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THE 4 ONE 1

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Welcome to THE 4 ONE 1 – our new quarterly newsletter that focuses on business law, litigation, and matters of general concern to California businesses. We believe, and hope you do as well, that this publication will be worthy of your time and interest. Our goal is to keep you informed about the latest legal developments, issues, and trends that are relevant to California businesses.

If you have any questions or if you would like more information on any topics we discuss in this or future issues of THE 4 ONE 1, please contact us. Rutan & Tucker is a full-service law firm in the areas of real estate, business litigation, bankruptcy, employment law, corporate, securities and M&A, financial practices, intellectual property, land use, municipal and government law, tax, and trust and estates. You may also direct specific questions you have to any of the lawyers listed on the last page of the newsletter.

— Best Regards,

Lindsay

Lindsay J. Hulley

ON THE RECORD

RUTAN'S NEW MANAGING PARTNER

Steve Nichols has been elected as Managing Partner of Rutan & Tucker, LLP, effective March 1, 2014

Steve has over 30 years of experience as a business litigation specialist, and is co-chair of Rutan's Construction Law Group. Steve also has served as an arbitrator with the American Arbitration Association, and has been named one of the top 100 attorneys in California by the Daily Journal, California's largest legal publication. Rutan is the foremost and largest full service law firm in Orange County, California.

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Thompson to be Honored Father of the Year

On June 5, 2014, Rutan partner Kim D. Thompson will be honored by the Father's Day Council, in partnership with the American Diabetes Association, as a Father of the Year Honoree. The honor is reserved for businessmen who have demonstrated the ability to balance their professional lives with their role as a father while also actively serving their communities. Thompson, a father of two, served as a member of the Board of Directors of Orange County Search & Rescue, Chairman for "Project Playground" for Newport Heights Elementary School, as a founding officer and director of the Newport Heights Elementary Foundation, as a founding member of the Newport Harbor Lacrosse Booster Club, and as a member of the organization and planning committee of the Orange County Centennial celebration. The Father's Day Council's annual dinner will recognize and celebrate Thompson's contributions while raising awareness about the diabetes epidemic.

Thompson is a partner in Rutan's Real Estate Section and advises clients in commercial real estate

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What Employers Should Know in 2014

By Kenneth J. Zielinski

New Year, new laws—the California legislature has once again put your hard-earned tax dollars to work, if the sheer volume of new legislation is any reliable measure. Some of the newly enacted laws reflect significant changes and directly affect California employers, while others make smaller changes and/or only impact specific industries. Many of these laws should be incorporated into your employee handbook and management training programs. As Benjamin Franklin once said, "an ounce of prevention is worth a pound of cure."

The following is a brief overview of this author's top ten most significant new employment-related laws. In reverse Letterman fashion, they are as follows:

10. Expanded Paid Family Leave Rights: The California Employment Development Department ("EDD"), through employee payroll deductions, provides for family temporary disability insurance benefits to workers who need to care for a seriously ill "family member" – namely, children, spouses, parents, or domestic partners. Paid Family Leave ("PFL") has been expanded to provide benefits to employees who take time off to care for a seriously ill grandparent, grandchild, sibling, or parent-in-law. Employers should note that employee eligibility for PFL is determined by the EDD rather than employers, and this law does not impact employee eligibility or leave rights under the California Family Rights Act, the Family Medical Leave Act, or other laws protecting the employment status of employees who take time off to care for family members.

9. Security Breach Duties: California businesses that suffer a security breach have additional disclosure requirements where the breach involves personal information that would permit access to an online or email account.

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8. Citizenship/Immigration Status: Employers could face suspension or revocation of the employer's business license if the employer reports or threatens to report to a federal, state, or local agency, the suspected citizenship or immigration status of an employee, applicant, or one of their family members.

7. Stalking Victims Rights: Stalking victims now have the same rights as those pertaining to victims of domestic violence and sexual assault. Such victims must be permitted to take time off work to address issues related to stalking, domestic violence, and sexual assault and may not be retaliated against as a result of doing so. An employer must provide reasonable accommodations for victims of domestic violence, sexual assault, or stalking who request an accommodation for the safety of the victim while at work.

6. Crime Victims Rights: An employee who is a victim of certain crimes and offenses, or whose spouse, domestic partner, parent, child, sibling, or guardian is the victim of such, may take time off from work to participate in court proceedings in which the victim's rights are at issue. Employers are prohibited from discharging or discriminating against employees on the basis of their exercise of these rights.

5. Criminal Convictions: Employers are prohibited from asking employment applicants to disclose, or using as a factor in employment decisions, any information regarding a criminal conviction that has been judicially dismissed or sealed.

4. Sexual Harassment Clarified: An amendment to the Fair Employment and Housing Act clarifies that, in establishing a sexual harassment claim, an employee is not required to prove that the inappropriate conduct was motivated by the harasser's sexual desire for the employee.

3. Military/Veterans: "Military and veteran status" is now a protected class under the California Fair Employment and Housing Act. "Military and veteran status" is defined as one who is a member or veteran of the United States Armed Forces, United States Armed Forces Reserve, the United States National Guard, and the California National Guard.

2. Immigration Rights: Employers are prohibited from taking immigration-related adverse actions against employees in retaliation for the employees' exercise of employment-related rights. Examples of prohibited retaliatory conduct include: (a) requesting more or different documents than federal law requires for proof of employment eligibility; (b) using the E-Verify system to check employment at a time not required by federal law; (c) threatening to file a false police report; and (d) threatening to contact, or contacting, immigration authorities.

1. Minimum Wage Increase: The California minimum wage will increase to $9.00 per hour on July 1, 2014 and to $10.00 on January 1, 2016. The increase not only impacts

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transactions. He has been a member of the firm's executive committee, and was previously the Managing Partner. Thompson joined Rutan in 1985 after receiving his law degree from the University of Southern California.

Hurlbut Honored by the Orange County Bar Foundation

John B. Hurlbut, a partner in Rutan's Trial Section, recently received the 2013 Orange County Bar Foundation's annual "Sammy" Award for his many years of support for the Foundation and its mission of serving the youth and families of Orange County. The Sammy Award is the Foundation's most prestigious award. It is dedicated in memory of Robert Sam Barnes, a longtime Foundation supporter, and is awarded to a recipient who has made substantial contributions to the Foundation. Hurlbut is a past President of the Foundation, is a member of the Foundation's Executive Committee, and is the co-chair of the Foundation's Committee for Project SELF, an eight-week paid internship program offered to high school juniors from low-income families in Orange County. Hurlbut began his legal career in 1964, joining

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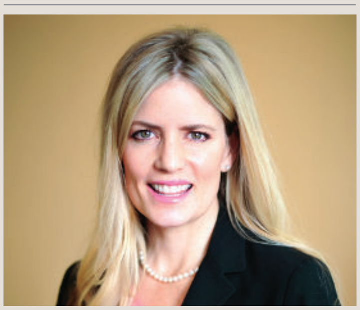
Rutan after graduating from Stanford Law School. Among his many contributions to Rutan, Hurlbut previously lead the firm's Trial Section, and served as Rutan's Managing Partner.

Owen Named Chair of Education Law Group

Rutan recently named Epiphany Owen as the Chair of the Education Law Group. Owen is a partner in Rutan & Tucker's Government & Regulatory Law Section and she specializes in education law, labor and employment law, and civil litigation.



Hulley Named Partner

Rutan recently announced that Senior Counsel Lindsay J. Hulley has been elevated to partner. Hulley joined the firm in 2012. As a member of the firm's Corporate Section and Intellectual Property Group, her practice focuses on trademark and copyright prosecution, and advising clients on the adoption and use of trademarks.

WHAT EMPLOYERS SHOULD KNOW continued...

the amounts that must be paid to hourly employees, it also affects other things such as the minimum annualized salary that must be paid to exempt employees.

As is evident from these new laws, California continues to expand protections for employees. In addition to updating handbooks, California employers should consider training management on these issues. Again, the information above is only a partial recitation of the new laws and is not meant to be an exhaustive list.

If you have questions regarding any of the above or any other employment matter, please feel free to contact Kenneth Zielinski at 714.338.1876.

Rutan at the 2014 NAMM Show

By Damon D. Mircheff

The National Association of Music Merchants' ("NAMM") annual convention at the Anaheim Convention Center – known as "The NAMM Show" – is the largest trade show of its kind for the musical instrument industry, with everything from jazz and orchestra instruments, to rock and roll music and stage gear, to cutting-edge electronics and software.

The 2014 NAMM show spanned four days at the end of January, and Rutan was there. "Rutan's presence at the NAMM Show is important to maintaining our goal of providing clients with top legal guidance. By being there, we develop a deeper understanding of the business issues our clients face as well as emerging trends in the industry. Our presence also shows that we care about our clients' continued successes," said Rutan Trial Partner Alejandro Angulo. "In short, Rutan is at the NAMM Show to support our clients, to stay on top of industry trends, and to help clients connect with strategic partners."

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RUTAN AT THE 2014 NAMM SHOW continued...

Pictured: George Gorman (left) and Damon Mircheff (right) at the 2014 NAMM Show.

The NAMM Show features educational seminars, performances and signings by professional musicians, awards recognizing new and innovative products, and thousands of exhibitors attend the show to conduct business and show off their products and services.

Rutan attorneys represent music and music instrument industry clients in a wide range of matters that include patent, trademark and copyright litigation and protection, licensing agreements, general corporate work and business counseling, and real estate. Rutan's clients include manufacturers and sellers of guitars, amplifiers, pro audio and DJ equipment, and music producers.

The Rutan team at the 2014 NAMM Show represented the multi-disciplinary nature of the music and musical instrument industry and the broad range of Rutan's industry clients. It included Trial Partner Ron Oines, who is an intellectual property litigator and counselor, Intellectual Property Associate Kari Barnes, who is a patent attorney, and Rutan attorneys who practice corporate law, business litigation, and employment law.

A number of the Rutan attorneys who attended the 2014 NAMM Show are also musicians, including Mr. Angulo, who plays stand-up bass in a jazz combo called The SMART Jazz Execs, and Mr. Oines, who, when not representing musical instrument industry clients in intellectual property matters and disputes, plays lead guitar in a rock band.

"It was fun and productive to connect with friends and clients, who were pleasantly surprised to see Rutan participating in the NAMM Show," said Mr. Oines. "We hope to see them all there again next year."

Rutan Clients Who Made CFO of the Year

Congratulations!

Rutan would like to congratulate the following individuals on being named CFO of the Year in their respective categories at Orange County Business Journal's 7th Annual CFO of the Year Awards!

STEPHEN DIXON
of Fluidmaster Inc., San Juan Capistrano (Private Company Category)

FRANK MARTELL
of CoreLogic Inc., Irvine (Public Company Category)

KENT RATZLAFF
of Niagara Bottling LLC, Ontario/Irvine (Rising Star Category)

DONALD VOSKA
of Goodwill of Orange County in Santa Ana (Not-for-Profit Organization Category)

Fluidmaster

CoreLogic

niagara

The Face of Independence
GOODWILL OF ORANGE COUNTY

Short-Form Mergers: Limited Minority Shareholder Rights and Recourse

By Rich Marr and Gerard Mooney

Section 1110 of the California Corporations Code provides for "short-form mergers," in which a subsidiary corporation merges into a parent corporation that owns at least 90% of each of the subsidiary's classes of outstanding shares.

In addition to providing a streamlined process to simplify capital structure, a short-form merger may also permit majority shareholders to eliminate minority shareholder interests with limited recourse available to the minority.

The short-form merger process is relatively simple. Assume there are shareholders owning 90% or more of the shares of a corporation (the "majority"), and a minority shareholder owning 10% or less of the corporation. The majority shareholders contribute their shares in the corporation – called the "Target" – to a newly formed corporation – called the "Parent" – in exchange for all of the Parent's shares. The majority shareholders then own 100% of the Parent, and the Parent owns all of the Target's shares, save for those of the minority shareholder. The Target then merges into the Parent (or vice versa).

The majority shareholders may "cash out" the minority shareholder by giving the minority shareholder the right to receive payment for the "fair market value" of his or her shares. If the minority shareholder agrees to the offered price, he or she tenders the shares for cancellation and payment, thereby terminating his or her interest in the Target.

If the minority shareholder does not agree to the offered price, his or her recourse is limited by statute. Pursuant to California Corporations Code section 1312, subdivision (a), the dissenting minority shareholder generally may not attack the validity of the short-form merger or seek to have it set aside or rescinded. Rather, he or she is limited to an action in court for appraisal of his or her shares. In addition, the California Supreme Court has held that section 1312, subdivision (a) also precludes actions for damages by the dissenting minority shareholder in connection with the merger, including claims for fraud and breach of fiduciary duty.

Section 1312, subdivision (b), creates an exception to subdivision (a) where the entities in the merger are under "common control." In such a circumstance, the dissenting minority shareholder may bring a claim to attack the validity of the merger or have it set aside or rescinded. Theoretically, this exception could apply in every short-form merger, where the Parent owns the majority of the Target's shares. The question arose whether the exception created by subdivision (b) permits the sorts of claims for damages subdivision (a) prohibits.

Recently, a California Court of Appeal held that subdivision (b) does not allow a dissenting minority shareholder to bring claims for damages in connection with the merger. Rather, if the shareholder does not agree to the price offered for his or her shares, he or she must choose between an appraisal of the shares, or an action to rescind the merger. Although the California Supreme Court has indicated that the appraisal of the shares may take into account potential issues of fraud or breaches of fiduciary duty insofar as they might affect the value of the shares, direct claims for damages may not be brought.

There are important nuances to the governing statutes and case law, and your individual circumstances must be considered, but the short-form merger process can provide significant advantages to majority shareholders while limiting minority shareholder rights.

Should you have questions about short-form mergers or similar corporate or shareholder-related matters, please contact Rich Marr at 714.662.4652 or Gerard Mooney at 714.338.1857.

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Questions?

If you have any questions concerning THE 4ONE1, please contact:

CONTRIBUTING EDITORS

Lindsay J. Hulley, Partner
714.641.3446 | lhulley@rutan.com

Kenneth J. Zielinski, Associate
714.338.1876 | kzielinski@rutan.com

Damon D. Mircheff, Senior Counsel
714.641.3405 | dmircheff@rutan.com

We Want Your Feedback and Suggestions!

We hope you enjoyed this issue of THE 4ONE1. It is our intention always to deliver information that is current and educational and, most importantly, relevant to you. Thus, if there is a topic you would like us to cover in an upcoming issue of THE 4ONE1, please send your idea to Lindsay Hulley at **lhulley@rutan.com.**

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COSTA MESA
611 Anton Boulevard
Suite 1400
Costa Mesa, CA 92626
714.641.5100
Fax: 714.546.9035

PALO ALTO
Five Palo Alto Square
3000 El Camino Real, Suite 200
Palo Alto, CA 94306-9814
650.320.1500
Fax: 650.320.9905

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