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Debra Real ~ Board Member

Debra Real has been in the WC industry since 1993 and am currently employed as a claims examiner with the County of Sacramento. Over the past three years I have enjoyed teaching the "Basic WC" classes for the Insurance Education Association. When not working I enjoy traveling, reading, and spending time with family/friends. This is my 2nd year as an AWCP Board member and pleased to chair the education committee. The committee members are enthusiastic and committed to providing quality speakers. I look forward to any/all suggestions the community has to offer

Ted Richards, Esq. ~ Board Member

Ted Richards is the managing shareholder overseeing the Sacramento, Stockton, and Chico offices of Grancell, Lebovitz, Stander, Barnes, and Reubens. His practice focuses on Workers' Compensation

and Employment defense, and he is certified by the State Bar of California as a specialist in Workers' Compensation. He speaks often on all aspects workers compensation and on ADA/FEHA issues. He is author of Two To Die For , a novel awaiting a publisher, and he is a big fan of Stanford sports.

Melody A. Tucker ~ Board Member

I have worked for CMI, Inc. for 14 years but I have been in the industry since the late 70's. I have seen many changes occur through the years and understand the importance of continuing education. I felt becoming an AWCP board member I could help provide suggestions for educational seminars. My goal for the coming year is to make sure the speakers provide useful information which claims personnel can use on a day to day basis.

NaTasha Ralston ~ Alternate Board Member

NaTasha N. Ralston has been

representing insurers and self-insured employers in worker's compensation matters since 2005. She also defends employers in Labor Code 132(a) discrimination claims and serious and willful misconduct claims. She joined the Sacramento Office of Hanna & Brophy in November, 2005.

NaTasha earned her law degree from the University of California, Davis School of Law in 2004. In 2001, she received her Bachelor of Arts in Sociology, from San Francisco State University, where she was on the Dean's List from 1999 to 2001.

Professional Memberships include the California State Bar, Sacramento County Bar Association, including the Workers' Compensation Division, the Wiley E. Manuel Bar Association, Women Lawyers of Sacramento, Association of Workers' Compensation Professionals and the Valley Industrial Claims Association. ■

AWCP

Association of Workers' Compensation Professionals

2007 AWCP Board

President
Amy Brown
Gregory B. Bragg & Associates
Phone: (916) 412-0219
Amy.Brown@gbbragg.com

Vice President
KC Schuft
Crum & Forster Insurance
Phone: (916) 508-4707
kc_schuft@cfins.com

Secretary/Treasurer
Jim Carmazzi
Carmazzi Interpreting
Phone: (916) 714-7848
james@carmazzi.com

Past President
J.R. Robles
APEX Investigation
2934 Gold Pan Ct, Suite 12
Rancho Cordova, CA 9567
Phone: (916) 858-2999
www.apexpi.com
jr@apexpi.com

Philanthropy Chair
Joshua Bragg
Bragg & Associates
Phone: (916) 960-0952
joshua.bragg@gbbragg.com

Education Chair
Debra Real
County of Sacramento
Phone: (916) 876-5031
reald@saccounty.net

Educational Conference Chair
Ted Richards
Grancell, Lebovitz, Stander, Barnes, & Reubens
Phone: (916) 204-9235
trichards@glbr.net

Boat Cruise Chair
Rich Marconi
Travelers
Phone: (916) 638-6474
rmarconi@travelers.com

Membership Chair/Golf Co-Chair
Bert Andersson
Law Office of Bert Andersson
Phone: (916) 844-9338
anderssonlaw@yahoo.com

Van Haas
Probe Information Services
Phone: (916) 676-4962
van@probeinfo.com

Melody Tucker
Claims Management, Inc.
Phone: (916) 636-9717
mtucker@cmi-mba.com

Natasha Ralston
Hanna, Brophy, McAleer & Jensen.
Phone: (916) 929-9411
nralston@hannabrophy.com

Staff

Connie Conley
Executive Director
connie@awcp.org

Workers' Compensation MATTERS

A Publication for the Members of the Association of Workers' Compensation Professionals

M A R C H 2 0 0 7

President's Message

By Amy Brown

Hello Everyone,

First, on behalf of the AWCP board members and myself, I would like to send a heartfelt thank you, to our members and sponsors. Without your continued support AWCP would not be able to continue to provide superior educational opportunities, such as our NEW upcoming Mini-Conference in May, or our monthly lunch meetings and our sell out Educational Conference in October. In addition to these educational programs, we also offer great networking possibilities, like our annual golf tournament, our river boat cruise, and the ever popular holiday party. For more information on any of these events please visit our website www.awcp.org.

On a more personal note, you may or may not know that one of our own, Debbie Bradshaw has been fighting cancer for the last few months. As you know cancer not only ravages a person physically and emotionally, it also is devastating on their finances. These are the times when we all need to come together to support those in the workers' compensation family. This is why AWCP has decided to return all the support Debbie has given us over the years by donating all raffle money raised at our monthly luncheon's to "The Debbie Bradshaw Cancer Fund" to help Debbie and her family through this difficult time. Please help us, help Debbie by taking part in our luncheon raffles (either by supplying prizes or purchasing tickets). For more information on the Debbie Bradshaw Cancer Fund, please contact me at 916.412.0219.

Thank you again for your continued support.



Save the Date

AWCP 2007 Events

- May 10 Educational Mini-Conference
National University Sacramento
- June 8 Golf Tournament ~ Lincoln Hills Golf Club
- August 17 Fun Night Cruise on the Sacramento River
- October 22 Education Conference ~ Radisson Sacramento
- December 6 Holiday Party ~ Arden Hills Country Club

For Sponsorship Information, please visit www.awcp.org

Meet your 2007 AWCP Board of Trustees

Amy Brown ~ President

As your president, this is my third year on the AWCP Board. This year I'm excited to also be the co-chair of the AWCP Golf Tournament. Professionally, I am a Senior Claim's Examiner at Bragg & Associates and have been in the work comp industry for 11 years. My tenure on the board has been very rewarding working with membership and fellow board members and AWCP has grown as a result of dedication and hard work. As your president, I am pleased to announce that we have added more quality education in the mini-conference series. I'm excited for the new year and look forward to the enhanced and exciting programs along with the enjoyable events that AWCP will be holding this year.

KC Schuft ~ Vice President

I have been in the insurance industry for five years. I am currently an SIU Investigator for Crum & Forster Insurance. I have been involved with the AWCP for four years and a board member for three years. I am also the Holiday Party Chairperson and have organized the AWCP Holiday Party for the last two years. I am looking forward to my position as President-Elect this year and as President of the AWCP for 2008. I hope to get more people involved in our organization and increase membership and sponsorships.

James Carmazzi ~ Treasurer

As your treasurer, I will continue to promote and reshape as needed the vision, mission, and values of AWCP, and then execute upon the strategies as set forth by the Board of Directors, especially related to its financial stability and reporting.

JR Robles ~ Immediate Past President

JR Robles, is the Founder & C.E.O. of Apex Investigation. Apex Investigation was founded 10 years ago while he was an Investigator for the State of California. He spent 6 years as a Fraud Investigator with the Department of Consumer Affairs and the Attorney General's Office where he investigated both administrative and criminal cases. While assigned to the San Jose office, he worked on a joint task force with the FBI and the San Jose Police Department's Intelligence Unit, that put an end to one of the country's most notorious organized crime leader's fraud ring in the bay area that span as far north as Canada. His work led to over 200 convictions and millions more in restitution. He also served 3 years on the Board of Directors for the Ca. Association of Regulatory Investigators and CAUSE the Ca. Association of Union Safety Employees, the state's second largest peace officers union. As the Vice President of the CAUSE Foundation he worked with legislators in Northern and Southern California related to anti-fraud education and victims rights. For the past 5 years he's been a Board Member, V.P. and President of the Association of Workers Compensation Professionals in the Sacramento Valley. During his free time, he serves as a Board Member of the Young Entrepreneurs' Organization and coaches Soccer and Basketball for his children.

Bert Andersson, Esq. ~ Board Member

Bert G. Andersson from Law Office of Bert G. Andersson. As a first-year member on the AWCP board, I am proud to work towards increase in our membership and improved exposure to our sponsors. Amy Brown and I are also busy providing the community with a new and improved golf tournament at Lincoln Hills this June.

Joshua Bragg ~ Board Member

Joshua Bragg joined the workers'

compensation industry in the summer of 2001 after completing graduate work in International Economics at the University of Copenhagen, Denmark. He has worked in various capacities at Gregory B. Bragg & Associates, including file clerk, trainer, and claims supervisor. Joshua joined the AWCP board in 2005 in order to meet more friends in the profession. He has been the membership chair, but will shift his primary mission to meet the philanthropic goals of AWCP in 2007.

Van Haas ~ Board Member

I have been involved in the Workers' Compensation insurance industry for 6 years. I am currently the Vice President of Probe Information Services and have been working in the insurance investigations industry for the last 4 years. Prior to this, I worked as a Workers' Compensation Adjuster. This is my first year on the board of AWCP, although I have been involved in the association for many years. I hope to be a part in the growth of this great organization and to increase the value of membership. I am the co-chair of the 2007 AWCP Conference and I am looking forward to another successful conference this year.

Rich Marconi ~ Board Member

I am a Claims adjuster for Travelers insurance company, 4 years in the industry and member of AWCP for 4 years. I am the chair for the fun night including the Boat Cruise in August and a potential fun night in March of 2008 to be announced later. This year's Boat Cruise will be on Friday, August 17 beginning at 6:30. We are going to have a full buffet dinner with beer or wine, more prizes and a fun relaxing evening on the Sacramento River. I look forward to seeing you all there. This will be a two-hour dinner cruise to allow everyone time to have fun in Old Sacramento after we dock.

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Medical/Legal
MEDLink
Janice Skiljo Haris,
RN, CNLCP
1613 Montgomery Street
San Francisco, CA 94111
Phone: (415) 399-9769
Fax: (415) 399-9439
camedlink@camedlink.com

Medical/Managed Care

CareAxis
Elizabeth Collins
PO Box 714
Newcastle, CA 95658-0714
Phone: (916) 663-3950
Fax: (916) 663-3924
info@careaxis.com

Choices Case Management, Inc.
Connie Rominger
1145 Second Street
Ste. A #315
Brentwood, CA 94513
Phone: (925) 516-3901
Fax: (925) 516-3905
crominger@choicescasemgmt.com

Excel Managed Care
Bill Spaller
8300 Fair Oaks Blvd.
Carmichael, CA 95608-1969
Phone: (916) 944-7185
spallerb@excelmanagedcare.com

MedFocus Radiology Network

Brandon Beaver
2811 Wilshire Blvd Suite 900
Santa Monica, CA 90403
Phone: (800) 398-8999
Fax: (310) 264-4729
blbeaver@medfocus.net

RNS Healthcare Consultants

Karen Preston
4811 Chippendale Drive, Suite 704
Sacramento, CA 95841
Phone: (916) 929-6506
Fax: (916) 929-6013
rnspreston@aol.com

Medical/Pharmacy/MRI

Medical Services Company
Jessica Elliott
2300 Iron Point Rd. #311
Folsom, CA 95630
Phone: (916) 548-9735
Fax: (916) 646-3870
jelliott@medservco.com

PMSI

Keri Chapman
701 Gibson Drive #1927
Roseville, CA 95678
Phone: (916) 704-2027
keri.chapman@pmsionline.com

Professional Diagnostics Management

Elizabeth Prillwitz
2241 Lava Ridge Ct.
Roseville, CA 95661
Phone: (916) 782-2200
Fax: (916) 782-2211
Elizabeth@PDM-Nationwide.com

Medical Service/ Functional Capacity

Physical Rehabilitation Network
Dwain Johnson
660 E. Calaveras Blvd.
Milpitas, CA 95035
Phone: (925) 519-4397
djohnson@prnpt.com

Pringle Consulting
Dave Pringle
2007 Opportunity Drive #1
Roseville, CA 95678
Phone: (916) 789-1979
Fax: (916) 789-1254
ptdave@inreach.com

U.S. HealthWorks
Suzy Hernandez
1675 Alhambra Boulevard, Suite B
Sacramento, CA 95816
Phone: (916) 451-4580
suzy.hernandez@ushworks.com

Miscellaneous

Camellia Memorial Lawn
Lynda Baxter
10221 Jackson Road
Sacramento, CA 95827
Phone: (916) 363-3850

Education Conference Update

By Ted Richards, Esq.

In 2007, AWCP will again provide a full-day conference on workers' compensation issues, including crossover with HR and risk management concerns. We plan to build on the momentum created by last year's highly successful conference.

In 2006, the conference headlined four featured speakers, including an inspirational presentation by Judge Dana LaMon, who spoke about his experience overcoming childhood blindness to attend Yale and USC and to become an administrative law judge in California and highly regarded motivational speaker. Our other stellar featured speakers included the very entertaining musings of local celebrity, Kelly Brothers, insights on ADA/FEHA from national expert, Lew Vierling, and the always energetic and passionate humor and insights of Phil Walker. The faculty for the breakout sessions again provided valuable information for the attendees. That faculty consisted of Don Barthel, Esq., Catherine Bland, R.N., Marlon Robbins, Kyle Hansen, Esq., Bert Anderson, Esq., Jeff Keena, Ted Richards, Esq., Curt Winters, Esq., Erin Forest, M.D., and Michael Hembd, M.D.

The 2006 conference drew over 275 attendees, who filled the conference center to capacity at the Radisson Hotel in Sacramento. As always, the conference was made possible by the generosity of our sponsors. The

Title Sponsor, as with all AWCP events in 2006, was 3i Interpreting, Inc. A special thanks goes out to Sal Alvarez of 3i for his amazing support of AWCP. Other sponsors making the event a success were Alpine Information Services, Inc.; Comprehensive Cost Solutions, Inc.; Cuneo, Black, Ward & Missler; Grancell, Lebovitz, Stander, Barnes, and Reubens; Hanna, Brophy, MacLean, McAleer, & Jensen; Laughlin, Falbo, Levy & Moresi; and Nelson Vocational Consulting. Finally, the conference drew over 30 exhibitors who shared their expertise and products with the attendees.

Look for an announcement soon as to the date and location of the next full-day conference, which will occur in September or October 2007. The next conference is expected to be even larger and better than last year, again providing the best educational and networking value of any conference in California. We again expect to draw our featured speakers from the top presenters in the industry on subjects related to professional and personal growth. Continuing education credits will be available for all specialties that make up the AWCP community.

Should you want to assist in making the 2007 conference the best yet and the standard for educational programs statewide, please contact Ted Richards at 916-922-7390. The conference committee will begin meeting in January and February 2007. ■

Legal Update

By Bert Andersson

Law Office of Bert G. Andersson

On January 24, 2007, the WCAB handed down an en banc decision which has the potential of changing the value of many cases with a date of injury pre-January 1, 2005. Three of the seven commissioners dissented. In Pendergrass v. Duggan Plumbing and SCIE, SAL 0110868, the WCAB held that an applicant's permanent disability should be rated under the 1997 rating schedule if the first date of compensable temporary disability occurs before January 1, 2005.

Mr. Pendergrass was employed as a plumber when he suffered an admitted injury to his right lower extremity/ankle on June 29, 2004. Defendant started paying temporary disability on June 30, 2004, and paid continuously until July 19, 2005.

The WCJ concluded in his ruling that none of the exceptions listed in L.C. section 4660(d) existed. Therefore, the applicant's permanent disability should be rated under the 2005 rating schedule. The applicant sought reconsideration from the WCAB.

In its discussion, the WCAB quoted L.C. section 4660(d) which states in pertinent part that the 2005 rating schedule shall apply to pre-January 1, 2005 cases "when the employer is not required to provide the notice required by Section 4061 to the injured worker." Such section requires that the employer sends to the injured worker "together with the last payment of temporary disability" a notice indicating that either no permanent disability is due, the amount of permanent disability due, or that the permanent disability cannot be determined yet.

Ultimately, the WCAB concluded that the duty to provide the notice required per L.C. section 4061 arises with the first payment of temporary disability. They reasoned that there is no obligation to provide the notice unless temporary disability previously had been paid, or should have been paid. Payment of temporary disability before January 1, 2005 will under all circumstance require the employer to provide the notice as required by L.C. section 4061 at some time in the future. Such duty is absolute and cannot be avoided. Therefore, reasoned the WCAB, the duty to provide a L.C section 4061 notice arises with the first payment of temporary disability. If such first temporary disability payment was made pre-January 1, 2005, the 1997 rating schedule will apply.

A second exception to the application of the 2005 rating schedule is also discussed in L.C section 4660(d). The 1997 rating schedule applies to pre-January 1, 2005 injuries if the treating physician issued a report before January 1, 2005 "indicating the existence of permanent disability. The California

Court of Appeal, First Appellate District, Division Three, issued an opinion on February 28, 2007 regarding its interpretation of such language. In Trader Joes's Company v. WCAB (Evets), A115638, SRO 132346 it held that a report which describes the applicant's injury and treatment, does not "indicate the existence of permanent disability", when no medical opinion was given that the injury would result in permanent disability.

Mr. Evets was working for Trader Joes on 1/4/2004 when he suffered a crush injury to his right hand. Dr. Frederick Bennett wrote a report on the date of the injury wherein he described it as "a crush injury to the ulnar aspect of the right hand with open right fifth metacarpal fracture and probable traumatic amputation of the distal segment of the small finger." He also wrote that "His fifth finger will either be amputated or pinned, depending on intraoperative findings." The applicant subsequently had multiple surgeries to this right hand. Other treatment reports from 2004 noted chronic loss of range of motion. Applicant was ultimately released to work on March 1, 2005 and found permanent and stationary on that day.

The WCJ found that the 2005 rating schedule applied in the absence of a pre-2005 report indicating permanent and stationary status. The applicant petitioned for reconsideration.

The WCJ then amended his Award and utilized the 1997 rating schedule because the reports provided an indication of permanent disability vis-à-vis the AMA Guides in their description of loss of range of motion and nerve damage. The WCAB denied reconsideration.

The Court of Appeal refused to state whether an applicant must be permanent and stationary before January 1, 2005 for the 1997 schedule to apply. Instead it stated that "the 1997 permanent disability schedule will apply to cases in which prior to 2005, a physician's report indicated a permanent disability. This does not mean that the percentage of disability must have been determined prior to 2005, but does mean that a qualifying report must at least state that the applicant is or will be permanently disabled or, at a minimum describe an injury that necessarily will result in permanent disability."

The Court of Appeal then held that the reports from the treating physician in this case did not indicate that Mr. Evets injuries were necessarily permanent. In fact, the doctors said that Mr. Evets "remains totally, temporarily disabled." Thus, despite not directly discussing whether the applicant must be permanent and stationary for the 1997 schedule to apply, the physician's temporary disability opinion appears to have swayed the court away from the old schedule. Most importantly, the Court of Appeal stated the "the mere mention of a condition that *could* result in permanent disability is insufficient" to render the 1997 schedule applicable. (italics original) ■

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3I Interpreting, Inc.
Sal Diego Alvarez
338 S. Melrose Drive
Vista, CA 92081
Phone: (800) 311-6289
Fax: (866) 903-4329
sdalvarez@3icorp.net
www.3icorp.net

Platinum Members

Apex Investigation
J.R. Robles
2934 Gold Pan Court, Suite 12
Rancho Cordova, CA 95670
Phone: (916) 858-2999
Fax: (916) 858-2227
www.apexpi.com
jr@apexpi.com

Best Doctors, Inc.
Morgan E. Yarber, RN, CCM,
CNLCP
One Boston Place,
32nd Floor
Boston, MA 02108
Phone: (916) 683-3806
Fax: (916) 683-0173
myarber@bestdoctors.com
www.bestdoctors.com

Grancell, Lebovitz, Stander, Barnes
& Reubens
Ted Richards
1451 River Park Drive #230
Sacramento, CA 95815
Phone: (916) 922-7390
Fax: (916) 922-7392
trichard@glsbr.net

Probe Information Services, Inc.
Rebecca Hughes
6375 Auburn Blvd.
Citrus Heights, CA 95621
Phone: (800) 397-6517
Fax: (916) 813-5764
rebecca@probeinfo.com
www.probeinfo.com

Radiological Associates of
Sacramento Medical Group, Inc.
Tami Lucas
1500 Expo Parkway
Sacramento, CA 95815
www.radiological.com

Diamond Members

Insurance

Capital Claims Services
Bill Randal
15072 Hilldale Circle #2013
El Dorado Hills, CA 95762
Phone: (866) 835-8121
brandall@ccclaims.com

Claims Management, Inc.
Scott Kramer
2868 Prospect Park Drive, Suite 200
Rancho Cordova, CA 95670
Phone: (916) 635-1250
kpavisich@cmi-mba.com

Gregory B. Bragg & Associates
Eileen Gould
P. O. Box 619058
Roseville, CA 95661-9058
Phone: (916) 960-0955
Fax: (916) 783-0338
eileen.gould@gbbragg.com

LWP Claims Solutions
Angela Livingston
3835 N. Freeway Blvd,
Suite 210
Sacramento, CA 95834
Phone: (916) 609-3616
Fax: (916) 609-3645
a_livingston@lwpcclaims.com

Interpreting

Carmazzi Interpreting
Jim Carmazzi
8698 Elk Grove Blvd, Ste 3, Pmb 331
Elk Grove, CA 95624-3300
Phone: (916) 714-7848
Fax: (916) 714-4232
sales@carmazzi.com

Investigation Services

Alpine Investigations
Rod Christopher
5050 Laguna Blvd #112-368
Elk Grove, CA 95758
Phone: (916) 691-0200
Fax: (916) 244-2662
rod@alpineinvestigations.com

Capitol Legal Investigations, Inc.
Luke Patterson
102 Lincoln Street
Roseville, CA 95678
Phone: (916)784-3920
capitollegal@yahoo.com

Frasco, Inc.
Laura Pulido
9960 Business Park Drive, Suite 170,
Sacramento, CA 95827
Phone: (916) 856-5788
Fax: (916) 368-7611
lpulido@frasco.com

Global Options
Christopher A. Champlin
PO Box 15931
Sacramento, CA 95852
Phone: (800) 495-5591
www.globaloptions.com

Hoy & Associates Insurance
Investigations
Russell D. Hoy, CPI, CFS
705-2 E. Bidwell Street #268
Folsom, CA 95630-3315
Phone: (916) 983-9800
Fax: (916) 983-1057
HOYINV@sbcglobal.net

North Valley Investigations, Inc
Jesse Gomez
2521 Hilltop Drive #129
Redding, CA 96002
Phone: (530) 722-0222
nvinvestigations@aol.com

Perez Investigations
Al Perez
P.O. Box 1764
Martinez, CA 94553
Phone: (925) 934-5543
aperez@perezinvestigations.com

Shadow Company
Laura Barrett
P.O. Box 254476
Sacramento, CA 95865
Phone: (916) 487-1688
Fax: (916) 486-3522

Sterling Investigative Services, Inc.
Jeremiah Scott
P.O. Box 418203
Sacramento, CA 95841-8203
Phone: (916) 972-0989
Fax: (916) 972-0987
sterlinginvestigations@comcast.net

Job Placement

International Insurance Institute
Janell Fisher
4641 Freeport Boulevard
Sacramento, CA 95822
Phone:(866) 356-0395
Fax: (209) 370-2089
janellfisher@insuranceinstitute.com

Law Firms

Cuneo , Black, Ward
& Missler
David Converse
8880 Cal Center Drive #300
Sacramento, CA 95826
Phone: (916) 363-8822
Fax: (916) 363-8821
dconverse@cbwmlaw.com

D Andre, Peterson, Bobus
& Bruscinio
Stephanie Doll
9851 Horn Road #150
Sacramento, CA 95827
Phone: (916) 364-9390

Hanna, Brophy, MacLean, McAleer
& Jensen
Kyle Hansen
99 Scripps Drive
Sacramento, CA 95825
Phone: (916) 929-9411
Fax: (916) 929-0549
khansen@hannabrophy.com

Haworth, Bradshaw, Stallknecht &
Barber
Ruth Stallknecht
4420 Auburn Blvd # 100
Sacramento, CA 95841
Phone: (916) 484-4354
Fax: (916) 487-4348

Laughlin, Falbo, Levy
& Moresi
Terri McFarland
106 K Street, 2nd Floor
Rancho cordova 95741-0760
Phone: (916) 441-6045
Fax: (916) 441-7067
tmcfarland@lflm.com

Law Offices of Richard J. Yruegui
Karen Yruegui
5088 N. Fruit
Fresno, CA 93711
Phone: (559) 222-0660
Fax: (559) 222-2880
KYruegui@RJYLaw.com

McDonald Law Corporation
Mike & Sue McDonald
1900 Point West Way,
Suite 141
Sacramento, CA 95815
Phone: (916) 201-2450
Fax: (916) 914-2159
mike@mcdonaldlawcorp.com

Mullen & Filippi
Loren Dieu
1601 Response Road,
Suite 300
Sacramento, CA 95815
Phone: (916) 442-4503

Pursley, Rush, & Wesley, LLP
Bill J. Pursley Esq.
1760 Creekside Oaks Drive, Suite
190
Sacramento, CA 95833
Phone: (916) 922-9801
Fax: (916) 922-9061
wjp@prwattorneys.com

Rahn, Holbrook,
Murphy Law
Michael Rahn
1300 Ethan Way, Suite 500
Sacramento, CA 95825
Phone: (916) 569-1700
mrahn@rhmlaw.com