether they use the funds to relocate. It was originally dismissed by the lower court that found there was no exaction of funds from the municipality.

The Ninth Circuit affirmed this decision. They acknowledged that "private property" shall not "be taken for public use, without just compensation" under U.S. Const., amend. V, but they likened relocation benefits to "the broad power to regulate housing conditions in general and the landlord-tenant relationship in particular..." *Ballinger* citing *Loretto v. Teleprompter Manhattan CATV Corp.,* 458 U.S. 419, 440 (1982).

This gives rise to many legal questions, but more so real-life repercussions in our town where Santa Barbara has fallen behind in creating more housing supply. The legal question starts with whether this decision will be elevated to the Supreme Court as the plaintiffs' counsel, Pacific Legal Foundation, hopes. We will wait and see and perhaps in another six months an update will be published.

The real-life questions are a little stickier as data is being gathered to determine the impacts of these new regulations.

In the last year, the relocation fees have been paid by owners and, in a recent court filing against the City of Santa Barbara, a plaintiff alleges they paid their tenant three times the rent due to necessary plumbing repairs required in a unit within a duplex their tenant was residing in. This sounds reasonable until the plaintiff points out that they relocated the tenants to the other unit of the duplex.

Michelle E. Roberson

Couple this with The Tenant Protection Act colloquially known as AB 1482. Many lawyers are recommending that no leases be renewed after the first year in light of the new laws, particularly if the rates were set artificially low during the pandemic as many are experiencing inflationary costs. This causes further displacement and uncertainty for tenants. It would exempt landlords from the AB 1482 requirements, but also be disruptive for many families that want security in their community, which is particularly harsh when there are children involved.

The new rent cap rules and one-year lease offer requirements within the City of Santa Barbara pushed many landlords to raise rents they otherwise would have let ride as a "use it or lose it" mindset creeps in presumably due to the increasing rates of electricity, water, trash, insurance, and labor that far exceed much of the standard inflation impact.

But, to the newly repaired vacant unit like the aforementioned plaintiff's duplex, will they envelope in the relocation expense by raising rents at the onset for a new tenant?

The City of Santa Barbara seems to have found a solution via a rent control and rent registry ordinance they passed quickly in December 2021 prior to Mayor Murillo departing from office. This ordinance would cap rents less than the current 5% plus inflation allowed statewide and cost the city a few million to govern.

Most recently, the City approved for over $200,000 to retain a consulting firm to see what financial impact this would have within the City. However, three councilmembers (Harmon, Sneddon, and O. Gutierrez) voted to pursue the rent control ordinance prior to receiving and evaluating the economic impact study as an emergency stop gap, which did not pass.

Looking at the cost of rent in other large cities where

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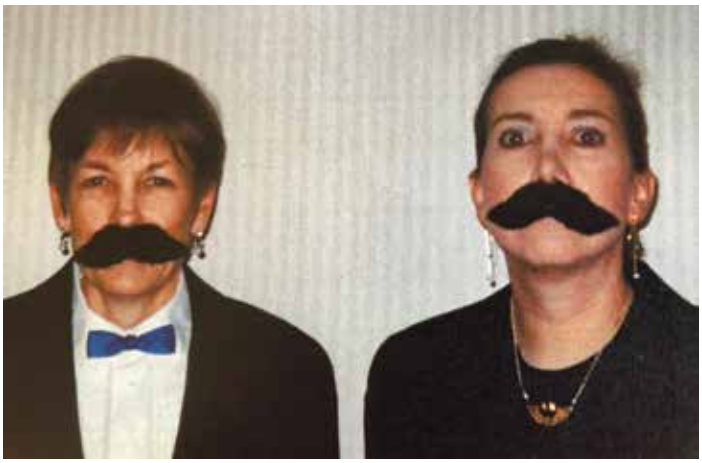
Requiem for a Friend Sue Dodds AKA Mrs. Bruce Dodds Ret.

By Penny Clemmons



Mrs. Dodds and the author

In 1993, it was my great pleasure to meet Bruce and Sue Dodds. It was the genesis of a unique friendship full of fun, creativity, scintillating conversation and travel.

In 1996, Sue, Bruce, my husband Burt and myself met in London to celebrate New Year's Eve. We had dinner at Rules Restaurant where Charles Dickens worked as a bus boy centuries ago. They have a quaint custom called "Ladies Menus" which Sue and I vehemently opposed. However, we knew the cost of dinner, and it was New Year's Eve, so we made sure Bruce had a Ladies Menu. We learned early on that it was not a good idea to let Bruce order the wine. He would simply glance at the right-hand side of the menu and pick the bottle with the lowest price.

Seated at the banquette next to Sue was a handsome Italian gentleman dressed in a resplendent gendarme uniform. They struck up a conversation and she discovered he was on duty at the Leonardo da Vinci Airport in Rome. He kept his phone nearby and was confident he could continue his reverie without interruption. We were flabbergasted.

There was a new play on the West End entitled Art. Tickets were sold out but Sue and I were determined to see it. We discovered that you could line up outside the theater two hours before the curtain opened and wait for turnback tickets, if there were any. She and I bundled up and our gallant husbands left us to have high tea while we scavenged for tickets. We told them if we got two, we were using them, if we got three they could draw a straw for the third, and if we got four they needed to buy us dinner. It was below freezing out and we stood shivering outside the theater because we went early, to be first in line. Someone in the lobby took pity on these two frozen American women and invited us to wait in the lobby and voila, suddenly we had four tickets.

Over the years we shared animals. Burt adopted a cat from the Humane Society and I declared it separate property, as it terrorized our cat. He had to find a new home for him. Bruce and Sue adopted Zeus.

Now Sue did not like to cook, and I love to cook. So generally, I cooked and they took us out to dinner but Sue paid. One night Sue invited us to their home and set a beautiful table. This was a special treat for us because we knew how much effort it was for her. Zeus was always happy to see Burt. He was so happy that night as we approached the beautiful table, we noticed he had deposited one of the largest rats I have ever seen right in front of Burt's plate.

Salmon was Sue's very favorite entrée (followed by chocolate). It was our tradition that I would always serve salmon and experiment with different recipes. She always declined dessert so I would give Bruce a larger serving and two forks. She would eat more of his than if she had a separate serving.

A couple of decades ago Sue was diagnosed with a particularly virulent cancer. She had already survived a serious bout with breast cancer before we met. She blithely sat on the sofa in our living room one evening as we were eating appetizers and announced, I was diagnosed with such and such cancer this week. If I have chemotherapy, they can prolong my life, but without it I have six months to live. Bruce knew and stoically sat there as she detailed the protocol. She said she had decided not to have chemo, she had a wonderful life and no regrets. She had done everything on her bucket list. Sue was in her sixties at the time and was totally at peace with her decision.

Six months passed, but not Sue. She was as vibrant and energetic as ever. She was an avid photographer, world traveler, contributor to liberal causes, loving mother, amazing wife and an incredible friend. She loved the theater and the Bruins. She worked one week a month in Washington, D.C. and the other three weeks telecommuted from her home office before it was fashionable

Sue was a prolific e-mailer. One evening she walked into our house for dinner with what looked like a ream of paper. It was our email correspondence over the years that she

had printed out for me to have a copy!

The hair salon we both patronized had an art show. We were comparing notes about the exhibit, and I told her how enthralled I was with a glass and stone sculpture entitled Skateboarding the Acropolis. The following month for my birthday she gave me a large and heavy box. The sculpture has hung on our living room wall ever since.

Time passed and Sue had some treatments for her cancer, but nothing too exotic. Ten years ago, after Zeus exhausted his ninth life, Sue said how much she wanted to get a Ragdoll kitten but didn't think it was fair to an animal because likely the cat would outlive her. So, I stepped up to the plate and said, oh Sue, of course you should get the kitten you want. If you pass before it does, I will take it as long as you provide me with a trust fund to care for it in its sunset years. So, Zoe the kitten became an integral part of the Dodds's family, and I was named the Guardian.

Covid significantly impacted our get-togethers. Compromised immune systems did not lend themselves to our bi-weekly dinners. So, we returned to e-mail. Sue began to have some significant symptoms and in the fall her medical team recommended a chemotherapy regimen. She embraced it with courage and equanimity in December and to everyone's astonishment, it did not take the significant toll on her body that was predicted, and she began planning to do the things she loved again. She was taking online classes, editing and cataloging her gazillion photos, and once again living her life to the fullest.

But we know not the day nor the hour, and on Jan. 17, 2022 the disease took Sue from our midst at the age of 83. A true friend is never gone. Sue's spirit lives on in our memories. ■

Penny Clemmons, Ph.D. is Chair of the Santa Barbara County Bar ADR Section. She is a CMADRESS mediator, Mandatory Settlement Conference Master, Unlawful Detainer Settlement Master, Professor at the Santa Barbara and Ventura Colleges of Law and maintains a mediation and private judging practice.

Same But Different: California Supplemental Sick Leave Resurrected

By Jared Speier

As many news outlets have reported, the Governor and California Legislature agreed to provide additional COVID-19 supplemental paid sick leave to California workers. Now a bill effectuating that leave has been released. Assembly Bill 84, while still pending in the legislature, will likely pass quickly and require employers of 26 or more employees to provide up to 80 hours of supplemental paid sick leave. When the Bill is passed, which is a near foregone conclusion, it will require employers to begin providing the leave 10 days after approved. Below is a list of FAQ's to help you prepare for advising clients on the complexities of this new leave requirement.

Which employers are covered?

Employers of 26 or more employees and who have at least one employee in the state of California will be required to provide this new leave.

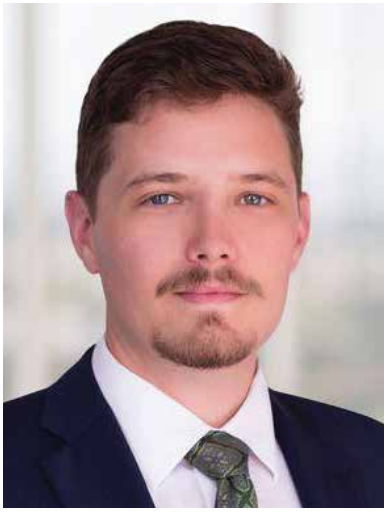
Which employees are entitled to the leave?

All employees of the covered employer, both full time and part time are entitled to the leave. There is no length of service requirement for an employee to be eligible.

When can an employee take leave?

The entitlement will apply retroactively back to January 1, 2022, and prospectively until September 30, 2022. That means if an employee has already taken a leave that would have been covered as described below they can apply this new entitlement to be paid for that leave. It is important to note that employers cannot unilaterally apply this leave retroactively, the employee must request that the employer do so. In the case where an employee took a prior leave which was paid, at the same or higher amount than they would have been paid under this supplemental leave and the employee requests retroactive application, the employee will be credited back the leave they previously used. For example, if an employee took 40 hours off in January for one of the covered reasons below and they used sick leave to be paid for that time, that employee can choose to use this new supplemental leave and will be credited back the sick leave hours they already used.

If an employee uses the leave retroactively, then they must be paid the corresponding amount on the payday after the next full pay period.



Jared Speier

Additionally, in the event the employee has requested leave prior to September 30, 2022, they can remain on leave even if the leave extends past that date.

What are the covered reasons for leave?

Employees are entitled to use this supplemental leave for the following reasons:

1. The covered employee is subject to a quarantine or isolation period related to COVID-19 as defined by an order or guidance of the State Department of Public Health, the federal Centers for Disease Control and Prevention (CDC), or a local public health officer who has jurisdiction over the workplace.
2. The covered employee has been advised by a health care provider to isolate or quarantine due to COVID-19.
3. The covered employee is attending an appointment for themselves or a family member to receive a vaccine or a vaccine booster for protection against COVID-19.
4. The covered employee is experiencing symptoms or caring for a family member experiencing symptoms, related to a COVID-19 vaccine or vaccine booster that prevents the employee from being able to work or telework.
5. The covered employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis.
6. The covered employee is caring for a family member who is subject to an order or guidance or who has been advised to isolate or quarantine.
7. The covered employee is caring for a child, whose school or place of care is closed or otherwise unavailable for reasons related to COVID-19 on the premises.

How much leave do employees get?

A full-time covered employee is automatically entitled to 40 hours of leave for the reasons detailed above. A part-time covered employee is entitled to a proportionate number of hours of supplemental leave based on their weekly schedule. If the employee works a variable number of hours then the calculation depends on how long they have been with the company, but will generally be a weekly average of their hours.

Both full and part-time employees are entitled to an additional amount of time, equal to their allotment for the reasons detailed above, if the employee or family member for whom the employee is caring for tests positive for COVID-19. For instance, full-time employees are entitled to an additional 40 hours. If the employee tested positive, then the employer may require the employee to submit to a COVID-19 test on the fifth day after the initial positive test and provide documentation of the results. If the employee's family member tests positive, then the employer may request documentation of those results. The Bill is silent on what documentation will suffice, this is of greater concern if the employee or family member is using an at home test. We expect additional information to be released on this requirement prior to its implementation.

If an employee refuses to provide the test results then the employer has no obligation to provide the additional leave allotment.

What rate do employees receive for supplemental sick hours?

For nonexempt employees, the rate of pay is either (1) their regular rate of pay (which is not necessarily the same as their base hourly rate), or (2) can be calculated by dividing the employees total wages, not including overtime, by the employees non-overtime hours in the full pay periods occurring in the 90 days prior to taking the leave.

For exempt employees, the leave should be paid at the same rate as the employer calculates wages for other forms of paid leave.

There is a cap of $511 per day and $5,110 total. So if the calculations above yield a higher amount, employers can cap it at the aforementioned amounts. If an employee hits the cap, they can elect to use other forms of paid leave so they can receive their full wages while on leave.

Can employers require employees to use supplemental leave instead of paying exclusion pay?

No. Unlike the previous supplemental sick leave requirement, employers cannot require that employees first exhaust this leave before being entitled to exclusion pay under the Cal/OSHA Emergency Temporary Standards. As a reminder, subject to some exceptions, employees are entitled to their regular rate of pay when they are sent home for an exposure to COVID-19 at the workplace. This effectively means that this new supplemental sick pay will only apply when an employer can show that the employee contracted COVID-19 or was exposed outside of work.

Are there notice requirements?

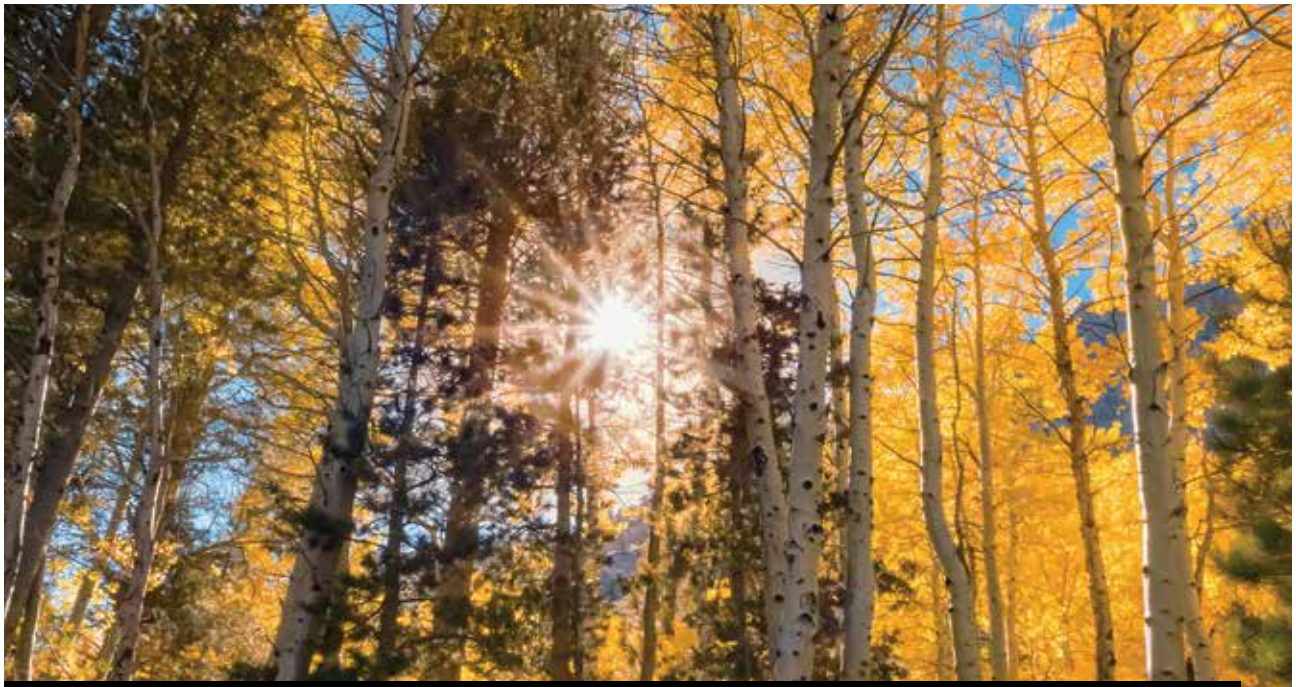
Employers must list the amount of supplemental leave an employee has used on their wage statement or a separate writing provided with the employee's wage statements. This is different from the previous requirement which required employers to list the amount of leave available on the paystub or separate writing. For instance, under the new requirements, employers should list zero hours on the paystub if an employee has not used any COVID-19 supplemental paid sick leave.

Employers must also post a notice to be created by the Labor Commissioner about this new benefit. If an employer's covered employees work remotely, the employer can send out this notice through electronic means, like e-mail. ■

MCLE Presentation

On March 15, at 12 pm Jared Speier will be presenting on this new leave entitlement and much more.

Jared W. Speier is an associate in Stradling's Employment Law practice group and represents clients in several industries, including financial services, medical devices, retail, logistics, and manufacturing. Jared has defended and settled numerous matters in both state and federal court and various arbitral forums including FINRA. Jared regularly guides clients through their COVID-19 and general employment law compliance with an emphasis on practical solutions.



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How to Prepare Clients for the Approaching CalSavers Deadline

By Christine P. Roberts, Mullen & Henzell L.L.P.

Christine P. Roberts

CalSavers is a state-run retirement program that applies to employers who do not already sponsor their own retirement plan. It automatically enrolls eligible employees in a state-managed system of Roth IRA accounts. It has been in place since September 30, 2020 for employers with more than 100 employees and since June 30, 2021 for employers with more than 50 employees. On June 31, 2022, it goes into effect for employers with 5 or more employees. Below we cover key aspects of the CalSavers program, focusing on the types of issues that California business owners might bring to their business or employment law counsel for further clarification.

Q.1: What is CalSavers?

A.1: CalSavers is the byproduct of California Senate Bill 1234, which Governor Brown signed into law in 2016. It is codified in Title 21 of the Government Code and in applicable regulations. It creates a state board tasked with developing a workplace retirement savings program for private for-profit and non-profit employers with at least 5 employees that do not sponsor their own retirement plans ("Eligible Employers"). Specifically, CalSavers calls for employees aged at least 18, and who receive a Form W-2 from an eligible employer, to be automatically enrolled in the CalSavers program after a 30-day period, during which they may either opt out, or customize their contribution level and investment choices. The default is an employee contribution of 5% of their wages subject to income tax withholding, automatically increasing each year by 1% to a maximum contribution level of 8%. Employer contributions currently are prohibited, but they may be allowed at a later date.

Q.2: If a business wants to comply with CalSavers, what does it need to do?

A.2: The steps are as follows:

- Prior to their mandatory participation date – which as mentioned is June 30, 2022 for employers with 5 or more employees, Eligible Employers will receive a notice from the CalSavers program containing an access code, and a written notice that may be forwarded to employees. Eligible Employers must log on to the CalSavers site to either register online, or certify their exemption from Calsavers by stating that their business already maintains a retirement plan. The link to do so is at https://employer.calsavers.com/californiaertpl/enroll/createEmp/viewCollectEmpPreRegDetails.cs. To do either, the employer will need its federal Employer Identification Number or Tax Identification Number, as well as the access code provided in the CalSavers notice.
- Eligible Employers who enroll in CalSavers will provide some basic employee roster information to CalSavers. CalSavers will then contact employees directly to notify them of the program and to instruct them about how to enroll or opt-out online. Those who enroll will have an online account which they can access in order to change their contribution levels or investment selections.
- Once an Eligible Employer has enrolled in CalSavers, their subsequent obligations are limited to deducting and remitting each enrolled employee's contributions each pay period, and to adding new eligible employees within 30 days of hire (or of attaining eligibility by turning age 18, if later).
- Eligible Employers may delegate their third-party payroll provider to fulfill these functions, if the payroll provider agrees and is equipped to do so. CalSavers provides information on adding payroll representatives once a business registers.

Q.3: How does a business prove it is exempt from CalSavers?

A.3: There are several steps:

- First, it must have a retirement plan in place as of the mandatory participation date. This may mean a 401(k) plan, a 403(b) plan, a SEP or SIMPLE plan, or

a multiple employer (union) plan.

- Employers with plans in place must still register with CalSavers to certify their exemption. The link is at https://employer.calsavers.com (Select "I need to exempt my business" from the pull-down menu.) They will need their federal Employer Identification Number or Tax Identification Number and an access code that is provided on a notice they should have received from CalSavers. If they can't find their notice, they can call (855) 650-6916.

Q.4: How does a business count employees, for the 5 or more threshold?

A.4: To count employees for purposes of the 5 or more threshold, a business takes the average number of employees that it reported to the California Environmental Development Department (EDD) for the previous calendar year. This is done by counting the employees reported to the EDD on Form DE 9C, "Quarterly Contribution Return and Report of Wages (Continuation)" for the quarter ending December 31 and the previous three quarters, counting full- and part-time employees. So, for example, if a business reported over 5 employees to EDD for the quarter ending December 31, 2021 and the previous three quarters, combined, and it did not maintain a retirement plan, it would need to register with CalSavers by June 30, 2022. If a business uses staffing agencies or a payroll company, or a professional employer organization, this will impact its employee headcount. The business should seek legal counsel as the applicable regulations are somewhat complex.

Q.5: What are the consequences of noncompliance with CalSavers requirements?

A.5: There are monetary penalties for noncompliance, imposed on the Eligible Employer by CalSavers working together with the Franchise Tax Board. The penalty is $250 per eligible employee for failure to comply after 90 days of receiving the CalSavers notification, and $500 per eligible employee if noncompliance extends to 180 days or more after the notice. CalSavers has begun enforcing compliance with the program in early 2022, for employers with more than 100 employees who were required to enroll by the September 30, 2020 deadline.

Q.6: Are there any legal challenges to CalSavers?

A.6: Yes, but the main suit challenging the program has not met with much success. A bit of background infor-

mation is necessary to understand the legal challenge to CalSavers. The Employee Retirement Income Security Act of 1974 (ERISA) generally preempts state laws relating to benefits, but a Department of Labor "safe harbor" dating back to 1975 excludes from the definition of an ERISA plan certain "completely voluntary" programs with limited employer involvement. 29 C.F.R. § 2510.3-2(d). The Obama administration finalized regulations in 2016 that would have expressly classified state programs like CalSavers, as exempt from ERISA coverage, and thus permissible for states to impose. However, Congress passed legislation in 2017 that repealed those regulations, such that the 1975 safe harbor remains applicable. Arguing that the autoenrollment feature of CalSavers program makes CalSavers not completely voluntary and thus takes it out of the 1975 regulatory safe harbor, a California taxpayer association argued that ERISA preempts CalSavers. On March 29, 2019, a federal court judge concluded that ERISA did not prevent operation of the CalSavers program, because the program only applies to employers who do not have retirement plans governed by ERISA. The Ninth Circuit affirmed. A request for review by the Supreme Court is currently pending. In the meantime, state-operated IRA savings programs are underway in a number of other states, including Oregon, Illinois and New York, and in the formation stages in others.

Q.7: Does CalSavers apply to out-of-state employers?

A.7: It can. An employer's eligibility is based on the number of California employees it employs, as reported to EDD. Eligible employees are any individuals who have the status of an employee under California law, who receive wages subject to California taxes, and who are at least 18-years-old. If an out-of-state employer has more than five employees meeting that description, as measured in the manner described in Q&A 4, then as of June 30, 2022 it would need to either sponsor a retirement plan, or register for CalSavers.

Q.8. Does CalSavers apply to businesses located in California, with workers who perform services out of state?

A.8: Yes, if the employer is not otherwise exempt, and if they have a sufficient number of employees who have the status of an employee under California law, who receive wages subject to California taxes, and who are at least 18-years-old.

Q.9: Can an employer be held liable over the costs, or outcome of CalSavers investments?

A.9: No. Eligible Employers concerned about lawsuits should be aware that they are shielded from fiduciary liability to employees that might otherwise arise regarding investment performance or other aspects of participation in the CalSavers program. In that regard, the CalSavers Program Disclosure Booklet, available online, goes into significant detail about the way CalSavers contributions will be invested; notably the cost of these investments (consisting of an underlying fund fee, a state fee, and a program administration fee).

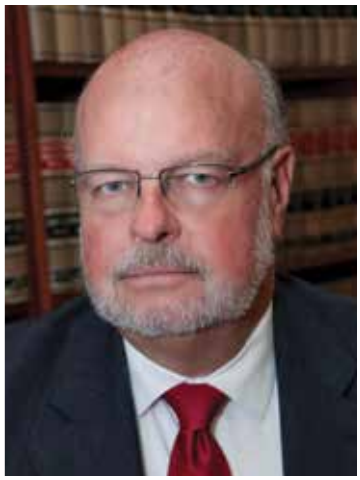
Q.10: Can an employer share its opinions about CalSavers, to employees?

A.10. Not really. Eligible Employers must remain neutral about the CalSavers program and may not encourage employees to participate, or discourage them from doing so. They should refer employees with questions about CalSavers to the CalSavers website or to Client Services at 855-650-6918 or clientservices@calsavers.com. ■

Christine Roberts is a partner at Mullen & Henzell L.L.P. and focuses her practice on employment benefits.

Forensic DNA Phenotyping and Facial Recognition

By Robert M. Sanger[1]



Robert M. Sanger

Who did it? That is often the most important question in a criminal investigation and one that may persist after a suspect is arrested, charged, and tried – and, beyond that, through post-conviction investigation. Eyewitnesses can be helpful but, as has been amply documented, can be woefully wrong. Other circumstantial evidence can also be helpful but can also be misleading. Wrongful convictions also occur despite, or because of, forensic analysis and testimony.

Although it has been hinted at for years, a new technology is being advanced commercially for potential use by law enforcement. It is called "forensic DNA phenotyping." Basically, the claim is that by analyzing genetic sequencing, commercial companies can offer law enforcement a physical profile – a projection of what the face of the person who contributed the DNA would look like. The new twist is that the phenotypic results can be submitted to a facial recognition database. This month's *Criminal Justice* column will look at the state of the science, the commercial claims and both the benefits and dangers of this technology.

The Science behind Forensic DNA Phenotyping

It was recently reported in the January 31, 2022 issue of *MIT Technology Review* that a private company, Corsight AI, made a presentation on December 15, 2021, in New York City, to a conference of potential capital investors regarding this new technology.[1] The article reported that the slide presentation by the company representative claimed that their product "constructs a physical profile by analyzing genetic material collected in a DNA sample." This, in turn, is to be used with facial recognition programs to make an identification of a suspect.

While scientists have been working on this technology for some time, this is evidently the first indication of an attempt to market it commercially for government and law enforcement applications and, specifically, to link the DNA phenotyping to facial recognition software. The article notes that the presenter declined to answer questions about the technology and that the company later stated by email, "We are not engaging with the press at the moment as the details of what we are doing are company confidential."

It is important to break down the scientific claims here. There is a scientific basis for making phenotypic assumptions based on genetic sequencing. It is a study in uncertainty. Algorithmic interpretation of the human genome can predict physical characteristics of actual individuals with some degree of correspondence. This phenotyping from DNA has limits but some successes have been documented when comparing general computer generated images to the human beings from whom the DNA was extracted.[2] The question is what can be done with the information forensically.

Phenotyping in general has a long and regrettable history in the law. It harkens back to phrenology which was developed as a purported scientific discipline in the 1800s and was still offered as a legitimate inquiry in the early twentieth century. The idea was to characterize phenotypes by measuring and interpreting skull shapes, dimensions and anomalies to determine the personal characteristics of the individual. In other words, phrenology took the physical attributes of the cranium and made assumptions about the internal operations of the "brain organs." Phrenology was, of course, discredited but not before it formed the basis for wrongful claims of racial and gender superiority.

Forensic DNA phenotyping is not phrenology, *per se*. It is a scientific effort to determine what physical traits an individual would be likely to have based on the sequencing of an individual's genome. In other words, it does not draw assumptions about character from phenotype, it draws assumptions about phenotype from genotype. On one level, it makes sense. For instance, one can find the genomic sequence in human DNA that can establish a probability of a person's skin color, eye color and facial structure. Because the algorithms used in DNA phenotyping are based on data sets and assumptions, the results are probabilistic at best. Nevertheless, the software results in a computer generated two- or three-dimensional phenotypical representation.

This representation, for government or law enforcement purposes, can be modified or "enhanced" by other information. For instance, eyewitness observations can be

introduced into the final representation by artists who take into account reported data regarding approximate height, weight or other physical characteristics. Other extrinsic information can also be accommodated. This is the sort of process that has given rise to graphical representations of the appearance of prehistoric individuals and other archeological finds. Of course, subjective enhancement could be a source of error or bias.

The comparison of phrenology to forensic DNA phenotyping, however, is more than a cautionary tale. Race is a social construct and has been abandoned, at least expressly, in anthropological studies. However, research indicates that the stereotypes associated with concepts of race have a lingering effect on characterization of individual specific phenotypes.[3] In addition, scholarship has long discussed the fact that other social assumptions, including those based on gender, can have an effect on interpretation of genetic information.[4]

Moving from Phenotyping to Facial Recognition

The use of DNA phenotyping for forensic purposes could be useful to law enforcement. Sketch artists have long interpreted witnesses' verbal descriptions into wanted posters. The use of genomic sequencing to make an approximation of a suspect description could be helpful in the investigative stages of a criminal case. Of course, the phenotyping results are no more meaningful than the significance of the DNA used as a basis for the analysis. The trace evidence that is analyzed would have to be a non-degraded, uncontaminated, single donor sample.

The big leap, however, in the most recent claim is that forensic DNA phenotyping can be coupled with facial recognition software. Successful or otherwise, it could lead to the possible arrest and prosecution of an actual person. Ordinarily, if the DNA sample was not degraded, contaminated or a mixture, it could be checked against the CODIS database or some other local databases that are being created. It can even be put through an automated system, like ANDI, for an immediate result. However, if there is no hit in the databases, the proposal set forth by Corsight AI is to create a phenotype profile based on the DNA and then subject that profile to a facial recognition database.

As the *MIT Technology Review* article suggests in its subtitle, "Though it almost certainly won't work, it is a telling

sign of where the field is heading." There is a fundamental disconnect between DNA phenotyping and facial recognition software. Generally, facial recognition relies on measurements that can establish precise ratios between the eyes, nose and mouth. DNA phenotyping only creates a likelihood of physical characteristics relating to the general shape of the face and some other attributes such as eye color. There is a concern that submission of this kind of material to a facial recognition database will devalue the database itself. There is also a concern that such attenuated facial recognition could lead to false arrests.

The Good News and the Bad News

From the current literature, it appears that, even as an investigative tool, the science has not developed sufficiently to actually move from DNA phenotyping to facial recognition. It may or may not ever be possible to convert DNA sequencing to the kind of precise metrics required for facial recognition. The environment can also affect gene expression through epigenetics which, in turn, affects the phenotype. Currently, and perhaps permanently, the sequencing of the genome itself can only tell a part of the story and can only establish a basis for a likelihood not a certainty. However, if this is where the field is heading, it is important that the legal community understand its potential problems and limitations.

First, there are ethical issues regarding the use of biological methodologies in determining phenotype. While race is a social construct and was scientifically discarded as a valid biological category, it never left the lexicon of law enforcement. Forensic DNA phenotyping, even as a law enforcement tool, expressly reinserts race and ethnicity into the "collectivization of suspicion."[5] This can increase the implicit (or express) bias associated with racial or ethnic assumptions, aggravating stigmatization and targeting "phenotypically others" for additional surveillance and investigation.

Second, if DNA phenotyping linked to facial recognition is used in investigation, it should never be used as substantive evidence in the prosecution of an individual. If someone is arrested and a lawful DNA sample is obtained, that sample can be compared to the sample found at the scene or in the course of the investigation. As extensively documented, testimony about DNA comparisons may carry much more weight with a jury than it deserves.

Third, DNA comparisons are subject to question based on degradation, contamination and potential mixture. In other words, a DNA analysis itself is still a study in uncertainty. There can be no "match," only a likelihood given the prosecution's theory. But the significance of the presence of the DNA of an individual at a crime scene may not mean that the person accused was actually involved in a crime. Locard's principle is aspirational but does not lead to a scientific conclusion. DNA can be analyzed in such small quantities that there is no way to determine if its presence at a scene even meant that a person with that DNA was even at the scene. A person's DNA can be transferred by touch or can be on an object for other reasons.

Therefore, creating a two- or three-dimensional representation from genomic sequencing only tells investigators that there is a probability that a particular individual left the biological trace. Using the morphology and a facial recognition database does nothing to increase the reliability of, or significance of, the DNA evidence itself. Displaying images to a jury adds nothing to the evidence but would have a potentially strong prejudicial effect than simply describing the DNA comparisons.

Conclusion

Given the state of the science, it appears that, despite the fundraising efforts of the tech company, we are not there yet. Nevertheless, lawyers and judges need to be ready for this technology and be prepared to use it wisely, if at all. ■

Endnotes

1 Robert Sanger is a Certified Criminal Law Specialist (Ca. State Bar Bd. Of Legal Specialization) and has been practicing as a litigation partner at Sanger Swysen & Dunkle in Santa Barbara for 48 years. Mr. Sanger is a Fellow of the American Academy of Forensic Sciences (AAFS). He is a Professor of Law and Forensic Science at the Santa Barbara College of Law. Mr. Sanger is an Associate Member of the Council of Forensic Science Educators (COFSE). He is Past President of California Attorneys for Criminal Justice (CACJ), the statewide criminal defense lawyers' organization.

The opinions expressed here are those of the author and do not necessarily reflect those of the organizations with which he is associated. ©Robert M. Sanger.

2 Tate Ryan-Mosley, "This company says it's developing a system that can recognize your face from just your DNA," MIT Technology Review (January 31, 2022).

3 Christoph Lippert, et al., "Identification of individuals by trait prediction using whole-genome sequencing data," Proceedings of the National Academy of Sciences (with Correction, October 2, 2017). Note that the authors are associated with Human Longevity, Inc. that was promoting a product that may be a precursor to the Corsight AI offering.

4 Roos Hopman, "The face as folded object: Race and the problems with 'progress' in forensic DNA phenotyping," Social Studies of Science 1-22 (2021).

5 See, e.g., the article and references to the archived discussions in, Mark Borrello and David Sepkoski, "Ideology as Biology," New York Review of Books (February 5, 2022).

6 Filipa Queirós, "The visibilities and invisibilities of race entangled with forensic DNA phenotyping technology," 68 Journal of Forensic and Legal Medicine," 101858 (November 2019).

THE OTHER BAR NOTICE

Meets at noon on the first and third Tuesdays of the month at 330 E. Carrillo St. We are a state-wide network of recovering lawyers and judges dedicated to assisting others within the profession who have problems with alcohol or substance abuse. We protect anonymity. To contact a local member go to http://www.otherbar.org and choose Santa Barbara in "Meetings" menu.

SAVE THE DATE

2022

Mock Trial Competition

SANTA BARBARA COUNTY HIGH SCHOOL

on

Saturday, February 26 & Saturday, March 5, 2022

Request for attorney volunteers to score the competition

Every year, judges, commissioners, and attorneys, volunteer their time to make the Santa Barbara Mock Trial competition an exciting educational experience for our students.

Please support our local high school students by volunteering your time as a scorer on Saturday, February 26 and/or Saturday, March 5, 2022. An online scorers training will be provided.

To sign up or for more details: Pat Noronha, Santa Barbara County Education Office
pnoronha@sbceo.org · (805) 964-4711 x5289

Kaur, *continued from page 7*

In addition to exercise, I truly enjoy spending time with my friends, family, and my golden lab fur babies, Jack and Max.

Any role models – legal or otherwise? Why?

Justice Ruth Bader Ginsburg (RBG) and my parents. It is hard not to choose RBG as one of my mentors. She paved the way for millions of people across the world, not just this nation. She opened many doors, shattered the glass ceiling for gender equality and women's rights and won many arguments before the Supreme Court as an advocate. As a woman, RBG inspires me to be a better attorney and a better person. She has inspired me to advocate for under-represented individuals, to be their voice, and to pave a path where no path was even available. RBG is one of the reasons I continue to be a Modest Means attorney.

It is hard not to choose my parents as my role models. My dad moved to the United States in 1997, and the rest of the family (mom and four kids) moved to the United States in 1999. My parents worked day and night to ensure their children would have the best opportunities to create a life they knew they could not provide back in India. As immigrants with four young children, they often struggled to make ends meet, but they always did it with a smile! They ensured we had a roof over our heads, food on our table and all the love we could handle. That was all we needed. Their drive to provide for us is another reason I decided to start my own practice here in Santa Barbara. I would like to be able to give back to them as much as they have given to me.

What would someone be surprised to learn about you?

Some secrets should remain secrets! Ha! Hmm… Two fun facts SOME people would be surprised to know about me…

1) My favorite color is pink! You will see pink in my logo, pink in my office and pink everywhere else I can get away with!

2) I love hotdogs! Yes, hotdogs! I love them so much that a few years ago a friend of mine made a cake in the shape of giant hotdog as a surprise for my birthday (and I have the pictures to prove it)!

Any advice you'd have given yourself when first starting out your law career?

Don't be so hard on yourself. Great things take time and it is okay to fail once in a while.

What is the most gratifying about being a Modest Means Attorney?

Being able to provide affordable access to the legal system as a family law attorney.

Do you have any animal friends you'd like to tell us about?

By now, you already know about Jack and Max! They are two adorable golden labs that have completely stolen the hearts of my entire family.

Who is your legal hero/ine (if any), or favorite fictional hero?

I have a picture of RBG hanging in my office to remind me everyday of the amazing work she did.

What do you own that you should really throw out?

Out-of-date clothes and shoes! I have an issue with throwing away anything but I am working on it! #hoarder

What was your favorite journey?

The journey to become an attorney; the journey I am on now.

IPad or Chromebook?

Neither. I will always choose the outdoors over a tablet or computer!

What is your greatest fear?

My serious answer is failure, but my real answer is snakes! I am truly terrified of snakes, which I know comes from watching a certain movie at probably too young of an age. I had nightmares for years!

What app did you use most?

I use many apps on a daily basis but I have to say that my favorite is definitely FaceTime since it allows me to see my fur babies!

What do you perceive as the greatest obstacles to justice, if any?

The financial inability to retain an attorney. ■

Guneet Kaur is a strong client-advocate; a trait that distinguishes her from other lawyers. She takes a holistic yet individual approach with each client and supports his or her claims with firm legal arguments. As a result, her cases are met with the kind of success that allows her clients the peace of mind to lead more fulfilling lives. Born in India and raised in the United States, she completed her legal studies at The Santa Barbara & Ventura Colleges of Law and was conferred a Juris Doctor degree in 2015. Ms. Kaur has successfully represented many clients in Ventura, Santa Barbara, Santa Maria.

Roberson, *continued from page 8*

rent control has been implemented, New York City is over $3,200 per month for a one bedroom and San Francisco is $2,800. A working paper analyzing rent control in Germany (recently struck down by the courts), found the following: (1) the benefits of rent control flow disproportionately to higher income households; (2) rent control tends to increase the level of income segregation.

We are not Germany nor is this to say that rent increases are unique to rent controlled areas. By way of example, Austin, Texas has seen a rise of 40% in *new* leases, not existing. Notably, in California under the *Costa-Hawkins Rental Housing Act,* there is no vacancy control. Meaning, once a unit is vacant, the property provider could rent it for as much as they want. This is creating a bigger demand for luxury units as they are finding that the high-income earners are now renters due to many able to work from home, but not able or ready to buy property in their new area, sometimes due to lack of supply.

At this juncture as we see less people in the workforce and our town trying to recruit new people to the area, the primary question is how to make it fair for tenants who are being displaced while not motivating landlords to push rents artificially high and more often than they would have prior to the regulations. ■

Michelle E. Roberson is a real estate broker and President/CEO of Sierra Property Group, Inc. where she oversees the management of residential and commercial units from Carpinteria to Goleta. She is also a local attorney that has represented both landlords and tenants on housing matters, though now refrains from her former litigation role by limiting her practice to providing consulting services for professionals.

ENDNOTES

1 Santa Barbara Lawyer Magazine, July 2021 https://secure-servercdn.net/104.238.71.33/3b9.d8d.myftpupload.com/wp-content/uploads/2021/07/586.pdf
2 Regular City Council Meeting, Tuesday, 12/7/2021, item 22 https://www.santabarbaraca.gov/gov/cityhall/council/meetings/videos/default.asp
3 Regular City Council Meeting, Tuesday 2/1/2022, Item 14 https://records.santabarbaraca.gov/OnBaseAgendaOnline/Meetings/ViewMeeting?id=739&doctype=1
4 Why is Rent So Damn High, February 2, 2022 retrieved on February 14, 2022 https://www.npr.org/2022/02/09/1079645680/why-is-the-rent-so-damn-high
5 Rainhold Borck and Niklas Gohl, "Gentrification and Affordable Housing Policies," CESifo Working Paper No. 9454, November 29, 2021. https://www.cesifo.org/DocDL/cesifo1_wp9454.pdf
6 See footnote 4
7 Cal. Civ. Section 1954.50 et seq.
8 See footnote 4

Verdicts, Decisions & Settlements

Linda Patton v William J. Pierce, M.D., Peter W. Davis, M.D.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA BARBARA –COOK DIVISION (Santa Maria)

CASE NUMBER:	16CV05702
TYPE OF CASE:	Medical Malpractice
TYPE OF PROCEEDING:	Jury Trial
JUDGE:	Hon. Jed Beebe
LENGTH OF TRIAL:	12 days
LENGTH OF DELIBERATIONS:	40 minutes.
DATE OF VERDICT OR DECISION:	October 20, 2021
PLAINTIFF:	Linda Patton
PLAINTIFF'S COUNSEL:	Bradford F. Ginder of Hollister & Brace Tyler Saldo of Tardiff & Saldo Law Group
DEFENDANTS:	William J. Pierce, M.D., and Peter W. Davis, M.D..
DEFENDANTS' COUNSEL:	Richard Salinas of Salinas Law Group for Dr. Pierce; Mark B. Connely of Hall Hieatt & Connely for Dr. Davis.
PLAINTIFF'S EXPERTS:	Brendan Carroll, M.D. (General Surgeon), Howard Pitchon, M.D., (Infectious Disease), John Nordstrand (Economist), Susan Baar (home-care nurse)
DEFENDANT'S EXPERTS:	Gregg Adams, M.D. (General Surgeon), James Macho, M.D. (General Surgeon, Critical Care), Stephen Hosea, M.D. (Infectious Disease), and Teri Longacre, M.D. (Pathology)

OVERVIEW OF CASE: Ms. Patton sustained severe abdominal injuries as a result of elective laparoscope ventral hernia repair by Dr. Pierce at Lompoc Valley Medical Center, resulting in a perforated small bowel. The perforation was not observed by Dr. Pierce, who asked Dr. Davis, another general surgeon, to undertake hospital care for Ms. Patton because Dr. Pierce had scheduled a vacation. For three postoperative days, Dr. Davis did not test, diagnose, or timely treat the developing peritonitis caused by the bowel perforation. As a result, multiple surgeries at Santa Barbara Cottage Hospital were required to save Ms. Patton's life.

FACT SUMMARY: At age 67, Ms. Patton consulted Dr. Pierce for a moderately sized incisional abdominal hernia that had developed within a surgical scar from an operation two years earlier to remove part of her colon due to diverticulitis. Dr. Pierce told Ms. Patton that due to the prior colectomy and earlier hiatal hernia surgeries, he anticipated resultant adhesions in her bowel area that may require "more probable than normal probability" of converting to open surgery. During the laparoscopic surgery, Dr. Pierce saw extensive adhesions within the abdominal cavity that he spent 90 minutes taking down ("adhesiolysis") before he placed a mesh to repair the hernia defect. The laparoscopic procedure lasted 3 hours. Dr. Pierce did not see a bowel perforation. He left town after calling Dr. Davis to take over hospital care of Ms. Patton.

Ms. Patton became progressively ill while in the hospital. She had persistent severe abdominal pain, for which she received opioid and anti-inflammatory medication over the next three days. Fluid output dropped sharply during the

first postoperative day in spite of ample fluid resuscitation. By the second day, output had dropped further as heart rate increased, blood pressure dropped and supplemental oxygen increased to maintain minimal oxygen saturation levels. By the morning of the third day, all these signs were worse and altered mental status became evident. While attending to Ms. Patton and observing this course daily, Dr. Davis increased pain medication and added a third pain medication, Toradol, which he discontinued on the second day explaining he thought that medication might be causing the kidney dysfunction. However, he never undertook a differential diagnosis for peritonitis and never tested or treated Ms. Patton for infection. On the morning of the third day, he asked for a consult by a hospitalist, Dr. Kalita, telling her that he suspected an adverse reaction to Toradol. Dr. Kalita immediately ordered a battery of tests, including diagnostic tests for infection. All of the test results were consistent with bowel perforation and resulting peritonitis. Dr. Kalita called Dr. Davis back to the hospital. By that time, Ms. Patton was in septic shock, resulting in ischemic necrosis of tissue. Dr. Davis operated that afternoon. He found "an obvious disruption" in Ms. Patton's small bowel, from which feculent waste was leading into her abdominal cavity. He removed a section of small bowel where the perforation was located. Ms. Patton was transported by air to Santa Barbara Cottage Hospital, where she was hospitalized for over three months. Ultimately, Ms. Patton underwent 15 open surgeries over two and a half years as a result of the perforation and delayed diagnosis and treatment, which had caused multiple organ dysfunction, ischemic necrosis and abscesses in bowel tissue.

CONTENTIONS: Plaintiff contended that Dr. Pierce caused the bowel perforation through medical negligence, and that Dr. Davis was medically negligent in failing to test, diagnose and timely treat the bowel perforation and peritonitis.

Dr. Carroll testified that Dr. Pierce failed to meet the standard of care by failing to convert to an open procedure when he observed what Dr. Pierce described as "incredible adhesions" because the risk of perforation with lengthy adhesiolysis outweighed any benefit to the patient of continuing with the laparoscopic procedure. He explained how open surgery on this particular hernia could in medical probability be done with no adhesiolysis at all by depressing the entire hernia sac manually, and if any lysis of adhesions were necessary in an open procedure, it would be minimal compared to a laparoscopic procedure. Plaintiff's experts testified that the perforation probably occurred during the laparoscopic adhesiolysis. Dr. Pierce's expert, Dr. Adams, testified that although he agreed that bowel injury was probably caused during adhesiolysis, it could not be known whether the perforation occurred during the surgery and was missed or occurred as a delayed perforation due to a tearing or thermal injury. He testified that bowel injury without full perforation is often difficult to recognize during a laparoscopic procedure. Dr. Adams testified that Dr. Pierce's decision not to convert to an open procedure was within the standard of care. Plaintiff also contended that under the circumstances, Dr. Pierce was negligent for not advising her of the relative risks and benefits of an open procedure as an alternative to the laparoscopic procedure he recommended. Dr. Carroll and Dr. Adams disagreed about whether relative risks and benefits of such alternatives is something skilled physicians would advise a patient under the circumstances.

Dr. Carroll and Dr. Pitchon testified that Dr. Davis breached the standard of care at least by the evening of the first postoperative day when a nurse called him at home. Plaintiff's experts explained that signs of Systemic Inflammatory Response Syndrome (SIRS) were present that evening, kidney dysfunction was evident, sepsis was in process, extensive and lengthy laparoscopic adhesiolysis is known to increase the risk of bowel perforation and, without surgical treatment, an undiagnosed bowel perforation will lead to progression from sepsis, to septic shock and usually death. Dr. Davis had ordered Toradol when the nurse called him at home but did not order any tests for infection. Both experts testified that it was below the standard of care to suspect only Toradol for Ms. Patton's problems on the morning of the second postoperative day, that diagnostic testing was required and probably would have revealed the infection that was present, and that surgery that day to repair the bowel perforation probably would have avoided the cascade of injuries that Ms. Patton ultimately suffered because septic shock had not yet occurred. Dr. Pitchon explained that septic shock, which occurred by the afternoon of the third postoperative day, and pressor agents administered for the septic shock, caused ischemic necrosis of bowel tissue and subsequent abscesses of bowel tissue. Dr. Carroll explained how that condition, aggravated by pressor agents necessary to keep Ms. Patton alive, caused the cascade of bowel injuries and multiple surgeries at Cottage Hospital and UCLA. Dr. Pitchon concluded that these injuries probably would have been avoided if repair surgery had been performed by Dr. Davis by or before the early morning of the third postoperative day.

Dr. Davis contended he was not negligent for failing to suspect, test, diagnose or treat Ms. Patton for infection before the afternoon of the third postoperative day. His expert, Dr. Longacre, a pathologist from Stanford, reviewed slides from the specimen taken from Dr. Davis's surgery. She testified that it was unusual to see fungal organisms as seen on one section

of one slide in the concentration present. She admitted that fungal and bacterial organisms both inhabit intact intestines and that both would enter the abdominal cavity through a perforation. She testified that it was most probable that the organisms she saw were outside the bowel 48 hours before the surgery by Dr. Davis, but admitted in her deposition there would be no way to know from the slides whether they were there for as long as 3 days.

Dr. Macho testified that Ms. Patton's signs and symptoms were not typical for bowel perforation, that Dr. Davis met the standard of care, that "good doctors" don't do differential diagnoses, and that he thought Ms. Patton's case was unusual. He also said he did not think SIRS was a reliable standard for diagnosing infection, particularly in a post-surgical setting. Dr. Hosea testified that he thought Dr. Davis met the standard of care, but admitted that SB Cottage Hospital utilizes SIRS as a diagnostic standard and instructs general surgeons about using SIRS in the hospital's sepsis guidelines, that bacteria cause dead tissue, that fungal organisms from the intestine thrive in a setting of antibiotics that Ms. Patton was receiving since the third afternoon, and that it was reasonable to conclude that fungal organisms were not driving Ms. Patton's clinical illness at SB Cottage Hospital because she was responding to continued antibiotics with diminution of pressors before antifungal agents were prescribed. Plaintiff maintained throughout that Dr. Davis's fungus defense was a red herring.

SUMMARY OF CLAIMED DAMAGES:

Past Medical Expenses Paid:	$ 855,203.09
In-Home TPN service by sister:	$ 158,250.00
Lost Earning Capacity (3 years):	$ 149,494.00
Transportation Cost for Medical:	$ 10,700.00
Past Non-Economic	$1,000,000.00
Future Non-Economic	$ 250,000.00
Total Claimed	$2,423,647.09

SUMMARY OF SETTLEMENT DISCUSSIONS: Plaintiff served Dr. Davis with a 998 offer to compromise for $850,000 in Sept. 2019. No offer by Davis.

Plaintiff simultaneously served Dr. Pierce with a 998 offer to compromise for $500,000. No offer by Pierce.

RESULT:
Verdict for Plaintiff against Dr. Davis for $2,423,647.09.
12-0 negligence
11-1 causation
11-1 damage (dissenting juror thought damages should be greater)

MICRA reduces the judgment against Dr. Davis to $1,423,647.09.

Defense Verdict for Dr. Pierce.
12-0

The SBCBA Labor & Employment Section Presents:

"2022 and Beyond: High Impact Employment Law Developments to Be Aware of in the New Year"

When: March 15, 2022, Time: 12:00 p.m. – 1:15 p.m.

Where: Zoom – Details to be provided upon registration

MCLE: 1.0 Hours MCLE (General)

Speaker(s): Jared W. Speier, Associate, Stradling Yocca Carlson & Rauth

About the Event: These are challenging times for your California employer clients! Don't let them be caught off guard. Significant changes took effect in 2022 in the areas of wage & hour, California Family Rights Act (CFRA) expansion, Private Attorney General Act (PAGA) actions, independent contractor liability, severance and settlement agreements, and Covid-19-related regulations.

Join Jared Speier, an employment specialist with Stradling Yocca Carlson & Rauth, as he walks us through each of these changes.

Price: $10 SBCBA members/$15 non-members

Please mail checks by Thursday, March 10th, 2022 payable to Santa Barbara Bar Association, 15 W. Carrillo Street Suite 106, Santa Barbara, CA 93101.

You may also click the link here to pay via Venmo. Or call to pay via credit card: 805-569-5511.

Contact Information/R.S.V.P.: Please RSVP by March 10, 2022 to: Alex Craigie, Esq., The Law Offices of Alex Craigie, 791 Via Manana, Santa Barbara, CA 93108, alex@craigielawfirm.com. (805) 845-1752

Santa Barbara County Bar Association

Santa Barbara County Bar Association Criminal Law Section Presents:

"New Ameliorative Sentencing Laws for 2022"

Last session, the Legislature passed a number of new laws aimed at reducing sentences. Now that the courts have had a couple of months to interpret some of them, we will be discussing what has changed, and who may be affected.

When: Tuesday, March 29th, 2022, from 12:00 P.M. – 1:15 P.M.

Where: Zoom

MCLE: 1.0 Hour MCLE (General)

Speaker(s): David Andreasen

David Andreasen is a Santa Barbara-based staff attorney with the nonprofit California Appellate Project, Los Angeles. He has been representing clients in criminal appeals since 2007.

Price: Members $10/Non-Members $15

Please mail checks by Thursday, March 24th, 2022 payable to Santa Barbara Bar Association, 15 W. Carrillo Street Suite 106, Santa Barbara, CA 93101.

You may also click the link here to pay via Venmo. Or call to pay via credit card: 805-569-5511.

Contact Information/RSVP: Please RSVP by March 24th, 2022 to: Jeff Chambliss, Esq. jeff@chamblisslegal.com and Lida Sideris sblawdirector@gmail.com

Santa Barbara County Bar Association

March 2022

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
		1	2	3	4	5
6	7	8 International Women's Day	9	10	11	12
13 Daylight Savings Time Begins	14	15 The SBCBA Labor & Employment Law Section MCLE: "High Impact Developments"	16 Freedom of Information Day	17 St. Patrick's Day	18 Global Recycling Day	19
20 Spring Equinox International Day of Happiness	21	22	23	24	25	26
27	28	29 The SBCBA Criminal Law Section MCLE: "New Sentencing Laws"	30	31 Cesar Chavez Day (Court Holiday)		

The Santa Barbara Bar Association is a State Bar of California MCLE approved provider. Please visit www.sblaw.org to view SBCBA event details. Pricing discounted for current SBCBA members.

TWO OFFICES FOR RENT

For rent (available immediately) two professional furnished offices (11'8" x 8'8" for $1,200.00 and 11'8" x 10'9" for $1,350.00). Includes two conference rooms, kitchen and workroom with copier. Located in a great Santa Barbara downtown location across from the Courthouse and above the Secret Bao restaurant. Please contact Howard Simon at hsimon@jhslawsb.com for further information.

HAGER & DOWLING, LLP SEEKS ASSOCIATE ATTORNEY

Highly respected Santa Barbara civil litigation firm seeks associate attorney with civil litigation and insurance law background. The applicant must have excellent verbal and writing skills, work well both independently and in a team environment, exceptional legal research and enjoy litigation. Competitive benefits include, health and dental insurance, free parking and 401k plan. Respond with resume, cover letter and references to kcallahan@hdlaw.com.

REICKER PFAU IS PURSUING A TRANSACTIONAL ASSOCIATE ATTORNEY

Reicker, Pfau, Pyle & McRoy LLP, Santa Barbara's premier business law firm, is seeking a mid-level transactional/corporate associate.

Our firm's transactional practice includes mergers and acquisitions, emerging companies, financing, securities, private placements, and general corporate and contract matters. We are looking for a candidate with three to eight years of experience to initially fill a supporting role in transactional matters and progress to assignments with greater responsibility.

Competitive pay and excellent benefits. To apply or inquire, please contact Jan Petteway at jpetteway@rppmh.com.

SEEKING TRANSACTIONAL ASSOCIATE

Allen & Kimbell, LLP is an established Santa Barbara law firm providing personalized real estate, estate planning, business counseling, and litigation legal services. We are seeking an associate attorney with 1 to 4 years of transactional or litigation experience to join our practice. The selected candidate will primarily assist the real estate and business transactions groups as well as the litigation department but will have the opportunity to work with other areas of the firm and develop the candidate's own practice. Candidate should be licensed to practice before the California Bar and possess exceptional writing and analytic abilities, good academic credentials, and a strong work ethic. We offer competitive compensation commensurate with experience along with a benefits package including medical, 401(k) and profit sharing plan. Qualified applicants should submit their resume to: eruehlman@aklaw.net.

MULLEN & HENZELL ASSOCIATE ATTORNEY POSITIONS

We are seeking a junior associate for our **Business & Real Estate** department. Our transactional practice includes real estate acquisition, development, financing, syndication, and leasing, land use, business and nonprofit formation and operation, business acquisitions, and general corporate and contract matters.

We are seeking a junior associate to join our **Estate & Wealth Planning** department to work on sophisticated estate plans, conservatorships, post-death probate and trust administrations, and other estate planning matters. Candidate will work with a team of partners and associates to design and draft complex estate plans, including for high net-worth clients, as well as various court filings and appearances. Excellent communication skills required. Coursework in taxation preferred but not required.

We are looking for candidates with 0-3 years of experience. Must be member CA Bar. Competitive pay and excellent benefits. Send resume and cover letter to Jared Green, Recruiting Partner: Recruit@mullenlaw.com

LITIGATION ASSOCIATE SOUGHT

Ventura County's largest law firm, Ferguson Case Orr Paterson LLP, seeks a top caliber litigation associate. The ideal candidate has 1 to 5 years of experience, strong academic credentials, and excellent writing and communication skills. Ties to the Ventura County area are a plus. This is an ideal opportunity to build your career in a great community with an esteemed law firm that pays competitive salaries and benefits. Please send a resume with a cover letter introducing yourself and describing your experience to sbarron@fcoplaw.com Applicants without litigation experience will not be considered.

2022 SBCBA SECTION HEADS

Alternative Dispute Resolution
Dr. Penny Clemmons (805) 687-9901
clemmonsjd@cs.com

Bench & Bar Relations:
Richard Lloyd (805) 564-2444
RLloyd@cappellonoel.com

Civil Litigation
Mark Coffin (805) 248-7118
mtc@markcoffinlaw.com

Criminal
Jeff Chambliss (805) 895-6782
Jeff@Chamblisslegal.com

Employment Law
Alex Craigie (805) 845-1752
alex@craigielawfirm.com

Estate Planning/Probate
Marla Pleyte (805) 770-7080
marla@marlapleyte.com

Family Law
Renee Fairbanks (805) 845-1604
renee@reneemfairbanks.com
Marisa Beuoy (805) 965-5131
beuoy@g-tlaw.com

In House Counsel/Corporate Law
Betty L. Jeppesen (805) 450-1789
jeppesenlaw@gmail.com

Intellectual Property
Christine Kopitzke (805) 845-3434
ckopitzke@socalip.com

Real Property/Land Use
Joe Billings (805) 963-8611
jbillings@aklaw.net

Taxation
Peter Muzinich (805) 966-2440
pmuzinich@gmail.com
Cindy Brittain (805) 695-7315
cindybrittain@gmail.com

Classifieds

CIVIL LITIGATION ASSOCIATE

Small civil construction litigation firm seeks associate attorney. Position involves client contact, preparing/opposing motions, drafting written discovery, taking and defending depositions, regular court appearances, and assisting with trial preparation, with opportunity to participate in mediations, trials and arbitrations. Candidate must:

- Be an active member in good standing with the California Bar.
- Have two years of civil litigation experience including research/drafting motions, preparing and responding to discovery, preparing for and defending depositions, trial preparation and appearing in court for conferences and hearings.
- Have excellent research, writing, and organizational skills.
- Be able to prioritize workload and manage time.

Construction litigation, insurance coverage and contract drafting experience is a plus. Salary commensurate with experience. Benefits include vacation, medical and retirement.

To apply, send resume, cover letter, and one writing sample to: avugrek@myerlawpc.com. References and a further writing sample will be requested.

Santa Barbara Lawyer
The Santa Barbara County Bar Association
15 W. Carrillo St., Suite 106
Santa Barbara, CA 93101
Change Service Requested