



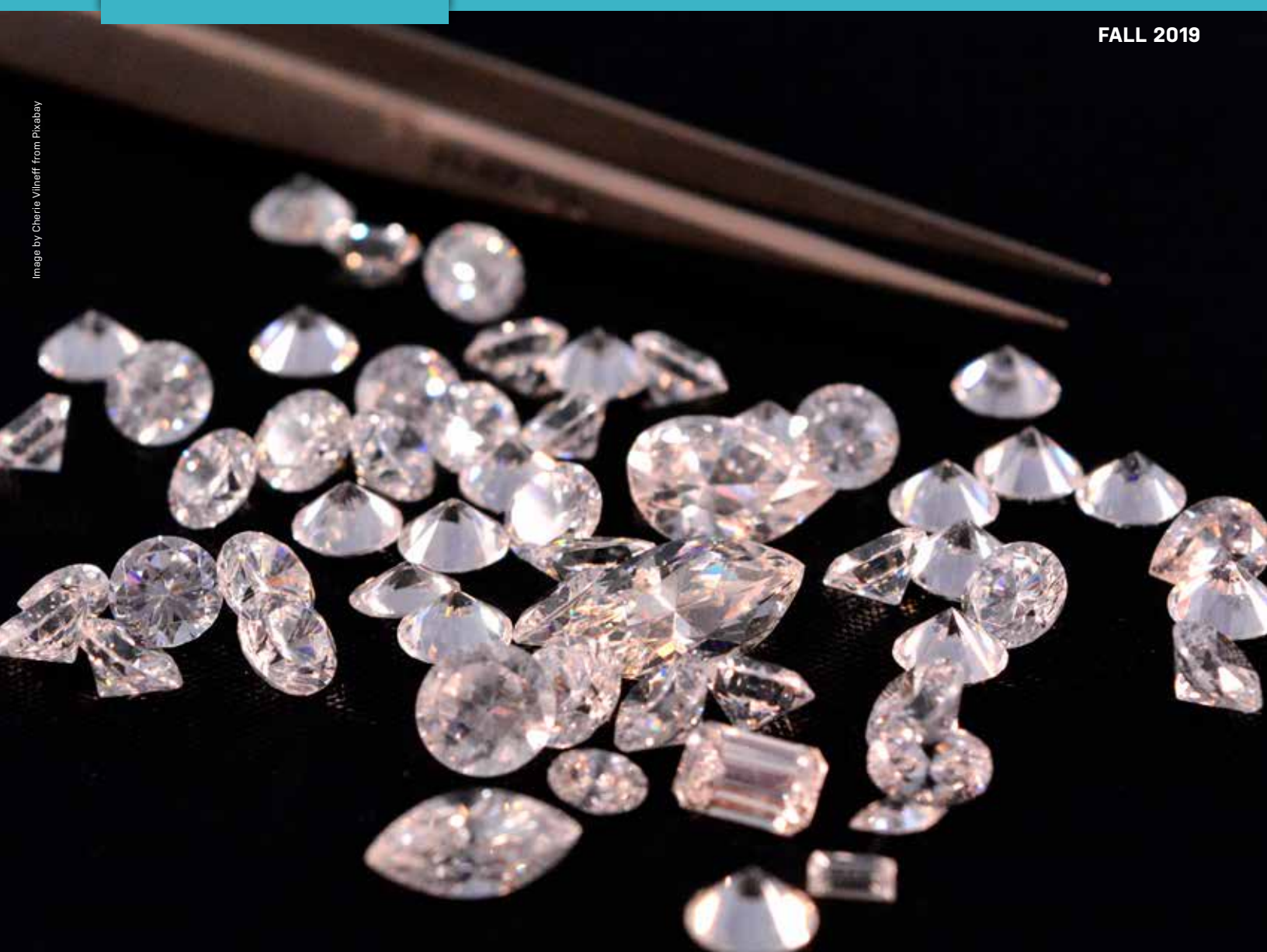
CALIFORNIA
PAWNBROKERS
ASSOCIATION™

CAPA

CALIFORNIA PAWNBROKERS ASSOCIATION
COLLATERAL LOAN & SECONDHAND DEALERS ASSOCIATION OF CALIFORNIA

FALL 2019

Image by Cherie Vilneff from Pixabay



NATURAL VS. MANUFACTURED DIAMONDS

CAPA ATTORNEYS WEIGH-IN



WEXLER INSURANCE AGENCY, INC.

*Included coverages such as:
FedEx Shipping; Workplace
Violence; EPLI & Cyber Liability*

INSURING **PAWNBROKERS** SINCE 1968

The Best Coverage at Competitive Prices



Available Coverages:

- ◆ Pawned & Owned Jewelry & Guns
- ◆ Pawned & Owned Other Stock
- ◆ Memo
- ◆ Products Liability for Guns & Ammunition
- ◆ See back page for other available coverages
- ◆ Business Personal Property
- ◆ Business Interruption
- ◆ Buildings

***Ask about our exclusive Workers
Comp program for Pawnshops!***

No Coinsurance

We pay based on your choice of the following:

- ◆ Actual cost of the loan plus legally accrued interest
- ◆ Replacement Cost
- ◆ 2 or 3 times pawn value

Wexler Insurance Agency, Inc.

1120 Ponce de Leon Blvd.
Coral Gables, FL 33134
Tel: 305-445-5050
Fax: 305-448-8189

New York Office

580 Fifth Avenue
Suite 715A
New York, NY 10036
Tel: 212-391-5211
Fax: 212-391-5212

Ohio Office

7363 E. Kemper Rd.
Suite C & D
Cincinnati, OH 45249
Tel: 513-891-2131
Fax: 513-891-2132

California Office

1400 Quail Street
Suite 235
Newport Beach, CA 92660
Tel: 949-723-3835
Fax: 949-723-3839

Nationwide: 1-888-4-WEXLER
1-800-432-1853 **E-mail:** info@wexlerinsurance.com



**CALL 1-800-432-1853 FOR AN IMMEDIATE QUOTE
OR VISIT US AT WWW.WEXLERINSURANCE.COM**



INTERNATIONAL GEMOLOGICAL INSTITUTE

The Authoritative Resource for the Gem and Jewelry Industry

- Diamond Identification/Origin
- Diamond Grading
- Diamond Sorting
- Diamond Screening of Natural vs Laboratory Grown Diamonds
- Diamond & Gemstones Audit Services
- Jewelry Reports
- Expert Witness Services
- Arbitration Services
- Gemstone Escrow Services
- IGI School of Gemology



ANTWERP • NEW YORK • HONG KONG • MUMBAI • TOKYO • DUBAI • TEL AVIV • LOS ANGELES • ITALY
BANGKOK • SHANGHAI • KOLKATA • NEW DELHI • SURAT • JAIPUR • CHENNAI • THRISSUR • AHMEDABAD • HYDERABAD

www.igi.org

RAPAPORT[®]

DIAMOND AUCTIONS

THE CASH MARKET FOR DIAMONDS



SELL YOUR DIAMONDS IN OUR UPCOMING AUCTIONS

JANUARY 15 - 22	SINGLE STONE	NEW YORK & ISRAEL
FEBRUARY 4 - 12	MELEE	NEW YORK & DUBAI
FEBRUARY 12 - 19	SINGLE STONE	NEW YORK & ISRAEL
FEBRUARY 26 - MARCH 5	MELEE	NEW YORK & HONG KONG

Now OFFERING
IN-HOUSE PREMIUM BOILING SERVICES FOR ALL DIAMONDS



CONTACT US TO LEARN MORE & START SELLING TODAY

auctions@rapaport.com • www.rapaportauctions.com • +1-212-354-9800

OFFICERS

Jan Schneider
President

R & J Jewelry & Loan
San Jose, CA
Phone: (408) 295-3610
jewelryjan@att.net

Stan Lukowicz, III
President-Elect

Loyalty Pawn
1708 Broadway
Sacramento, CA 95818
Phone: 916-919-2331
stanjr@loyaltypawn.com

Scott Tiemann
Secretary

Central Mega Pawn
11031 S. Central Avenue
Ontario, CA 91762
Phone: 909-627-9622
centralloan@gmail.com

Michael Herda
Treasurer

Atlas Loan & Jewelry
16522 Bellflower Blvd.
Bellflower, CA 90706
Phone: 562-263-7296
atlaspawn@aol.com

Pat Rogers
Immediate Past President

Perris Pawn & Hemet Pawn
Perris, CA
Phone: (951) 443-1716
pat@perrispawn.com

STAFF

Kimberly Andosca
Executive Director
CAPA

One Capitol Mall, Suite 800
Sacramento, CA 95814
Phone: (916) 669-5322
Fax: (916) 444-7462
kandosca@amgroup.us

Copyright © 2019 CAPA

Opinions expressed in these articles
are those of the individual authors
and do not necessarily represent the
views of CAPA.

CONTENTS

President's Message	7
Capitol Report	9
Legislative Chair Update	10
Snapshots from the CAPA 63 rd Annual Convention & Exposition	12
The Military Lending Act and Pawn Contracts in California.	16
Natural vs. Manufactured Diamonds — CAPA Attorneys Weigh-in	20
CAPA Committe Roundup	26
Save the Dates	26

Directors

Israel Adato
Express Financial Services
San Diego, CA
Phone: 619-428-8003
israeladato@yahoo.com

Moris Adato
Cashco Jewelry & Loan
San Diego, CA
Phone: 619-264-7296
morisg@me.com

Leon Alchian, Jr.
Majestic Jewelry & Loan Co
Fresno, CA
Phone: 559-266-1138
lajr11@aol.com

Omar Anzar
Monte de Piedad
San Ysidro, CA
Phone: 619-428-3859
omar@montedepiedad.com

Curt Chapman
Westminster Jewelry & Loan
Westminster
Phone: 714-893-0556
cchapmancurty@aol.com

Tony DeMarco
Western Loan & Jewelry
Los Angeles, CA
Phone: 323-268-4120
westernloan@aol.com

Stephen Foster
*Fresno Coin Gallery Jewelry &
Loan Inc.*
Fresno, CA
Phone: 559-222-2646
fresnocoin@aol.com

Michael Klass
Platinum Jewelry & Loan
Lancaster, CA
Phone: 310-365-5450
mk@pjloan.com

David Lisso
AJ's Superpawn
Pomona, CA
Phone: 909-622-0334
nfmalice@gmail.com

Dan Lukowicz
Capital City Loan & Jewelry
Sacramento, CA
Phone: 916-334-7296
dan@capitalcityloan.com

Angel Manzano
R&J Jewelry and Loan
San Jose, CA
Phone: 408-295-3610
pawnfather@gmail.com

Keven Pedersen
Salinas Pawn
Salinas, CA
Phone: 831-422-5626
slnpwn@aol.com

Sam Shocket
King's Jewelry & Loan
Los Angeles, CA
Phone: 213-383-5555
sam@kingspawn.com

Dan Stansell
Beverly Loan Company
Beverly Hills, CA
Phone: 310-275-2555
Dan.stansell@beverlyloan.com

Vito Wise
Granters Jewelry & Loan Co
El Cerrito, CA
Phone: 510-525-9144
granterspawnshop@gmail.com

Trustees

Tim Cassidy
Cassidy's Jewelry & Loan

Barry Smith
BG Loan & Jewelry Co.

Vendors Council

Seth Ward
Union Life & Casualty Insurance

What is your
CHRISTMAS
going to look like?



This
OR
That



CardCerts™ can Increase Profits
On Your Jewelry Sales Up To 50%*

Don't wait for the end of season rush.
Send in your jewelry and
diamonds for a CardCert TODAY
And see your jewelry profits SOAR!

SEND 20 ITEMS & PAY:

~~\$35.00~~ **\$24.95**
PER CARDCERT*



JEWELRY APPRAISAL AND GEMOLOGICAL INSTITUTE

*Results may vary depending on item, region, and market value. **Cannot be combined other offers. Shipping, repairs and additional services not included. \$24.95 per CardCert valid for the 1st order of 20 CardCerts and on subsequent CardCert orders for 90 days. Visit Jagilab.com for details



CAPAcon 2019

There is only one word to describe our 2019 CAPA Convention...PHENOMENAL!

Starting with the Board of Directors meeting on Thursday, board members reviewed

our successful legislative efforts of 2019 and identified and prioritized goals for 2020. We reviewed the financial reports and made recommendations for the continued financial health of our association and had each committee report on their committee's efforts for the year. I have never served with a more engaged and energetic group of people. They really accomplished a lot this year.

On Friday we filled a bus with members for what has become one of the most popular events at our conventions, the Annual Pawn Tour. Local CAPA members graciously opened their shops to attendees and members were able to learn new business techniques and get fresh ideas at every stop.

While the Pawn Tour was rolling, over thirty members of law enforcement agencies from several jurisdictions attended the Bi-annual CAPA Law Enforcement Seminar. These officers spent four hours learning about our industry and the laws that regulate pawn and secondhand businesses. This worthwhile exercise does a lot to better the relationship between industry and law enforcement.

Friday night we had an extremely successful Legislative Reception for several of our friends that serve in the California State Senate and Assembly. It was a great

opportunity to have them meet the people from the businesses that our legislation affects and to thank them for supporting our legislative efforts.

Saturday CAPAcon 2019 officially kicked off. We started the education early with an amazing keynote speaker at our opening breakfast in the person of Adam Harris. There were new and exciting seminars and vendors that we've never had before.

Most importantly, we had a great turn-out from members old and new. The comment heard over and over throughout the weekend was, "This is the best convention I've ever attended!", and "Everyone is so friendly! It really feels like family!". The seminars were packed and so was the vendor hall.

I want to thank our great staff, led by our Executive Director Kim Andosca, for their hard work leading up to and during the convention. They continue to raise the bar and make our California conventions the best in the country. We couldn't do it without them!

Thank you to all our wonderful vendors. Their support contributes immeasurably to our success.

Most of all, thank you to all our CAPA family that attended. Whether you came for the whole weekend or one day, thank you for supporting CAPA with your attendance and I am sure you all took back a lot of new knowledge and ideas for your shops.

I look forward to seeing all of you next year. If you missed coming this year, plan on attending CAPAcon 2020! You'll be glad you did!

Jan Schneider ■



Join Us!



Plant A Tree!



Proud members of the California Pawnbrokers Association seek partnerships with city and community organizations to improve city parks and facilities through pawnbroker funded donations.



www.pawnshopsforparks.com

info@pawnshopsforparks.com

WORLDWIDE
DIAMOND CO

WE BUY DIAMONDS!

WE WILL OFFER ON *ALL* YOUR DIAMONDS,
JEWELRY AND COLORED GEMSTONES!

FREE QUICK QUOTES! FREE DIAMOND EXTRACTIONS!



Proudly supporting the pawn industry since 1977*

Contact Lisa or Bob!

📍 607 South Hill Street Suite 811 • Los Angeles, Ca 90014

✉ wwdiamond@earthlink.net

☎ 213-622-2191

🌐 wwdiamond.com



Bill Duplissea
www.cline-duplissea.com

Capitol Report

For the lucky CAPA members who attended our fantastic convention in Long Beach last month, my Sacramento Report may be a bit redundant. I apologize for that. We are at that delicate time in the Legislative process;

where ideas for new legislation, and unfinished business (read bills that did not make it out of the Legislature in the first year of the two year session) begin to take a total backseat to RE-ELECTION for every Legislator. For people and groups that ran major legislation that failed last year, it is an especially hard time, since it is much harder to get anyone's attention about a failed proposal when we are in an election year. **CAPA has no such problem.**

2019 was a very successful year for the CAPA Team. Our fee adjustment bill, AB 1186 (Medina), was passed by both the State Assembly and the State Senate and was signed by Governor Newsom. On January 1, 2020 California pawnbrokers may begin charging the new fees. In large measure our success in Legislature can be credited to the CAPA Board of Directors, the Legislative Committee, and the Executive sub-committee of the Legislative Committee. Work began on the Medina bill back to when we were all together last year in Rancho Mirage for our 2018 convention, and did not end until the bill was signed. I believe most of our members are unaware of just how much time and effort our CAPA Team expends on these bills. The lost time they all sustain from running their own shops alone is a huge sacrifice. You should also be aware that the CAPA Team takes great pains to fashion our legislation to benefit the greatest number of our members. Of Our bills never favor the "big shops" or the specialty one store or another may do. AB 1186 is an across the board adjustment for all of our fees, and will benefit everyone. The degree to which the CAPA Team engages in the Legislative and political process makes my job as your lobbyist that much easier. When we are doing a big bill like AB 1186, I will often need immediate direction, or immediate permission to make changes to the bill or make changes in the manner in which we are dealing with certain Legislators on the bill. Typically, I send out the SOS and we are on a conference call in a matter of minutes. And within a few minutes I have what I need to get another CAPA bill passed. This kind of behavior

is not always typical in statewide organizations. I hope all of our members appreciate it, I know that I do.

The Legislature has been very good to CAPA in 2019, not so toward business in general in the Golden State. Some major changes were made in 2019 that will make it even more difficult and expensive to do business in California. The measure that has gotten most of the press coverage is AB 5 (Gonzalez). With a few minor exceptions, this bill will make virtually everyone an employee with W-2 wages and subject to all employee benefits. What we have come to embrace as a business service or 1099 people will be eliminated. The provisions of the bill become effective on January 1, 2020. It will take a couple of years for the enforcement arm of the State to reach down to every small business, but they will get there too soon for me. This is a catastrophic turn for most small businesses. The high threshold that a business must meet to use independent contractors will, in my opinion, subject many small and medium businesses to very punitive penalties. In may be the cynic in me, but one has to ask themselves "why is this so necessary now"? The economy is strong, wages are higher than they have every been across the State, and the rapidly changing business models are a perfect fit for entrepreneurial contractors who can provide a service we didn't even know we needed just a few years ago. Well, think about it. The tax man in Sacramento knows exactly where every W-2 wage earner is and what the State is owed by them every payroll period. Not so with 1099 contractors. This is very similar to why when we make a retail sale, we collect, hold and transmit sales tax to the State; even though it is our customer who incurs sales tax. We are being used as a free collection service for the tax man. Likewise, more employee withholding means more tax dollars to the State against no additional cost of services to the State. If I was to be even more cynical, it also makes it much easier to unionize employees than it is to unionize independent contractors.

Remember that a sizable chunk of union dues get directed to political action committees (PACs) that in turn get distributed to the very politicians that required them all to be employees instead of independent contractors.

We are in for some turbulent times for small businesses in California. Expect more grim news on that front from your man under the dome in Sacramento...I hope to see as many of you as possible in January when we "Walk the Halls" to inform Legislators of CAPA's Legislative Agenda for 2020.

Bill Duplissea ■



Tony DeMarco

2020: Seeking Protections for our Clients

I believe it has been more than two decades that I have been on or involved with the CAPA board that the phrase ‘item only’ reporting has been discussed. Way back then, it was just a thought. I once had a contractor trying to make payroll come in my store to get \$500. I remember going to his truck and helping him bring in a dozen or so hand tools. Thank goodness for pawn shops, he made his payroll. However, a week later a detective from Alhambra PD calls me to inquire about why my client (their resident) had pawned so many tools. I asked the detective if any of the tools were reported stolen? No, was the answer. ‘We just think these transactions are suspicious.’ ‘Why would someone pawn 20 hand tools?’ I told the detective, I’m sure they are his tools, he has his name written all over them. But the detectives came down anyway. Treating our customers as criminals is bad for our industry and our community status as a local small business. Profiling our customers is just wrong. Add to my example from years past, the incredible growth of App Based selling of tangible items, (OfferUP, Marcari, eBay, Craigslist, LetGo, 5Mile) we are losing market share and subjecting our customers from unduly searches of private information. Imagine if WE could play by these rules. Would more customers use our services? Just think about what one needs to open an “OfferUp” account. An email and a password. No background, bond or license for the owner and certainly no customer information (signature, fingerprint, valid ID) about the sale. Why are we required to give so much customer information with our transactions?

There is definitely a fundamental change going on in Sacramento — Bill has referred to this in his message. Customer privacy and the sharing of this information, for use other than what it was meant for, is politically frowned upon. Why do we need to share our customer information when law enforcement is trying to find stolen property?

We now have a uniform search engine, that we all pay for, to help LE find stolen property—CAPSS. This year CAPA will begin the journey of limiting some of the information that is required in a CAPSS upload. It will be difficult. Law Enforcement, in general, does not like giving up anything they are used to receiving.

CAPSS Reporting Update

I have been told by DOJ that beginning January 1st, 2020 there will be new requirements about how we report items in CAPSS. Specifically, forcing secondhand dealers and pawnbrokers to populate drop down menus for Color, Size, Pattern, Material & Personalized Inscription. What this means, is all license holders will need to change their routine in describing property and new training for employees. Technically, it will be another “xml” format change. This is the file format we use to bulk upload. CAPA is working to extend the implementation period in order to give our members more time to comply. Please stay tuned on this issue. CAPA will be working with our software vendors to make changes to our programs in order to comply with the new regs.

And lastly, I had put a message on our google group a few weeks ago. If any non-California police jurisdiction contacts your store about an item or person that has pawned or sold to you, please take down that person’s information and follow up your conversation with an email to this person. Ask what database they used to get their information in your email. Please share this information with me. My info: Shop-323-268-4120 or westernloan@aol.com If you are still using LEADS ONLINE to manage your uploads to CAPSS, please cease immediately. If you are receiving pressure from your law enforcement, call me, and I will get a letter to them from our attorney. Never hesitate to reach out to me. I don’t know everything, but I probably know someone that will.

Tony DeMarco ■

Albuquerque
Los Angeles
Phoenix
San Francisco
dhfco.com



David H. Fell & Company
Outstanding in every element.™

Trusted Refining for Over 40 Years

High Grade & Jewelry Scrap
Silver & PGM
Placer, Doré
Filings, Polishings, Sweeps
Dental, Industrial, Gemsoaks

Office: 323-722-9992
Cell: 415-815-9938



SPECIALIZING IN PAWNBROKER
INSURANCE AND BONDS FOR

OVER 30 YEARS

Uhle Insurance Services



INSURANCE AND BONDS FOR
THE PAWNBROKER INDUSTRY

PHONE: (866) 4EZ-BONDS OR (866) 439-2663 FAX: (818) 345-1878
www.uhleinsurance.com • lulu.uhleinsurance@gmail.com

SNAPSHOTS FROM THE CAPA 63RD ANNUAL CONVENTION & EXPOSITION







Single to Full-Color Printing - Layout & Design

Direct Mailing Services • First Class & Bulk

(800) 531-5234 • Fax (512) 990-3001 • print-info@burrellprinting.com

THE MILITARY LENDING ACT AND PAWN CONTRACTS IN CALIFORNIA

The Military Lending Act, 10 U.S.C. § 987 (the “MLA”) dictates the terms of consumer credit extended to members of the U.S. military and their qualified dependents. The relevant CAPA form contracts, 403 Non-MLA and 409 MLA, include provisions disclosing the existence and general terms of the MLA and ask pledgors to check boxes stating whether they are military members, dependents of military members, or neither. The pledgor’s answer to this section is then attested to by a signature. The 403 Non-MLA contract has a further provision advising the pledgor that the lender is not offering a loan that complies with the MLA and that the pledgor warrants to the lender that they are not active duty military members or dependents of such. This warrant is made by way of the pledgor initialing the loan contract.

Questions have arisen on whether these self-certification clauses are sufficient to shield a pawnbroker from liability under the MLA in the case of the pawnbroker making a non-MLA compliant loan to an active duty member of the military or their dependent. These questions are of significant concern in light of the gravity of the MLA penal-

ties. A lender who violates the MLA is subject to civil liability, including actual damages, punitive damages and costs. *Id.* at § 987(f)(5). Violations are also punishable as misdemeanors, but only if a creditor “knowingly violates” the statute. *Id.* at § 987(f)(1). Ultimately, each broker must make their own risk-management decisions and determine their business practices, taking into account the costs of complying with the “safe harbor” provisions weighed against the liability risks of using other verification methods. As discussed herein, the threshold decision of whether to offer MLA loans will likely weigh heavily on the necessity of a covered borrower check.

Regulation 32 C.F.R. § 232.1(a) allows a broker to use their own method to determine whether a pledgor is a covered borrower; such methods could include inspection of a military ID, other documents reflecting coverage or even self-certification. However, to achieve certainty of compliance with MLA and “safe harbor” from liability for violating the Act, a broker must either use the MLA database at <https://mla.dmdc.osd.mil> or determine a borrower’s MLA status from a consumer

credit report obtained from a consumer credit reporting agency, such as Experian, Equifax, or Transunion. The MLA database requires a broker to enter the borrower’s name, date of birth, and social security number. It should be noted that, contrary to what some think, it is entirely legal to ask for your customers’ social security number. See e.g. *California Pawnbrokers Association, Inc. v. Carter* (E.D. Cal., Nov. 8, 2016, No. 2016-CV-02141-JAM-KJN) 2016 WL 6599819.

Many CAPA members have expressed frustration that the safe harbor mechanisms are not compatible with the practical realities of their businesses. Members expressed concerns that many customers refuse to provide social security numbers, that requesting social security numbers subjects members to liability, and that checking every customer places too great a strain on time and staff. Thus, our office was asked to provide practical advice on best practices, including whether self-certification clauses are sufficient.

As an initial matter, Courts have consistently rejected the claim that the MLA requires brokers to search the MLA database, or that the safe harbor

procedure is effectively “mandatory,” because of “the severe civil and criminal penalties from noncompliance with the MLA cap for covered borrowers. *Huntco Pawn Holders, LLC v. U.S. Department of Defense*, 240 F.Supp.3d 206, 236 (D.D.C. 2016); *California Pawnbrokers Association, Inc. (“CAPA”)*, 2016 WL 6599819 at *6. The *Huntco* court labeled it a “false premise that the Final Rule requires creditors to search the MLA Database. It does not. As the Department stated when issuing the Final Rule, “nothing in the Department’s final rule requires a creditor to conduct a covered-borrower check.” Indeed, the Final Rule itself states that “[a] creditor is permitted to apply its own method to assess whether a consumer is a covered borrower.” *Huntco* at 236. The courts have further suggested that self-certification clauses may still provide CAPA members with enough “cover” in the case of accidentally charging an MLA covered borrower non-MLA compliant rates. “CAPA members are still able to minimize their risk of liability by continuing to use a self-certification or other method to verify covered borrower status. See 32 C.F.R. § 232.5(a). While they may choose not to use the legally conclusive safe harbor...they are still authorized to use other means of verification to all but ensure compliance with the MLA.” *CAPA* at *6. In a published decision the United States District Court for the District of Columbia stated that pawnbrokers can continue to use the “self-certification” method of determining a customer’s MLA status and that such a use would be “reasonable” and likely sufficient to avoid criminal or civil liability under the MLA if a pawnbroker accidentally loaned to an MLA covered borrower at non-MLA complaint rates. *Huntco Pawn Holders, LLC v. U.S. Department of Defense*, 240 F.Supp.3d 206, 236 (D.D.C. 2016).

If a CAPA member decides to rely on self-certification or another non-safe harbor verification procedure, there are additional considerations. Up until 2015 self-certifications were considered “safe harbors” under Department of Defense regulations. However, they were removed from being considered “safe harbors” in significant part because people tended to lie on their

certifications in order to be given credit by financial institutions that did not extend MLA compliant loans. See e.g. *Huntco* 240 F.Supp.3d at 225. Nevertheless, the *Huntco* court stated, “there are a number of other ways to lessen that risk, if not eliminate it altogether, without using a covered-borrower check, such as continuing to use self-certifications.” (*Huntco*, at 236.) The *CAPA* court agreed. Moreover, brokers not utilizing the safe-harbor provisions should consider drafting policies and

procedures which would establish a defense under 10 U.S.C. § 987(f)(5)(D).¹

Significantly, the *CAPA* court recognized that it is an open legal question as to whether the “bona fide error” defense will actually protect pawnbrokers from civil liability where they use their own method to determine covered borrower status. (*CAPA* at 11.) That being the case, self-certification is likely a far stronger defense for a CAPA member offering MLA compliant loans than for member who does

PAWN ELITE INSURANCE PROGRAM

**Marshall
& Sterling**
INSURANCE

As a Pawnbroker, there are many specialized needs related to the type of insurance coverage you require. Assessing risk and protecting your business from loss is critical. Aligning your company with the right insurance provider - one that can deliver exceptional coverage at a competitive price - is essential to your profitability and success.

Marshall & Sterling's Pawn Elite program can supply your business with the customized insurance solutions tailored uniquely for the specialized concerns of Pawnbrokers. Our experienced and dedicated staff are industry-leaders in protecting the assets of Pawnbrokers, helping to secure your business.

- ◆ Building Coverage
- ◆ Business Personal Property including Pledged and Unpledged Property
- ◆ General Liability Coverage
- ◆ Personal and Advertising Liability
- ◆ Medical Expense
- ◆ Firearms Liability
- ◆ Hired And Non Owned Auto Liability
- ◆ Employment Practices Liability
- ◆ Employee Theft
- ◆ Money and Securities On and Off Premise
- ◆ Business Income / 12 Month Actual Loss Sustained
- ◆ Kidnap & Ransom

Contact us today for a free, no obligation insurance quote.

Marshall & Sterling Insurance
110 Main Street

Poughkeepsie, NY 12601

800-333-3766, x-5550

www.marshallsterling.com/pawnbrokers

Insuring the World of Financial Services with Integrity & Trust Since 1864

not. If MLA complaint loans are offered, then inducement for false self-certification has been eliminated (although the regulatory changes were also concerned with unintentional or mistaken misrepresentations). On the other hand, if a broker only offers non-MLA loans then the broker has placed themselves in the circumstance the 2015 regulatory amendments were targeting, i.e. a situation where an MLA covered person is forced to lie to access the loan. The latter circumstance is obviously more difficult to defend and could even give rise to claims the violations were knowingly committed. Thus, brokers refusing to lend to active duty members of the U.S. military and their dependents should utilize the safe harbor provisions.

The approach of refusing to lend to active duty members of the U.S. military and their dependents has several other drawbacks.² First, such brokers are turning away potential business. This could be a particular issue for members whose shops are near military bases. Secondly, the position of “We refuse to do business with U.S. Armed Service Members” is bad public relations. But while such a policy is bad from a public relations perspective, it is not illegal. Finally, these policies create such an inducement for covered individuals to lie that brokers are severely hampering their ability to defend against a claimed violation of the MLA unless they utilize one of the safe harbor methods.

In conclusion, the only two absolutely safe ways of avoiding any risk from the Military Lending Act are either to comply with the “safe harbors” or to only issue MLA compliant loans, regardless of the identity of the customer. The use of the “safe harbors” is highly recommended for all transactions as it eliminates the risk. While some CAPA members have expressed concern that asking for social security numbers is illegal, the courts have expressly stated otherwise.³ If a broker chooses not to use the safe harbor provisions and instead relies upon self-certification, it is strongly recommended that the broker offer MLA compliant loans in order to reduce potential liability and maximize their defenses in the event of an unintentional violation. Ultimately, CAPA members must determine their own best practices based on what makes sense for their business, balancing potential liability under the MLA with what types of loans they wish to offer and how much information they wish to obtain from their customers.

David E. Mastagni, Mastagni Holstedt, A.P.C. ■

1. “A person may not be held liable for civil liability under this paragraph if the person shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error. Examples of a bona fide error include clerical, calculation, computer malfunction and programming, and printing errors, except that an error of legal judgment with respect to a person's obligations under this section is not a bona fide error.”
2. While it is illegal under California Military and Veterans Code § 394(f) for lenders to discriminate against members of the military, there is an express exception in the Code for lenders who do not extend MLA compliant loans.
3. In *CAPA*, the court held the Privacy Act of 1974 does not prevent brokers from requesting SSN. (*CAPA*, at 7.) Act states: “It shall be unlawful for any Federal, State or Local Government Agency to deny to any individual any right, benefit, or privilege provided by law because of such individual's refusal to disclose his social security account number.” 5 U.S.C. § 552a. *CAPA* argued SSN collection is essentially mandatory due to the safe harbor provision, thus “deputiz[ing]” pawnbrokers as government agents. The court rejected this argument because the collection of SSN is optional and noting that pawnbrokers are free to reduce their risk of liability via the safe harbor or choose not to do so.

Boost Your Professional Credibility Earn Your GIA Credential – Completely Online



Our eLearning courses provide you with the gem and jewelry knowledge you need, and the flexibility of studying at your convenience.

Take a test drive at
GIA.edu/tryelearning



GIA®

The World's Foremost Authority in Gemology™

NPA member? Save 10% on tuition!



- BUYING FAKE / COUNTERFEIT WATCHES
- MAKING BAD LOANS
- PAYING TOO MUCH
- SELLING SHORT
- LETTING CUSTOMERS WALK OUT

IMITATED, BUT NEVER DUPLICATED!

WATCHCSA.COM

OVER 100,000 KNOWN COUNTERFEITS!

More than a price guide, **WATCHCSA.COM** is an interactive authenticator for 180 Rolex models!

Over 100,000 known counterfeits for the top 90 luxury swiss watch brands.

Over 8,000 watch prices, too!

ALL THIS AND MORE FOR ABOUT 80¢ PER DAY

**UNLIMITED 24/7/365 ACCESS
STARTING AS LOW AS \$299.⁹⁵ ANNUALLY!**

(WITH PROMO CODE)

BUY NOW • 30-DAY MONEY BACK GUARANTEE

www.watchcsa.com • 1.888.YES.WCSA (1.888.937.9272)

Not affiliated with Rolex. Rolex is a registered trademark of Rolex U.S.A.

SIGN UP
TODAY AND
SAVE \$100!
USE CODE:
CAPA

15 SECONDS
COULD SAVE
YOU \$5,000
OR MORE!

NATURAL VS. MANUFACTURED DIAMONDS

CAPA ATTORNEYS WEIGH-IN

Recently there has been a lot of discussion about what CAPA members should do regarding manufactured diamonds and how the existence of manufactured diamonds impact how CAPA members should market diamonds of all sorts.

The real challenge posed by the existence of manufactured diamonds is that natural diamonds are generally more valuable than manufactured diamonds. So, if a member has a diamond they believe to be a natural diamond, they'd likely rather sell it as a natural diamond and get that price premium. However, the question is what liability does a CAPA member face if they sell a diamond that they represent to the buyer to be a natural diamond but it later turns out to be a manufactured diamond?

Under California Law negligent misrepresentation occurs when someone asserts a fact which is not true when

they lack the reasonable grounds to believe that fact to be true. The elements of a claim for misrepresentation are that there is a misrepresentation of a fact, that the person who made the misrepresentation lacked reasonable grounds to believe that fact to be true, that person owed a duty to the plaintiff, that the misrepresentation was made with an intent to induce reliance on that representation, that the plaintiff actually relied on that misrepresentation, and that that reliance caused the plaintiff to suffer harm. See 5 Witkin, Summary of California Law, Torts § 891.

In a sales situation most of these elements are a given in that any representations about the quality of the goods (i.e. that it's a natural diamond) would be made with an intent to cause the purchaser to buy the goods, the purchaser would be relying on that representation in choosing to buy the product at the price in question, and that reliance would



cause them damages in the form of a difference in the price between what they would have paid for a natural diamond versus a manufactured diamond. Similarly, a seller has a duty of good faith in that transaction, including having a duty to relate the facts basic to the transaction. See e.g. Restatement 2d Torts § 551(2)(e).

If the diamonds were in fact manufactured diamonds but sold as natural diamonds, the representation of fact would be false as well, which leaves a single element to this claim—whether the CAPA member “lacked reasonable grounds to believe that fact to be true.” Courts consistently have held that even if a seller believes a fact to be true, if they lack information that truly supports that belief, they may be found to have violated this element. See e.g. *Apollo Capital Fund, LLC v. Roth Capital Partners, LLC* (2007) 158 Cal.App.4th 226, 243-244. In making this determination courts will look at exactly what representations are being made and will assess exactly what knowledge the seller has to support those representations and will then determine whether the Court thinks those representations were reasonable based on those facts.

Needless to say, this kind of judicial second guessing of what is said during sales is something no CAPA member likely wants to face. It is entirely unknown exactly how much information and how much certainty a court would decide was “enough” to be “reasonable grounds” to believe a representation that a diamond is a “natural diamond” to be true. A CAPA member therefore may find themselves facing civil liability if they sell diamonds and aren’t nearly certain that those diamonds are natural diamonds when they say they are. If someone regularly deals with diamonds, has the spe-

cial skills needed to identify a natural diamond, has outside certification by a reliable and established diamond certification firm, a CAPA member may be able to limit their potential liability if they accidentally sell a manufactured diamond as a natural diamond, but, due to the lack of direct precedent, the level of certainty necessary is unknowable at this time.

With the uncertainty discussed above a “best practice” might be to never assert with one-hundred percent confidence that a diamond is natural versus manufactured. Even with all of the support for a representation that a diamond is natural that were discussed above it is likely best to “hedge” and not say “guaranteed to be natural” or “this is a natural diamond” but rather to say “this is believed to be a natural diamond”, “this diamond was certified as natural by X company”, or some other way to avoid making a certain statement. It would be better still to make it clear on all diamond sales that no representations, one way or another, are being made.

In the end how to approach this issue is a business decision each CAPA member has to make for themselves and every diamond may be different. In some cases a member may feel they have enough certainty between outside certification, their own skill, or other knowledge to be able to assert that a diamond is natural. In other cases it might be less certain. Whether and when to take the risk in telling a buyer that a diamond is not manufactured is something that will have to be decided based on all of these variables, but CAPA members should know that there is potential risk of liability if they sell diamonds and warrant they are natural.

Brett Beyer & Gregory Haroutunian, Mastagni Holstedt, A.P.C. ■



THE SHERLOCK HOLMES 2.0

Lab-Grown Diamond Detector

Y

YEHUDA

Only \$6,495



Project ASSURE:

**The Sherlock Holmes
detected 100% of all lab grown diamonds.**

Scan the QR Code below to read the full report of the Assure Program
performed by UL Laboratories, and see for yourself.



Sherlock Holmes/
Yehuda

Version: ZY-SH130

Assure ID: 5169974

Tested: 02/2019

diamondproducers.com/assure



1.800.934.8328 | YEHUDA.COM

IDO IZKOVICH | 702-523-6982 | IDO@YEHUDA.COM

COMMITTEE ROUNDUP

CAPA EDUCATION COMMITTEE

We had many fantastic presentations at the CAPA convention this year. From AML compliance to synthetic diamonds, we covered a dozen or more highly important aspects of the industry today.

Several members were particularly impressed with Adam Harris' seminar on watches. There are groups in both Northern California and Southern California that are working to pool resources and host Adam for his full 3-day course, *Replica or Real?*, in Spring 2020. Please contact Adam and Katie Knaub directly if you're interested in participating: adam007@gmail.com; katie@luxuryorlie.com; <https://www.highercailber.com>.

What topics would you like to see covered next year? We welcome your suggestions!

Dan Stansell, Chair

CAPA MEMBERSHIP COMMITTEE

Your membership committee has been taking input from all around. We've heard from members and non-members alike. If anyone has additional input, our would like to join the Membership Committee, please reach out. You don't have to be on the board to join the committee. Any CAPA member is welcome.

At our Convention in Long Beach we had a great discussion during our Annual Business Meeting. Mark Schecter from Ideal Luxury had some valuable insights. Mark has "Board Member" written all over him!

The long story short is that we need to attract more licensed pawnbrokers to our association. Our goal is to increase the membership so that we can LOWER OUR DUES! We have many ideas and concepts that we need to craft into actionable tasks.

We recently obtained a list of ALL licensees from the Department of Justice and we will be reaching out to everyone on that list.

Obviously CAPA has gotten some great legislation passed for us recently. These non-members reap all the benefits without sharing any of the burden we all carry. That needs to change. I ask that if anyone is friendly with a non-member, reach out to them or drop me a line at Scott@CentralMegaPawn.com so we can help them see the benefits of membership.

Thank you all for your continued support.

Scott Tiemann, Chair

CAPA TECHNOLOGY COMMITTEE

CAPA Members, by now I hope everyone has looked at our new website www.californiapawnbrokers.org which was generously donated by ReachLocal, one of our very supportive vendors. Our goal for the website is to drive traffic, engage prospects, generate leads and re-engage existing CAPA members. Kim and her staff have done a fantastic job curating the content with those goals in mind, but they are

Save the Dates

- **January 27, 2020** | Board Meeting - *Sacramento*
- **January 28, 2020** | Annual "Walk the Halls with Bill Duplissee" – *Sacramento*
- **May 2, 2020** | Board Meeting – *Redwood City*
- **May 2-3, 2020** | Northern CA CAPA Spring Conference – *Redwood City*
- **October 22, 2020** | Board Meeting – *Rancho Mirage*
- **October 23-25, 2020** | CAPA Annual Convention and Exposition – *Rancho Mirage*

limited in doing so by the lack of a CAPA member login portal. Since our current site is completely public and without a private login portal we are limited populating the site with generic public info. I would like to have a new site built with a CAPA members login section, a search tool for finding local pawn shops and a search tool for vendors and members to complement our printed version. Please send all your comments and feedback in, we would love to know what you would like to see in our newest website. Thank you

Angel Manzano, Chair

CAPA COMPLIANCE COMMITTEE

Below are a list of important industry laws and compliance issues.

If you are operating your business and are not aware or in compliance with all of the laws, you have liability.

Please understand the liability you are accepting prior to choosing to do business in violation of the laws that govern our industry.

The 12 Fatal Issues (Null, Void and Unenforceable)

1. Not complying with the Replacement Loan requirements that the new contract cannot take effect until the day after the original loan expires (Ca. Financial Code Section 21201.5). Pawnshops in California have chosen to not follow the law. This bad choice brings Huge Liability (because it could invalidate the Pawnbrokers title and thus make any sell of that merchandise illegal).
2. Sending non-compliant notices via snail mail, text, or email. Some Shops are improperly and illegally using Bulk Mailing Rates to mail Certificate of mailing notices without meeting all the requirements to qualify for the bulk rate discount. Notices that are improperly mailed are not valid notices and therefore don't transfer clear title to the Shop. Without clear title the Shop has huge continuing liability if they sell an item. F. C. 21201.2
3. Not having the proper required verbiage on their loan contracts. Not having any idea what their Loan or Buy contract stipulates. It is unlikely that their contract even

represents the standards in which they are running their business. F. C. 21201 (a) (b) & F. C. 21201.3 (a) (b) (c)

4. Not knowing how to calculate proper a legal TILA APR rate on the interest rate that they are charging. Few are checking for accuracy. A loan with an improper TILA disclosure is considered to be Null, Void and Unenforceable. (Interest + Fees Divided by Amount Loaned Divided by the Length of the Loan [days or months] Times [365 or 12] Times 100 = APR)
5. Not complying with the California Unruh Law. Shops could be writing loan transactions that are null and void because they are not giving Clients (that they are talking to in other languages) a translated contract.
6. Not reporting properly to the DOJ (through CAPSS) and therefore are not only violating the State Law but also are not getting title on the items that they think they are foreclosing on. B & P Code 21628 (7) & 21630 (a)
7. Not sending legally binding Grace Period Notices (because they do not include the proper verbiage in the notice or because improper timing of the notice or because the improper and illegal calculations of amount owed.). F.C. 21201 (d)
8. Issuing 30 day buy-backs. A 30 day Buy Back is an illegal transaction that is used to circumvent interest and loan term laws. B & P Code 21636.5 & F. C. 21200.9
9. Forfeiting items on the first day after they were closed when the last day of the Grace Period falls on a day that the Store was closed. F.C. 21201 (d)
10. Not extending loan contract properly (in accordance with the Law). F.C. 21201 (d) & F. C. 21201.4
11. Not complying with the Service Members Civil Relief Act (6% APR cap).
12. Selling non-Vested (Pledged) property. F.C. 21002 (a) (b)

40 more issues that pawnbrokers need to make sure that they are in compliance with.

1. Not being in compliance with California Revenue and Tax Code Section 6010.15 (a) (3). It Requires that the Original Pawn Client show proof that they originally paid Sale Tax on the item during the original Sale. If the Client qualifies, the SALE can be run as a Tax Exempt Sale, as long as the Pawnbroker follows the total compensation formula set forth in the State Rev. & Tax Code Statute. The "Reverse Forfeit" process that is available in their POS Software should not be used for this transaction. There is no Legal transaction supported in California Law that would allow someone to transfer title (other than a Sale) or flip-flop title. If the Pawnbroker Rewrites or does a Replacement Loan to finance any of the redemption they are also violating the States Unruh Law. Flip Flopping Title, weakens the Pawnbrokers claim to original title in every item that they foreclose on.
2. Charging illegal Storage charges Shops write a single ticket on several individual items and charging an individual storage fee on each item on the single loan ticket. F.C. 21200.6 (a) (1) (2) (3) (4) (b)
3. Splitting (writing separate tickets) natural pairings then, tying the all loans together to require them to be picked up together. Charge a Storage charge, a separate interest rate, a separate ticket writing fee, and a separate notice fee on each individual item. B & P Code 21628 (d), (6), (7)
4. Violating the law by not giving the Clients the proper receipts at the time of redemption. F. C. section 21204
5. Not calculate proper interest rate that they are charging. F. C. section 21200 (a) (1) (2) (b) & F. C. 21200.5 & F. C. 201201.4
6. Charging illegal notice mailing charges on the notices they send. Writing a single notice on several loans that were coming due at the same time and charging for separate notices for each loan. F. C. section 21201.2
7. Financing a purchase by taking the purchased item and pawning it to pay off a portion of the sale price (Unruh Law).
8. Not properly doing Dealer to Dealer Reporting or keeping proper documentation. B & P Code 21629 (a)
9. Not having the required or proper signage visible to the public in their Stores. B & P Code 21642 (b) (2) & F.C. 21201.3 (a) (b) (c) & F. C. 21200.7
10. Not performing 90 day hold properly. B & P Code 21647 & F. C. 21206 (a) (b) (c) & F. C. 21206.7 & F. C. 21206.8 (a) (b) (c) (d)
11. Not handle B & P code Section 13300 properly (Register Display showing Charges to the Client at the time they are being rung-up).
12. Not giving sales receipts on watches (not having the proper required verbiage on those receipts or on displayed used watch), (This section requirement also applies to construction tools). (Watches) B & P Code 21503 (a) (b) (c) (d) & 21505 & 21506 & 21508. (Construction Equipment) B & P Code 21551 (a) (b) (c) (d).
13. Not requiring a legally required form of ID to do a transaction. B & P Code 21628 (2) (a) (b) (c) (d) (e) (f) & 21628.3.
14. Not properly describing the tangible personal property. B & P Code 21628 (3) (a) (b) (7)
15. Participate in Off-site loans and buys. B & P Code 21642 (b) (1) & F. C. 21301(b) (1)
16. Not reporting all tangible personal property. B & P Code 21627.
17. Not having the required information on all advertising. B & P Code 21640 & F. C. 21301.1
18. Not holding buy for the 7 day hold period. If you opt to only hold for 5 days, not collecting and archiving the proper sales clients information B & P Code 21636 (a), (b), (d) (1), (A), (B) (i), (ii), (iii), (I), (II), (III), (3), (4)
19. Not storing Client records properly or for the required time. B & P Code 21629



**Exclusively serving the
Jewelry & Pawn Industries...**

REFINING

Gold & Silver
Platinum
Palladium
Bench/Floor Sweeps
Crucibles & Slag
Carpet
Filings/Grindings
Tools
Karated/Dental Scrap
Stone Removal

Conflict-Free Gold
No mining materials
are processed at United

United
PRECIOUS METAL REFINING, INC.

800.999.FINE
www.UnitedPMR.com

EXPERIENCE you can count on • **RESULTS** you can trust
STABILITY & FINANCIAL STRENGTH since 1988...

Certified as Environmentally & Ethically Responsible



20. Charging a PIA (Pain in the Ass) charge. F. C. section 21001
 21. Charging the Client the full interest (four or five months) for the first 90 day period. F. C. section 21200.7, 212 01.4
 22. Not complying with AML, Know your Client regulations. Not reporting and even helping to structure CTR / AML / 8300 / SAR forms transactions.
 23. Not getting an opt-in agreement with the Client prior to sharing the Clients Personal Financial Data with an unrelated third party. GLB Act.
 24. Not doing a proper front-end SDN checks for all clients prior to doing an asset based (exchange) transactions. Patriot Act.
 25. Not disclosing Jewelry treatments, selling fakes or counterfeits items, and intentionally or unintentionally misleading the public and their clients.
 26. Not complying with Fair Credit Reporting Act & Fair and Accurate Credit Transactions Act.
 27. Not storing or disposing of dangerous or controlled chemicals properly.
 28. Not complying with the FTC Consumer Information Disposal Rule.
 29. Not doing what it takes to comply with the MLA requirements.
 30. Not in compliance with Precious Metals Dealers Regulations.
 31. Not complying with State and Federal data Privacy Laws.
 32. Not complying with CFPB Safeguard Regulations.
 33. Not complying with the FTC Red Flag Regulation.
 34. Not complying with US Patriot regulations.
 35. Not complying with OFAC regulations.
 36. Not complying with TILA regulations.
 37. Not handling Bankruptcies properly.
 38. Not complying with the GLB.
 39. Not keeping Corporate minutes.
 40. Not properly documenting Non-taxable sales
 - (a) Wholesale (with proper WS license documentation)
 - (b) Sell back to original Client at the Legal Formula (with documentation of payment of sales tax by the original purchaser on the original sale) .
 - (c) Coin Bullion Sales over \$1,500.00
 - (d) Out of State shipment sales (with documentation of out of State shipment) .
- *Remember, anything that a Dealer or Individual buys through the internet or shipped from out of State that is not resold (and sales tax paid on it), the Dealer or Individual needs to pay "Use Tax".

Sam Shocket, Chair ■

CAPA MEMBERS GET FREE LEGAL ADVICE

"CAPA's members will now be served by a large multi-faceted law firm, who have already impressed us with their insights and ideas. We feel that this new relationship will be very beneficial for CAPA members and the association. We hope all members will take advantage of this complimentary 30 minute monthly benefit."

— Jan Schneider, CAPA President

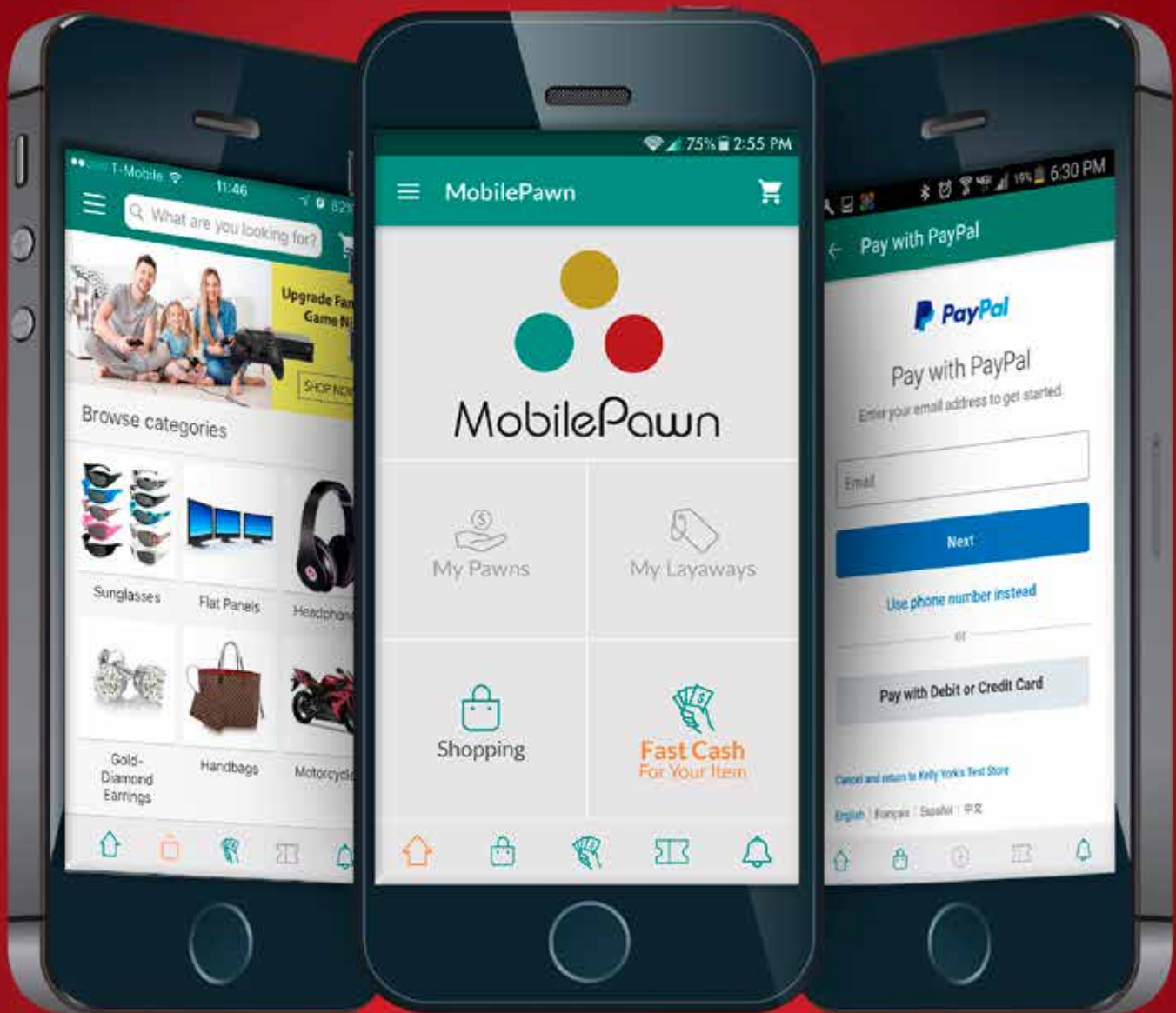
Mastagni Holstedt offers CAPA members 30 minutes of scheduled consultation monthly — a \$1,500 value!



David E. Mastagni | Partner
MASTAGNI HOLSTEDT, A.P.C.
1912 I Street | Sacramento, CA 95811
Phone: (916) 491-4250
Email: davidm@mastagni.com

CALL NOW FOR YOUR APPOINTMENT

The best location is everywhere.



Bravo Pawn Systems
Point-of-Sale | eCommerce | Mobile

Call us at 888-407-6287
Visit us at BravoPawnSystems.com



One Capitol Mall, Suite 800
Sacramento, CA 95814



Address Service
Requested

INSURANCE FOR PAWNBROKERS

PAWNINSURANCE.COM

BY

UNION LIFE & CASUALTY INSURANCE AGENCY

OVER 30 YEARS SERVING CALIFORNIA PAWNBROKERS

WHAT IS COVERED?????

PAWNED & OWNED INVENTORY INCLUDING THEFT, BURGLARY & ROBBERY
COMPREHENSIVE GENERAL LIABILITY INCLUDING FIREARMS PRODUCTS LIABILITY
EMPLOYMENT PRACTICES, CYBER LIABILITY, WORKERS COMPENSATION, BONDS
MUCH MUCH MORE.



LIFETIME MEMBERS OF CAPA!!!!

WE FIGHT FOR PAWNBROKERS RIGHTS
YOUR PARTNER IN BUSINESS INSURANCE

OUR CLIENTS LOVE US

CALL TODAY TO SAVE TODAY!

800.545.5624

SETH WARD AT 602.900.7003

INFO@PAWNINSURANCE.COM

Union Life and Casualty Insurance Agency

WWW.PAWNINSURANCE.COM

