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NOVEMBER 2020

## Recent Professional & Community Accomplishments

### BUSINESS PRACTICE GROUPS

- Business & Civil Litigation
- Commercial Finance
- Corporate
- Employment
- Environmental
- Franchise & Distribution
- Health Care
- Intellectual Property
- Mergers & Acquisitions
- Real Estate
- Tax Planning

### CONSUMER PRACTICE GROUPS

- Family Law
- Personal Injury
- Trust & Estate Planning

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**Tal Grinblat** (Certified Specialist in Franchise & Distribution Law) was selected to serve another term as the Vice Chair of Legislation for the Business Law Section of the California Lawyers Association (CLA). Other appointments include **Taylor M. Vernon** as Chair, and **Matthew J. Soroky** as Vice Chair of Legislation – both for the CLA's Franchise Law Committee.

**David G. Jones** has been installed as President of the San Fernando Valley Bar Association for the 2020-21 term. **Jessica W. Rosen** will serve two years on the bar's Board of Trustees, and **Alex J. Hemmelgarn** will serve one year on the same Board.

**Vanessa Soto Nellis** (California Certified Family Law Specialist) filed a request to set aside a default judgment against a wife who lives in China and had no notice of the proceedings. The client's request was granted and the default judgment terminating the parties' marriage in 2018 was set aside.

**David Gurnick** (Certified Specialist in Franchise & Distribution Law) and **Jessica W. Rosen** obtained a favorable outcome for our business client facing allegations of misrepresentation. David and Jessica successfully argued that the plaintiff's claims lacked merit and were barred by litigation privilege. The plaintiff was persuaded to resolve the issue for a mere fraction of the damages claimed without the need for our client to respond to the complaint, saving our client costs and fees associated with litigation.

**Zane S. Averbach** and **Alex J. Hemmelgarn** were successful in petitioning the probate court ex parte to appoint two cousins as successor trustees of a trust created by their grandmother following the death of the prior trustee and the declination of a successor institutional trustee to serve. The appointment will permit the new trustees to repair and maintain several rental properties owned by the trust and ensure continued rental income.

**Steven L. Feldman** worked with Mississippi counsel to vacate a fraudulent arbitration award for \$1.5 million against our client in a Mississippi District Court, and then with the same counsel was able to obtain a 5th Circuit Court of Appeal affirmation of the dismissal. Steve thereafter worked in collaboration with Hawaii counsel to obtain the dismissal of a motion to confirm the same sham award filed in Hawaii District Court.

**Sue M. Bendavid** and **Jessica W. Rosen** obtained dismissal of our franchisor client facing allegations of vicarious liability for a franchisee employee's alleged wrongful conduct. Sue and Jessica filed a persuasive motion for summary judgment, establishing the plaintiff's claims lacked merit, both factually and legally, as the franchisor could not be and was not vicariously liable for the franchisee employee's conduct. The plaintiff dismissed our franchisor client for zero contribution.

**Paul C. Bauducco** successfully opposed a Petition to Release Mechanics Lien recorded by our contractor client, leaving the contractor's claim secured by a lien against the defendant owner's property and receiving an attorneys' fees award for defeating the motion.

**Barry Kurtz** (Certified Specialist in Franchise & Distribution Law) and **Matthew J. Soroky** represent a multi-unit operator of a global brand in its negotiations with new management over development rights. In a separate matter, Barry and Matt are counseling a start-up franchisor on a relations matter in the Middle East.

**Mark J. Phillips** (California Certified Specialist in Estate Planning, Probate & Trust Law) was retained by a family following the death of the father – leaving a surviving spouse, adult children, and a trust valued at more than \$25 million. Working with a CPA, Mark crafted a plan to have the surviving spouse give \$11.5 million of her remaining assets to the children, to fully use her estate tax exclusion before the exclusion expires or is eliminated by Congress. The planning potentially saves the family \$2 million in estate tax.

**Kevin E. Rex** resolved a litigated dispute between two shareholders by structuring a buy-out whereby the majority shareholder purchased all of the interests of the minority shareholder. In another matter, Kevin structured a deal in which our client was able to purchase the interests of several minority shareholders to take control of the company.

**Kira S. Masteller** is working with clients making gifts of assets via a Family Limited Partnership and Limited Liability Company to their children's protective trusts. The transactions allow clients to take advantage of the existing federal gift and estate tax exemptions.

**Keith T. Zimmet** represented our client in the restructuring of its major lines of credit.

**David Gurnick** and **Jessica W. Rosen** successfully opposed a federal motion to dismiss for lack of personal jurisdiction and failure to state a claim for relief. David and Jessica filed a lawsuit on behalf of a beauty supply manufacturer, against its distributor and the owners in Europe, for breach of contract and other claims. The owners failed to persuade the district court that dismissal was warranted in part based on their failure to comply with Local Rules and federal procedure. The motion was denied in its entirety.

**Vanessa Soto Nellis** represented a spouse in a premarital agreement. Our client has children from a prior marriage he would like to leave his assets to – the prenuptial agreement protects the assets from becoming community property under California law. In another matter, Vanessa worked with a married couple in drafting a postnuptial agreement establishing the property rights of each party and documenting the parties intentions for their finances.

**Taylor M. Vernon, Kevin E. Rex** and **David Gurnick** represented a nationally-known franchise company in a seven figure buyout of a substantial shareholder. The stock repurchase also included a non-compete agreement and post-closing consulting agreement.

**Kira S. Masteller** represents the beneficiary of a Court-ordered trust created in the 1990s. The Conservatee whose funds were placed in the trust recently passed away. The procedural history may change the outcome of the court ordered trust pending a heirship search which located over 185 heirs of the deceased Conservatee.

**Matthew J. Soroky** represented a local franchisee besieged by mandatory closure orders, in negotiating terms for termination of their franchise agreement with a major salon chain and buyout of their lease with the landlord. In a separate matter, Matt is representing a long-term licensee of a restaurant concept in negotiating extensive terms with the franchisor for conversion to a franchise agreement.

**Jessica W. Rosen** persuaded the plaintiff in a premises liability case to dismiss our franchisor client shortly after service of the complaint, because there was no legal or factual basis to name the franchisor as a defendant for alleged injuries that occurred at a franchisee's store.

**Barry Kurtz** and **Katherine L. Wallman** are working with various clients in developing franchise businesses. One client will provide personalized care services to seniors in their homes, while a separate client is originating a franchised delivery service for baked goods produced by a large, regional bakery company.

**Mark J. Phillips** successfully negotiated and subsequently obtained the court's approval of a settlement between our client, a national trust company, and a beneficiary who objected to the trustee's plan to divide and distribute the balance of a decedent's trust. Judicial approval was further complicated by the COVID-19 court closures over the past six months.

**Barry Kurtz, Peter L. Ente** and **Taylor M. Vernon** worked with a client in the cannabis industry with the sale of equity in exchange for a seven figure investment by the purchasers. The transaction included a conversion from corporation to limited liability company, a purchase agreement, convertible note and a new operating agreement for the members.

**Sue M. Bendavid** obtained a dismissal for a franchisor client by pointing out the lack of legal liability in a matter where the employee of a franchisee was asserting claims of harassment, discrimination and wage and hour violations. Sue showed the plaintiff's attorney that there was no employer-employee relationship between the franchisor and the franchisee's employee. Opposing counsel dismissed our client without any settlement payment.

**David G. Jones** represented a pre-school facing a large group of disgruntled parents seeking full refunds for non-refundable tuition for the upcoming semester. Dave reduced the group of disgruntled parents to a handful who were threatening legal action. He then negotiated significantly reduced refunds, resulting in a savings of thousands of dollars for our client. As a result the pre-school is moving forward, having minimized the potential risk of resolving several potential claims.

**Kyla A. Parrino, Paralegal Marianne Toghia** and **Kira S. Masteller** worked with a women-owned industrial company to certify the company via a two-step process in order to connect with government agencies and hundreds of corporations in the United States to seek out their products. First, the company registered with the System of Award Management, which allows a person/company to do business with the government. Since the company is a women-owned business, the second registration was initiated for the Women's Business Enterprise National Council (WBENC). Because of the diversity and procurement requirements the government and corporations enact, having a WBENC certification is the way to market and procure business. WBENC is also an approved Third Party Certifier for the United States Small Business Administration's Women-Owned Small Business Federal Contracting Program.

**David Gurnick** has represented clients in several industries in enforcing or negotiating exits, cancellations and modifications of contracts based on force majeure, impossibility, impracticability, frustration and other legal rules due to the COVID-19 pandemic. **David, Stephen T. Holzer** and **Steven L. Feldman** have also spoken to local attorneys and to clients and friends of the firm on these subjects.

**David B. Bobrosky** appeared as a guest lecturer for a business law roundtable hosted by the Pepperdine MBA program. The class covered the history and future of the *Assumption of Risk Rule* and how it applies to the sports industry. In particular, David focused on baseball stadiums and whether or not sports franchises still deserve protection from lawsuits, e.g. when fans are hit by foul balls, cracking bats, etc.

**David Gurnick** was a panelist at the American Bar Association Forum on Franchising, co-presenting a workshop on financial performance representations in offering and selling franchises. David is also co-chair of the Forum on Franchising's committee of lawyers who teach franchise law, and co-chaired a meeting of professors at the Forum. **Matthew J. Soroky** also co-presented at the Forum, a workshop entitled "How to Be a Strong Advocate and Effective Counselor to Your Client in Mediation."

Congratulations to **Caitlyn Dillon** and her husband Justin, on the birth of their first child, Liam. All members of the Dillon family are doing very well.

## PUBLICATIONS & MEDIA MENTIONS

### ***The Los Angeles Daily Journal***

*Tax Law Specialist Had a Fun and Meaningful Life, Friends Recalled*  
**Zane S. Averbach & Mark J. Phillips** quoted

### ***The Los Angeles Daily Journal***

*San Fernando Valley Bar President Aims to Promote Community*  
**David G. Jones** featured

### ***San Fernando Valley Business Journal***

*Bar Association Elects David Jones as President*  
**David G. Jones** featured

### ***Valley Lawyer*** (San Fernando Valley Bar Association)

*First Out the Gate: Meet SFVBA President David G. Jones*  
**David G. Jones** featured

### ***The Los Angeles Daily Journal***

*Reformation of Unambiguous Wills in Light of Estate of Duke*  
**Mark J. Phillips**, author

### ***San Fernando Valley Business Journal***

*Uber, Lyft Remain in Business for the Present*  
**Sue M. Bendavid** quoted

### ***San Fernando Valley Business Journal***

*California Labor & Employment - What Business Owners and Executives Need to Know*  
**Sue M. Bendavid**, participant

### ***Valley Lawyer*** (San Fernando Valley Bar Association)

*Meet the 2020 SFVBA Trustee Candidates*  
**Alex J. Hemmelgarn & Jessica W. Rosen**, featured

### ***San Fernando Valley Business Journal***

*Landlord-Tenant Talks: Real Estate Attorneys See Vacancy and Rent Concessions in Negotiations*  
**John B. Marshall** quoted

### ***KNX 1070 News Radio***

*COVID-19 Employer Compliance and Re-Opening Businesses*  
**Sue M. Bendavid** interview