



C A L I F O R N I A

DEPARTMENT OF JUSTICE

# BIENNIAL REPORT

2019-2020



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# EXECUTIVE SUMMARY

As the chief law enforcement officer of California, the Attorney General has been a steadfast champion of the beliefs and institutions upon which our democracy is built and worked diligently to address the current needs of California. He has routinely fought to protect Californians' health care, disability rights, education and economic opportunity, strengthen environmental justice, and promote public safety in our communities.

To that end, the California Department of Justice (DOJ), under his leadership, created the Healthcare Rights and Access Section, the Environmental Justice Bureau, the Disability Rights Bureau and elevated and expanded the Worker Rights Section. It also expanded the Civil Rights and Environment Sections, and developed the recruitment unit to further enhance diversity and recruitment. The DOJ created law enforcement teams that police human trafficking, white collar crime and tax evasion. In his tenure, Attorney General Becerra has reprioritized the Department's efforts in protecting the elderly and preventing Medi-Cal fraud by making the Bureau of Medi-Cal Fraud and Elder Abuse to a full fledged division. It is now known as the Division of Medi-Cal Fraud and Abuse.

Standing firm on the belief that discrimination has no place in our society, Attorney General Becerra has fought to ensure that working people have access to the health care they need; including birth control and protections for people with preexisting conditions, as well as the jobs they want, regardless of their sexual orientation or gender identity. These efforts have borne fruit for Californians with landmark victories requiring Sutter Health to limit their health care charges and the hard fought court victory over Johnson and Johnson for implanting medical mesh that cause women patients to suffer severe injury and disability. His office has led the defense of the Affordable Care Act and stood up for the rights of immigrants, women, and the LGBTQ community. His fight for LGBTQ Californians' rights has included defending their ability to serve in the military and access health care and also pushing back on discriminatory federal and local policies. He has also worked to protect consumers from discrimination in the marketplace. He has fought unfair rules and actions in the retail, housing, and financial markets as well as in schools.

Attorney General Becerra has fought to improve public safety and the criminal justice system by advocating for reforms at a state and national level and working with cities in California to implement new policies. This includes working to increase transparency between public safety officers and the public, providing resources, data, and guidance to the public through reports on RIPA and APPS and the OpenJustice portal.

He has been a determined defender of California's landmark climate change programs and has repeatedly gone to court to defend California's land, water, and air from dangerous attempts by the federal government to rollback key environmental laws like California's Clean Car Standards, limiting of methane emissions, and the Clean Water Rule. He has further urged federal agencies to fulfill their mission to protect and conserve public lands and has gone to court when they have failed to do so. For example, Attorney General Becerra filed a lawsuit after the Trump Administration pushed ahead with a dangerous plan to open up millions of acres of public land to fracking. He also challenged the Trump Administration's disastrous decision to divert funding to build a border wall that threatens hundreds of sensitive plant and animal species.

As a dedicated leader and son of immigrants, he has also been a constant fighter for immigrants' rights, ensuring they are allowed fair access to entry, education and health care. And, he has challenged policies and practices that put them in harm's way including the Public Charge Rule, the family separation policy, limitations and the conditions at border detention facilities.

In early 2020, the entire country was hit hard by unprecedented challenges resulting from the

COVID-19 global pandemic. Social distancing, self-isolation and travel restrictions led to a reduced workforce across all economic sectors, including government. As a result, California's economy took a direct hit which has left California's government facing large budget shortfalls. Despite such challenges, the DOJ continues to serve the people of California with commitment and dedication.

This report describes some of the major accomplishments during the biennial period.

## **DEFENDING THE CIVIL RIGHTS OF ALL CALIFORNIANS**

Attorney General Becerra has made fighting discrimination and pursuing equal opportunity for all Californians the cornerstones of the DOJ's work. He has routinely fought for fair trials, fair elections, and a fair census. He has fought Voter ID laws and voter roll purges. He also took his fight for a fair census – and thus fair apportionment of congressional representation and federal funds – to court in **California v. Ross**, and got the Trump Administration to concede that there would be no question on citizenship on the 2020 census.

Additionally, Attorney General Becerra has made protecting the rights of workers across California a clear priority for the DOJ, whether that means improving working conditions, fighting for a fair chance in the new economy, protecting their retirement savings, or combatting pay or workplace discrimination coming from employers or the federal government. One element of his fight for California workers focuses on protecting and improving working conditions across California. As part of that fight, in **California v. Lyft & Uber**, he sued the companies for misclassifying their drivers as independent contractors, which causes immediate and irreparable harm to the state and deprives workers of critical workplace protections, in violation of the law.

The DOJ is committed to protecting the rights of each and every student in California. In January 2019, Attorney General Becerra secured a settlement with **Stockton Unified School District** and its police department to address system-wide violations of civil and constitutional rights of African American and Latino students and students with disabilities. That same year, he entered into a settlement with the **Sausalito Marin City School District** to address discriminatory treatment and racial and ethnic segregation of students. Additionally, he entered into three separate settlements with the **Barstow Unified School District**, the **Oroville City Elementary School District**, and the **Oroville Union High School District** addressing discriminatory treatment of students based on race and disability.

Attorney General Becerra continues to be a steadfast defender of education. He is leading a lawsuit against U.S. Department of Education Secretary Betsy DeVos' attempt to drain pandemic relief funds away from K-12 public schools. Following Attorney General Becerra's early court victory securing a preliminary injunction against the misallocation of funds, Secretary DeVos announced that the Department of Education would not appeal the ruling and conceded that the interim final rule at issue would not be enforced.

## **DEFENDING THE ENVIRONMENT AND HOLDING POLLUTERS ACCOUNTABLE**

Attorney General Becerra believes that we must fight for a healthy, safe and clean environment for all Californians. He has been a stalwart defender of California's landmark climate change programs and has repeatedly gone to court to defend California's land, water, and air from dangerous attempts by the Trump Administration to rollback key environmental laws, like California's **Clean Car Standards**, which permit the state to implement its greenhouse gas and zero emission vehicle standards. Since September 2019, the DOJ has fought several federal attempts to rollback California's signature environmental policy.

Reducing methane emissions is also an important component of California's climate change strategy.

Methane is a super-pollutant up to 87 times more potent than carbon dioxide in its ability to trap heat over a 20-year timeframe, and up to 90 percent of methane emissions from the oil and natural gas sector come from existing equipment. Attorney General Becerra has taken the U.S. Environmental Protection Agency to court on multiple occasions for their failure to enforce methane regulations. In July 2020, he secured a victory in blocking federal attempts to repeal the **Waste Prevention Rule** when the court ruled that the repeal violated the National Environmental Policy Act, was arbitrary and capricious, and went against the Bureau of Land Management’s statutory mandate to ensure the safe and responsible development of oil and gas on public lands.

Understanding that some communities are disproportionately affected by environmental pollution and public health hazards, Attorney General Becerra has also strived to make environmental justice a centerpiece of all efforts to protect California’s environment. Since its inception in 2018, the **Bureau of Environmental Justice**, has made it its mission to ensure compliance with the California Environmental Quality Act (CEQA) and land use planning laws, support local governments’ efforts to protect the health and safety of their most vulnerable residents, and challenge the federal government’s actions that repeal or reduce public health and environmental protections.

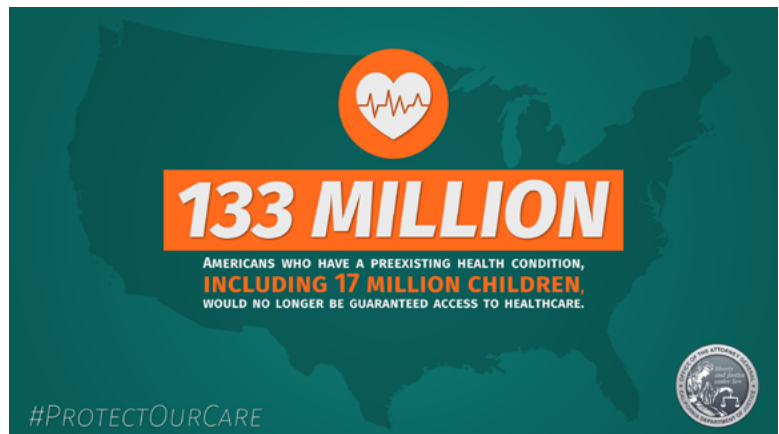
## **PROTECTING THE HEALTH, WELLBEING AND RIGHTS OF CALIFORNIANS**

Ensuring the accessibility and affordability of the health care Californians need to survive and thrive has been a priority for Attorney General Becerra throughout his career. As Attorney General, that work takes on many forms, and ensures California is leading the charge for the nation. The office does this by: working to California’s health care market competitive, fighting collusive pharmaceutical agreements, fighting for justice for Californians affected by the opioid crisis, and defending health care as a right, including defending the Affordable Care Act (ACA) from challenges from the federal government and other states.

Ensuring the health care markets are competitive and patients have choices in the market is a critical component of our work. The DOJ fights against anti-competitive conduct in the market and mergers that will lead to less choices and higher prices in the market from hospitals, providers and pharmaceutical companies. Including passing critical legislation to prohibit collusive arrangements between generic and brand name drug companies that result in higher costs for patients.

Ensuring access to health care, no matter who you are or what type of care it is, is a critical part of the Attorney General’s work. As a strong protector of the health care rights of Californians, and all Americans, he has taken on multiple efforts to protect the ACA. This work importantly includes, leading a national coalition in **California v. United States** case, which is a lawsuit to challenge the constitutionality of the ACA and dismantle it in its entirety. This fight is ongoing and a decision by the Supreme Court is pending. The Attorney General has also fought to protect birth control coverage guaranteed by the ACA, consumer protections afforded by the ACA, and LGBTQ rights under Section 1557 of the ACA.

Attorney General Becerra has also led efforts to protect anti-discrimination protections in health care. He worked to get the Trump Administration’s **“Health Care Refusal Rule”** struck down, which allows



Social media graphic showing how many Americans would be at risk of losing healthcare coverage if the Affordable Care Act was not defended.

any individual involved in the provision of health care from the parking attendant to the doctor to deny care based on religious or moral objections. Notably, in Court the Administration made clear that this rule would even allow an ambulance driver to leave a woman bleeding on the side of the road from an ectopic pregnancy if he/she objected to the care she needed. In addition, Attorney General Becerra fought to protect against interference in medical care, fighting against the Administration's domestic abortion gag rule, which prohibits providers participating in the Title X federal family planning program from providing full and accurate information to patients, including referrals for safe and legal abortion care.

Ensuring that the products on the market in California are safe to purchase and use is a top priority for the Attorney General, who took legal action against companies, including a hard fought victory, **securing a \$343.99 million judgment against Johnson and Johnson** for false and deceptive marketing practices that put the health and wellbeing of thousands of women at risk.

Ensuring access to care also means defending access to reproductive care and rights. Recognizing the importance of this care and defending constitutionally protected abortion rights, Attorney General Becerra has worked to oppose rules that take away access to abortion care like the abortion separate payments rule, which requires that a consumer make two payments for health care—one for at least \$1 for abortion coverage and the other for the health insurance premium payment for coverage. If patients miss either of these payments, their health care coverage can be stopped. He also importantly defended birth control coverage that is mandated under the ACA at no cost to women and their families. In addition, he urged the U.S. Food and Drug Administration to **increase telehealth for reproductive care**, allowing women access to the medication abortion without barriers during the ongoing COVID-19 pandemic.

## **PROTECTING CONSUMERS AND STUDENT BORROWERS**

As the state's top law enforcement officer Attorney General Becerra has taken action to ensure products are safe and well-regulated and that those who try to cheat the system or the consumer are held account. During his time in office, he has secured more than \$3 billion in settlements for California consumers.

One of the cornerstone pieces of consumer legislation the Attorney General has focused on is the **California Consumer Privacy Act (CCPA)**, a landmark, first-in-the-nation law that will help rebalance the power between consumers and companies in the age of Big Data. CCPA grants California consumers robust data privacy rights and control over their personal information including the right to know, the right to delete, and the right to opt-out of the sale of personal information that businesses collect, and includes additional protections for minors.

He has consistently fought to protect student borrowers both at the state and federal level, including submitting a letter to the Department of Education, urging for it to discharge the student loans of tens of thousands of veterans who were disabled as part of their service. Attorney General Becerra also filed several more lawsuits against Secretary DeVos and the Department of Education challenging their action to unlawfully repeal and replace critical rules to protect student borrowers, including the 2016 "**borrower defense**" regulations and the Gainful Employment rule. Attorney General Becerra also sued Secretary DeVos over her unlawful failure to properly implement the Temporary Expanded Public Service Loan Forgiveness Program, an essential tool for workers and employers across non-profit and government sectors. Regulations which established critical protections for student-borrowers who were misled or defrauded by predatory schools, and provide an efficient pathway for students to get relief from their federal student loans. And, in 2020, he secured a **\$330 million settlement with ITT Technical Institute**, which resolves allegations of an illegal private student loan scheme that harmed student borrowers by misdirecting them towards expensive student loans that they struggled to repay.



The DOJ has also issued various consumer alerts to provide Californians with information they need on price gouging cybersecurity, Medi-Cal fraud and more. Particularly in light of the declared state of emergency due to the ongoing COVID-19 pandemic, the upcoming 2020 Census, and the devastating California wildfires.

## **COMBATting HUMAN TRAFFICKING**

Attorney General Becerra has been an ardent participant in the fight to stop human trafficking by taking on criminal actors in California, and supporting state and federal legislation. Human trafficking is among the world's fastest growing criminal enterprises and is estimated to be a \$150 billion-a-year global industry. It is a form of modern day slavery that profits from the exploitation of the most vulnerable populations.

The DOJ has taken major steps to disrupt this criminal industry by prosecuting human traffickers throughout the state. Attorney General Becerra announced human trafficking and other labor related charges against the owners and operators of **Rainbow Bright**, a Bay area adult residential and child-care company. And in 2019, in collaboration with the Ventura County Sheriff's Office, he filed multiple charges involving sex trafficking, tax fraud, and money laundering against an organized crime ring, operating statewide.

The DOJ is committed to combatting human trafficking wherever it occurs. Attorney General Becerra is a staunch advocate and uses his platform to remind California businesses to use available resources to help combat slavery and human trafficking. He also provides additional human trafficking prevention resources for free on the Attorney General website.

## **EDUCATING AND INFORMING IMMIGRANTS, FIGHTING FOR THEIR RIGHTS**

Attorney General Becerra is dedicated to ensuring that everyone who works hard gets their chance at the American Dream, no matter where they come from. And in a state that has more immigrants than any other<sup>1</sup>, this work is vital. His work defending Dreamers, and the preliminary injunction he secured in his lawsuit against the Trump Administration has allowed nearly all current DACA recipients to renew their protections and stay working and studying in the only home they have ever known. He has taken his lawsuit challenging the repeal of **DACA** all the way to the Supreme Court, and won.

When the federal government attempted to issue updated guidance that would force students on **Student and Exchange Visitor Program (SEVP)** visas to risk their health or go back to their home countries. This directive came down amidst the COVID-19 pandemic, when most universities had already moved the majority of their coursework online. Attorney General Becerra took the matter to court and the Trump Administration rescinded the decision in July 2020.

## **PROTECTING PUBLIC SAFETY, TAKING DOWN GANGS, REMOVING FIREARMS FROM PROHIBITED PEOPLE**

As the state's top law enforcement officer, Attorney General Becerra has prioritized keeping California communities safe and delivering justice. Recognizing that public safety efforts require public trust, Attorney General Becerra has prioritized ensuring peace officers keep the communities' interests front and center.

Following the fatal shooting of Stephon Alonzo Clark by members of the **Sacramento Police Department (SPD)**, the California Department of Justice conducted a review of SPD's policies and practices related to use of force, bias prevention, personnel complaints and investigations, and, officer

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1 <https://www.ppic.org/publication/immigrants-in-california/>



discipline, recruitment, hiring, and retention. This resulted in a two phased report released in January 2019, with an update released in July 2020.

As gun violence continues to rise, leaving Californians vulnerable in their homes, schools, festivals, and places of worship, Attorney General Becerra has looked for new solutions to this enduring problem. He has advocated for reform to gun laws at a state and national level, defending California's gun laws in court on multiple occasions. The DOJ also maintains and utilizes the Armed Prohibited Persons System (APPS) database to seize guns from individuals who have become prohibited from legally owning them because they were convicted of a felony or a violent misdemeanor, placed under a domestic violence or other restraining order, or suffer from serious mental illness. To date, DOJ Special Agents have **seized more than 34,500 firearms** from prohibited individuals, **5,041** of those since January 1, 2018. .



Attorney General Xavier Becerra announcing the results of the 2018 Armed Prohibited Persons System (APPS) program.

Ensuring a trustworthy criminal justice system includes pushing back on the federal government's attempts to tie federal funds for public safety to immigration reporting and ensuring that the state's law enforcement officers are not required to breach public trust in order to gain access to federal funds. After the federal government appealed to the U.S. Supreme Court in *United States v. California*, the Supreme Court refused the request to review a federal appeals court decision that upheld the 2017 California Values Act in June 2020.



# DEPARTMENT OVERVIEW

The Attorney General’s responsibilities are fulfilled through the diverse programs of the DOJ, which has 5,300 positions, four divisions, and an annual operating budget of over \$1 billion.

<i>Division</i>	<b>Authorized Positions</b>	<b>Budget</b>
Legal Services Division	1,803	\$546,740,000
Division of Law Enforcement	1,266	\$300,309,000
California Justice Information Services	1,200	\$239,119,000
Directorate and Administration	1,031	(\$140,665,000)
<b>Total</b>	<b>5,300 positions</b>	<b>\$1,086,168,000</b>

Through its dedicated employees, the Department represents the People in matters before the appellate and Supreme Courts of California and the United States, serves as legal counsel to state agencies, coordinates efforts to fight crime, provides identification and information services to criminal justice agencies, and pursues projects designed to protect the People of California from fraudulent, unfair, and illegal activities.

Major issues, significant cases, and improvements in the Department’s operations are highlighted on the following pages.





# DIVISION OF OPERATIONS

The Division of Operations (OPS), through its 949 employees, supports the day-to-day operations of the Department and assists programs in administrative and technical areas such as accounting, budgeting, human resources, asset management, facilities, procurement, contracting, conferencing, regulations, recycling, training, law library services, legal case management, time reporting, litigation support, legal support services, and special projects.

Over the last two years, there has been a concerted effort to modernize the operations of the DOJ. First and foremost, there has been an effort to improve the recruitment and diversity of the workforce. This effort resulted in the expansion and retooling of the Talent, Acquisition, Development and Analytics Office. This office is now using improved data and metrics to examine its progress. Second, there has been the creation of a grant office which has begun the centralization of the Department's grant application and implementation process. Third, the Department reorganized the e-discovery and litigation support by improving the level of technology expertise and streamlining its implementation in the Department with the increased demands caused by e-discovery.

The Division of Operations consists of the following sections and programs:

**Office of Human Resources** is responsible for nearly all facets of employment for DOJ's 5,300 authorized positions. The section is comprised of several units, including:

- **Adverse Actions**
- **Attorney Hiring**
- **Classification and Pay**
- **Data Analytics**
- **FMLA and Special Leave**
- **JusticeHR**
- **Labor Relations**
- **Office of Professional Development**
- **Organizational Development**
- **Payroll and Benefit Services**
- **Performance Management**
- **Recruiting Services**
- **Risk Management**
- **Testing and Selection**

## **Office of Fiscal Services**

- **The Accounting Office** provides oversight and monitors DOJ's resources by maintaining centralized records through processing and reconciling of appropriations, expenditures, revenues, federal grants, travel, reimbursements, legal time reporting and billing. The Accounting Office also serves as liaison between the Department and state control agencies, namely the State Controller's Office and State Treasurer's Office. They maintain the agency trust Litigation Deposit Fund. It also provides cash flow analysis and prepares the year-end financial statements for the Department's 50+ funding sources.
- **The Budget Office** is responsible for DOJ's annual financial plan and provides critical technical direction and support to Executive and program management and managers in preparation, negotiation and management of the Department's annual budget.
- **Facilities Planning and Management and Telecommunications Section** manages more than 1.8 million square feet of DOJ facilities statewide, including legal offices, forensic crime laboratories, regional law enforcement offices, anti-crime task force offices, aircraft hangar space, the Hawkins

Data Center, field offices, and radio sites. A significant facility project includes the Bureau of Forensic Services Sacramento-area consolidation. The Telecommunications Unit manages the communications system for the Department.

- o **Central Services** provides mail and warehouse services to DOJ, including shipments and document archive storage.
- o **Contracts and Purchasing Unit** is comprised of two areas: The Contracts Unit prepares Legal and non-IT service contracts and the Purchasing Unit oversees the ordering and purchasing of non-IT equipment, furniture and supplies.

### **Office of Legal Support Services**

- **Legal Support Operations** provides administrative support for the Attorney General's law offices in Sacramento, Oakland, San Francisco, Fresno, Los Angeles and San Diego. Services are provided to 1,450 attorney and paralegal staff in 30 law practice areas. The administrative services include legal secretarial and clerical support, business and office services, docketing and records management, procurement and facilities management.
- **Law Library Services** provides research services and manages the law libraries in the legal offices statewide. The libraries maintain state and federal codes, statutes, court procedures, practice materials, and treatises. The collection features historical codes dating back to the founding of California and over 6,500 California legislative histories.
  - o **Case Management Section** is responsible for DOJ's legal case management, billing and business intelligence systems and all legal desktop applications. Supporting over 35 practice areas comprised of 2,300 users in the Legal Division, Division of Operations and Executive Programs. Case Management Section manages the systems responsible for recovering legal fees and costs of over \$200 million per year through the Legal Services Revolving Fund.
  - o **eDiscovery & Litigation Services** provides legal and investigative teams with services and applications to manage data for litigation, discovery, investigations and Public Record Act requests. The section manages large-scale litigation using the state of the art software, Relativity, to process, search, review and produce data. eDLS works with legal teams and client agencies to collect, preserve and produce electronically stored information. Additionally, the section develops data management strategies, provides in-court technology assistance, provides training and user support for litigation software and coordinates with vendors. eDLS collaborates with divisions in the Department to develop best practices and policies in order to keep current with eDiscovery trends and changes. The section also provides statewide, section specific and case specific training using Relativity and other litigation software.

**Statewide Operational Services** provides analysis and assistance to DOJ in a variety of areas including local assistance, fleet management, asset and records management, parking, merit awards, forms, wireless services, credentials, ethics, Form 700 filing, and personnel services.

- **Local Assistance Unit** This section was acquired from the Division of Law Enforcement (DLE) in 2019 and consists of grant opportunity programs offered by the Department and currently only includes the Tobacco Grant Program. The California Healthcare, Research and Prevention Tobacco Tax Act of 2016 (Proposition 56) provides local public agencies with funding to promote a healthier California by reducing illegal sales and marketing of cigarettes and tobacco products, including e-cigarettes, to minors. The Department awards approximately \$30 million to local agencies to help in the enforcement of tobacco laws. A new round of awards is made each fiscal year.

## MAJOR ACCOMPLISHMENTS

**Expanded Recruiting and Diversity Efforts.** In early 2019, the Recruiting Unit successfully conducted a mass recruiting effort to support SB 384 (Stats. 2017, ch. 541). This resulted in successfully filling over 30 positions—the most in any single recruitment to date. To enhance legal recruiting, OHR is partnering with DOJ attorneys to increase recruiting subject matter expertise, develop robust pipelines of highly qualified and diverse candidates, and build strategic alliances with diverse organizations. In March 2020, the Recruiting Unit contracted with a consultant to identify areas of improvement with respect to the Department’s recruiting, hiring, and general diversity initiatives. One of the primary deliverables emerging from this contract is a department-wide diversity strategic plan that outlines diversity initiatives from recruiting, selection, hiring, retention, and engagement.

**New Services within the Office of Human Resources.** As a part of OHR’s ongoing commitment to innovation, they introduced four new teams which provide enhanced services to customers:

- **Assessment Consultation.** In September 2019, OHR created the Assessment Consultation Team and started exclusively providing assessment services for customers. This team is dedicated to developing valid and effective interview questions, multiple-choice tests, screening matrices, and other assessments to help identify the top candidates for DOJ vacancies. Through this team, OHR is able to provide one-on-one consultation with the hiring manager or supervisor regarding their ideal employee, and develop custom assessments to meet their needs. ACT, which is comprised of only three staff (one manager and two analysts), has completed a total of 323 assessments between July 2018 (when the data started being tracked) through June 2020. Since the team’s official creation in September 2019 through June 2020, they have completed 217 assessments.
- **Organizational Development.** In response to demand from managers for more strategic services, in April 2020 OHR established a three-person Organizational Development Unit to focus on improving both individual and organizational performance; some of its core services include strategic planning, change management, coaching, and process improvement.
- **Attorney Hiring.** In an effort to improve hiring and increase the diversity of DOJ’s attorney workforce, OHR centralized the hiring functions for all attorney hires and created the Attorney Hiring Unit in February 2020. Since its launch, the overall time-to-hire a DOJ attorney has decreased from six months to three months.
- **Data Analytics.** The Data Analytics Unit has grown to include four researchers and a research manager. This team serves DOJ leaders and programs by providing a variety of workforce analytics services, developing data systems that streamline manual tasks and improve data quality, conducting action research to provide feedback on programs, and leading the collection of performance metrics. The achievements of this team include providing data and analysis of telework activities and building occupancy during COVID-19, and initiating a study on the experience of Black/African American Deputy Attorneys General.

**Special Agent Recruitment.** OHR established a working group with stakeholders from the Division of Law Enforcement (DLE) and the Division of Medi-Cal Fraud and Elder Abuse to identify solutions to the difficulty in recruiting, examining and hiring Special Agents and Special Agent Trainees. Since the beginning of 2020, the group has implemented a standard Hiring-Above-Minimum process to ensure pay equity for new-to-state incumbents, created an Internet page specifically designed to attract and educate potential Special Agent candidates, increased the frequency of the examinations, and launched several large-scale recruitment campaigns for both classifications. As a result, DLE has seen the largest number of Agents entered into the background process and the largest applicant pool in recent history.

Additionally, in an effort to further expand the reach for recruitment of Special Agents, OHR submitted a proposal to modify the minimum qualifications of the Special Agent class series to provide equal credit for both investigative and patrol peace officer experience, as well as allow military experience to substitute for education at the Special Agent Trainee level. This request is under review by CalHR.

**Program Reorganization.** The Office of Legal Support Services expanded during a reorganization effort in 2018 to focus on optimal support and expertise to the legal division. Under the Office of Legal Support Services, the expansion included existing programs Legal Support Operations and the Law Library Services, but also added the Case Management Section and eDiscovery & Litigation Services (formerly Litigation Support Services). The expansion and reorganization to include these programs has allowed for subject matter experts to dedicate direct service to the law practice in areas of law office management, advancements in legal technology, eDiscovery, case management, legal billing, and legal research.

**Litigation Hold Automation.** Case Management Section staff worked through a year-long process with the Legal Division and the Office of Digital Investigations (ODI) to update and revise the Department's Litigation Hold Policy and its impact on the case management system and associated file repositories. Leveraging automation and integration with the ProLaw application, Case Management Section created an application utility which allows ODI to implement a series of litigation hold and preservation actions automatically and without requiring technical assistance of Case Management Section staff.

**Data Integrity Initiative.** With the Office of Program Oversight & Accountability, the Case Management Section developed a framework for the development of a quality control and data integrity review process for the legal division's case management data. This framework provides a set of measures and expectations based on existing policies around timekeeping, billing and management of legal work. As a result of this initiative, a Quality Control and Data Integrity Team was formed to focus on this critical initiative. The team will leverage the Case Management Cognos Business Intelligence and Analytical system to analyze critical legal case data to ensure that client agency, departmental and legislative objectives are met.

**CA Government Relativity Forum.** eDLS created the Forum in 2019 with the goal of streamlining the workflow between agencies for more efficient data collection and transfers. The Forum was previously recognized by Relativity as an official Relativity User Group. The Forum meets quarterly, shares knowledge of upcoming technology and is currently developing a comprehensive workflow for Administrative Records.

**eDLS PRA Team.** In order to comprehensively manage, monitor and track Public Records Requests, eDLS created the eDLS PRA Team in 2019 to work with and support Government Law. The team developed a workflow for incoming public record requests and the data collected to be processed, reviewed, produced and tracked in Relativity. They are also currently developing a workflow plan to manage and track existing productions in order to efficiently produce records without duplicating work.

**Families First Coronavirus Response Act (FFCRA).** In response to the FFCRA, the FMLA & Special Leaves Unit created and implemented new policies and procedures to approve and process this new leave in a very short amount of time. The unit has also added staff to process the special pay associated with the FFCRA leave. Since April 2020, the unit has processed over 450 FFCRA requests for leave and special pay. Despite occurring during the COVID-19 pandemic and transition to a telework environment, the implementation of this new leave benefit has been a great success for the team.

**Payroll Adaptations to the Telework Environment.** In response to the mandated telework environment, Payroll and Benefit Services (PBS) staff adapted several core functions. PBS developed and implemented an electronic RPA (E-RPA) process. E-RPAs are now created, routed, approved and



distributed to staff for keying via email. PBS developed tracking logs and hold regular video conference meetings to ensure communication is maintained in this E-RPA era. PBS implemented an electronic salary determination process, wherein salary determinations are now entirely facilitated via email. This process transpires entirely via email. PBS also added digital signatures to the Department's timesheets, allowing us to digitize the timesheet process. PBS also worked with the Accounting Office to implement an electronic salary advance request process, wherein salary advances can be requested, approved, and issued by Accounting Office staff via email.

**Savings Plus Workshops.** The Position and Information Management Services (PIMS) Unit worked with Savings Plus to set up 18 workshops for all of DOJ. Savings Plus provided helpful tips and guidance for those nearing retirement and for those who are in their early to mid-career. The workshops provided information about Pre-Tax and Roth After-Tax contributions and the various investment choices available in both plans. They also covered what happens to your 401k/457b plans after separating from state service. PIMS received positive feedback from those who attended the workshops and plans to set up online courses in the near future.

**2019 Open Enrollment Wellness Fair.** The PIMS unit coordinated the 2019 Open Enrollment Wellness Fairs that took place in Sacramento, San Francisco, Oakland, Los Angeles and San Diego offices. These events gave DOJ employees the opportunity to meet with health and dental providers, medical groups, retirement specialists, and more. OHR was on hand at each office location to answer questions regarding the enrollment process and processing times. The fair was successful and had over 100 employees in attendance at each event.

**Workers' Compensation Claims Management System (WCCMS).** In 2019, the Risk Management Unit (RMU) implemented a new software program to manage and track all workers' compensation claims. This required a complete migration of data from an old and outdated system as well as SharePoint. Data had to be manually transferred for 380 open claims and 275 closed claims. This program has become an effective tool in the management of all workers' compensation matters with extensive reporting capabilities. RMU is now looking to move the open reasonable accommodation caseload into this software program as well.

**Reduction in Workers' Compensation (WC) Open Inventory.** In January 2018, open inventory of active worker's compensation cases totaled 409. As of June 2020, total case count was down to 304. During this time period, OHR's claims administrator charged \$4,000 per open case for claims management. Closing these 105 cases saved the Department \$420,000.

**Health and Safety Response to COVID-19.** With the onset of the COVID-19 pandemic, five Risk Management Unit (RMU) staff members became dedicated to the Health & Safety (H&S) COVID taskforce team which was then designated the central point of contact for all COVID-19 related questions and communications. After working directly with upper management to establish the Emergency Response Team (comprised of staff at all levels up to and including the CDAG), this H&S team went to work managing and coordinating the response to this pandemic for approximately 5,300 DOJ employees.

Since the end of February 2020, this H&S taskforce team has contributed significantly to educating and keeping DOJ staff informed of all efforts to address and combat the virus. The following are some of the specific contributions this team has made to this effort:

- Responded to over 2,000+ COVID-related inquiries from DOJ staff.
- Developed and distributed 73+ DOJ-wide COVID-related communications providing exposure notifications, resources, and daily information.
- Implemented contact tracing protocols to track, investigate, and coordinate the response to employees who have been exposed or contracted a positive case of COVID-19. All contact tracing

efforts are handled 100 percent internally by H&S staff.

- Communicated with local public health organizations when responding to potential exposures and diagnosed cases of COVID-19. Arranged for deep cleaning of work areas following exposures to positive cases.
- Established a COVID-19 intranet website to provide resources and up-to-date information.
- Developed CalHR-mandated COVID-19 training for all DOJ staff.
- Obtained and oversaw the distribution of Personal Protective Equipment and sanitation supplies throughout all DOJ offices statewide.
- Continually researched, monitored, and tracked all local health orders, statewide health orders, and worldwide public health agencies (World Health Organization, Centers for Disease Control, etc.).
- Drafting DOJ's COVID-19 Emergency Telework Policy, drafting "All DOJ" guidance on a reoccurring basis, providing quick responses on a myriad of health and safety related questions and concerns received from employees, management, and various unions.

**JusticeHR Project.** This effort to procure a modern Human Capital Management and Learning Management System that will automate timekeeping and leave management, offer employee/manager self-service functionality, and provide robust reporting and analytics is in the final stages. OHR anticipates that project team training and implementation activities will occur in the first quarter of 2021.

**Transition from In-person to Virtual Training.** As a result of the COVID-19 pandemic, the Office of Professional Development (OPD) canceled all in-person training and began teleworking on March 17, 2020. From March 17 to April 1, 2020, OPD was able to: 1) Convert ten in-person trainings to a virtual format; 2) Learn the BlueJeans Events platform to deliver virtual training effectively; 3) Issue and commit to a new training calendar of virtual courses for April and March of 2020. OPD's efforts yielded 1,528 students taught in April, compared to 812 students taught in the first quarter of 2020.

**OPD Training Needs Assessments 2019/2020.** OPD deployed a needs assessment in April of 2019, with a total of 1,178 employees offering their input. This data provided an opportunity for the OPD to focus their efforts in areas that matter. One example is the need to increase the frequency of courses offered to avoid students from being waitlisted and having to wait, in some cases, months, for training that they need. As a response to feedback received during the 2019 assessment, OPD deployed its first region-specific training needs assessment in Southern California in 2020, and achieved a response rate of 63 percent. This effort will help provide an opportunity for OPD to address the needs of Southern California employees more effectively.

**BlueJeans (ROI).** OPD oversees the management and training of the BlueJeans Video Conferencing system. One service that BlueJeans Corporate provides is offering a series of metrics to measure use of this platform, along with the estimated travel cost savings. From September 1, 2018 to August 1, 2020 there was a total of 347,792 meetings, which totaled approximately 14,762,139 minutes. Additionally, from March 6, 2018 to March 21, 2020 a total of 58,377,460 miles of meeting distance was covered, which has an estimated travel cost savings of \$9,442,063.00.



# DIVISION OF LAW ENFORCEMENT

The Division of Law Enforcement (DLE), through its 1,266 employees, provides exemplary and comprehensive law enforcement, forensic services, investigations, intelligence and training. The DLE is dedicated to enhancing the safety and reducing the vulnerability of all citizens, residents and visitors within the state of California. The DLE is organized into the following five areas:

- **The Office of the Chief** provides administrative support to the investigative, regulatory and forensic components of the DLE and other criminal justice agencies. The Office serves as the policy-making and oversight body for its four operational bureaus.
- **The Bureau of Firearms (BOF)** serves the people of California through education, regulation, and enforcement actions concerning the manufacture, sales, ownership, safety training, and transfer of firearms. BOF ensures the state's firearms laws are administered fairly, enforced consistently, and understood uniformly throughout California. It is a leader in innovation and collaboration by providing firearms expertise and information to law enforcement, legislators and the general public. BOF administers a comprehensive program designed to promote legitimate and responsible firearms possession and use within California. Law enforcement and program services are extended to all 58 counties within the state through three regional offices, three field offices, one program office, and one headquarters office.
- **The Bureau of Forensic Services (BFS)** comprises one of the largest crime laboratory systems in the nation and is accredited to International Organization for Standardization (ISO) under the ANSI-ASQ National Accreditation Board (ANAB). BFS provides evaluation and analysis of physical evidence, including crime scene investigation and expert court testimony to federal, state and local law enforcement agencies, district attorneys, and courts, by operating 12 specialized laboratories that serve 46 counties as well as a forensic training facility. BFS maintains the state DNA laboratory database, which compiles DNA profiles of sex and violent offenders and felony arrestees. BFS maintains several specialized programs, including the California Criminalistics Institute, forensic toxicology, digital evidence, the Missing Persons DNA Program, latent print examination and automated searches, crime scene examination, and the CAL-DNA Data Bank program.
- **The Bureau of Gambling Control (BGC)** regulates legal gambling activities in California to ensure gambling is conducted honestly and is free from criminal and corruptive elements. BGC works cooperatively with the California Gambling Control Commission to regulate the gambling industry in the state. This is accomplished by investigating the qualifications of individuals and business entities who apply for state gambling licenses and monitoring the conduct of these licensees to ensure compliance with the Gambling Control Act and applicable regulations. The Bureau's Special Agents conduct criminal investigations in and around tribal casinos and California cardrooms. In addition, the Bureau conducts audits and reviews for tribal gaming to ensure that each tribe is in compliance with all aspects of the state gaming compact.
- **The Bureau of Investigation (BI)** investigates a wide range of criminal activities through its headquarters office, six regional offices, and 17 specialized programs including but not limited to Foreign Prosecution and Law Enforcement Unit, Human Trafficking and Sexual Predator Apprehension Team, Recycle Fraud Team, Special Investigations Team, Special Operations Unit, Task Force Program, Tax Recovery in the Underground Economy Program, and White Collar Investigation Team. In addition to enhancing public safety by focusing law enforcement efforts through its specialized programs, the Bureau of Investigation also provides expert investigative resources to the DOJ legal division as well as to any agency or governmental entity or upon the specific request of the Attorney General.

The overall purpose of the DLE is to enhance public safety by conducting criminal investigations, regulatory oversight, and forensic analysis of evidence for criminal proceedings. The DLE enhances the effectiveness of state and local law enforcement agencies throughout California. Specifically, DLE special agents contribute unique technical expertise and statewide jurisdiction to criminal investigations and work with local, state, and federal law enforcement partners to provide investigative law enforcement services throughout California. The DLE scientists provide cutting-edge forensic services and support to agencies throughout the state. The DLE's regulatory professional staff conduct background reviews for firearms eligibility and gambling license applicants. Together, the Office of the Chief and the four bureaus are dedicated to enhancing public safety and protecting Californians.

## **MAJOR ACCOMPLISHMENTS**

In fiscal year 2011-12, the DLE was significantly affected by budget reductions that caused the loss of \$71 million dollars and 246 sworn personnel. In recent years, there has been a concerted effort to rebuild this division with funding secured to create specialized investigative programs within the Bureau of Investigation. The DOJ was successful in securing funding in fiscal year 2019-20 to create the White Collar Investigative team and the Human Trafficking and Sexual Predator Apprehension team. Additionally, in 2013 with the passage of the Revenue Recovery and Enforcement Team Act<sup>2</sup>, funding was secured for Tax Recovery in the Underground Economy (TRUE) Program that prevents tax evasion and recovers revenue lost to the underground economy. These new efforts have already paid dividends for Californians with cases that have saved the state a combined \$2.8 million dollars in court ordered restitution for calendar year 2019, with an estimated potential monetary loss to victims of \$4.1 million dollars. Additionally the Human Trafficking program was able to assist 121 victims with victim services or placement back with their families.

In addition to expanding and improving the Bureau of Investigations, the DOJ worked to stabilize the funding for the Bureau of Forensic Services (BFS). Proposition 69 (2004) established the DNA Identification Fund with a revenue stream consisting of fines collected on criminal offenses. The Fund is intended to support expanded DNA collection, analysis, and other related forensic services. Ten years later, Proposition 47, which reclassified certain non-serious, nonviolent felonies to misdemeanors, had an unintentional but almost instantaneous negative impact on the DNA Identification Fund. The decrease in felony penalties went hand-in-hand with a decrease in the number of fines being collected from criminal offenders. Revenues to the DNA Identification Fund began to decline immediately and are now inadequate to support DOJ's laboratory system, which provides a full range of forensic services, free-of-charge, to law enforcement agencies throughout California.

Attorney General Becerra worked with the Department of Finance on alternative solutions to backfill BFS's revenue shortfall. In addition, the DOJ secured \$8.4 million to modernize the laboratories and \$4.7 million to upgrade equipment related to sexual assault evidence processing. The DOJ initiated the process of relocating the Richmond Laboratory, the Sacramento Regional Laboratory, Toxicology Laboratory, and the California Criminalistics Institute in 2018 to a new combined facility lab near Sacramento State University to help reduce costs.

The Bureau of Gambling Control has increased its enforcement of 65 operational cardrooms throughout the State. This has been accomplished by conducting proactive, overt and covert inspections by Special Agents and Field Representatives in order to ensure the cardrooms are operating in compliance with State and Federal law, the Gambling Control Act, and local ordinances. In addition, quarterly adequate financing evaluations are being completed by Auditors to ensure public protection by verifying cardrooms have sufficient funds to cover chips in use. Due to the global pandemic, these efforts have been temporarily curtailed as a result of cardroom closures but will continue once cardroom operations resume.

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2 Assembly Bill 576, Chapter 614, Statutes of 2013

The Department has increased the funding for enforcement of firearms by \$10.2 million dollars which secured permanent funding for existing, non-funded Special Agent and Analyst positions. As a result of the permanent funding, the Bureau of Firearms was able to fill vacant positions which contributed to reducing the ongoing backlog of cases. In addition, the Department recently secured funding to modernize the firearms data system which should improve the efficiency of professional staff conducting background checks and Special Agents conducting criminal investigations. Finally, the Department sponsored legislation (Assembly Bill 1669) which increased the Dealer Record of Sales fee and stabilized the funding for programs that conduct background checks on individuals buying firearms to ensure that prohibited persons cannot illegally purchase them.

## **OFFICE OF THE CHIEF**

**The Office of the Chief** began working on a strategic plan for the DLE in March 2020. The Chief's Office coordinated eight workshops to conduct a Strengths, Weaknesses, Opportunities and Threats (SWOT) analysis of the Division. Over 500 employees engaged in the SWOT exercise. The input from the SWOT exercise, along with employee surveys, was used as the foundational data for the DLE strategic plan. The Chief's Office established a Strategic Planning Committee composed of a cross section of the Division and over the course of six months, despite the challenges of the COVID-19 restrictions, completed the DLE Strategic Plan (2021-2023) by in 2020. The DLE Strategic Plan is the Division's work plan for the next three years.

**The Advanced Training Center (ATC)** within the Office of the Chief provides specialized investigative training to thousands of law enforcement personnel statewide. The following classes were conducted in fiscal years 2018-2019 and 2019-2020: Electronic Surveillance, Clandestine Laboratory Safety Certification and Recertification, Computer Crimes, Investigation of Internet Crimes, Human Trafficking, Advanced Crypto-Currencies, Computer Digital Evidence Recovery, LAN Investigations, Cellular Phone Forensics, Threat Intelligence and Campaign, and Vehicle Forensics. A total of 105 classes were conducted with 3,595 students attending these courses.

## **BUREAU OF FIREARMS**

The Bureau of Firearms is largely funded through the Dealer Record of Sales (DROS) fee. Existing law allows the Department to require a firearms dealer to charge each firearm purchaser a fee, called the "DROS fee," at the time of a transfer of firearms (a "DROS transaction"). The DROS fee was set at \$19 for almost two decades. Over the years, the Department has been forced to significantly reduce DROS program activities and expenditures in order to operate within the available DROS Fund revenues, which are well below the appropriation levels established by the Legislature for these critical public safety firearms programs. For example, the Bureau of Firearms has maintained only baseline program functionalities; has postponed significant facility infrastructure projects; and has delayed necessary information technology refreshes in order to maintain solvency in the DROS Fund.

Historically, the DROS Fee accounts for approximately 70 percent of the revenue collected by the Bureau of Firearms. Effective January 1, 2020 through AB 1669, the Department was able to increase the DROS fee to \$31.19 which will make the DROS Fund solvent, sustain the current program, and thereby position the Bureau of Firearms to meet future challenges. Had the fee not been increased, it would have resulted in the insolvency of the Bureau of Firearms and the discontinuance of most of the Department's firearms-related regulatory and enforcement activities.

**Disarming Dangerous Individuals through the Armed Prohibited Persons System.** Established in 2006, the Armed Prohibited Persons System (APPS) identifies registered firearm owners in California who subsequently become prohibited from owning and/or possessing firearms and ammunition. The number of active prohibited subjects in the database changes on a daily basis due to the addition



## MORE THAN 400 APPS CASES HAVE BEEN CLOSED DURING THE COVID-19 PANDEMIC

### DOJ SPECIAL AGENTS HAVE SEIZED:



**51** FIREARMS, INCLUDING  
4 ASSAULT WEAPONS AND 2 GHOST GUNS



**123** MAGAZINES, INCLUDING  
33 LARGE-CAPACITY MAGAZINES



**28,518** ROUNDS OF AMMUNITION



Infographic highlighting work completed by the APPS program during the first months of the COVID-19 pandemic.

of new subjects and removal of others. During the period of January 1, 2018 through June 30, 2020, BOF enforcement teams conducted 16,995 investigations that led to the seizure of 5,041 firearms and 1,363,922 rounds of ammunition. Meanwhile, the APPS program section processed 185,551 triggering events which causes an analyst to determine whether a lawful firearm owner has now become prohibited. Through this analysis, staff confirmed 58,199 prohibited firearm ownership determinations for the time frame of January 1, 2018 through June 30, 2020.

BOF enforcement efforts are further outlined in the APPS Annual Report which reflect the success and broader positive impacts to the APPS list. With the stabilization of the funding for the enforcement of APPS secured by the Department, BOF resources are further positioned to meet the challenges of APPS enforcement. These resources are critical for the program to meet the obligations to administer and enforce gun safety laws and investigate APPS subjects. Following are several cases further illustrating enforcement successes.

Notable APPS seizures from January 1, 2018 - June 30, 2020 include:

- ***Contra Costa County APPS Subject Arrested with Numerous Assault Weapons.*** BOF Special Agents conducted an APPS investigation in Contra Costa County at the home of a prohibited APPS subject due to a misdemeanor conviction of negligent discharge of a firearm. The prohibited APPS subject was found to be in possession of seven assault weapons, two rifles, five handguns, one shotgun, and 5,000 rounds of ammunition. Four of the assault weapons and two of the handguns confiscated by Special Agents were manufactured by the APPS subject and were considered “ghost guns.” The APPS subject was arrested for manufacturing an assault weapon, possession of an unregistered assault weapon, prohibited person in possession of a firearm, and prohibited person in possession of ammunition. The APPS subject was convicted of possession of an assault weapon and sentenced to three years of probation.
- ***Merced Man Arrested after Importing and Selling Numerous Non-Roster Handguns in California.*** A three-month investigation conducted by BOF Special Agents concluded with the service of a search warrant and arrest of a man at his Merced home. Special Agents had received allegations that the individual was selling non-roster firearms. Special Agents were able to confirm the man had imported into California and sold at least 80 non-roster firearms. As a result of the service of the search warrant, Special Agents seized four non-roster handguns, one assault weapon, three AR-15 lower receivers, 26 large capacity magazines, and firearms sales paperwork. The man was charged with 80 counts of importation/sale of an unsafe handgun, unlicensed person selling a firearm, and possession of an unregistered assault weapon. The individual is pending court proceedings in Merced County.
- ***Glock Full-Auto Switches Seized from Kern County Subject after Controlled Delivery to Residence.*** The United States Customs and Border Patrol intercepted a parcel set for delivery to a Kern County subject from China containing five full-automatic selector switches for Glock handguns. BOF Special Agents along with U.S. Customs Agents, conducted a controlled delivery of the package and served a search warrant. The individual who purchased the switches was a convicted felon and validated gang member. As a result of the search warrant, Special Agents seized five Glock full-auto selector

switches, one Glock large capacity magazine, milling tools to manufacture handguns, and numerous rounds of ammunition. The individual was arrested for possession of a machine gun, felon in possession of a firearm, and felon in possession of ammunition. He was convicted of conspiracy and sentenced to one year in the county jail and three years of probation.

- **Agents seize several firearms from a Lancaster man after he attempts to purchase ammunition while being prohibited for mental health commitment.** When BOF Special Agents went to the man's home in Lancaster looking for one handgun that he had registered, they found 10 firearms, including assault rifles, shotguns, high-capacity magazines, and thousands of rounds of ammunition. The man was arrested and is pending three criminal counts, including possession of a firearm by a prohibited person due to a mental health commitment, possession of ammunition by a prohibited person, and possession of an unregistered assault weapon.
- **Search of Mojave home yields arsenal of firearms under a bed.** BOF Special Agents located numerous weapons in a Mohave residence, including several assault weapons and short-barreled rifles, after they identified a convicted felon purchasing ammunition at the Lancaster gun show. Special Agents contacted the man in the parking lot and subsequently arrested him. Special Agents seized the ammunition that he had purchased and obtained a search warrant for his Mohave home. During search of the residence, four assault rifles, two short-barreled rifles, two shotguns, three handguns, and 3,000 rounds of ammunition were located. He was arrested, pled guilty, and was sentenced to 16 months in state prison.
- **Search of man's Fountain Valley home who was suspected of impersonating a law enforcement officer results in the seizure of several assault weapons.** BOF Special Agents received information that a Fountain Valley man was in possession of several firearms and impersonating a law enforcement officer. Through the investigation it was determined that the man was previously employed in law enforcement. Special Agents obtained a search warrant for his Fountain Valley home. During the search of the residence, six unregistered assault weapons and two handguns were located. In addition to the firearms, there was evidence of the impersonation of a law enforcement officer by the man. He was subsequently arrested, and is pending criminal charges.
- **Agents seize several guns from a San Diego man who is prohibited from owning or possessing firearms for being under a Gun Violence Restraining Order.** BOF Special Agents went to the San Diego home of a man who is prohibited from owning or possessing firearms due to a Gun Violence Restraining Order. The man had nine firearms registered in his name. During the search of the residence Special Agents located eight firearms, which included one unregistered assault weapon, seven handguns, and thousands of rounds of ammunition. The man was arrested and is pending criminal charges.

**THE FIRST OF ITS KIND – Ammunition Purchase Authorization Program.** Proposition 63 (Prop; The Safety for All Act), as amended by Senate Bill (SB) 1235 (Stats. 2016, ch. 55), was approved by voters in 2016. The intent of Prop 63 and SB 1235 was primarily to keep prohibited persons from acquiring ammunition in an effort to prevent unnecessary gun violence. Under the new laws, ammunition must be purchased from or transferred by a California Ammunition Vendor (CAV) in a face-to-face transaction. Effective July 1, 2019, the law required California Ammunition Vendors to submit eligibility checks for prospective purchasers to the BOF, and obtain approval prior to selling or transferring ammunition. Thereafter, CAVs are required to submit ammunition purchase details to the BOF. The eligibility checks ensure purchasers are not prohibited from owning or possessing ammunition due to a felony and/or violent misdemeanor conviction or warrant, Domestic Violence Restraining Order, or mental health issue.

On July 1, 2019, the BOF successfully deployed enhancements to the DROS Entry System, which allows



ammunition vendors to submit eligibility checks, and subsequently report ammunition purchases in compliance with Proposition 63.

***Implementation of Assembly Bill 857 “Firearms: Identifying Information,” (Stats.2016, ch. 60).***

Assembly Bill 857 statutorily regulates self-manufactured and self-assembled firearms, commonly referred to as 80 percent unfinished receivers. Effective July 1, 2018, the bill required DOJ to accept applications for unique serial numbers from new and current California residents, who wish to retain possession of self-manufactured or self-assembled firearms. Additionally, prior to manufacturing or assembling a firearm, a California resident shall apply to the Department for a unique serial number. DOJ has issued 3,881 unique serial numbers between July 1, 2018 and June 30, 2020.

***Significant Spike in DROS Transactions.*** As the COVID-19 pandemic began to unfold, and state and local governments across the country declared shelter-in-place orders and shut down non-essential businesses, firearm sales began to surge. With exponential increases in firearm sales in California, the accompanying DROS background requirements followed suit. As the pandemic continued to rapidly progress, firearm sales peaked in mid-March 2020, surpassing all single day sales in recent California history. Since the peak, firearm sales have remained at much higher than typical levels due to continued pandemic fear and civil unrest that ensued just 2 months after the pandemic spike. In comparing DROS applications received March 1 - June 30, 2020, the Department experienced a substantial increase in 2020 over 2019. The Department took considerable steps to ensure the health and safety of staff handling the critical responsibilities associated with the DROS background requirements. These efforts further ensured California citizens maintained the ability to exercise their second amendment right of firearm ownership while taking into consideration the well-being of Department staff. Fortunately, with the increased revenue through the higher DROS fee secured by the Department through AB 1669, the DROS fund has been stabilized, further positioning the Department to meet future unprecedented events.

## **BUREAU OF FORENSIC SERVICES**

***Providing World-Class Forensic Services to Jurisdictions Throughout California.*** BFS provides scientific services to state and local law enforcement, district attorneys and the courts for 46 of California’s 58 counties. In addition, BFS maintains the Cal DNA Data Bank for all of California and provides forensic science training and library services for DOJ criminalists and local government crime laboratory staff through the California Criminalistics Institute. During this biennial period, BFS completed over 140,000 requests for analysis from client agencies and logged 58,750 breath alcohol records from instruments provided to law enforcement agencies in the field. There was a significant decrease in submissions of breath alcohol cases, likely due to COVID-19.

Forensic Discipline	Completed Requests
Biological Evidence	1,894
Blood Alcohol (DUI)	25,063
Breath Alcohol (DUI)	58,750
Controlled Substance	38,372
Crime Scene Response	274
Digital Evidence	137 (41 computers, 96 mobile devices)
DNA	5,745
DNA RADS	3,530
Firearms	1,004
Latent Print Processing and Comparison	2,561
Toxicology	8,564
Total	145,894

\* Includes latent print and clandestine laboratory response.

**Rapid DNA Service (RADS) of victim sexual assault kits.** The Rapid DNA Service continues to provide expedited processing and DNA typing of body swabs collected from rape victims. Sexual assault evidence kits are directly submitted to the DNA programs at the Jan Bashinski DNA Laboratory in Richmond and the regional laboratories in the Central Valley, Fresno, Redding, Riverside, Sacramento, and Santa Barbara. Following streamlined analysis of the sexual assault evidence, perpetrator DNA profiles are uploaded into CODIS where they are compared to the DNA profiles of over 2.9 million convicted offenders and arrestees in the California database and over 18 million offenders and arrestees nationwide. DOJ provides forensic services to 46 counties, 39 of which participate in the RADS program. Because of the RADS program’s success, DOJ has no sexual assault kit backlog. To streamline the RADS analysis process, the BFS DNA Casework programs brought the Hamilton AutoLys instrument on-line for the automated processing of sexual assault evidence.

**Sexual Assault Forensic Evidence Tracking (SAFE-T) database.** Per California Penal Code section 680.3, all victim sexual assault kit evidence collected on or after January 1, 2018, must be entered into DOJ’s SAFE-T database. This mandate was enacted to enable the state to track the collection and processing of sexual assault evidence kits collected statewide. Per the mandate, DOJ must also submit to the Legislature an annual report summarizing the data entered into SAFE-T for that year. BFS filed the annual report for 2018 and is preparing the 2019 report for submission.

**New mandate in Sexual Assault Victims’ DNA Bill of Rights affects BFS DNA Casework.** As of January 1, 2020, California Penal Code section 680.3 was amended to require mandatory deadlines for law enforcement agencies and crime laboratories that handle sexual assault evidence. For sexual assault evidence received by a law enforcement agency or crime laboratory on or after January 1, 2016, a law enforcement agency must submit the evidence to a crime laboratory within 20 days of booking the evidence, and a crime laboratory must process samples of the evidence and upload qualifying DNA profiles into the Combined DNA Index System (CODIS) no later than 120 days after receiving the evidence. These mandated deadlines were recommendations in prior legislation.

**Notable cases aided by BFS efforts include:**

- **Riverside Laboratory collaborates in multi-agency missing person investigation.** In March 2020, the Riverside Laboratory responded to multiple crime scenes in Riverside and San Bernardino counties to assist the San Luis Obispo County District Attorney’s Office and the Paso Robles Police Department with a missing person investigation. Over the course of several weeks, criminalists

processed burned vehicles and several residences, including the residence where the missing person's body was recovered. Evidence from the missing person confirmed that he was a homicide victim, and suspects were arrested. The Santa Barbara, Freedom, and Jan Bashinski DNA Laboratories also provided forensic services in this investigation.

- **Riverside Laboratory Controlled Substance Analysis Collaboration.** The Riverside laboratory continued to see large controlled substance analysis submissions. One submission from the Bureau of Investigation's Los Angeles Interagency Metropolitan Police Apprehension Crime Task Force (LA/IMPACT) included thirty-eight (38) kilograms of cocaine, and four kilograms of heroin. The Riverside laboratory received a plaque from the LA/IMPACT demonstrating their appreciation for the BFS Riverside Laboratory.
- **Chico Laboratory and Redding Laboratory multiple scene response.** The two BFS laboratories recently responded to several crime scenes in Tehama and Butte counties that were all tied to a single suspect based initially on a Modus Operandi review between two laboratories that had each responded to scenes in their service areas. By tying the scenes together and informing the respective agencies, the BFS laboratory staff were able to focus investigative efforts and bring quick resolution while mitigating further loss of life in these apparently random homicide events.
- **Sacramento Laboratory expedites analysis in California Senate assault case.** In 2019, the Sacramento Laboratory expedited analysis of evidence from a high-profile case submitted by the Threat Assessment Unit of the California Highway Patrol. The incident occurred in the California Senate chambers when suspected blood was thrown from the upper gallery onto the Senate floor. The Sacramento Laboratory conducted a rush analysis to determine if the substance was indeed blood and whether it belonged to the suspect. Within six hours of submission of the evidence, the Sacramento Laboratory released a report confirming the presence of blood. Within 24 hours of receiving the suspect's DNA reference sample, the laboratory released a report confirming the suspect as the source of the blood.
- **Santa Barbara Laboratory analyzed sold razor blade to confirm identity of deceased murder suspect in Atascadero case.** In 1977 and 1978, Jane Antunez and Patricia Dwyer were found gagged, bound, sexually assaulted, and murdered. The two murders were linked through DNA in 2006, but the identity of the assailant remained unknown. In 2018, the Familial Search Program provided an investigative lead that identified Arthur Rudy Martinez as a potential suspect. Subsequent investigation revealed that Martinez was deceased. In 2019, the Santa Barbara Laboratory performed DNA analysis on an old razor blade that had belonged to Martinez. The DNA from Martinez' razor blade matched the DNA from the evidence at both crime scenes.
- **Familial Search solves homicide through landmark familial DNA match to female offender in CODIS.** In February 2019, the Familial Search Program conducted a familial search on evidence from the homicide of 94-year old Leola Shreves. When the homicide occurred in 2013, the Chico Laboratory processed the scene, collecting bloodstains from inside and outside of Shreves' Yuba City home. DNA analysis conducted at the Redding Laboratory showed that the bloodstains were from the same male individual, but the initial suspect was excluded and the evidence profile did not hit in CODIS. Through the 2019 familial search, a new suspect was developed when a familial DNA match was made to a female offender in CODIS. Through the ensuing investigation, an individual was identified as the suspected source of the bloodstains. This was the Familial Search Program's first successful effort with searching against female offenders in CODIS. Bureau of Investigation personnel conducted an analytical investigation and searched for potential first-degree relatives, providing the results to the Yuba County Police Department (YCPD) in February 2019. As a result of the DNA evidence and BI's investigation, the YCPD identified a potential suspect in the homicide and identified an address for him in Yuba City. The suspect was arrested in April 2019 and his trial is

scheduled for the end of 2020.

**CAL-DNA Data Bank at the Jan Bashinski DNA Laboratory.** In April 2018, the California Supreme Court decided *People v. Buza* in favor of the state. Mr. Buza’s misdemeanor conviction for refusing to give a DNA sample as an adult arrested for a felony arson charge was upheld, as was the constitutionality of arrestee collections under both the U.S. and California constitutions. Through 2019, the CAL-DNA Data Bank continued to receive over 100,000 submissions annually. Starting in March 2020, the number of monthly submissions dropped due to COVID-19 pandemic. At the end of November 2020, the state CODIS database had: 3,004,173 offender and arrestee DNA profiles, 130,381 crime scene DNA profiles, 85,576 crime scene-to-offender hits, and 106,045 investigations aided through case-to-case hits. The state database also had 608 DNA Index of Special Concern (DISC)-enabled forensic profiles. Procedures for searching profiles from a Rapid DNA Booking Station arrestee against the DISC Index went online on September 1, 2020. The Data Bank also completed statewide agency training for the transition from Bode buccal collectors to EasiCollect+ collectors. The new collectors provide a more stable matrix for the long-term preservation of the DNA samples.

**CAL-DNA Data Bank’s Familial Search Program.** When cold case evidence has not hit in CODIS, the Familial Search Program at the Jan Bashinski DNA Laboratory searches the DNA evidence in the CODIS Convicted Offender database to try to identify a potential close relative of the source of the evidence. In January 2018, the Familial Search Program implemented updated methods which added additional DNA markers and expanded search capabilities to enable identification of a potential *female* relative in the CODIS database. Prior to this, familial searches were only able to identify potential male relatives in CODIS. Thus far, fifteen familial searches have provided investigative leads that have solved previously unsolved major crimes. Many more familial searches are currently in progress.

**Missing Persons DNA Program (MPDP) Assisting with Devastation Historic Wildfires.** The 2018 wildfire season was one of the deadliest in California history, killing at least 88 people including at least 85 victims of the Butte County Camp Fire. When the fires erupted, the MPDP deployed to the Butte County Sheriff’s Office to assist with collection of family reference samples and transfer unidentified human remains to the laboratory. MPDP confirmed preliminary identifications of many victims and identified seven victims that could not be identified through conventional means.

**Missing Person Kinship Searches.** As of 2019, the MPDP also provides Missing Person Kinship Searches of unidentified remains. These searches attempt to identify a potential close relative in the CODIS database. In October 2019, this type of search led to the identification of a deceased infant, Nikko Lee Perez, whose skeletal remains were found in a submerged in a cooler in a Yolo County canal in 2007. As a result of this identification, an individual has been charged with five counts of murder for the deaths of Nikko and four of his siblings. This case made headlines when it took third place in the international DNA Hit of the Year competition.

**Mitochondrial DNA.** The MPDP became the first accredited state crime laboratory to conduct whole mitochondrial DNA genome sequencing using massive parallel sequencing technology in February 2020. Using this technology, valuable genetic information can be obtained from unidentified remains that cannot be typed with traditional typing methods due to exposure to extreme environmental abuse. This technology will significantly increase MPDP’s ability to identify severely compromised human remains.

**Toxicology Laboratory.** With the legalization of marijuana in California, the driving under the influence of drugs (DUID), toxicology caseload is expected to continue to increase. The Toxicology Laboratory is responding proactively by validating and implementing new methods and workflows to expand capabilities, increase efficiency and mitigate backlogs. The Toxicology Laboratory has recently completed a new method for drugs in blood, which combines five methods into one. This “One Stop

Shot – Toxicology Method” allows for the identification of 58 drugs (46 quantitated), smaller sample size, and a significant reduction in analytical time, which addresses the needs of our client agencies. Soon, there will be national recommendations for states to meet minimum criteria for toxicological testing. The Toxicology Laboratory will exceed that requirement. Within the next four to six months, urine and oral fluid methods will be completed as well.

**Responding to the effect of the COVID-19 pandemic on California Criminalistics Institute (CCI) course offerings.** Out of an abundance of caution, CCI postponed all in person courses indefinitely as of March 12, 2020. In response to the postponement of in person courses, CCI pivoted to providing courses that could be quickly reconfigured to an online format.

The COVID-19 situation provided a unique opportunity for CCI to evaluate the effectiveness of online course offerings. CCI took this opportunity to develop several new and innovative course or webinar offerings that provided forensic scientists the opportunity to attend training courses in a teleworking or remote environment. CCI will continue to develop and offer online content and incorporate into traditional in person offerings as the COVID-19 situation subsides.

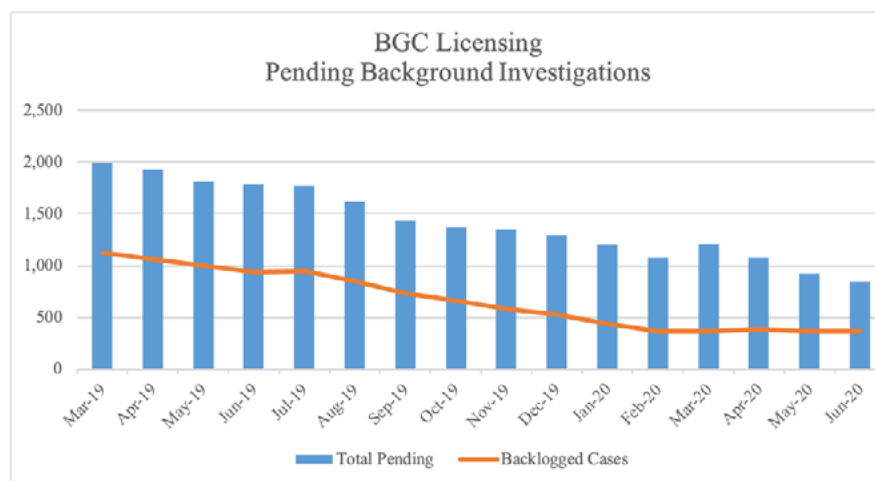
<b>Courses Reformatted to an Online Platform</b>	
T101	Introduction to Forensic Toxicology
C132	FTIR Instrumentation and Sample Prep
C131	Interpretation of Infrared Spectra
H102	Laboratory Safety Officer
R107	Case Approach to Biological Evidence Workshop
R153	Y-Chromosome Short Tandem Repeat Analysis
A120	Technical Writing for the Forensic Scientist
A130	Ethics in Forensic Science
<b>New Online Courses Developed</b>	
M401w	Understanding Koehler Illumination
A410w	Journal Article Review: Wading Through the Waters
T401w	Breath Alcohol Testimony
R401w	Investigative Genetic Genealogy
FAE451	Ammunition Reloading

## **BUREAU OF GAMBLING CONTROL**

**Licensing Section Decrease in Backlogged BGC Cases.** In March 2019, the Bureau of Gambling Control (BGC) had 1,990 pending background investigations required for applicants of California cardrooms and Third-Party Providers of Proposition Player Services (TPPPS), of which 1,129 were considered backlogged<sup>3</sup>. By the end of fiscal year 2019-2020, the pending background investigations had been reduced to 842 pending investigations, of which 370 were considered backlogged. Most notably, in September 2019, the Cardroom Licensing Unit processed 73 of the more complex cardroom owner applications in one month, which represents the most cardroom owner applications processed in a month during the last fiscal year. Also, in December 2019, the TPPPS Licensing Unit completed four of the more complex provider background investigations and processed 33 associated applications.

<sup>3</sup> Backlogged cases refer to pending background investigations that are over 180 days old.

The chart below illustrates the decrease in the number of pending and backlogged background investigations from March 2019 through June 2020. The increase in productivity can be attributed to BGC receiving additional positions, the hiring of BGC Deputy Attorney General positions, streamlining and combining procedures across similar license types, and redirecting staff to work on other license types where the workload necessitated additional resources.



**Compliance and Enforcement Investigations and Inspections.** Between January 1, 2018 and June 30, 2020, the Compliance and Enforcement Section (CES) initiated 512 investigations and 297 regulatory compliance inspections of licensed cardrooms and tribal casinos. As a result of criminal investigations, search and arrest warrants were issued and illegal gaming devices, illegal narcotics, and other contraband were seized. CES staff also generated 6 accusations against cardrooms (administrative actions seeking to revoke gambling licenses), 37 letters of warning to cardrooms, and 94 tribal inspection letters and reports.

**BGC Creates Casino Money Laundering Working Group.** In February 2020, BGC created the Casino Money Laundering (CML) Working Group with the Chief of the United States Attorney’s Office (USAO) International Narcotics, Money Laundering, and Racketeering Section. The CML Working Group is made up of management level representatives from BGC; the USAO Central and Eastern Districts; DOJ Criminal Fraud and Special Prosecutions Unit; DOJ Indian and Gaming Law Section; IRS Criminal and Civil Branches; Homeland Security Investigations (HSI); FinCEN; and the Nevada Gaming Control Board, Investigations and Intelligence Section. BGC currently co-chairs the working group. The CML Working Group has adopted and will be working collaboratively on matters involving money laundering and organized crime occurring in California casinos.

**Illegal Gambling/RICO Investigation Results in \$3.6 Million Seizure.** BGC worked jointly with HSI, as part of the High Intensity Financial Crimes Area Task Force (HIFCA), to investigate an illegal sports betting and bookmaking operation in Southern California. In 2020, search warrants were executed at the residences of the primary suspects. As a result of the warrants, credit card statements, betting ledgers, several computers, customer lists, cell phones, approximately 20 firearms, and approximately \$880,000 were seized from the locations. A total of \$3.6 million has been identified and requested for asset forfeiture in this case by the BGC. As a result of the investigation, the USAO is pursuing charges under the Illegal Gambling Act, Wire Act, Travel Act, and Racketeer Influenced and Corrupt Organizations (RICO) Act.

**Indoor Marijuana Grow Houses.** In August 2019, BGC Special Agents conducted an investigation prompted by suspicious financial activity in a cardroom. The investigation resulted in three search warrants being served simultaneously in Sacramento. BGC was assisted by BOF, BI, and BFS. Four suspects were arrested and booked on charges related to cannabis cultivation and conspiracy.



**Red Hawk Casino Embezzlement Investigation.** In November 2019, BGC was contacted by Red Hawk Casino regarding an employee and casino patron allegedly embezzling over \$200,000 from the casino. Upon investigation, it was determined that the two individuals may have been working together to embezzle funds through the use of casino “markers” which were forged and falsified by the employee. A “marker” is a short term, no-interest credit line extended by the casino to approved patrons for easy access of gambling funds. It is alleged the employee worked as a floor manager and would extend “markers” to the patron, and indicate they were paid back in full when they were not. Each loan was between \$12,000 and \$14,000, for a total amount of approximately \$224,000. BGC Special Agents arrested both individuals. The suspects pled guilty to Penal Code section 459, commercial burglary and were sentenced to one year in jail, five years of probation with a no gambling provision, a stay away order from Red Hawk Casino and were ordered to pay restitution.

**Settlement Against Hawaiian Gardens Casino.** On December 5, 2019, based on the Memorandum of Understanding between BGC and FinCEN, DOJ announced a \$3.1 million settlement with Hawaiian Gardens Casino. The settlement resulted from an accusation brought against the cardroom in 2016 for violations of the Bank Secrecy Act (BSA) and failure to report FinCEN’s investigation of the cardroom to BGC. The \$3.1 million settlement was in addition to a \$2.8 million assessment by FinCEN for failing to implement and maintain an effective Anti-Money Laundering Program, failing to report large cash transactions, failing to file many suspicious activity reports, and failing to keep certain required records in violation of the BSA.

**Emergency Closure of Magnolia House Casino.** On January 6, 2020, BGC issued an Emergency Closure Order to the Magnolia House Casino in Rancho Cordova. The closure was related to the cardroom’s failure to maintain adequate funds to cover their chips in use and player bank liabilities. An administrative accusation was filed seeking to revoke the cardroom license. The controlling interest holder entered into a stipulated settlement with BGC that was approved by the Commission. The stipulation included the following: suspension of the cardroom’s gaming license, which is stayed for a period of 12 months to allow for the sale of the cardroom; a lifetime ban prohibiting the controlling interest holder from holding any license, registration, or permit related to gambling in the State that is under the jurisdiction of the BGC and the Commission; and payment of \$50,000 in costs to BGC. The cardroom remains closed.

**Dealer Arrested in \$4.3 Million Cheating Scam.** In May 2020, BGC Special Agents traveled to the State of Texas to effect an arrest warrant on two suspects believed to be involved in a cheating scam at Parkwest Casino 580 in Livermore. The suspects, who were husband and wife, were allegedly involved in a cheating scam at the cardroom where the wife dealt EZ Baccarat. The suspects were arrested for felony commercial burglary, grand theft, and conspiracy. BGC determined that the pair is believed to have had a net winning of approximately \$4.3 million during that time. Both suspects were arraigned in Alameda County Superior Court on August 10, 2020; their next hearing date is scheduled for September 4, 2020.

## **BUREAU OF INVESTIGATION**

### **Foreign Prosecution and Law Enforcement Unit Program**

- **1980 U.S. Hague Convention Treaty/Child Abduction & Safe Return of Two Children.** On September 13, 2019, the Foreign Prosecution and Law Enforcement Unit Program (FPLEU) received a request to assist the Los Angeles County Department of Children and Family Services with a judicial hearing in Mexico regarding the application of the International Hague Convention related to parental abductions. The FPLEU coordinated with Oaxaca, Mexico State Police to locate and present the children to Mexico’s Child Protective Services in preparation for the Hague Convention hearing a few days later. A judge subsequently approved the children’s return to their father in Los



Angeles County. The minors were escorted to an airport in Mexico to travel to Tijuana--San Diego U.S. Port of Entry. The FPLEU coordinated with U.S. Customs and Border Protection to facilitate entry into the U.S. Once in the U.S., the children were re-united with their father.

### ***Recycle Fraud Team***

- ***Arizona California Redemption Value (CRV) Fraud.*** In 2019, the BI, Recycle Fraud Team (RFT), received information which related an Arizona resident was responsible for purchasing, packaging and ultimately smuggling thousands of pounds of out of state (OOS) empty beverage container (EBC) material from Phoenix, Arizona to California.

Starting in April 2020, BI Special Agents began conducting 24 hour surveillance. From June 22-25, 2020, the BI Special Agents served numerous search warrants, seized six vehicles (including two semi-trucks) and arrested nine suspects (including a suspect in Arizona) at various self-storage locations, recycle centers and commercial lots. A total of 45,226 pounds of OOS/EBC material was seized and processed. The material seized had a CRV value of \$67,324.16. Based on evidence collected in this investigation it is believed that the suspect and his co-conspirators defrauded the CRV fund of over \$25 million dating back to 2005.

- ***Pacoima, California Fraud Organization.*** In 2019, the BI, RFT, received information stating that the owner of a recycling center in Pacoima, California, was involved in a large scale recycling fraud organization which utilized various Los Angeles area self-storage facilities to import, store and sell OOS/EBC material. The OOS/EBC material was suspected of being redeemed at recycling centers resulting in a significant loss to the CRV fund. A total of 27,653 pounds of OOS/EBC material was seized and processed. The material seized had a CRV value of \$38,890. Based on evidence collected in this investigation it is believed the total loss to the CRV fund exceeded \$2 million dollars.

### ***Special Investigations Team***

- ***Familial DNA Investigation Solves 2012 kidnapping and sexual assault of six-year-old girl.*** In August 2019, the Special Investigations Team (SIT) was informed by the BFS of a familial DNA match to a Santa Ana Police Department (SAPD) cold case investigation involving the kidnapping and sexual assault of a six-year-old girl. The BI personnel conducted an analytical investigation and searched for potential first-degree relatives, providing the results to SAPD in September 2019. As a result of the DNA evidence and SIT's investigation, a suspect was identified, and has been arrested and charged for kidnapping with intent to rape. He is pending a jury trial.
- ***Familial DNA Investigation Leads to Arrest in 2013 Homicide of 94 Year Old Woman.*** In early 2019, BFS informed SIT of a familial match to a Yuba City Police Department (YCPD) 2013 unsolved homicide. The case involved a 94-year-old woman who was brutally beaten and murdered in her home. BI personnel conducted an analytical investigation and searched for first-degree relatives, providing the results to the YCPD in February 2019. As a result of the DNA evidence and SIT's investigation, the YCPD identified a potential suspect in the homicide. In April 2019, the suspect was arrested and charged with murder. He is pending a jury trial.
- ***Financial Fraudster Sentenced to 17 Years in Prison.*** In June 2018, SIT concluded a nine-month investigation into allegations of fraud committed by the owner of Reimers Financial Services. The suspect was accused of taking monies from retired and elderly clients under the guise of investments. During the course of the investigation, SIT agents met with victims of the suspect, most of whom were not aware they were victims, as they had not requested to withdraw funds from their investment accounts. SIT Special Agents and Auditors obtained financial records and, pieced together an audit trail. SIT Special Agents obtained a search warrant for the suspect's

residence and business, and an arrest warrant. In April 2019, the suspect pled guilty to nearly all of 126 felony counts of fraudulent and prohibited practices, elder abuse, grand theft and burglary. In July 2019, he was sentenced to pay restitution in the amount of \$1,800,000 and serve 17 years in prison.

- **Price Gouging During a State of Emergency.** In March 2020, Governor Newsom declared a state of emergency due to the Coronavirus pandemic (COVID-19). Between March and June 2020, SIT investigated over 50 cases of price gouging throughout California. Nearly all of the cases involved an increase beyond the 10 percent threshold in the sales price of household staple grocery items or personal protective equipment. To date, two cases have been filed by the DOJ.

### **Special Operations Unit**

- **Dismantling of MS-13 gang in Mendota, California – Operation Blue Inferno.** In January 2018, several law enforcement agencies partnered together to target the criminal activities of the Mara Salvatrucha (MS-13) gang in the Central Valley. The investigation focused on the murders that had taken place in or around the city of Mendota over the past three years. The murders were believed to have been carried out by MS-13. In total, 43 MS-13 gang members were arrested and charged during this investigation. Of the 43 MS-13 gang members, 17 were charged with murder. The remaining suspects were charged with a combination of charges including but not limited to physical assaults, attempted murders, and/or conspiracy to distribute narcotics in aid of racketeering (MS-13 Enterprise). This investigation completely dismantled the MS-13 gang in Mendota, California. The SOU team was honored with the United States Attorney’s award for their work on the MS-13 case. The team also traveled to El Salvador to help Salvadoran law enforcement implement and manage electronic surveillance. This program has completely removed MS-13 from central San Salvador and the country has been able to indict over 270 members of Los Centrales Salvatruchos Locos.
- **Investigation into the Norteno Street Gang Operating in Stockton Results in 50 Arrests.** In August 2019, a joint investigation with SOU Team, the Stockton Police Department’s Gang Violence Suppression Unit and the San Joaquin County District Attorney’s Office, resulted in the arrest of 50 Norteno gang members and associates. Several acts of violence including a planned armed robbery, attempted murder, and conspiracy to commit murder were prevented during the course of the investigation. As a result of the investigation, 50 felony arrests were made, as well as the seizure of 43 firearms, one pound of heroin, one pound of methamphetamine, one pound of Fentanyl, two pounds of cocaine, 20 pounds of marijuana and \$8,625.00 in U.S. currency.

Additionally, suspects were identified in the shooting of a ten-year-old girl who was struck by a stray bullet while playing in her backyard. A male adult and two juvenile male gang members were arrested for the crime.

- **Bust of Violent Sureño Street Gangs Operating at the Direction of the Mexican Mafia.** The Mexican Mafia is a highly organized criminal organization that operates throughout the California prison system and is known by its Spanish slang name, “La Eme” (“the M”). The Mexican Mafia is allegedly involved with murders, assaults, extortion, and other criminal activities. Gang members may be punished or murdered for committing infractions, refusing orders or failing to demonstrate loyalty to the group.

In January 2018, a joint investigation with the Orange County Sheriff’s Department and the SOU team targeted these criminal street gang members and “La Eme”, resulting in the arrest of 85 individuals and the seizure of 14.7 pounds of methamphetamine, 3.1 pounds of marijuana, 36 firearms including assault rifles and semi-automatic weapons, and \$40,195 in currency. The investigation is believed to have prevented five violent crimes orchestrated by “Sureño” gang

members at the direction of the Mexican Mafia.

### **Task Force Program**

- **Placer Investigation into Importing Concentrated Cannabis Products.** In May 2020, Placer Special Investigation Unit (SIU) conducted an investigation of two suspects who were believed to be conducting out of state sales of concentrated cannabis products and importing cannabis products into the state. The suspects predominately use the U.S. Postal Service to send and receive parcels of concentrated cannabis and bulk currency (drug proceeds). The suspects used Facebook and Instagram social media platforms to promote and facilitate drug sales and used money transfer services such as PayPal, Venmo, Cashapp, Coinbase and Bitcoin as well as traditional banking entities to facilitate illicit and untaxed money transactions. The suspects used a straw mailing address in Placer County to receive parcels of cannabis and bulk currency. They resided at an “Airbnb” rental property used to operate a well-organized cannabis packaging, labeling and shipping operation. The Placer SIU team executed a Ramey arrest warrant for one of the suspects and two residential search warrants. Agents seized three AR-15 style assault rifles, several high capacity and drum rifle magazines, a 9mm handgun, a large amount of concentrated cannabis, \$63,723 in bulk currency and two vehicles as drug proceeds. Agents also identified and “froze” an additional \$62,000 in drug proceeds held in accounts belonging to the suspects. The suspects were charged with Give/Transport cannabis over 28.5 grams - out of state; Possession of cannabis for sale; and Illegal possession of assault weapon.
- **High Intensity Drug Trafficking Area Assists Homicide Case.** In April 2020, the Merced Area Gang and Narcotic Enforcement Team Task Force (MAGNET), a High Intensity Drug Trafficking Area (HIDTA) initiative, was requested to assist the Los Baños Police Department (LBDP) with solving a homicide. In March 2020, the LBDP responded to a report of shots fired and located a male victim with multiple injuries including a gunshot wound. The victim succumbed to his injuries and a homicide investigation was initiated. After exhausting all conventional leads, the LBDP requested MAGNET locate the suspects, who they believed had fled from the Central Valley to the Bay Area. MAGNET agents were led to a location in Stockton, California, and with LBDP’s assistance, a search warrant was served. Additionally, two suspects were arrested and charged with murder. Two additional suspects were arrested and charged with harboring a fugitive. All suspects are currently facing charges in Merced County Superior Court.
- **Tulare Investigates Narcotic Related Crimes and Unsolved Homicide.** Beginning in October 2019, the Tulare County Agency Regional Gang Enforcement Team (TARGET) task force, along with the Tulare County Sheriff’s Office and the Drug Enforcement Administration, began an investigation into narcotic related crimes being committed by gang members. The investigation concluded in January 2020, with the service of 18 search warrants and the seizure of 21 firearms, 150 pounds of processed marijuana, 10 ounces of heroin and four ounces of methamphetamine. As a result of the investigation, 25 gang members and their associates were arrested, effectively dismantling the Norteno street gang in the Cutler-Orosi communities of Tulare County.
- **Narcotics Seized from Semi-Militarized Mexican Criminal Gang.** Between March and December 2019, the High Impact Investigation Team (HIIT), a HIDTA initiative, conducted an investigation of the Jalisco New Generation Cartel (Cartel del Jalisco Nueva Generation/CJNG) based in Mexico. During the course of the investigation, several undercover operations were conducted where large amounts of narcotics were seized and arrests were made. In total, 124 pounds of methamphetamine, 8.8 pounds of fentanyl-laced or “synthetic” heroin, 50.9 pounds of heroin, and 62,000 OxyContin counterfeit M30 pills laced with fentanyl and over \$260,000.00 was seized. Currently, 11 suspects are pending federal prosecution for conspiracy to transport and sell controlled substances.

## ***Tax Recovery in the Underground Economy***

- ***Rainbow Bright Residential Care Facility Investigation.*** The Sacramento Tax Recovery in the Underground Economy (TRUE) Program was contacted by the San Mateo District Attorney's Office with information that initiated an investigation into the owners of "Rainbow Bright," who operated four adult residential care facilities and two child day care facilities in San Mateo County. The Rainbow Bright's owners allegedly forced employees to work nearly 24 hours a day, sleep on floors and in garages. The investigation also identified three alleged rapes, sexual assaults by one of the owners of the company, for which he has been charged. The Program developed evidence indicating the suspects were involved in wage theft, workers compensation, and unemployment insurance fraud, allegedly totaling more than \$8.5 million.

On September 6, 2018, the BI Special Agents executed search warrants at three residences and six businesses. A 59-count criminal complaint was filed and all four subjects were arrested. BI Special Agents seized more than \$200,000 in cash, 14 illegal assault weapons (including three "Ghost Guns"<sup>4</sup>), seven handguns and 10 extended magazines. This case is pending trial with the Criminal Law Division.

- ***Nevada Tobacco Products Inc.*** The TRUE Program conducted an investigation into Nevada Tobacco Products Inc. (NTP). The investigation revealed that NTP purchased tobacco products from outside California, and distributed them inside California. The investigation also revealed that NTP submitted false excise tax returns in which they failed to report approximately \$50,528,702 in tobacco distributions, and failed to pay approximately \$14,508,397 in excise tax.

On November 1, 2019, the owner pleaded guilty to six felony counts and is required to pay \$13,000,000 in restitution and is expected to be sentenced to seven years in state prison.

- ***Sam Woo BBQ Restaurants.*** The TRUE Program began an investigation into the Sam Woo BBQ Restaurant chain. The Program received information that the restaurant chain was using sales tax evasion software on their Point of Sales (POS) computer system and fraudulent register tapes from their non-POS electronic cash registers, to under report the true amount of their taxable sales. The Program conducted an audit of several restaurant locations and discovered that Sam Woo BBQ Restaurants underreported \$7,683,371 in taxable sales to the State of California Department of Tax and Fee Administration and evaded \$691,504 in sales tax.

On February 20, 2019, the BI Special Agents served search warrants at several Sam Woo BBQ Restaurants, a storage location, and an accountant's office. On August 11, 2020, the owner plead guilty to multiple felonies for which he is expected to be sentenced to 3 years in state prison and required to pay restitution in the amount of \$2,964,375.93.

## ***White Collar Investigation Team***

- ***Notary Public Fraud in Garden Grove, California.*** In March 2020, the BI, White Collar Investigation Team (WCIT), was referred an investigation by the Garden Grove Police Department. This investigation involved a licensed Notary Public and another suspect who allegedly forged the signature of a victim on several loan and mortgage documents allowing them to borrow \$300,000 in equity resulting in a lien being placed on the victim's property.

Following execution of a search warrant by BI Special Agents, the suspects were arrested and faced multiple charges.

<sup>4</sup> The term ghost guns can be defined as privately made [firearms](#) that do not have a commercial [serial number](#) or other identifying marks.

- **Analytical Assistance for Tehama County.** The Tehama County Sheriff’s Department requested analytical assistance from the Western States Information Network (WSIN) on a home invasion that involved a homicide case. During a home invasion on January 29, 2019, five suspects lured three victims of a family out of their home and attempted to take them hostage. One victim broke free from his captors, acquired a firearm and killed two of the suspects. The remaining three suspects fled the premises. It was later discovered that the victim’s family operated a marijuana grow and the assailants had conspired to take the family hostage in order to steal their drugs and money. It was also discovered that there were additional co-conspirators waiting with a large rented truck at a nearby truck stop. The WSIN analyst was asked to analyze cell phone downloads of the victims, the deceased suspects, and two of the other suspects. The analyst was able to extract relevant conversations from the cell phone downloads and compile them into a multi-media presentation. Relevant location data, videos, and photos were also incorporated and used to identify the other individuals involved and determine how the suspects knew to target the family. Ultimately, all three of the suspects have been arrested and have pled guilty.





# LEGAL SERVICES DIVISION

The Legal Services Division is organized in the following four areas: Public Rights Division, Civil Law Division, Criminal Law Division and the Division of Medi-Cal Fraud and Elder Abuse.

## PUBLIC RIGHTS

Through its 510 employees, the Public Rights Division serves Californians by protecting their civil rights, ensuring their access to effective and efficient health care, safeguarding the State's environment and natural resources, protecting state lands, maintaining competitive markets, preventing fraudulent business practices, protecting consumers against false advertising and other predatory practices, and preserving charitable assets.

The Public Rights Division consists of the following sections:

- The **Antitrust Law Section** is responsible for civil and criminal enforcement of California's antitrust laws and has authority to file civil actions under federal antitrust law. The section vigorously pursues investigations and prosecutions, on its own and in collaboration with other states and federal agencies, to prevent and stop anti-competitive and unfair business practices, such as price-fixing. The section also investigates potential antitrust violations, reviews proposed mergers and acquisitions, litigates cases in state and federal courts, and prosecutes criminal cases.
- The **Charitable Trusts Section** has authority over charities, charitable trustees, and fundraising professionals incorporated, or operating in California. The section is responsible for:
  - o Identifying, registering, collecting and maintaining public records for California charities and their fundraisers.
  - o Prosecuting charity fiscal abuse, including fraud, diversion and mismanagement of funds.
  - o Prosecuting fraudulent or misleading charitable solicitation and reporting.
  - o Reviewing transactions that have a significant impact on the charity and its assets, including a merger, sale of assets, conversion to another corporate status and disposition of assets when a charity is dissolved.
    - Reviewing transactions involving the sale of nonprofit health facilities or the transfer of their assets, which requires the Attorney General's written consent.
    - Representing the People of the State of California, as beneficiaries, in trust and probate litigation involving charitable gifts to unnamed charities.
- The **Civil Rights Enforcement Section** enforces civil rights laws on behalf of state agencies and the Attorney General in his independent capacity. The section acts when there are civil rights law violations or where an important or unsettled issue of law is presented. The section conducts investigations, files civil actions in state and federal courts, and participates in appellate proceedings, often as amicus curiae. The section also houses:
  - o The **Bureau of Children's Justice**, was created to focus on enforcing California's civil and criminal laws that protect children and to hold accountable institutions that fail to uphold children's rights under the law. During this biennial period, it has expanded its role in investigating and engaging in policy actions that help to address gaps in regulation or oversight between different subject matter areas.
  - o The **Disability Rights Bureau**, is currently planned to launch in 2021 once fully staffed. The Bureau is designed to focus on ensuring that the rights of persons with disabilities are represented across all of the Civil Rights Enforcement Section's matters, and also advanced



through specific investigations and litigation.

- The **Consumer Protection Section** protects California consumers by combatting unlawful, unfair and deceptive conduct, false advertising, and other illegal trade practices. The section, which includes the office’s Privacy Unit, investigates and prosecutes complex civil enforcement actions in the name of the People of the State of California to obtain restitution for victims as well as injunctions and civil penalties that reform industry behavior and deter future misconduct. The section also has the capability to conduct criminal investigations and prosecutions and bring challenges under the Administrative Procedure Act to challenge federal actions that harm consumers, and it has a robust appellate amicus practice that supports local prosecutors and protects the effectiveness of state and federal consumer protection laws.
- The **Corporate Fraud Section** investigates and prosecutes cases concerning securities and commodities fraud, market manipulation arising out of California’s energy crisis; and financial wrongdoing perpetrated against the state under California’s False Claims Act. The section also brings actions under the Administrative Procedure Act to challenge federal actions that put at risk protections for investors and those saving for retirement, and collaborates with other states and federal agencies on securities fraud and false claims.
- The **Environment Law Section** enforces state and federal environmental laws that affect California’s natural resources and public health. The section investigates and litigates matters to ensure that environmental laws are enforced fairly, so that all Californians enjoy the benefits of a clean environment; protect all Californians from toxic chemicals, reduce emissions of greenhouse gases that contribute to global warming, and prohibit air and water pollution; exercise the Attorney General’s broad independent authority under a variety of state and federal laws to protect California’s natural resources from pollution, impairment, and destruction so that they may continue to be enjoyed by current citizens and future generations; challenge federal government environmental regulatory roll-backs; and represent the Department of Toxic Substances Control (DTSC) in its enforcement of federal and state hazardous waste control laws, including enforcement of the “Superfund Law” created to protect people and communities from heavily contaminated toxic waste sites. The section also houses:
  - The **Environmental Justice Bureau** which was created to protect people and communities experiencing a disproportionate share of environmental pollution and public health hazards, through investigation and enforcement of violations of environmental laws. The Bureau uses the Attorney General’s independent authority to protect these vulnerable frontline communities from exposure to pollution and to help make sure the communities’ voices are heard
  - The **Healthcare Rights and Access Section** serves as the lead in affirmative health care work, representing the Attorney General in his independent capacity and coordinating this work with other sections in the Department. The Healthcare Rights and Access Section has comprehensive authority to work on any matters, including investigations, litigation and legislation, that will increase and protect the affordability, accessibility, and quality of health care in the State of California. The Section is responsible for overseeing and leading all work in the areas of consumer health care rights, anticompetitive consolidation in the health care market, anticompetitive drug pricing, nonprofit health care transactions, health care privacy issues and health care civil rights, such as reproductive rights and LGBTQ health care-related rights. Currently, the Healthcare Rights and Access Section is monitoring and defending against federal efforts that undermine the Affordable Care Act, Medicaid, Women’s and LGBTQ health rights, and other attempts to rollback progress made to instill and protect health care as a right for all Californians. The Healthcare Rights & Access Section provides advice regarding health care law to the Governor’s Office and other offices and state agencies. The Section also houses:
    - The **Tobacco Litigation and Enforcement Unit**, formerly its own Section was added to

the Healthcare Rights and Access Section to coordinate litigation, create more efficiency and continue the Department's efforts to improve the health and safety of Californians statewide. The Unit enforces state and federal laws that control the marketing and sale of tobacco products. The Unit also protects and enforces California's rights under the nationwide Tobacco Master Settlement Agreement (MSA), which limits the marketing of certain tobacco products and entitles California to settlement payments for ongoing cigarette sales. In addition, the Unit facilitates the distribution of Proposition 56 tobacco tax funds to local agencies to enforce state and local tobacco laws.

- The **Indian and Gaming Law Section** provides legal representation and advice regarding Indian law and gambling to a number of state offices and entities. This section also participates in the negotiation, interpretation, enforcement, and defense of tribal gaming compacts. It also counsels on, and litigates, issues relating to unlawful gambling, licensing of card rooms, their employees, their contractors, certain tribal employees, and compliance with gambling regulations.
- The **Land Law Section** represents and advises the State in land use litigation and in cases that involve lands that the State owns and administers for resource conservation or development. The section's attorneys are authorities on laws pertaining to land use and resource regulation, environmental review, real property, the public trust doctrine, oil and gas development, administrative procedure, and on the law applicable to constitutional takings. This section provides legal representation for a number of state offices and agencies.
- The **Natural Resources Law Section** represents the majority of state agencies responsible for natural resources management or pollution control. The section handles complex environmental litigation both in defense of client actions and enforcement of pollution laws and regulations. Much of the section's litigation work involves the Air Resources Board, the State Water Resources Control Board, the Regional Water Quality Control Boards, the Department of Water Resources, the Department of Fish and Wildlife, the Department of Forestry and Fire Protection, and CalRecycle. The section also represents the Department of Food and Agriculture and the 55 District Agricultural Associations.
- The **Worker Rights Section** investigates and brings civil and criminal actions against employers and other entities that engage in unlawful employment practices, including violations of wage and hour laws, health and safety standards, and tax and insurance laws. The Worker Rights Section works closely with other federal, state and local agencies including the California Department of Industrial Relations – Division of Labor Standards Enforcement, the Employment Development Department, and the United States Department of Labor.

## MAJOR ACCOMPLISHMENTS

### ANTITRUST LAW SECTION

**California v. Sutter Health.** In December 2019, the Attorney General filed a settlement of this suit against the largest health care provider in Northern California to challenge business practices that undercut competition in health care and lead to higher costs for employers without improvement in quality of care. In addition to substantial monetary relief for self-insured employers, the injunctive terms of the settlement compel abandonment of Sutter's coercive all-or-nothing contracting practices, and prohibit its interference with tiering of health insurance plans to offer greater affordability to consumers.

**California v. Teva.** A long investigation into Teva's use of pay-for-delay agreements with generic drug

manufacturers to maintain its monopoly in the drug Provigil was settled in July 2019. The settlement, which received court approval in 2020, included \$69 million in monetary relief for consumers as well as the state, and provides for monitoring of other Teva pacts limiting generic drug marketing.

**California v. Vitol.** In May 2020, the Attorney General filed a complaint charging two major gasoline trading companies with conspiracy to manipulate California gasoline markets during 2014-16 by means of collusive and fraudulent trades on the spot market in order to raise prices of larger transactions and the gasoline market as a whole. The investigation leading to this complaint included information from the proceedings of the Petroleum Marketing Advisory Committee of the California Energy Commission and its 2017 final report.

**New York et al. v. TMobile & Sprint.** Attorney General Becerra led this nationally significant case brought by California and other state Attorneys General to block the merger of TMobile and Sprint, which was filed in June 2019 and went to trial in December 2019. Following an adverse ruling by the court, the Attorney General negotiated a settlement in March 2020 that included extension of low-priced rate plans for California consumers, free mobile broadband for low-income families with school-age children, jobs retention, and \$15 million in attorneys’ fees and costs of litigation.



Infographic highlighting healthcare cost disparities in California as part of *California v. Sutter Health* lawsuit.

## CHARITABLE TRUSTS SECTION

The Registry of Charitable Trusts receives and processes initial registration and annual renewal reports for nonprofit charities and professional fundraisers. Currently, over 114,000 registered charities are required to file annual reports with the Registry. The Registry also responded to over 116,000 requests for information, and made over 370,800 documents available to the public. Total documents available to the public now exceed 2.5 million. The following table reflects some of the Registry’s core metrics:

Registry of Charitable Trust Statistics	2018-2020 Biennial Volume
Initial Charity Registration Forms Processed	10,707
Annual Charity Renewal Reports Processed	92,408
Charity Delinquency Notices Issued	21,282
Charity Dissolution Requests Processed	6,143
Charity Dissolution Waivers Issued	4,286
Raffle Registration Forms Processed	14,199
Raffle Report Forms Processed	10,388
Professional Fundraiser Financial Reports Processed	4,117
Professional Fundraiser Notice of Intent Forms Processed	5,227
Complaints Processed	1,908

**Note:** Due to the COVID-19 outbreak and the resultant stay at home orders, temporary business closures, and the extension of the IRS tax filing deadline to 7/15/20 many renewal fees and forms submissions have been delayed/deferred. The initial impacts to the Registry due to these events are reflected in some of the above metrics. It is anticipated that the full results will be reported in the 2020-2022 report, and may reflect material impacts to compliance measures such as registrations, delinquencies and fees.

**People v. Cars 4 Causes.** The DOJ and the District Attorney of Ventura County filed an action against Cars 4 Causes (“C4C”), its directors and accountant. Cars 4 Causes misrepresented to donors that their designated charity would receive 70 percent of the net proceeds. Additionally, the charity stopped making payments to the intended charity beneficiaries of the car donations. The case settled for \$1,020,000, required the dissolution of the charity and a permanent ban against the directors and officers from operating any charity in California.

**People v. Matthew Bishop et al. (Jean Schroeder Education Trust.)** The Office of the Attorney General filed an action to remove the trustees of the Jean Schroeder Education Trust, for an accounting and other relief. The Education Trust was created to provide scholarships to college students, but the investigation revealed that the trustees instead engaged in multiple violations of law, including excessive compensation, self-dealing transactions, and other diversions of charitable assets. The court appointed a temporary trustee to take control of the trust assets and to conduct a forensic accounting. The primary trust asset, real property located in Napa, was quitclaimed back the Education Trust and sold for \$1.585 million. The office reached a settlement for \$450,000 and obtained a ban against the trustees from serving as fiduciaries in the future.

**Administrative Action against Food for the Poor, Inc., MAP International and Catholic Medical Mission Board, Inc.** These three charities receive hundreds of millions of dollars each year in pharmaceutical donations from U.S. drug companies. Most of the drugs are restricted for distribution and use overseas. Despite this restriction, all three charities, as well as many others across the nation, are allowed by Generally Accepted Accounting Principles (GAAP) to use extremely high U.S. market prices in valuing the drugs. Using U.S. prices results in substantially inflated revenue and program expense numbers on regulatory filings, and also has the result of artificially diminishing fundraising and administrative expenses. The charities each use solicitations with illustrative pie charts alongside statements claiming that 95-99 percent of donations are used for charitable programs. Some solicitations use nickel graphics to indicate that only 5 cents of every dollar are used for administrative costs. The statements mislead donors to believe that 95-99 cents of every dollar donated will be used for programs rather than administrative and overhead costs. An Administrative Law Judge found that the solicitations were deceptive and awarded \$1 million in penalties against Food for the Poor, \$409,575 against Catholic Medical Mission Board and \$80,600 against MAP. The Judge also ordered the charities to cease and desist from including in their solicitation’s statements of percentages of combined cash and non-cash donations in their solicitations directed to California donors. The charities filed an appeal with the DOJ. The Attorney General adopted the Administrative Law Judge’s decision on September 6, 2019. The charities requested the administrative record and stated an intent to file petitions for writs of administrative mandamus.

**Lithuanian Assistance Foundation.** The Lithuanian Assistance Foundation (LAF) received four apartment buildings in Santa Monica from two donors. The proceeds from the buildings were to be used for the benefit of the people of Lithuania. Certain LAF board members transferred three buildings to limited liability partnerships owned by two directors and the son of LAF’s president. Another building was transferred to a partnership formed by long-term employees of LAF’s president. The Attorney General reached a settlement in the amount of \$7.2 million. The settlement provides that LAF will dissolve and two directors were banned from serving as directors, trustees or founders of any charity in California.

***People v. William Shine (and Related Appeals).*** Under the terms of the Eva Lindskog Trust (“Trust”), William Shine, as the trustee had a duty to use \$20 million in income-producing real property assets from Eva’s estate to form and fund a charitable foundation. Instead of forming a foundation, Shine operated the Trust’s rental properties for the next eight years without making any charitable donations. After a six-week bench trial, the Court awarded the Eva Lindskog Trust \$1.42 million in damages. Four appeals were filed and in 2020 the Court of Appeal reduced the judgment to \$1.2 million in damages, affirmed the \$1.6 million fee award, and affirmed the denial of Shine’s fee petition. The Lindskog Foundation has new management and has begun making distributions to the charities Eva Lindskog identified in 2003.

## **CIVIL RIGHTS ENFORCEMENT SECTION**

***Federal Grant Funding Conditions Litigation.*** In August 2017, the Attorney General filed a complaint against the federal government challenging immigration enforcement conditions imposed on federal Edward Byrne Memorial Justice Assistance Grants (“JAG”) and Community Oriented Policing Services (COPS) grants. The Attorney General alleged that the federal government violated the separation of powers by adding these conditions, and that the conditions violated the Spending Clause of the U.S. Constitution because they were ambiguous and unrelated to JAG’s federal purpose, and were arbitrary and capricious under the federal Administrative Procedure Act. On October 5, 2018, the district court ruled in favor of California, holding that the federal government’s first set of immigration enforcement conditions on the 2017 JAG funds were unlawful and unconstitutional. The Ninth Circuit Court of Appeals affirmed that immigration enforcement requirements attached to the fiscal year 2017 JAG program funds were unlawful. The court also affirmed the statewide injunction California had secured, providing the same protections for all jurisdictions across the state.

In 2018, the Attorney General challenged the federal government’s imposition of unlawful immigration enforcement conditions on federal fiscal year 2018 JAG funds. The district court again ruled in favor of California, and held that the federal government cannot require California and its local jurisdictions to comply with immigration enforcement requirements in order to receive \$28.7 million in law enforcement grants. The federal government has appealed the decision to the Ninth Circuit.

In federal fiscal year 2019, California filed a lawsuit challenging two sets of immigration related requirements that the U.S. DOJ (USDOJ) imposed on its grants. First, it imposed immigration enforcement requirements on both a JAG grant and a Juvenile Justice Formula Grant that were already governed by the district court’s previous injunctions. Second, it imposed a requirement on ten formula grants totaling \$327.7 million that several state agencies receive requiring grant recipients to comply with certain federal immigration requirements governing employment of non-. California and USDOJ reached a settlement under which USDOJ agreed not to enforce the conditions that the district court has enjoined in the past.

### ***Litigation Challenging the Diversion of Funding for Construction of the Border Wall in California.***

In February 2019, the State of California, along with a coalition of 19 states, challenged the Trump Administration’s diversion of funds toward construction of the border wall on various constitutional and statutory grounds. The States prevailed on the merits of two legal issues at summary judgment. On June 26, 2020, the Ninth Circuit issued an opinion affirming the district court’s grant of summary judgment holding that sections 8005 and 9002 of the Department of Defense Appropriations Act of 2019 did not authorize the Administration to transfer funds for border wall construction. The panel held that the Act did not permit the transfer of funds to build the border wall because the wall is not an “unforeseen military requirement,” and because Congress previously denied funding for the wall. The federal government has since filed a petition for writ of certiorari with the Supreme Court. With respect to the second legal issue, which relates to the diversion of funds under 8 U.S.C. section 2808, a Ninth Circuit opinion is pending.



In March 2020, the State of California and a coalition of states, filed a new challenge relating to the Trump Administration's diversion of funds toward construction of the border wall in Fiscal Year 2020. The litigation is ongoing.

***Litigation Challenging Proposed Changes to the Public Charge Rule in California.*** The Attorney General, along with four other attorneys general, filed a lawsuit in the United States District Court for the Northern District of California challenging the Trump Administration's Inadmissibility on Public Charge Grounds Final Rule. The lawsuit claims the Rule targets working immigrants and their families by creating unnecessary new barriers to lawful admission to the United States and by discouraging eligible immigrants and their families from accessing critical health, nutrition, and housing programs. The lawsuit alleges the Rule violates the Administrative Procedure Act and the Due Process Clause of the Fifth Amendment of the United States Constitution. The district court granted the States' motion for a preliminary injunction of the Rule in Plaintiff States but, at the request of the Department of Homeland Security, the Ninth Circuit stayed the district court's order granting the preliminary injunction on December 5, 2019. The Ninth Circuit heard oral argument on September 15 of the Federal Government's appeal of the preliminary injunction.

***Litigation in Oakley, et al v. DeVos, et al.*** In May 2020, the Attorney General filed a lawsuit in the Northern District of California on behalf of Chancellor Eloy Ortiz Oakley and the Board of Governors of the California Community Colleges, and 5 Community College Districts against the U.S. Department of Education and Education Secretary Betsy DeVos. The suit challenges the federal defendants' decision to place arbitrary eligibility restrictions on emergency grants to students under the CARES Act, which Congress enacted to mitigate the effects of the COVID-19 pandemic. On June 17, the district court issued a preliminary injunction. The federal government filed a notice of appeal in August 2020 and the litigation remains ongoing.

***Commonwealth of Pennsylvania, et al. v. DeVos, et al.*** The States of California, Pennsylvania, and New Jersey are co-leading a multistate litigation filed in June 2020 in the district court for the District of Columbia challenging the Department of Education's final regulations implementing Title IX of the Education Amendments of 1972. The lawsuit alleges that the new Title IX regulations create barriers to schools' ability to prevent and remedy sexual harassment and violence, including by mandating that schools employ an inequitable grievance process to respond to sexual harassment complaints under Title IX and by prohibiting schools from using Title IX to prevent and address many types of sexual harassment. The litigation remains ongoing.

***Defending California's right not be compelled to enforce federal immigration law in United States v. California.*** In June 2020, the U.S. Supreme Court denied the Federal Government's petition for certiorari in *United States v. California*. At issue in the petition for certiorari was whether federal law preempts Senate Bill 54 (SB 54), a law enacted in 2017 that is intended to protect public safety by enhancing trust between state and local law enforcement and the communities they serve. In 2019, the U.S. Court of Appeals for the Ninth Circuit upheld the ruling by the district court against the Federal Government on SB 54, noting that the Federal Government was unlikely to succeed on the merits. The district court's decision in favor of SB 54 was issued in 2018.

***Continuing Implementation of the Racial and Identity Profiling Act (RIPA) of 2015.*** In January 2019 and January 2020 respectively, pursuant to the Racial and Identity Profiling Act (RIPA) of 2015 (AB 953) the Racial and Identity Profiling Advisory Board established by the Attorney General released annual reports focusing on the past and current status of racial and identity profiling with policy recommendations for eliminating its unlawful practice. The eight largest law enforcement agencies began collecting the stop data on July 1, 2018, which was reported that data to the DOJ by April 1, 2019. The 2020 report contains an analysis of the approximately 1.8 million stops conducted by those



law enforcement agencies during the second half of 2018. The report also examines civilian complaint data and provides recommendations law enforcement can utilize to enhance their policies, procedures, and trainings on topics that intersect with bias and racial and identity profiling. In addition to the Board's new report, the DOJ launched an online dashboard to give researchers, advocates legislators, journalists, and all members of the public greater access to RIPA data.

***Issuance of Law Enforcement Bulletin on Modifications to California's Use of Force Standards.*** The office issued a bulletin in May 2020 to advise law enforcement officers around the state of the changes codified by AB 392, effective January 1, 2020, and the training and policy mandates, effective January 1, 2021, imposed by SB 230, related to an officer's use of force. AB 392 amended California law by redefining the circumstances under which homicide by a peace officer is deemed justifiable and by affirmatively prescribing the circumstances under which a peace officer is authorized to use deadly force to effect an arrest, prevent escape, or overcome resistance. (Pen. Code, §§ 196, 835a). SB 230 requires law enforcement agencies to implement certain training and policy mandates regarding use of force by January 1, 2021.

***Implementation of Memorandum of Understanding for Reform of San Francisco Police Department.*** In February 2018, the Attorney General signed a Memorandum of Understanding with the San Francisco Police Department and the City and County of San Francisco to provide independent monitoring and review of the San Francisco Police Department's ongoing efforts to implement recommendations for reform set forth by the U.S. DOJ in 2016. The recommendations for reform address issues related to use of force, bias, community policing, accountability, and recruitment, hiring, and personnel. The DOJ stepped into this role at the request of the police department after the U.S. DOJ terminated its reform work with the police department as a result of a broader reorganization of the Community Oriented Policing Services (COPS) Office. In May 2019 and February 2020, DOJ issued progress reports regarding the police department's implementation of the recommended reforms finding that while some progress has been made, there is still a significant amount of work to be done. DOJ's work with the San Francisco Police Department remains ongoing.

***Completion of Systemic Review of the Sacramento Police Department.*** In April 2018, the Attorney General announced that the DOJ would conduct a review of the Sacramento Police Department's use-of-force policies, training, and practices in response to community concerns following the Stephon Clark shooting. The office conducted an independent assessment and published two reports with detailed recommendations for reform and implementation by the Department.

***Implementation of State Prohibition on State Funded and Sponsored Travel to States with Discriminatory Laws.*** Assembly Bill 1887 (2016) prohibits state agencies from approving travel for state business to states that have enacted any law since June 26, 2015, which discriminates on the basis of someone's sexual orientation, gender identity or gender expression. This law also requires the Attorney General to develop, maintain, and post on the office's Internet web site a current list of states that are subject to this travel restriction. As of the date of this publication, the states of Alabama, Idaho, Iowa, Kansas, Kentucky, Mississippi, North Carolina, Oklahoma, South Carolina, South Dakota, Tennessee, and Texas are on the Attorney General's AB 1887 list. In 2020, the State of Texas sought to initiate a lawsuit in the United States Supreme Court against California to challenge the state's implementation of this law, a dispute that is ongoing as of the time of the publication of this report.

***Review of the Los Angeles Police Department's use of the CalGang Database.*** On February 10, 2020, the office initiated an independent review of the Los Angeles Police Department's (LAPD) records and policies regarding the use of CalGang, a criminal intelligence database used by law enforcement agencies to share gang-related intelligence. The review came as a result of reports that LAPD officers had falsified field records used to identify possible gang members. On July 14, 2020, the Attorney General announced that DOJ had revoked access to CalGang records generated by

LAPD to law enforcement agencies statewide. That announcement followed the decision by LAPD Chief Michel Moore to permanently withdraw from the CalGang program after an internal audit uncovered significant misuse of the gang-tracking database by LAPD personnel, including entry of false information.

## **CIVIL RIGHTS ENFORCEMENT SECTION: BUREAU OF CHILDREN’S JUSTICE**

***Lawsuit Challenging Rescission of Deferred Action for Childhood Arrivals (DACA).*** In January 2018, the Attorney General, in conjunction with the Attorneys General for Maine, Maryland and Minnesota, as well as the University of California, individual Dreamers and other plaintiffs – obtained a preliminary injunction from the United States District Court against the Trump Administration over its decision to end DACA. Since the program was created in 2012, nearly 800,000 young immigrants who were brought to this country as children have been granted DACA after paying application fees, submitting to and passing background checks and applying for work permits. The District Court’s ruling blocked the Trump Administration’s rescission of DACA while the underlying case continued. This decision was appealed to the Ninth Circuit, which affirmed the preliminary injunction, and then the Supreme Court. California’s Solicitor General, Michael Mongan, argued the case before the Supreme Court in November 2019 and in June 2020, the Supreme Court issued an opinion finding that the Trump Administration’s rescission was unlawful.



Attorney General Xavier Becerra speaking at a press conference with DACA recipients prior to a hearing before the U.S. Supreme Court.

***Stipulated Judgment Against the Sausalito-Marín School District.*** The DOJ filed a complaint and stipulated judgment in August 2019 in San Francisco Superior Court requiring the District to take steps to desegregate. After conducting a comprehensive investigation, the office concluded that the District established a K-8 school in 2013 with the intent that it be racially segregated, while promising that the new school would have an improved, attractive program. The stipulated judgment requires that the District implement a comprehensive academic plan to create an educational program that serves the entire school district; requires oversight of the District by a third-party monitor; establishes a compensatory counseling program and scholarship fund for affected students; and creates a community advisory group to examine racial segregation and its effects within the surrounding community. The office continues to monitor the judgment.

***Michigan, California, et al. v. DeVos, et al.*** In July 2020, the Attorney General co-led a coalition of nine attorneys general, and several local jurisdictions, including local education entities, in a lawsuit against U.S. Department of Education (Department) and Secretary Betsy DeVos’ unlawful attempt to siphon pandemic relief funds away from K-12 public schools to private schools. As a result of the interim final rule, tens of millions of dollars in California alone could have been diverted away from taxpayer-funded public schools in California’s poorest school districts to private institutions—in violation of the requirements established by Congress, the Administrative Procedure Act, and the U.S. Constitution. In August, the district court granted the motion for a preliminary injunction. In September, Secretary DeVos announced that she would not appeal the preliminary injunction and acknowledged that the interim final rule would not be enforced.

***Stipulated Judgment Concerning School Policing in the Stockton Unified School District.*** The DOJ filed

a complaint and stipulated judgment in February 2019 in Sacramento County Superior Court requiring changes to the Stockton Unified School District's policies and procedures relating to the school district police department, with the goal of minimizing arrests and citations for minor disciplinary conduct and ensuring equity in referrals to law enforcement. The monitoring period will continue for a period of 5 years.

***Stipulated Judgment Against the Mojave Unified School District.*** On July 22, 2020, the Attorney General announced that the DOJ (DOJ) entered into a settlement with the Mojave Unified School District (District) to address critical shortfalls in the District's policies and practices, including in relation to complaints of discrimination and retaliation. The settlement followed findings that the District failed to investigate a report that a principal threatened immigration consequences against the employer of a student's parents in retaliation for advocacy efforts to address a complaint of discriminatory treatment against the student. To address the systemic concerns, DOJ and the District worked cooperatively to agree on an extensive four-year plan memorialized in a stipulated judgment that provides for corrective actions. As part of the settlement, the District is required to take action to resolve several education access and opportunity issues, including improving procedures for of discrimination and retaliation, student discipline, searches and seizures, and special education evaluation.

***Washington, et al. v. United States of America.*** In June 2018, the Attorney General, along with the Attorneys General of 16 other states and the District of Columbia, filed a lawsuit challenging the federal government's policy of separating parents from their children for the express purpose of deterring immigration along the Southwestern border. This policy is related to the federal government's refusal to permit applicants to seek asylum when presenting themselves at the border and the "zero tolerance" prosecution approach to criminally charge all individuals who enter the United States without inspection. The litigation is ongoing.

***Comment on Proposed Rule on Special Immigrant Juvenile Status.*** The Attorney General led a coalition of 17 attorneys general pushing back against a federal proposal that would undermine children's access to Special Immigrant Juvenile Status (SIJ). SIJ, a classification created by Congress in 1990, protects abused, neglected, and abandoned children by allowing them to become legal residents, and eventually U.S. citizens. The newly proposed federal rule subverts the statutory role and expertise of states in safeguarding the welfare and best interests of children by requiring individuals seeking protection under SIJ to needlessly repeat steps with the federal government that would have already been lawfully handled by state juvenile courts

***Statewide School Enrollment Discrimination Investigation.*** Since March 2017, the Attorney General has received complaints that a number of school districts in California were engaging in discriminatory enrollment practices against immigrant youth by collecting social security numbers, citizenship or immigration status information, and/or other information regarding national origin. The Bureau has conducted an investigation into over 100 school districts regarding their compliance with law and the Attorney General's K-12 Model Policies, and sent letters to districts that were requesting social security numbers and/or citizenship or immigration status information on their enrollment or registration forms. The letters informed the districts that their enrollment forms may be in violation of federal and California law and demanded that the districts update their forms within 21 days and demonstrate full compliance with relevant laws. The Attorney General received cooperation and full compliance from all districts contacted regarding these issues.

***Law Enforcement Bulletin Regarding Protocols with Regard to Certain Youth.*** On July 5, 2019, the Office of the Attorney General released Information Bulletin 2019-DLE-04, which provides a summary of Senate Bill (SB) 439 that amended Welfare and Institutions Code sections 601 and 602, and added section 602.1. The Bulletin provides a summary of the law and suggested protocols that law enforcement officers should follow when they come into contact with youth under the age of 12 whose

conduct, if committed by a youth 12 through 17 years old, inclusive, could otherwise subject them to the jurisdiction of the juvenile court.

**Comment Letter on Proposed Rule Limiting Categorical Eligibility for Supplemental Nutrition Assistance Program (SNAP).** On September 24, 2019, the Attorney General joined a coalition of 24 attorneys general in opposing a U.S. Department of Agriculture Food and Nutrition Service (FNS) proposal that would categorically deny families' access to the Supplemental Nutrition Assistance Program (SNAP). In a comment letter to FNS, the coalition described how the proposed rule would illegally limit eligibility for SNAP and constrain state flexibility in administering the program.

**Litigation Challenging Proposed Rule Eliminating or Reducing the Healthfulness Standards for School Meals.** In April 2019, the Attorney General joined a multistate lawsuit challenging the Trump Administration's reversal of school meal nutrition standards that protect the health and well-being of students around the country. The litigation was brought to challenge a 2018 final rule that eliminates the standard requiring that all grains be whole grain-rich, even though the standard provided a process for states to grant exemptions to schools based on hardship. The litigation is now resolved, as the federal government declined to appeal a decision in a related case that permanently prevents the rollbacks and the coalition correspondingly agreed to dismiss the case.

**Litigation on the Flores Settlement Agreement.** In August 2019, the Attorney General led a coalition of attorneys general in filing a lawsuit opposing the Trump Administration's new rule circumventing the Flores Settlement Agreement, which has governed the treatment of children in immigration custody since 1997. In the complaint, the coalition argues that the Trump Administration's final rule interferes with the states' ability to help ensure the health, safety, and welfare of children by undermining state licensing requirements for facilities where children are held. The states' case is stayed pending resolution of a Ninth Circuit appeal in the related *Flores* litigation.

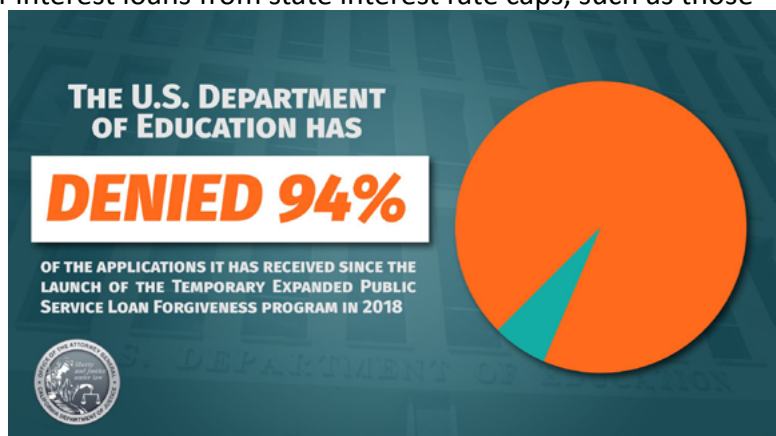
## CONSUMER PROTECTION SECTION

**People v. Johnson & Johnson, et al.** In 2020, following a nine-week bench trial, the Attorney General obtained a \$344 million judgment against Johnson and Johnson related to the company's violation of California consumer protection laws through the deceptive marketing of its surgical mesh devices used for pelvic surgeries in women.

**People v. Office of the Comptroller of the Currency; People v. Federal Deposit Insurance Corporation.** In 2020 the Attorney General brought suit under the Administrative Procedure Act to challenge newly-announced rules that exempt buyers of high-interest loans from state interest rate caps, such as those passed by the California Legislature.

**People v. DeVos.** In 2020, the Attorney General brought suit under the Administrative Procedure Act to challenge the US Department of Education's failed implementation of the Public Service Loan Forgiveness Program, which was designed to provide student loan debt relief to firefighters, police officers, nurses, and other public servants who spend a decade working in government or for nonprofit organizations.

**People v. Welk.** In 2020, the Attorney General and San Diego District Attorney obtained a stipulated judgment against Welk Resorts



Infographic showing the percentage of debt relief applications denied by the U.S. Department of Education.



resolving allegations that the company violated California's timeshare sales laws and engaged in other misconduct in the marketing and sale of timeshares. The company is required to pay up to \$3.5 million in restitution and \$2 million in penalties and investigative costs, and comply with an injunction concerning its sales practices.

***People v. Facebook.*** In 2019, the Attorney General filed an action to enforce investigative subpoenas directed to Facebook concerning its privacy and business practices, including its relationship with Cambridge Analytica.

***People v. Equifax.*** In 2019, the Attorney General obtained a stipulated judgment against Equifax concerning a 2017 data breach that compromised the personal information of 147 million consumers, including 15 million Californians. This nationwide settlement requires the company to pay \$425 million into a restitution fund, as well as \$175 million in penalties, \$19 million of which will flow to California. It also includes an injunction that, among other things, requires the company to implement enhanced data security measures.

***People v. Purdue.*** In 2019, the Attorney General brought suit against Purdue Pharma and related entities, alleging that their opioids marketing and sales practices created a public nuisance, misled doctors and patients about the addictive nature of opioids, and played a major contributing role in the opioid crisis. The Attorney General has continued to pursue these claims in the Purdue bankruptcy.

***People v. Paul Blanco's Good Car Company.*** In 2019, the Attorney General filed suit against a subprime auto dealer with a network of used car dealerships and its chief executive for engaging in deceptive business practices, including making misrepresentations to consumers about credit approval and financing products, targeting senior citizens with false offers of a senior discount program, and putting consumers at risk of default and repossession by misrepresenting consumers' incomes and vehicle values on loan applications.

***People v. Service Corporation International (the Neptune Society).*** In 2019 the Attorney General and a group of District Attorneys sued the Neptune Society for violating California's laws that require payments for pre-need funeral service plans to be held in trust. The lawsuit alleges that Neptune illegally kept \$100 million in customer payments that were required to be held in trust, included illegal terms in installment sales contracts, and engaged in other unlawful business practices.

***People v. Ashford University & Bridgepoint Education.*** The Attorney General is continuing to pursue litigation against Zovio (formerly known as Bridgepoint Education), operator of for-profit college Ashford-University, alleging that the school violated California consumer protection laws by making misrepresentations to students and engaging in unfair debt collection practices.

***People v. Navient.*** The Attorney General is continuing to pursue litigation against Navient, a major student loan servicer, and its subsidiaries for violations of California's consumer protection laws in the servicing and collection of federal student loans. The lawsuit alleges that Navient violated California law by misleading student loan borrowers, engaging in illegal collections practices, and steering borrowers to more costly loan repayment options.

***People v. Fiat Chrysler Automobiles.*** In 2019, in coordination with the California Air Resources board and US Environmental Protection Agency, the Attorney General obtained a consent judgment related to the Fiat Chrysler's practice of cheating on emissions tests and selling vehicles that did not comply with state and federal environmental laws. The defendants were required to pay \$78.4 million to California for violating environmental and consumer protection laws, to offer compensation to purchasers and modify at least 85 percent of the affected vehicles that they had sold in California, and abide by other injunctive terms.

**People v. E-Z Rent a Car.** In 2019, the Attorney General and the District Attorneys of Alameda and San Mateo Counties obtained a stipulated judgment against E-Z Rent a Car for over-billing an estimated 4000 customers for the repair of damaged rental cars. The defendant will pay \$1 million in restitution to victims, along with \$3.5 million in penalties and costs.

**People v. Student CU Connect (CUSO); People v. PEAKS Trust.** In 2019, the Attorney General obtained a stipulated judgment against CUSO requiring a bankrupt lender to provide \$21 million in relief to 4000 Californians who took out loans to attend the for-profit ITT Technical Institute. Similarly, in 2020, the Attorney General obtained a stipulated judgment against PEAKS Trust.

**People v. Uber.** In 2016 the Attorney General and District Attorney of San Francisco obtained a stipulated judgment against Uber concerning the company’s violation of data breach reporting and data security laws in connection with its 2016 breach of driver and customer data and its subsequent decision to pay hackers to cover up the breach rather than reporting it to proper authorities. The judgment was entered as part of a \$148 million nationwide settlement that included robust injunctive terms.

**Combatting Robo-Calls.** In 2019 the Attorney General, as part of the executive committee of a National Association of Attorney General working group, entered into an agreement with twelve telecommunications companies on a set of principles, which providers agreed to incorporate into their business practices, to limit and prevent robocalls and to facilitate traceback, which can assist law enforcement to investigate and prosecute robo-call activity.

**Privacy Regulations.** In 2020 the Attorney General promulgated regulations under the California Consumer Privacy Act (CCPA), which gives California consumers a right to know the information that companies are collecting and selling, a right to opt-out of the sale of their data, and a right to direct a business to delete information that it collected from the consumer. The regulations expand on these rights and provide guidance on how businesses must respond when consumers assert their rights under the CCPA.



Graphic explaining rights afforded to consumers under the California Consumer Privacy Act (CCPA).

**Student Transcripts Legislation.** In 2019 the Attorney General sponsored Assembly Bill 1313, which prohibits colleges and universities from withholding transcripts from students who owe the schools a debt. The legislation was drafted in response to debt collection tactics observed in the course of the Attorney General’s Corinthian Colleges investigation and other enforcement work.

## CORPORATE FRAUD SECTION

**Opposition to Federal Rules Undermining Investor Protection.** The Attorney General has signed five comment letters addressing regulatory proposals of federal agencies for Attorney General Becerra’s signature. Two were directed to the Department of Labor in support of preserving the Obama Administration’s Fiduciary Rule for financial professionals who advise retirees. Two others were directed to the Securities and Exchange Commission, opposing proposals to reduce registration requirements for securities issuers and to expand the definition of accredited investor, a change that will put many unsophisticated investors at greater risk of fraud. The fifth was also to the SEC, objecting to its Regulation Best Interest because despite the name, the regulation allows broker-dealers to



promote investments which are not in investors' best interests but are more lucrative for the broker-dealer.

***XY Planning, LLC v. United States Securities and Exchange Commission.*** In 2019, the Attorney General petitioned the Second Circuit Court of Appeal to invalidate the Securities and Exchange Commission's Regulation Best Interest, a rule allowing broker-dealers to put their interests ahead of their clients, exploiting conflicts of interest costing retail investors billions of dollars in unnecessary fees and poor returns. California argued that the regulation failed to protect investors and was in violation of the Dodd-Frank Wall Street Reform and Consumer Protection Act. The Second Circuit ruled in favor of the Securities and Exchange Commission in June 2020.

***People v. Morgan Stanley.*** In 2019, the Attorney General obtained a \$150 million settlement against multinational investment bank Morgan Stanley for misleading investors about the risks of mortgage-backed securities from 2003 to 2007. The Attorney General alleged that Morgan Stanley misled the California Public Employee Retirement System (CalPERS) and California State Teachers Retirement System (CalSTRS).

***Helper Fraud Cases: People v. Davitt, People v. PPT, People v. Chambliss.*** The office brought suit against multiple telemarketing operations and individuals who tout worthless "investment recovery" services to mainly elderly victims who have already suffered investment losses. The office has put three such operations out of business and recovered \$2.9 million in judgments so far. In May 2019, the Attorney General obtained judgments totaling almost \$1.5 million against a Los Angeles based group in *People v. Davitt Corporation*. In July 2020, the Attorney General obtained a \$1.4 million judgment against another group in Orange County in *People v. Property Protection Team*. The office has effectively ended an operation and anticipate obtaining a final judgment in a third case later this year, *People v. Chambliss Corporation*.

***San Diego Gas & Electric Company v. Sellers of Energy.*** In April 2020, the Attorney General and the AG's client, the Department of Water Resources, as well as the CPUC and the California investor-owned utilities, filed a petition at the Federal Energy Regulatory Commission in order to conclude most of the litigation over the 2000-2001 California energy crisis. The litigation resulted in over \$8 billion in recoveries for California ratepayers. The office provided the Commission with the complex calculations needed for a final accounting of a vast web of financial obligations in the organized CalISO and California Power Exchange markets and to permit final payouts. The Commission's approval of the petition will allow payouts of approximately \$250 million for California ratepayers and authorize the California Power Exchange to finally close its doors.

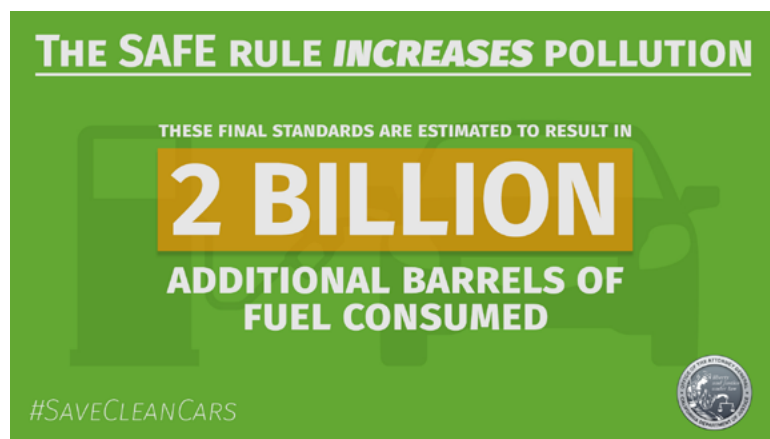
***People ex rel. Glenn v. Cisco Systems, Inc.*** In July 2019, the Attorney General negotiated a \$6 million settlement with Cisco as part of a multistate qui tam lawsuit alleging the sale, to government entities, of a security software product which contained serious flaws that gave hackers the ability to access and compromise users' surveillance systems and networks. The settlement netted the State of California and various political subdivisions \$1.6 million.

***People v. Pro Network Tools, et al.***: The office investigated and filed a False Claims Act case against coconspirators who planned and implemented a scheme to rig competitive IT procurement. Defendants John Brewer, Brent Vinch, and their primary accomplice Loraine Dixon orchestrated the submission of dozens of straw bids to at least ten state agencies, tainting over 40 state procurement contracts collectively worth over \$3 million. The investigation and referral resulted in federal felony convictions for bid-rigging against all three defendants. The office has have also obtained stipulated judgments and civil penalties from the defendants.

## ENVIRONMENT LAW SECTION

**Ensuring Legal Accountability for the Aliso Canyon Gas Leak.** Between 2018 and 2020, the Attorney General continued to work with the Los Angeles City Attorney to hold the Southern California Gas Company (SoCalGas) fully accountable for the massive October 2015 leak of methane gas from an injection well at the Aliso Canyon natural gas storage facility. The leak persisted for nearly four months and released more than 2 million metric tons of greenhouse gases. Residents of the nearby community of Porter Ranch were sickened by emissions and odors from the leak and more than 4,000 residents were temporarily relocated. In August 2020, the Attorney General, along with the California Air Resources Board, Los Angeles City Attorney, and the County of Los Angeles reached a \$119.5 million settlement with SoCalGas. The agreement not only addresses the needs of communities directly affected by the leak, but also has a positive impact by providing funding for a broad range of air quality improvement projects.

**Opposing U.S. EPA's National Power Plant Greenhouse Gas Roll-backs.** Under his authority to protect the state's public interest in public health and the environment, the Attorney General has continued to lead a multi-state coalition to both defend the Clean Power Plan (CPP) – U.S. EPA's groundbreaking 2015 rule regulating greenhouse gas (GHG) emissions from power plants – as well as to oppose efforts since 2017 to repeal it and replace it with a less stringent rule. In addition, California is leading the multi-state defense of the rule applicable to new and modified power plants. In August 2019, the Attorney General — as part of a coalition of 22 states, the District of Columbia, and six local governments — filed a lawsuit challenging the Trump Administration's repeal of the CPP and its replacement rule, the so-called Affordable Clean Energy (ACE) Rule. The ACE Rule, a toothless substitute finalized on June 19, 2019, does nothing to reduce carbon dioxide emissions or to promote clean energy generation. Instead, the new rule is merely designed to dismantle the CPP and protect coal and gas companies from any serious limits on climate change emissions from power plants. In the lawsuit, the coalition argues that the repeal of the plan and the replacement rule violate the Environmental Protection Agency's (EPA) duty under the Clean Air Act and are arbitrary and capricious.



Social media graphic highlighting the harmful effects of the Safer Affordable Fuel-Efficient Vehicles (SAFE) rule.

**Defense of California's Clean Car Standards.** In May 2020, the Attorney General, leading a multistate coalition, filed a lawsuit challenging the Trump Administration's disastrous final rule rolling back the nation's Clean Car Standards. The Clean Car Standards require appropriate and feasible improvements in fuel economy and reductions in greenhouse gas emissions from passenger cars and light trucks. Since their introduction in 2010, these standards have saved consumers money, reduced harmful emissions, and helped protect the health of the communities.

The Trump Administration's misguided Safer Affordable Fuel-Efficient Vehicles (SAFE) rule stops this progress in its tracks, hurting the economy and public health at a time when the country can least afford it. In the lawsuit, the coalition argues that the final rule unlawfully violates the Clean Air Act, the Energy Policy and Conservation Act, and the Administrative Procedure Act.

**Opposing U.S. EPA's Clean Water Act Roll-back.** Pursuant to an Executive Order, U.S. EPA has initiated a multi-stage strategy to significantly reduce the number of bodies of water subject to federal protection under the Clean Water Act by redefining what constitutes "waters of the United States." In May

2020, the Attorney General, with the New York Attorney General, co-led and filed a multistate lawsuit challenging the Trump Administration's final rule narrowing the definition of "waters of the United States" to remove protections for all ephemeral streams, many wetlands, and other waters that were previously covered under the Clean Water Act. Under the new rule, more than half of all wetlands and at least 18 percent of all streams would be left without federal protections. Western states like California would be even harder hit, with 35 percent of all streams deprived of federal protections as a result of the region's dry climate. Litigation is continuing. In 2019, the Attorney General also led multistate coalitions in filing comment letters opposing the EPA's unlawful guidance and proposed rule seeking to curtail state authority under Section 401 of the Clean Water Act.

***Opposing Department of the Interior Oil and Gas Rule Roll-backs.*** The Attorney General is challenging federal attempts to roll-back three significant oil and gas industry regulations: the Methane Rule, the Fracking Rule and the Valuation Rule. The U.S. Bureau of Land Management's (BLM's) 2016 Methane Rule reduces waste and GHG emissions by placing restrictions on venting, flaring, and leakage of natural gas on federal and Indian lands. The BLM twice illegally sought to suspend the key provisions of the rule without following the requirements of the federal Administrative Procedures Act. Litigation continues in several fora over this rule.

***Lawsuit Challenging Rollback of Endangered Species Act.*** In September 2019, the Attorney General, along with the Attorneys General from Massachusetts and Maryland, led a coalition of 20 attorneys general and the City of New York in filing a lawsuit challenging the Trump Administration's disastrous changes to the Endangered Species Act. In their complaint, the coalition argues that the rules are arbitrary and capricious under the Administrative Procedure Act, unauthorized under the Endangered Species Act, and unlawful under the National Environmental Policy Act.

***National Association of Wheat Growers, et al. v. OEHHA.*** The Attorney General is defending the constitutionality of a provision of Proposition 65 that results in the listing of certain chemicals for which warnings must be provided. Monsanto Company and various agricultural industry groups seek a declaration that the listing of the pesticide glyphosate, and any resulting warning about its potential health effects, violates the United States Constitution, and also seek injunctions prohibiting the enforcement of Proposition 65 and its implementing regulations with regard to glyphosate. Initial rulings in this and a related case have upheld the validity of the listing decision, while enjoining the warning requirement as an infringement of free speech in this instance.

***CEQ Revisions to National Environmental Policy Act (NEPA) Regulations.*** In March 2020, the Attorney General, with the Washington Attorney General, led a multistate effort to challenge the Trump Administration's attempt to revise the NEPA regulations. The revised NEPA regulations will substantially reduce federal agencies' obligation to evaluate the environmental impacts of their actions and thus ensure that significant impacts of federal actions, including the impacts of greenhouse gas emissions, are not fully considered in the federal decision-making process. The multistate coalition filed comments addressing the Council on Environmental Quality's proposed rule revising the NEPA regulations, arguing that the proposed rule lacked a rational justification and was inconsistent with NEPA's language and purpose. The office is in the process of filing litigation challenging the new rules.

***Regulation of Toxic "Forever Chemicals."*** In April 2020, the Attorney General, as part of a coalition of 18 attorneys general, urged the Environmental Protection Agency (EPA) to broaden and strengthen the review and regulation of per-fluoroalkyl and poly-fluoroalkyl substances (collectively known as PFAS). PFAS chemicals, known as "forever chemicals," have been shown to cause adverse health effects including developmental defects, kidney cancer, liver damage, and impacts on the thyroid and immune system. PFAS chemicals have contaminated groundwater at hundreds of sites across the country,

including several military bases in California. In the comment letter, the multistate coalition argues that the EPA's Supplemental Proposal to promulgate a significant new use rule does not go far enough to broaden the EPA's review and regulation of new uses for PFAS chemicals. The coalition supports expanded oversight that would allow the EPA to determine whether to restrict or limit new uses of PFAS chemicals in order to protect public health and the environment. Expanded oversight would also provide state and local government with the opportunity to participate in and inform the regulatory review process for new uses.

***Defending Critical Mercury and Air Toxics Standards.*** In June 2020, the Attorney General, as part of a multistate coalition, filed a motion to intervene in a lawsuit to defend critical mercury pollution limits against an industry-backed challenge. The Mercury and Air Toxics Standards limit emissions of mercury and other hazardous air pollutants from coal- and oil-fired power plants. Each year, these standards prevent tens of thousands of premature deaths and generate more than \$1 billion in economic activity.

***Call to Strengthen Standards Regulating Particulate Matter Pollution.*** In June 2020, the Attorney General, along with the Attorneys General from Illinois and New York, led a coalition of 17 attorneys general in issuing a comment letter urging the Environmental Protection Agency (EPA) to set aside its arbitrary and capricious proposal leaving the current National Ambient Air Quality Standards for particulate matter pollution unchanged and to instead strengthen those standards. The EPA's own science, which already underestimates risk, shows that the number of deaths from particulate matter (PM2.5) emissions ranges from 16,000 to 17,000 annually. In addition to premature mortality, particulate matter is linked to many serious public health problems including cardiovascular disease, respiratory impacts, and cancer. Particulate matter is a pollutant emitted from a variety of sources including vehicles, factories, and construction sites. Research shows that low-income and minority communities are disproportionately exposed to particulate matter and the associated health risks.

***Blocking Unlawful Diversion of Funds to Build Border Wall.*** In June 2020, the Attorney General secured a favorable decision from the Ninth Circuit Court of Appeals affirming that the Trump Administration's diversion of \$2.5 billion to build an unauthorized wall at the border was unlawful. The District Court had previously declared the diversion of funds unlawful and granted the Sierra Club's motion for a preliminary injunction. The Supreme Court stayed that injunction through the course of the appellate litigation. The Ninth Circuit's ruling, which followed more than a year of litigation by the Attorney General, a coalition of 16 partner states, and community-based organizations, addressed the District Court's final judgment in favor of California and New Mexico. The Attorney General has continued to lead the charge against the unlawful attempts to divert funding toward construction of a wall by challenging the Trump Administration's diversion in the 2020 fiscal year of more than \$3.8 billion in funds that Congress appropriated to the Department of Defense. More than 20 percent, \$890 million, of those funds had been allocated to state National Guard units for the purchase of equipment critical to responding to natural disasters and other emergencies.

## **ENVIRONMENT LAW SECTION: ENVIRONMENTAL JUSTICE BUREAU**

***Fighting for Stronger Public Health Protections for Warehouse Developments.*** In 2019 and 2020, the Attorney General submitted more than 20 California Environmental Quality Act (CEQA) comment letters on warehouse projects proposed near vulnerable communities throughout the state, including in the Inland Empire, Los Angeles, Bakersfield, Stockton, and Richmond relating to the local governments' environmental analyses of the air quality and cumulative impacts of warehouse projects located near communities that are exposed to some of the highest levels of air pollution in the state. As a result of these comments, lead agencies in several jurisdictions added measures to mitigate the warehouse projects' impacts in the community. Example mitigation measures added to projects include air filtration for impacted residences, buffer walls and vegetative barriers, truck route restrictions, electric truck infrastructure, and site design features to limit impacts to community members.

***San Bernardino Airport Eastgate Expansion Project.*** In February 2020, the Attorney General sued the San Bernardino Airport Authority and the Federal Aviation Administration, challenging these agencies' failure to analyze and disclose the environmental impacts of a proposed expansion of the San Bernardino Airport Authority that would make the airport a new e-commerce hub, in violation of the National Environmental Policy Act. The project involves the construction of a 658,500 square-foot air cargo warehouse and would generate at least an additional 500 truck trips and 26 flights daily at the airport, operating seven days a week. The airport is located near the San Bernardino-Muscoy community in San Bernardino County, a community identified by the California Air Resources Board as disproportionately burdened by pollution.

***Challenging the Bureau of Land Management's Plan to Open the Central Valley for Fracking.***

In January 2020, the Attorney General challenged the federal government's plan to open up public lands in Fresno, Kern, Kings, Madera, San Luis Obispo, Santa Barbara, Tulare, and Ventura Counties for hydraulic fracturing. The Bureau of Land Management failed to adequately analyze the impacts of its plan, in violation of the National Environmental Policy Act (NEPA). The litigation is pending in the Central District of California. The Attorney General also submitted NEPA comments in September 2020 on the proposed sale of seven oil and gas leases in Kern County and filed a formal protest to that lease sale in November 2020.

***Supporting State and Local Governments' Authority to Regulate the Handling of Coal and Crude Oil.***

The Attorney General filed three amicus briefs supporting the City of Oakland's authority to ban coal in the Ninth Circuit Court of Appeals (December 2018, December 2019, and July 2020), highlighting the importance of protecting the vulnerable West Oakland community. In May 2020, the Attorney General filed an amicus brief supporting the City of Richmond's authority to adopt its ordinance banning the handling and storage of coal in the Northern District of California. The Attorney General also spearheaded multi-state amicus briefs in 2019 and 2020 defending the State of Washington's authority to deny permits for a coal export terminal and defending a Maine town's authority to adopt an ordinance prohibiting the bulk loading of crude oil onto marine tank vessels.

***Urging EPA to Accurately Assess the Cancer Risk of the Pesticide Telone.*** In April and December 2020, the Attorney General submitted comments on the Environmental Protection Agency's human health risk assessment for 1, 3 dichloropropene, a pesticide with the brand name Telone, which downgraded the pesticide's cancer risk classification compared to previous risk assessments. EPA's risk assessment contradicts prior conclusions of California state agencies, the Department of Pesticide Regulation and the Office of Environmental Health Hazard Assessment. 1, 3-D is one of the most widely used non-organic pesticides in California, with more than 12.5 million pounds applied in 2017. 1, 3-D exposure is associated with acute and long-term health risks which disproportionately impact agricultural communities that already suffer from significant environmental hardship.

***Filing an Enforcement Action for Pesticide Drift that Endangered Public Health and Safety.*** In October 2020, the Attorney General and the Department of Pesticide Regulation (DPR) filed a complaint in San Joaquin County Superior Court against Alpine Helicopter Service, Inc. for multiple alleged incidents of pesticide drift that endangered the health and safety of nearby communities. Since at least 2013, Alpine has repeatedly engaged in aerial pesticide applications that unlawfully drifted to non-target property. The Attorney General and DPR seek penalties for three separate drift incidents, including two applications that drifted onto a sports complex in Stockton that serves disadvantaged communities that already experience disproportionate exposure to environmental pollution. In one instance, children and their families were present at the sports complex playing soccer at the time of pesticide application.

***Challenging EPA's Refusal to Address Dangerous Pesticide Chlorpyrifos.*** In August 2019, the Attorney General joined a new lawsuit in the Ninth Circuit Court of Appeals challenging the Environmental



Protection Agency’s refusal to make the required safety finding for the dangerous pesticide chlorpyrifos. The states’ Ninth Circuit petition concerns EPA’s failure to take action on a proposed rule that would have prevented exposure of the public to chlorpyrifos in food. The case is fully briefed and argued, and awaits the Ninth Circuit’s decision.

**Promoting Environmental Justice in Local Land Use Planning.** In 2016, Governor Jerry Brown signed SB 1000, which requires local governments to identify environmental justice communities and address environmental justice in their General Plans. Since 2018, the Attorney General has submitted ten letters to local government agencies, including the City of Fontana, City of Modesto, Riverside County, San Bernardino County, Ventura County, Tulare County and the City of Santa Ana to ensure that they comply with SB 1000. The Attorney General also posted a website with information and resources to assist local governments in their implementation of SB 1000.

**Fighting for Full Air Monitoring for Communities on the Frontline of Refineries.** In September 2020, the Attorney General intervened in litigation in Fresno County Superior Court challenging the San Joaquin Valley Air Pollution Control District’s (SJVAPCD) inadequate implementation of Health and Safety Code section 42705.6, which requires air districts establish air monitoring requirements at the fenceline of petroleum refineries and in nearby communities. SJVAPCD adopted two illegal exemptions that would allow for no monitoring at two of the refineries in its jurisdiction and limited monitoring at the other two. These exemptions violate the statutory text and are arbitrary, capricious and lacking in evidentiary support.

## HEALTHCARE RIGHTS AND ACCESS SECTION

**California v. Texas (ACA).** *California v. Texas* is the most prominent ongoing Affordable Care Act litigation. On April 9, 2018, the Attorney General, joined by 16 attorneys general, filed a motion to intervene in *Texas et al. v. United States et al.*, a lawsuit filed in federal district court in Texas which seeks to dismantle the Affordable Care Act (ACA). The motion to intervene was granted, and the coalition filed its opposition to Texas’ motion for a preliminary injunction. Texas’ request for a preliminary injunction would harm millions of Americans by taking away vital health care services and stripping funding from the nation’s public health system, including funding for work to combat the opioid epidemic. On December 14, 2018, the district court judge declared the ACA unconstitutional but denied the injunction requested by the Trump administration. The Fifth Circuit then held that the elimination of the individual mandate’s penalty could render parts of the ACA unconstitutional and remanded to the district court. California petitioned for certiorari. The Supreme Court granted the petition and will hear the case in the 2020-2021 term.



Social media graphic how many Americans receive healthcare coverage through Medicaid expansion under the Affordable Care Act.

**California v. Azar (1303 Abortion Billing).** On December 27, 2019, the federal Department of Health and Human Services issued a final rule requiring qualified health plans participating in health exchanges to send and collect separate bills—one for a health insurance premium and one of at least one dollar for abortion coverage. If a consumer missed the one-dollar payment, they could lose all coverage. This onerous and confusing requirement would cost billions to implement and threatens women’s access to abortion and put health insurance coverage at risk for millions of individuals. Furthermore, the rule



places unreasonable burdens on health insurers by requiring them to make onerous administrative changes in the middle of the plan year, instead of the end of the plan year, when all other benefit and rate changes are made. The Attorney General co-led a lawsuit contesting the final rule. On March 30, 2020, the coalition filed a motion for summary judgment opposing the HHS rule, arguing that the new rule violates federal law, disproportionately affects states committed to ensuring comprehensive reproductive health care, places excessive burdens on consumers seeking reliable health coverage, and is inconsistent with the ACA's requirement of equitable access to health care.

***California v. Azar (Section 1557 litigation).*** In July 2020, the Trump Administration issued a new Final Rule rolling back non-discrimination protections in section 1557 of the Affordable Care Act (ACA). The Attorney General co-led a multistate coalition of attorneys general with New York and Massachusetts in filing a lawsuit challenging the new rule. The complaint argues that the rule violates the Administrative Procedure Act and the equal protection guarantee of the Fifth Amendment to the United States Constitution.

***California v. Azar (Contraceptive Coverage Mandate).*** In 2017 and 2018, the Trump Administration issued rules that ignored the ACA's birth control requirement and allowed employers to deny birth control coverage to their employees based on religious or moral objections. California successfully led a coalition of 14 states and Washington, D.C. in defending the ACA's birth control coverage requirement. California obtained injunctions against these rules, however, after California won injunctions that protect the birth control coverage mandate, the federal government, Little Sisters of the Poor, and March for Life filed petitions for certiorari in the U.S. Supreme Court. When the Court granted the petitions in related Pennsylvania litigation. California co-led a multistate amicus brief in the U.S. Supreme Court supporting Pennsylvania in its challenge to the Rules.

***California v. Azar (IHSS).*** On May 13, 2019, California led suit against Health and Human Services in the Northern District of California challenging a rule that creates barriers for states to deduct employee benefits and union dues from in-home care workers' paychecks. California filed its motion for summary judgment on November 15, 2019.

***California v. Department of Homeland Security (Public Charge Rule).*** In 2019, California, with Oregon, Pennsylvania, Maine, and the District of Columbia filed suit challenging the Trump administration's reinterpretation of "public charge," discouraging immigrants from accessing Medicaid, SNAP, and housing assistance, and making it harder for low-income immigrants to get green cards. On August 26, 2019, the States filed a motion for a preliminary injunction, and on October 11, 2019, the district court granted the States' motion. On December 5, 2019, the Ninth Circuit stayed the preliminary injunction, allowing the rule to go into effect. The Ninth Circuit heard oral argument on the preliminary injunction appeal on September 15, 2020.

***California v. Azar (Title X Litigation).*** The U.S. Department of Health and Human Services released a proposed Rule, referred to as the Gag Rule, that would place several harmful restrictions on the Title X family planning program. California is home to the largest Title X program in the nation. The same day, the rule was finalized, the Attorney General filed a challenge in the Northern District Court of California, claiming the proposed restrictions to Title X disregard the rule of law and would harm California. The district court issued a preliminary injunction, concluding that implementing the Rule would be highly disruptive and would result in irreparable harm to public health and public fisc, causing an exodus of high-quality Title X providers who cannot accept restrictions requiring them to compromise the quality of care they provide and violate standards of medical ethics. Nonetheless, on June 20, 2019, a panel of three Ninth Circuit judges stayed the injunction against the rule, pending appeal. An en banc panel affirmed the motion's panel stay and reversed the preliminary injunctions. The district court granted plaintiffs request for a stay until November 19, 2020 to permit judicial economy while Plaintiffs consider whether to seek further review of the Ninth Circuit's decision.

**California v. Azar (Refusal Rule Litigation).** The Department of Health and Human Services proposed “Refusal Rule” that would permit health care providers to refuse service on religious or morale grounds. Attorney General filed suit, arguing that the rule exceeds legal authority and undermines the Constitution and federal law, including the Affordable Care Act, Title X, Title VII, and the Emergency Medical Treatment and Labor Act. The Attorney General moved for summary judgment, and on May 26, 2020, the district court granted California’s motion, holding the rule at issue unenforceable. Defendants appealed and the case remains in litigation.

## **HEALTHCARE RIGHTS AND ACCESS SECTION: TOBACCO LITIGATION AND ENFORCEMENT UNIT**

**MSA Payment Issues.** In 2019 and 2020, the Attorney General continued to oversee compliance by tobacco manufacturers with respect to their payment obligations under the MSA. As a result, the participating manufacturers paid California \$849 million in 2019 and \$814 million in 2020, bringing the total amount paid to California and its counties and four largest cities, since the MSA was signed in 1998, to over \$17.3 billion.

**Native Wholesale Supply Litigation.** In July 2019, the Third District Court of Appeal affirmed the grant of summary judgment against Native Wholesale Supply, finding that the company violated the directory statute, fire safety act, and unfair competition law by distributing over one billion cigarettes to the Big Sandy Rancheria Band of Mono Indians, a small tribe in central California, for resale to the general public. The appeal court upheld the trial court’s imposition of a permanent injunction and the award of \$4,292,500 in civil penalties and \$3,853,100 in attorneys’ fees and expert expenses. Native Wholesale’s petition for certiorari to the Supreme Court is pending.

**Huber Enterprises litigation.** In February 2019, the First District Court of Appeal affirmed the grant of a permanent injunction and summary adjudication against Huber Enterprises, a cigarette retailer and distributor located on Table Bluff reservation near Eureka. Huber, a tribal member, unlawfully sold millions of packs of cigarettes to non-members of her tribe, in violation of the directory statute, fire safety act, tax stamp act, and unfair competition law. The court permanently enjoined Huber from selling any untaxed cigarettes that are not listed on the state’s Tobacco Directory or certified as fire-safe, to persons who are not members of the Wiyot Tribe. The court sanctioned Huber for violation of this order. A trial in this case is scheduled for late 2020. .

**Big Sandy Rancheria Litigation.** In 2018, Big Sandy Rancheria Enterprises, a tribal corporation of the Big Sandy Rancheria of Western Mono Indians, brought suit against the Attorney General and the California Department of Tax and Fee Administration, seeking to enjoin the state from enforcing tax, licensing and MSA-related laws against its (unlicensed, tax-evading) cigarette distribution business. In August 2019, the District Court for the Eastern District of California dismissed all counts. BSRE appealed and the matter is set for oral argument in the Ninth Circuit in late 2020.

**Litigation against JUUL electronic cigarette manufacturer.** In November 2019, the Attorney General filed suit in Alameda County Superior Court against JUUL Labs, Inc., a leading manufacturer of electronic cigarettes, for violating the state’s remote sales law, STAKE Act, Privacy Rights for California Minors in the Digital World Act, and unfair competition law, for public nuisance and false advertising, and other acts.

**Litigation against U.S. Postal Service to enforce the PACT Act.** In October 2019, the Attorney General and the City of New York filed suit against the U.S. Postal Service and the Postmaster General, in the District Court for the Eastern District of New York. Three more states have since joined the action. The complaint alleges that the USPS violates the Prevent All Cigarette Trafficking Act (PACT Act), by

accepting and transmitting through the mail, packages known or reasonably believed by the USPS to contain cigarettes. The action seeks injunctive and declaratory relief. USPS's motion to dismiss is pending.

**Tobacco Grant Program.** Each year the DOJ awards approximately \$30 million in grants to local public agencies for activities to support enforcement of state and local tobacco laws relating to underage sale and marketing of tobacco products. These grants are funded by Proposition 56, a statewide initiative approved in November 2016 that increased the state excise tax of tobacco products by \$2 a pack of cigarettes or the equivalent, and earmarks the resulting revenue for specified purposes, including support of local law enforcement for tobacco-related enforcement activities. Over one hundred local agencies are current grant recipients.

**Outreach to video streaming industry to protect young viewers from tobacco imagery.** In August 2019 the Attorney General led a bipartisan coalition of 43 state attorneys general to urge the streaming industry to limit images of tobacco use in their video content. Representatives of the Attorney General continue to consult and communicate with these companies.

**Amicus brief regarding graphic warning labels on cigarette packs.** In July 2020, the Attorney General, along with 24 other state attorneys general, filed an amicus brief in support of the FDA's ability to require graphic warnings on cigarette packs. Graphic warnings are critical to counteracting decades of deceptive marketing by tobacco companies by providing accurate information about the health consequences of smoking. The amicus brief was filed in the District Court for the Eastern District of Texas.

**Amicus brief to Second Circuit regarding UPS's liability under the PACT Act.** The Attorney General, along with 17 other state attorneys general, filed an amicus brief in support of the City and State of New York regarding the interpretation of 15 U.S.C. § 376a of the Prevent All Cigarettes Trafficking Act (PACT Act.) In November 2019, the Second Circuit affirmed the District Court's ruling against UPS and twice cited California's amicus brief as evidence of the proper statutory interpretation.

## **INDIAN AND GAMING LAW SECTION**

**United Auburn Indian Community of the Auburn Rancheria v. Gavin Newsom.** The Attorney General represents the Governor in this suit filed by the United Auburn tribe challenging the Governor's decision to concur with the Secretary of the Interior's decision to take off-reservation land of the Enterprise tribe into trust for that tribe for the purpose of it developing a casino. United Auburn asserted that the Governor was required to comply with the California Environmental Quality Act before concurring with the federal government's trust action, and that the Governor violated the State's separation of powers clause by granting the concurrence. The Attorney General prevailed on both issues before the superior court and the court of appeal. The California Supreme Court granted a petition for review filed by United Auburn regarding the separation of powers question. A decision in favor of the Governor was issued on August 31, 2020.

**Pauma Band of Luiseno Mission Indians v. Gavin Newsom.** After breaking off compact negotiations, a gaming tribe sued the Governor asserting that he failed to negotiate in good faith with respect to amending a tribal gaming compact to operate new lottery games and an on-track horse racing facility. The federal district court held that the State of California negotiated in good faith and entered judgment accordingly. The Tribe appealed to the Ninth Circuit, which after briefing has taken the matter under submission without oral argument.

**Gaming Compacts.** The Attorney General assists the Governor in negotiating new compacts and compact amendments with federally recognized Indian tribes in California. The compacts enhance

environmental, consumer, and employee safeguards in the expansion of the Indian gaming industry in California and ensure that California tribes without casinos and those with small casinos continue to receive a share of revenues from tribal gaming. From January 1, 2018, to June 30, 2020, the Attorney General has assisted the Governor’s Office in negotiating with over 50 tribes resulting in nearly 20 compacts and compact amendments successfully negotiated—the most compacts since the class III gaming compacts were negotiated in 1999.

***People of the State of California v. Pong Game Studios Corporation, et al.*** On May 30, 2020, the Attorney General, leading a litigation task force of 10 local agencies, obtained an order determining that Pong Game Studios, other entities, and their principals violated California’s unfair competition law by offering games with gambling-themed games at computer stations in internet cafes to win cash prizes. These criminal enterprises have made millions of dollars in California by preying on the most disadvantaged clientele who least can afford persistent gambling losses. The cafes also attract a criminal element because of the illegal cash nature of the operations. The case is set for trial on penalties and possible restitution in May 2021.

***Card Room Disciplinary and Licensing Proceedings.*** The Attorney General represents the DOJ’s Bureau of Gambling Control (Bureau) in administrative proceedings brought against card rooms. Between January 1, 2018, and June 30, 2020, the California Gambling Control Commission approved settlements involving card rooms located in Stockton, Hawaiian Gardens, Rancho Cordova, Paso Robles, Tracy, and Marysville. Four of those settlements resulted in revoking, or denying renewal of, the owners’ licenses and requiring sales of the card room. In another settlement, the 225-table card room in Hawaiian Gardens admitted to violations of the federal Bank Secrecy Act and paid penalties and costs exceeding \$3.2 million. The Attorney General represented the Bureau in issuing an emergency order shutting down a card room in Grass Valley that reopened for business in violation of the Governor’s COVID-19 orders. The Attorney General’s representation of the Bureau also has included filing administrative proceedings that are presently pending against two card rooms based, in part, on their violations of the federal Bank Secrecy Act.

***Writs and Appeals from Card Room Disciplinary and Licensing Proceedings.*** The Attorney General represents the California Gambling Control Commission (Commission) in writ and appellate proceedings arising out of the Commission’s disciplinary and licensing matters involving card rooms and their employees or contractors. These proceedings generally challenge the Commission’s factual determinations and imposition of discipline or denial of licensure. Presently pending are an appellate proceeding arising out of the Commission’s imposing penalties of more than \$13.6 million against a card room owner and a writ proceeding arising out of the Commission’s denying licensure to a philanthropic businessperson, who had multiple misdemeanor convictions involving the failure to cooperate with law enforcement personnel.

## **LAND LAW SECTION**

***Affordable Housing.*** The Attorney General represents the state agency primarily responsible for expanding the supply of affordable housing, the Department of Housing and Community Development (HCD). On behalf of HCD, the Attorney General successfully prosecuted a breach of contract action against a Sacramento nonprofit that received hundreds of thousands of dollars in state funding to operate migrant housing and spent those funds on unauthorized purposes or without proper accounting. Also, on behalf of HCD, the Attorney General has taken actions to ensure local jurisdictions are complying with state housing law, including suing the City of Huntington Beach to compel the City to bring its housing element into compliance with state affordable housing laws; the case settled when the City amended its housing element to bring it into compliance. The Attorney General has also played a leadership role challenging U.S. Housing and Urban Development Department rulemaking when those proposed or final rules limit access to affordable housing, obstruct discrimination claimants, or

defeat fair housing initiatives.

**California High-Speed Rail Authority.** The Attorney General advises the California High-Speed Rail Authority on environmental law compliance for constructing the high-speed rail system. This includes providing advice regarding the Authority's project-level environmental impact reports/environmental impact statements analyzing individual parts of the statewide system under the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA). In 2019 and 2020, this office supported Authority efforts that resulted in the Authority issuing four Draft EIR/EISs for public review and comment, issuing two Final Supplemental EIR/EISs, and making project decisions based on these final documents. The Attorney General has assisted the Authority in settling seven lawsuits challenging its project-level EIR for the portion of the system in the Central Valley between Fresno and Bakersfield. The Attorney General's efforts have contributed to the Authority being able to start and maintain major civil infrastructure construction utilizing several billion dollars in federal grant funds awarded under the American Recovery and Reinvestment Act of 2009.

**Coastal Access and Access to Navigable Waters.** The California Constitution and state law mandate public access to navigable waters, such as the ocean, rivers and lakes. The Attorney General has frequently represented clients who seek to protect public access to the ocean or lakes, including representing the California Coastal Commission in protecting access to beaches and the ocean. The Attorney General defended the Commission's issuance of administrative civil penalties in several public access cases, including one in Malibu where a public access had been blocked for years. The Attorney General also successfully defended the Commission in challenges to permit conditions that protect public beach access from the adverse effects of seawalls that physically occupy the beach and cause beaches to erode.

**Oil Regulation Litigation.** The Department of Conservation's Geologic Energy Management Division (CalGEM, previously known as the Division of Oil, Gas, and Geothermal Resources) is in the process of overhauling its regulation of oil production in California to adapt to modern industry practices and current public expectations. It adopted emergency regulations addressing underground injection controls, and the Attorney General successfully defended the lawsuit challenging those regulations. In addition, in response to the Legislature's direction in Senate Bill 4, CalGEM prepared an environmental impact report examining the statewide impacts of hydraulic fracturing. The Attorney General successfully defended the lawsuit challenging that report. In 2018, CalGEM implemented revised regulations enhancing its ability to impose civil penalties against oil and gas operators violating operational regulations. In 2020, the Attorney General successfully reached a \$2,000,000 settlement of an administrative enforcement action against an operator that was in violation of CalGEM's operational regulations.

**Outer Continental Shelf.** The Attorney General, in his independent capacity and on behalf of several of the office's clients (including the Coastal Commission, State Lands Commission, and the Division of Oil, Gas and Geothermal Resources), formally objected to the Trump Administration's plan to re-open oil exploration on the outer continental shelf (OCS), as well as the Administration's attempts to rescind and amend safety and other regulations. The Attorney General is tracking proposals for other forms of energy using the OCS, including wind turbines and harnessing wave energy. This engagement on OCS matters will likely continue in the years to come and will include not only further administrative proceedings, but also court action if necessary, to protect California's coastal resources.

**Takings Law.** The Land Law Section has expertise in takings law and has frequently authored multi-state amicus briefs in takings cases before the United States Supreme Court, including recently in *Knick v. Township of Scott*, 139 S. Ct. 2162 (2019), which sought, successfully, to overturn the Court's long standing precedent requiring property owners to seek compensation in state court before pursuing takings claims in federal court. The amicus brief, which was submitted on behalf of California, fifteen



other states, the Commonwealth of Massachusetts, and the District of Columbia, argued for retention of the state court litigation requirement.

**Wildfire.** As the state in recent years has begun seeing a dramatic increase in the number and severity of catastrophic wildfires, the Attorney General has begun reviewing and commenting on local government approval of new developments in high or very high fire severity zones. The CEQA Guidelines were updated in 2019 to more clearly require thoughtful consideration of how new developments may exacerbate existing wildfire risk. The Attorney General’s involvement has been focused on encouraging local governments to conduct adequate review of these risks. The Attorney General’s comments also encourage compliance with state regulations that set minimum standards for new developments in State Responsibility Areas—particularly, the minimum requirements for the length of dead-end roads necessary to facilitate safe and timely evacuation and emergency response.

## **NATURAL RESOURCES LAW SECTION**

**Border Wall Litigation.** The Attorney General is leading a 20-State coalition and challenging the federal government’s unlawful transfer of billions of dollars appropriated by Congress for other purpose to build a border wall and its improper attempts to waive federal and state laws intended to protect natural and cultural resources.

**Water Quality / Water Rights Litigation.** The Attorney General represents the state and regional water boards (Boards) and the California Department of Water Resources (DWR) in several cases involving the adjudication of water rights over surface and ground water. The cases include a suit against the federal government for its discharges of pollutants into the Tijuana River and the defense the State Water Board’s adoption of the Bay-Delta Plan Update for the Lower San Joaquin River and Southern Delta. The Attorney General also represents the Boards in resolution of claims from natural resource damages resulting from mining activities, as well as in wide-ranging enforcement actions against operators and owners for unlawful discharges or threat of discharge to the State’s waters and failure to properly operate underground storage tank facilities throughout the State. The Attorney General also represents DWR before the Federal Energy Regulatory Commission in proceedings concerning federal hydropower regulatory matters.

**Climate Change Litigation.** The Attorney General represents the California Air Resources Board in numerous federal lawsuits challenging actions taken by the federal government to rollback or delay air emission regulations designed to address climate change. This includes protecting California’s waiver under the Clean Air Act to set its own tougher greenhouse gas emissions standard, and challenging new rules adopted by federal agencies (like the EPA and the National Highway Transportation Safety Administration) to roll back greenhouse gas and fuel efficiency standards for vehicles, weaken standards for greenhouse gas emissions and hazardous pollutants from power plants, and to rescind or roll back methane emissions rules from oil and gas facilities and landfills. The Attorney General also represents the Board in state court actions challenging the Board’s most recent updates to the scoping plan, the blueprint for meeting the greenhouse gas emissions targets under AB 32, and successfully defended CARB in a suit by the federal government challenging aspects of California’s “cap and trade” program.

**Air Enforcement.** The Attorney General represents the California Air Resources Board in matters brought to enforce and defend air quality and climate laws and regulations. The office continues to represent the Board as it investigates and brings litigation concerning air quality violations caused by non-compliant engines and vehicles, including investigations and litigation for emissions testing fraud (i.e., *Daimler* and other manufacturers’ diesel engine passenger cars with defeat devices), and failures of entities to meet clean air regulations such as those pertaining to fuel requirements.



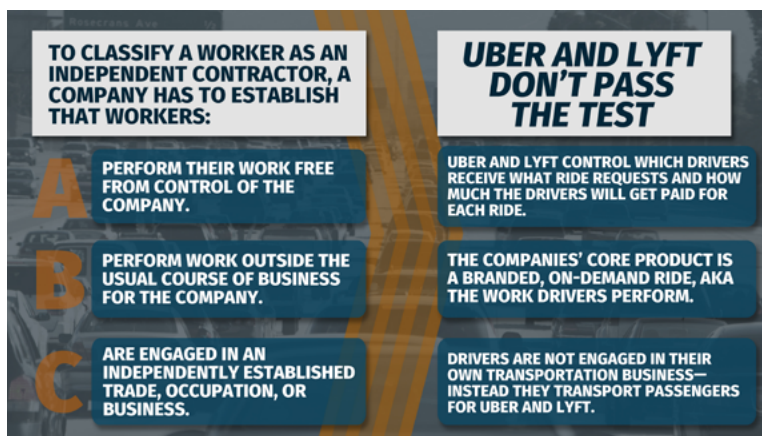
**Fire Suppression Cost Recovery Actions.** The Attorney General represents the Department of Forestry and Fire Prevention (*CAL FIRE*) to recoup the cost of fire suppression for wildland fires that occur in California each year. From May 2016 to May 2020, the office litigated cases that resulted in \$33,658,062.13 in recoveries. In 2020, the office reached a settlement for liability arising from fires prior to January 2019 with PG&E. The office anticipates a payment of \$115.3 million from PG&E to CAL FIRE as a result of that settlement.

**Oil Spill Cleanup Cost Recovery Actions.** The Attorney General represents the Department of Fish and Wildlife and Regional Water Quality Control Boards to recover civil penalties and natural resource damages from onshore and marine oil spills. Among other spills, the Attorney General is pursuing Plains All American Pipeline for its May 2015 spill of oil that reached the ocean just west of Refugio State Beach in Santa Barbara County. The spill resulted in the closing of Channel fishing grounds and public beaches as far south as Manhattan Beach, and caused significant harm to marine mammals, marine birds and intertidal resources.

**Wildlife and Endangered Species Litigation.** The Attorney General represents the Department of Fish & Wildlife (DFW) and Fish & Game Commission (FGC) in administrative proceedings challenging regulations and lawsuits filed by permittees impacted by regulations. The Attorney General also serves as legal counsel for agencies in litigation challenging federal biological opinions affecting releases of water by the state and federal water projects in the Bay Delta and the protection of endangered Salmon and Smelt species. The Attorney General is DFW’s attorney in water rights adjudications, including on the Ventura River, where it is working to ensure adequate stream flows to protect endangered steelhead trout and other species.

## WORKER RIGHTS SECTION

**People v. Uber and Lyft.** On May 5, 2020, the office, in partnership with the city attorneys of Los Angeles, San Diego, and San Francisco, filed a complaint against Uber Technologies, Inc. and Lyft, Inc., alleging that both companies were misclassifying their employee ride-hail drivers as independent contractors in violation of the Unfair Competition Law (Business & Professions Code, sections 17200, et seq.) and Labor Code section 2750.3. The complaint further alleges that the companies fail to obey laws with respect to the minimum wage, overtime, paid sick leave, unemployment insurance, workers’ compensation, and a host of other employer obligations. The DOJ obtained a preliminary injunction against both companies, and both companies have appealed.



Infographic explaining the misclassification of workers as independent contractors by Uber and Lyft.

**Labor Commissioner v. FMCSA.** In February 2019, the office filed a petition on behalf of the Labor Commissioner in the Ninth Circuit Court of Appeals. The petition challenged a ruling by the Federal Motor Carrier Safety Administration (FMCSA) to preempt state meal and rest break laws and regulations as they apply to cargo-carrying commercial motor vehicle drivers. The office argues that these laws of general applicability are not laws “on commercial motor vehicle safety” within the jurisdiction of the FMCSA, and that in any case, the FMCSA did not reach its decision in accordance with the standards set forth by law. Briefing is complete and the DOJ is awaiting a hearing date.

***People, et al. v. FMCSA.*** On March 12, 2020, the office filed a petition on behalf of the People ex rel. Xavier Becerra as Attorney General of California and the California Labor Commissioner in the Ninth Circuit Court of Appeals. This petition challenged a separate ruling by the Federal Motor Carrier Safety Administration to preempt state meal and rest break laws and regulations as they apply to passenger-carrying commercial motor vehicle drivers. Similarly, to the earlier petition, the office argues that these laws of general applicability are not laws “on commercial motor vehicle safety” within the jurisdiction of the FMCSA, and that in any case, the FMCSA did not reach its decision in accordance with the standards set forth by law. The office has filed the principal brief and is awaiting an opposition brief from the FMCSA.

***Comprehensive National Settlements Barring Fast Food “No-Poach” Policies.*** In March 2019, the office, in conjunction with a multi-state coalition of other Attorneys General, announced settlements with Arby’s, Dunkin’ Donuts, Five Guys, and Little Caesar’s, whereby they all agreed to stop the use of so-called “no-poach” agreements. These are agreements that require franchisees to refrain from recruiting or hiring employees from other franchisees in the chain. This can result in an unlawful restraint on employee mobility, and may have the effect of depressing wages by suppressing competition for workers.

***Investigations to Protect the Health and Safety of Employees in the Meat Processing Industry During COVID Outbreaks.*** In response to reports of COVID-19 outbreaks in meat processing facilities throughout the country, the Bureau initiated an investigation into the health and safety practices of the largest meat processing facilities throughout California. The office has sought information about the steps companies are taking to address risks of COVID-19 infection, including changes to their physical plant, operating procedures, and leave policies. The investigation is also examining whether workers face retaliation for raising health and safety concerns.

***Investigations to Protect the Health and Safety of Farmworkers During COVID Outbreaks.*** The Bureau has also been investigating reports of COVID-19 outbreaks in the agricultural workforce. The office is examining a number of agricultural growers and farm labor contractors, seeking information about the procedures and steps they have taken to protect their workforces in the workplace, but also in employer-provided housing and transportation. The office is also following up on specific complaints from workers and advocates to examine the workplace practices of a number of agricultural operations.

***Investigations to Protect the Health and Safety of Workers in Warehouses and Distribution Centers During COVID Outbreaks.*** Similar to the previous entries, the Bureau has been investigating the health and safety practices of a large California employer at its California fulfillment and distribution centers. The office has sought information about the steps companies are taking to address risks of COVID-19 infection, including changes to their physical environment, operating procedures, and leave policies. The investigation is also examining whether workers face retaliation for raising health and safety concerns.

***Amicus Brief in Bernstein v. Virgin America.*** On January 3, 2020, the office filed an amicus brief in support of plaintiffs in *Bernstein v. Virgin America* before the Ninth Circuit Court of Appeals. This case involves a class of flight attendants alleging a number of state wage and hour violations against Virgin America. Virgin argues that state laws are preempted in this context and cannot apply to Virgin’s flight employees who work across multiple state jurisdictions.

***Amicus Brief in Oracle v. OFCCP.*** On September 3, 2020, the office, along with the Attorney General of the District of Columbia, filed an amicus brief in support of the Office of Federal Contract Compliance Programs of the U.S. Department of Labor in *Oracle v. OFCCP*. The case involves a challenge by Oracle, a federal contractor, to the regulatory and enforcement statute. Restraining the OFCCP’s powers would compromise a significant part of the nation’s anti-discrimination enforcement apparatus to the detriment of workers subject to discrimination throughout the country.

## CIVIL LAW

The work of the Civil Law Division is primarily non-discretionary, and client based. The division represents more than 200 state agencies and California's constitutional officers, including the Governor and the Attorney General, in litigation and other proceedings. The division is presently handling 14,186 cases.

The Division of Civil Law consists of the following sections:

- The **Business and Tax Section's** primary mission is to protect the state's treasury by defending California's tax and fee structure. It protects the insurance, real estate, and financial interests of Californians, as well as the interests of members of the labor and business communities. The section represents three major state taxing agencies and various business and regulatory agencies and their officials.
- The **Cannabis Control Section** represents the state agencies that license medicinal and adult-use cannabis businesses in California.
- The **Correctional Law Section** represents the following entities in litigation and other proceedings: Governor's Office, Department of Corrections and Rehabilitation, Division of Juvenile Justice, and Board of Parole Hearings, and the Department of State Hospitals. The section defends state officials in civil suits brought by state prisoners regarding prison conditions and aspects of parole proceedings. More than 127,000 prisoners, 47,000 parolees, and 600 juvenile offenders are under the jurisdiction of the section's client agencies.
- The **Employment and Administrative Mandate Section** represents state agencies and officials in litigation and other proceedings regarding personnel matters and employment related claims including those for employment discrimination, harassment, retaliation, and interactive process and reasonable accommodation of disability claims.
- The **Government Law Section** defends state statutes against constitutional challenges; litigates matters involving the federal government and other governmental entities to preserve state interests; advises on and litigates elections matters; and carries out the Attorney General's role in preserving the integrity of the electoral process by preparing titles and summaries for proposed initiatives.
- The **Health, Education, and Welfare Section** represents more than 30 state agencies responsible for administering a multitude of health, education, and welfare programs, in litigation and other proceedings pertaining to health quality enforcement, Medi-Cal, and more.
- The **Health Quality Enforcement Section** vertically enforces medical quality investigations and prosecutes disciplinary actions against licensees of the Medical Board of California and other health care boards within the Department of Consumer Affairs.
- The **Licensing Section** protects integrity in business and professions by providing legal services to regulatory agencies created to protect consumers from harm from more than one million licensed businesses and professionals who operate in California.
- The **Tort and Condemnation Section** defends the state, its agencies, departments, and employees in civil actions for personal injury, wrongful death, property damage and civil rights claims brought in state and federal courts.

## BUSINESS AND TAX SECTION

The Business and Tax Section's primary mission is to protect the state's treasury by defending California's tax and fee structure.

The section protects the insurance, real estate, and financial interests of Californians, as well as the interests of members of the labor and business communities. The section represents three major state taxing agencies and various business and regulatory agencies and their officials, including:

- Franchise Tax Board (personal and corporate income taxes)
- Employment Development Department (employment taxes)
- Board of Equalization (utility and property taxes and premium)
- California Department of Tax and Fee Administration (sales and use taxes, other excise taxes, and some fees)
- Department of Insurance and the Insurance Commissioner
- Department of Business Oversight and its Commissioner
- Department of Real Estate and its Commissioner
- California Apprenticeship Council
- State Controller

### MAJOR ACCOMPLISHMENTS

***Arkansas, et al. (California, on behalf of the State Controller) v. Delaware*** This case arises under the original jurisdiction of the United States Supreme Court. Twenty-nine states challenge Delaware's escheat of unclaimed financial instruments sold by MoneyGram in violation of federal law. California has taken a leadership role in the prosecution of this case, in which the value of California's claim is \$15 to \$25 million. In addition, the case will have an ongoing impact on state escheat practices. Cross-motions for summary judgment are pending before a Special Master.

***Bekkerman, et al. v. California Department of Tax and Fee Administration*** This case challenges a regulation requiring sales tax on mobile telephones to be assessed on the full "unbundled" price of the telephone, rather than any discounted price contingent on a service plan commitment. A class action also seeks refunds of any excess sales tax paid, potentially to exceed \$1 billion. The trial court dismissed the state defendants from the class action, holding the refund claim premature; that ruling is on appeal. A hearing on the merits of the first action is pending.

***Franchise Tax Board LLC Tax Refund Cases*** This coordinated class action challenges the constitutionality of the tax imposed on limited liability companies registered in California under former Revenue and Taxation Code section 17942. The potential refunds total \$1.7 billion. The California Court of Appeal reversed the trial court's denial of class certification, changing long-standing law which had prohibited class action suits for refund unless preceded by administrative submission of a class claim for refund. On remand, the class was certified and cross-motions for summary judgment on the merits are pending.

***McClain v. Sav-On Drugs, et al. (California Dept. of Tax & Fee Administration)*** This consumer class action alleged that sales of glucose blood testing strips and lancets are exempt from sales tax and sought refunds of sales tax reimbursements paid by consumers to retailers. The California Supreme Court affirmed dismissal of the case under established precedent holding that retailers, not consumers, are taxpayers for purposes of sales tax and thus only retailers may claim sales tax refunds. The Court also declined to recognize any equitable remedy allowing consumers to recover sales tax reimbursements where the taxability issue has not been resolved.

***PacifiCare Life and Health Insurance Co. v. Jones (Department of Insurance)*** In the first phase of this case, the California Court of Appeal upheld key provisions of Fair Claims Settlement Practices regulations that govern how insurance companies process claims. These regulations form the basis for the Insurance Commissioner’s administrative decision, finding that PacifiCare committed nearly one million violations of these regulations, and assessing penalties of \$173 million. The second phase of this case, now on appeal, challenges these findings and assessments against PacifiCare.

## **CANNABIS CONTROL SECTION**

The Cannabis Control Section represents the following entities and state agencies involved in commercial cannabis licensing and enforcement activities:

- Bureau of Cannabis Control, Department of Consumer Affairs
- CalCannabis Cultivation Licensing, Department of Food and Agriculture
- Manufactured Cannabis Safety Branch, Department of Public Health
- California Department of Tax and Fee Administration
- California Highway Patrol
- California Department of Fish and Wildlife
- State Water Resources Control Board and Regional Boards
- Governor’s Office

Since its inception in June 2018, the section continues to develop and grow. Currently, the section is focused on defending lawsuits filed against client agencies relating to the implementation of licensing and enforcement programs. The section filed the first civil enforcement action for unlicensed commercial cannabis activity by a state regulatory agency. The section continues to review and provide advice on regulations and legislation related to cannabis. In addition, the section has assisted clients in drafting policy and has provided training on report writing. The section will handle licensing administrative proceedings and appeals from those proceedings.

## **MAJOR ACCOMPLISHMENTS**

***County of Santa Cruz et al. v. Bureau of Cannabis Control et al.*** The County of Santa Cruz and 24 cities seek declaratory and injunctive relief based on a regulation promulgated by the Bureau of Cannabis Control, which prohibits a local jurisdiction from preventing “delivery of cannabis or cannabis products on public roads by a licensee...” Plaintiffs argue that the regulation strips them of the local control over commercial cannabis activity that was guaranteed by Proposition 64. Plaintiffs seek a judicial determination that the regulation is inconsistent with the Medicinal and Adult-Use Cannabis Regulation and Safety Act and therefore invalid, and an injunction from implementation of the regulation by the Bureau of Cannabis Control.

***California Department of Food and Agriculture v. Lowell Farms, LLC et al.*** The California Department of Food and Agriculture filed this complaint for civil penalties against Lowell Farms, LLC, Lowell Farms, LLC dba Lowell Herb Co., The Hacienda Co., LLC, David Elias, and Brett M. Vapnek, for engaging in unlicensed commercial cannabis activity in violation of the Medicinal and Adult-Use Cannabis Regulation and Safety Act. Specifically, defendants processed cannabis without a license. Under the terms of the settlement, plaintiffs agreed to pay \$500,000 to the state as part of the overall settlement; \$33,560 to the California Department of Food and Agriculture for investigation costs and attorney’s fees, and \$12,852 to the California Department of Fish and Wildlife for investigation costs, costs of destroying illegal cannabis, and attorney’s fees.

***Matthew Farmer v. Bureau of Cannabis Control et al.*** Matthew Farmer seeks declaratory and injunctive relief based on a regulation promulgated by the Bureau of Cannabis Control, which



established the requirements for outdoor advertising displays. Plaintiff argues that the regulation illegally expands the statute which states that no licensee shall “[a]dvertise or market on a billboard or similar advertising device located on an Interstate Highway or State Highway which crosses the border of any other state.” The regulation states billboards shall not be located within a 15-mile radius of the California border on an Interstate Highway or on a State Highway that crosses the California border.

***Apothio, LLC v. Kern County; Kern County Sheriff’s Office; California Department of Fish and Wildlife; Donny Youngblood; Joshua Nicholson; Charlton H. Bonham.*** Apothio, LLC alleges defendants deliberately and wrongfully destroyed 500 acres of industrial hemp, which was allegedly being grown for research purposes, believing that it was unlicensed cannabis. Apothio LLC claims that the destroyed crop was valued at one-billion dollars.

## **CORRECTIONAL LAW SECTION**

The Correctional Law Section represents Governor’s Office; Department of Corrections and Rehabilitation (CDCR), Division of Juvenile Justice, Board of Parole Hearings; and the Department of State Hospitals in litigation and other proceedings.

The section defends state officials in civil suits brought by state prisoners regarding prison conditions and aspects of parole proceedings. Given various sentencing reforms and the state’s proactive response to the COVID-19 pandemic, the number of inmates under the state’s custody and control have reduced dramatically. Approximately 100,000 offenders are in CDCR’s custody or under its supervision, and more than 55,000 parolees are under the jurisdiction of the section’s client agencies. Successful defense of these cases saves millions of taxpayer dollars in potential liability.

## **MAJOR ACCOMPLISHMENTS**

***Plata v. Newsom*** This class action concerns the delivery of medical care to prisoners. In 2006, the court appointed a Receiver to manage inmate medical care. To date, the delivery of medical care at 19 prisons has been delegated back to the state. In March 2020, the COVID-19 pandemic hit the state and its prison institutions, which generated significant litigation seeking inmate releases and other forms of relief related to the pandemic. From March 1 through mid-August 2020, CDCR reduced its prison population by more than 18,000 inmates through natural releases, measures implemented to release some inmates in response to the pandemic, and a cessation of intake from the counties as another response to the pandemic. The inmates that remain in state custody have benefitted from social-distancing measures and quarantine and isolation space.

***Coleman v. Newsom*** This class action concerns inmate mental-health care. Since 1995, a court-appointed special master has monitored and reported on CDCR’s compliance with the remedial plan. The remedial stage of the litigation continues. In connection with CDCR’s ongoing COVID-19 response plan, approximately 5,000 *Coleman* class members have been released from CDCR’s custody, as of mid-August 2020. The parties continue to litigate various matters.

***Three-Judge Court Litigation*** This litigation stems from the 2011 U.S. Supreme decision affirming a three-judge court’s finding that prison overcrowding was the primary cause of alleged unconstitutional medical and mental health care (*Coleman* and *Plata* cases). Under the three-judge court’s judgment, CDCR must maintain an inmate population of less than 137.5 percent of design capacity. This matter remained relatively dormant for an extended period as the state worked toward demonstrating a “durable” population remedy to end court oversight. Then the COVID-19 pandemic hit the state and its prisons, and Plaintiffs filed a motion in the three-judge court proceeding to further reduce the population. The three-judge court denied Plaintiffs’ motion on April 4, 2020, without prejudice, and encouraged Plaintiffs to seek injunctive relief in the *Coleman* and *Plata* cases. As of August 2020, the

population was 96,881, which is about 113.9 percent of design capacity.

***Armstrong v. Newsom*** This class action involves enforcement of inmates' and parolees' rights under the Americans with Disabilities Act. This case is in the remedial stage. The parties continue to litigate various issues.

***Ashker v. Newsom*** This settled class action concerns CDCR's gang-validation and segregated-housing practices. After a two-year settlement monitoring period, the district court found that Defendants breached two settlement terms, which the Ninth Circuit reversed. The district court also extended the settlement for an additional year, but the Ninth Circuit remanded that finding for lack of jurisdiction. The further extension period ended on July 15, 2020 but given the original extension order and unsettled procedural posture, Plaintiffs intend to file a second motion extending the settlement. The parties continue to litigate named plaintiff Ashker's stand-alone retaliation claim.

## **EMPLOYMENT AND ADMINISTRATIVE MANDATE SECTION**

The Employment and Administrative Mandate Section represents state agencies and officials in civil lawsuits and other proceedings regarding personnel matters and employment related claims including those for employment discrimination, harassment, retaliation, and reasonable accommodation and other disability and leave claims. It prosecutes employee misconduct cases before the State Personnel Board. The majority of section deputies are litigators, but there is also an Investigations Group within the section. Deputies assigned to the Investigations Group specialize in conducting internal and external workplace investigations. The investigations may involve Equal Employment Opportunity, workplace violence, whistleblower, or alleged employee misconduct allegations. EAM investigations are typically privileged and confidential and rarely become public unless they form the basis of an adverse action which results in litigation.

The section also provides training and advice relating to a variety of employment issues so that client agencies can better detect, remedy, and prevent problems in the workplace.

In addition to its employment work, the section represents specific law enforcement and regulatory state agencies in matters affecting public safety, such as vehicle licensing, liquor licensing, and attempts by criminal defendants to obtain information from the personnel files of peace officers.

## **MAJOR ACCOMPLISHMENTS**

***Larios v. Lunardi et al.*** This is a Fourth Amendment search and seizure case which is currently on appeal before the Ninth Circuit. Plaintiff was an officer for the California Highway Patrol who was investigated for possibly having an illicit affair with a confidential informant. During that investigation and pursuant to a policy that provided that CHP work on a personal cell phone could be viewed by the CHP, plaintiff's personal cell phone was seized and reviewed by investigators over a seven-hour period. The investigators also downloaded texts with the confidential informant that evidenced the affair. The CHP terminated plaintiff for having a relationship with the confidential informant which compromised several prosecutions as well as for dishonesty. Plaintiff then sued claiming the search of his cell phone violated his Fourth Amendment rights. The district court granted summary judgment finding that the search of plaintiff's personal cell phone was reasonable and while downloading the texts was an improper seizure the investigators had qualified immunity from suit.

**Front Line Motor Cars v. Webb** Front Line Motor Cars was a used car dealer that had a practice of repossessing cars when buyers could not obtain financing. Front Line would then refuse to return the buyers' down payments. The buyers complained to the Department of Motor Vehicles which directed Front Line to refund the down payments. When Front Line refused, the DMV conditionally revoked Front Line's license for violating the Rees-Levering Motor Vehicles Sales and Finance Act. Front Line argued that the transactions were outside the Act because they were conditional sales contracts not seller-assisted financing. The Court of Appeal disagreed. The record established that Front Line did not intend in good faith to enter into a bona fide credit sale. Therefore, Front Line's predatory practice of selling cars and then repossessing them and keeping the down payments when the buyers failed to qualify for financing fell squarely within the consumer protections the Act was intended to provide.

**Carreon et al. v. CDCR and Bugube et al. v. CDCR.** These lawsuits allege the California Department of Corrections and Rehabilitation failed to provide reasonable accommodations to pregnant correctional officers and non-sworn employees. Plaintiffs claim they were entitled to light duty positions. The lawsuits involve the interplay between court orders and new regulations being implemented by CDCR as well as class certification issues.

**Aguirre v. California Employment Development Department** Plaintiff sued the Employment Development Department in federal court alleging violations of the Family Medical Leave Act and the California Family Rights Act. Plaintiff accepted a promotion knowing her new job required her to work in Marysville, which was about 100 miles from her home. Shortly thereafter, plaintiff requested intermittent leave during the morning hours to care for her ill father. EDD granted the requested leave such that she would begin working at 12:30 p.m. every day. For a limited period, it also allowed her to work from an EDD office near her home. At the end of the period, EDD required plaintiff to begin working from Marysville. Plaintiff's start time remained the same. Plaintiff then sued, claiming it was impossible for her to work that schedule in Marysville due to the two-hour commute time from her home. The office presented evidence that plaintiff's leave request had been granted and that she had the option of requesting further paid or unpaid leave. The case was tried to a jury, which ruled for all defendants. The matter is now on appeal.

**Moore v. California Department of State Hospitals** This was a wage-and-hour class action alleging that detained patients participating in vocational programs at state hospitals are state employees subject to the minimum wage. Plaintiffs sought claimed unpaid wages, liquidated damages, and waiting time penalties in excess of \$30 million. The Department of State Hospitals does not view the patients as employees. It considers that the purposes of the vocational programs are therapeutic and rehabilitative and benefit the patients. The patients who made up the putative class are persons who have been committed to DSH for treatment pursuant to statute, including persons determined to be sexually violent predators, mentally disordered offenders, persons incompetent to stand trial, and persons found not guilty by reason of insanity. The court granted the motion for summary adjudication finding that the Government Claims Act applied to plaintiffs' claims and therefore the claims were limited to the one-year presentation period for a government claim. The office then achieved a favorable settlement for the DSH at mediation.

**California DUI Lawyers Association, et al. v. California Department of Motor Vehicles** This is a due process challenge to the Department of Motor Vehicles' administrative process for driving under the influence license suspension hearings. The DMV conducts over 100,000 such hearings each year and so state law provides for a summary proceeding. As part of this process, DMV hearing officers not only serve as a trier of fact, but also present the evidence supporting the suspension at the hearing. Plaintiffs alleged that the hearing officers' dual role violates due process. The trial court granted DMV's motion for summary judgment on the grounds that the overlap of functions that a hearing officer is responsible for does not result in actual bias and so does not violate due process. The matter is currently on appeal.

## GOVERNMENT LAW SECTION

The Government Law Section advises the Governor, Attorney General, Controller, Treasurer, Secretary of State, and many state agencies and departments, and represents them in civil litigation and other proceedings. The section:

- Defends state statutes against constitutional challenges
- Litigates matters involving the federal government and other governmental entities to preserve state interests.
- Advises on and litigates elections matters.
- Carries out the Attorney General's role in preserving the integrity of the electoral process by preparing titles and summaries for proposed initiatives.
- Serves as bond counsel to the State Treasurer and various state agencies regarding issuance of bonds.
- Advises on and litigates firearms matters.
- Advises clients on issues relating to public records, open meeting laws, financial conflicts of interest, and ethics.

During this biennial period, additional resources were redirected to the section to create a Regulations Unit and a Public Records Act (PRA) Unit. The Regulations Unit centralizes the Department's rulemaking activities for improved efficiency, quality of work product, and consistency. The PRA Unit ensures effective management of the Department's responses to public records requests, which have substantially increased in volume and complexity in recent years. The unit also provides legal counsel to the Department and various state agencies, as they fulfil their responsibilities under the PRA.

### MAJOR ACCOMPLISHMENTS

**COVID-19 Litigation.** The Attorney General has successfully defended against numerous challenges to the Governor's executive orders, issued under the Emergency Services Act, to protect Californians' health during the COVID-19 pandemic. These matters have been litigated at every level of state and federal court, including the California and United States Supreme Courts. And they have addressed, among other issues: religious services, essential-business classifications, stay-at-home orders, patient housing, face coverings, public demonstrations, election rules, bail conditions, sex-offender registration, emergency funding, firearm sales, protection against evictions, and beach access.

***State of California v. Ross*** In 2019, the Attorney General obtained judgment against the U.S. Department of Commerce, the U.S. Census Bureau, and federal officials, enjoining them from adding a citizenship question to the 2020 Census—an action that would have discouraged responses to the Census and jeopardized congressional seats for California, its allocation of presidential electors, and critical federal funding. The lawsuit brought claims under the U.S. Constitution's actual enumeration provision and the Administrative Procedure Act, challenging the federal government's action as arbitrary and capricious. In 2020, the Attorney General filed a separate lawsuit challenging President Trump's Memorandum ordering Secretary Ross to exclude undocumented immigrants from the Apportionment count.

***United States v. California*** In coordination with the AG's Civil Rights Enforcement Section and the Office of the Solicitor General, the Government Law Section has defended against the United States' efforts to invalidate three California statutes: 1) Assembly Bill 450 ("the Immigrant Worker Protection Act," which generally prohibits employers from voluntarily allowing immigration agents to enter nonpublic areas of a workplace or inspect employment records); 2) Assembly Bill 103 (which requires state inspection and review of immigration detention facilities); and 3) Senate Bill 54 ("the Values Act," which generally prohibits state and local law enforcement from sharing certain immigration information with immigration authorities, without compulsory legal process). While a portion of the case continues,

the State has largely defeated the federal government’s claims.

**Firearms matters** The Attorney General defends against various challenges to state laws that protect public safety by regulating firearm possession and use. Some of these laws include:

- Statutes regulating the open carry of firearms in public (*Flanagan v. Becerra*; *Nichols v. Newsom*);
- Registration requirements for bullet-button assault weapons (*Villanueva. V. Becerra*);
- Prohibition against the sale of firearms to persons between 18 and 21, with certain exceptions for rifles—such as when the individual has a valid hunting license (*Jones v. Becerra*);
- The ban on the possession or sale of large-capacity magazines (*Duncan v. Becerra*);
- Proposition 63’s background-check and in-person sales requirements for purchase of ammunition (*Rhode v. Becerra*);
- Firearm-registration requirements in the Assault Weapons Control Act (*Rupp v. Becerra*); and,
- The Gun-Free School Zone Act, which was upheld in a federal appeal decided in 2018 (*Gallinger v. Becerra*).

**Assembly Bill 5 Litigation.** The Attorney General is defending against six lawsuits challenging the application of the “ABC test,” which is used to determine whether a worker is an employee or an independent contractor, as set out in Assembly Bill 5 and the California Supreme Court’s decision in *Dynamex v. Superior Court*.

**Net Neutrality Litigation** In two lawsuits against the State—one brought by the United States, and one by telecommunications industry groups—the Attorney General is defending against challenges to the California Internet Consumer Protection and Net Neutrality Act of 2018. The Legislature passed this law to protect an open and neutral Internet, following the federal government’s repeal of the Obama administration’s prior net neutrality rules. These cases address claims under federal preemption law and the Dormant Commerce Clause.

**Stockman v. Trump.** The State of California has intervened as a plaintiff in this case to challenge President Trump’s ban on transgender individuals in the military. California joins individuals serving in the United States armed forces, individuals seeking to enlist in the armed forces, and Equality California in challenging the ban under the First and Fifth Amendments to the U.S. Constitution.

**Redevelopment Agency Dissolution Cases.** Since the landmark decision in *California Redevelopment Association v. Matosantos*, which upheld the dissolution of the state’s redevelopment agencies, the Attorney General has successfully defended the Department of Finance in over 200 cases involving redevelopment agencies’ wind-down. These efforts have preserved billions of dollars in revenue used for core local governmental services such as schools, fire suppression, and water.

## **HEALTH, EDUCATION, AND WELFARE SECTION**

The Health, Education, and Welfare Section represents more than 30 state agencies responsible for administering a multitude of health, education, and welfare programs, including:

- Medi-Cal Program
- CA Health Benefit Exchange (CoveredCA)
- CalWORKs
- In-Home Supportive Services



- Skilled Nursing Facilities Oversight
- California Community Colleges
- Education (Special Education, Charter Schools, Public School Funding)
- Child Support Enforcement
- State Hospitals and Developmental Centers

## **MAJOR ACCOMPLISHMENTS**

***Christensen v. Lightbourne.*** The section secured victories in both the California Supreme Court and Court of Appeal that reaffirmed the importance of deferring to a State Agency’s interpretation of its own regulations. The underlying case involved a policy dispute concerning the California Department of Social Services interpretation of a CalWORKs program regulation. The appellate courts found that great weight must be accorded to the State Agency’s interpretation because: 1) the State Agency was responsible for adopting regulations/standards for the program at issue and had specialized expertise in the administration of this program; and 2) the State Agency consistently maintained its interpretation over a 20-year period.

***California Department of Managed Health Care v. Kaiser Foundation Health Plan, Inc.; California Assoc. of Health Plans v. Shelley Rouillard and California Department of Managed Health.*** In response to complaints from patients who were at risk of iatrogenic infertility due to their cancer treatments, the California Department of Managed Health Care defined medically-necessary fertility preservation treatments as a basic health care service. This designation required health insurers to provide coverage for the cost of such treatments. The section filed a complaint and sought a preliminary injunction to bring one of the largest managed health care plans into compliance and is defending against an industry challenge to this directive.

***Buck v. Smith, Whitlow v. California, Middleton v. Pan; Torrey-Love v. State.*** In response to a measles outbreak in the State, the Legislature eliminated an exemption in the longstanding California law requiring school-age children to be vaccinated in order to be admitted to schools and day-care facilities. Senate Bill 277 (SB 277) removed the exemption for children whose parents objected on the ground that vaccination violates their “personal beliefs.” The section successfully defended the State and its officials against four separate lawsuits, filed by opponents of vaccination, challenging the constitutionality of SB 277 in state and federal courts. The complaints alleged that SB 277 violated the U.S. Constitution, the California Constitution, and various state statutes. All of the suits sought to enjoin enforcement of SB 277 and to permit unvaccinated children to attend school and day-care facilities. The section succeeded in defeating all the injunction applications, and ultimately obtained dismissals of all four lawsuits, with the dismissals affirmed in three published appellate opinions upholding the constitutionality of SB 277.

***Association of American Physicians & Surgeons, Inc. v. Department of Managed Health Care.*** The section successfully defended a challenge to Assembly Bill 72 brought by the Association of American Physicians & Surgeons. The California Legislature passed Assembly Bill 72 (the “Act”) to protect patients who have health coverage from “surprise medical bills.” These are bills received by patients for treatment, unbeknownst to them, from an out-of-network health professional for services accompanying treatment at an in-network health facility. Under the Act, insured individuals are only responsible for costs equal to what they would pay if they received the service from an in-network provider. Further, out-of-network providers are prohibited from billing or collecting any amount from the enrollee for their services except for the in-network cost-sharing amount. The complaint alleged that the Act violated the Due Process, Takings, and Supremacy Clauses of the United States Constitution, and prayed that that Act be stricken in its entirety. The section succeeded in defeating plaintiff’s claims, and ultimately obtained dismissal of the lawsuit. Plaintiff declined to seek appellate review.

## HEALTH QUALITY ENFORCEMENT SECTION

The Health Quality Enforcement Section prosecutes disciplinary actions against licensees of the Medical Board of California and other health care boards within the Department of Consumer Affairs, including:

- Acupuncture
- Licensed Midwives
- Naturopathic Medicine
- Osteopathic Physicians
- Podiatrists
- Physician Assistants
- Physical Therapists
- Psychologists
- Respiratory Care Therapists
- Speech-Language Pathology and Audiology/Hearing Aid Dispensers

As part of its prosecutorial functions to prevent imminent harm to public health, safety, and welfare, the section enforces investigational subpoenas, petitions for mental examination and obtains interim license suspension orders, and recommends criminal bail restrictions against licensees. The section defends health care oversight agencies and their executive officers, board members and employees in administrative writs, and state and federal lawsuits relating to their licensing and enforcement programs. The section also enforces its clients' investigational subpoenas in superior court.

Significant cases and activities include:

***Dean Grafilo v. Emil Soorani, M.D., Court of Appeal, Second District*** In a published opinion, the Court of Appeal sustained the trial court's order compelling production of six patient medical records. The Court of Appeal held that the Medical Board established the absence of less intrusive alternatives to secure its compelling interests; established sufficient good cause to order the production of the records based on the declaration of the Board's medical consultant; and put forth sufficient evidence to support an inference of improper prescribing and had compelling interests to regulate controlled substances and ensure that physicians conform to the standard of care. The Court rejected the argument that the Board's expert declaration lacked evidentiary support because the reviewed CURES report was not introduced as evidence in the superior court, distinguishing a special proceeding to enforce an investigative subpoena from a motion for summary judgment. The Court also held that there was no requirement to prove misconduct or negligence. Based on the records that were ordered produced in the subpoena enforcement action, the DOJ is representing the Medical Board in an Accusation against the doctor.

***Ron Kennedy, M.D. v. Medical Board of California*** Kennedy instituted a civil action for, inter alia, injunctive and declaratory relief. Kennedy contended that the Fourth Amendment of the U.S. Constitution and Article 1 of the California Constitution required the Medical Board to provide him with an opportunity to challenge subpoenas issued to third party school districts. Following the subpoena enforcement action, the trial court issued an order compelling Kennedy to comply with three investigational subpoenas for office charts. Kennedy sought a stay by writ of supersedeas to the appellate court. In a published decision, the appellate court held that a subpoena enforcement action brought pursuant to Government Code sections 11186 and 11187 is a "special proceeding" not covered by the stay provisions of the Civil Code and that Kennedy was not entitled to an automatic or a discretionary stay of the Board's investigation. Kennedy then petitioned the California Supreme Court, which denied review. The office filed a demurrer to Kennedy's civil action third party subpoenas. The trial granted the demurrer without leave to amend, whereupon Kennedy filed a second appeal. Based on the records that were ordered produced from the third-party school districts in the subpoena enforcement action, the Office of the Attorney General is representing the Medical Board in an

Accusation.

***American Board of Cosmetic Surgery, Inc. v. Medical Board of California*** The trial court issued a judgment denying the American Board of Cosmetic Surgery, Inc.'s (ABCS) petition for writ of mandate against the Medical Board, seeking to reverse the Board's earlier denial of an application seeking permission for their physician plastic surgeon members to advertise in California as "Board Certified." This was the third time the Medical Board denied ABCS's application, and the ABCS's third unsuccessful writ petition. The appellate court upheld the Medical Board's denial of the application, and rejected each of petitioner's claims of error. The appellate court concluded that that the Board's denial of ABCS's application for Board Certification equivalency was not arbitrary, capricious, or devoid of evidentiary support.

***Yashwant Giri v. Medical Board of California***. The trial court granted the demurrer on Giri's complaint for declaratory relief filed five years after his surrender of his California medical license following his criminal conviction of multiple sexual assaults of female patients. Giri argued that Business and Professions Code section 2232 is unconstitutional because it deems license revocation mandatory for Penal Code section 290 sex offender registrants, and purportedly prevents him from bringing a petition for reinstatement under section 2307. The trial court held that respondent's failure to file a petition for reinstatement, before filing his civil suit, was fatal to his case under the doctrine of exhaustion of administrative remedies.

***Kenneth Stoller, M.D. v. Dennis Herrera et al.*** On behalf of the Medical Board, the office directed vertical enforcement investigations of Stoller who had been issuing vaccine exemptions to school-aged children without a valid medical reason since 2018. While the investigation was ongoing, the San Francisco City Attorney issued subpoenas to Stoller for records of exemptions issued to San Francisco patients. Stoller filed a civil rights action against the City Attorney and amended his complaint to add officers of the Department of Consumer Affairs and Medical Board of California. He sought to enjoin the agencies from investigating him, alleged improper motives and tactics, and asked the court to issue a declaratory judgment that the California Legislature had authorized vaccine exemptions beyond the guidelines previously set by the Centers for Disease Control. The office filed a demurrer to the causes of action relating to the agencies, based on Stoller's failure to exhaust his administrative remedies. Stoller dismissed the City Attorney (who withdrew the subpoenas after Stoller moved out of the county), amended the complaint again to add a patient's parent as a co-plaintiff, the California Department of Public Health as a defendant, and allegations regarding investigator misconduct. In addition, he urged the court to find a "public policy" exception to the Exhaustion Doctrine to permit him to seek injunctive relief without exhausting his administrative remedies. The trial court sustained the demurrer without leave to amend. The court found that Stoller was required to exhaust his administrative remedies before the Medical Board before resorting to the courts and that no exception to the doctrine excused him from doing so. As to the parent/co-plaintiff, the court found that she too had an administrative remedy by way of a motion to intervene (Gov. Code, § 11440.50). Based on the records that were ordered produced in the subpoena enforcement action, the Office of the Attorney General is representing the Medical Board in an Accusation.

***In the Matter of the Accusation Against Guillermo Cortes. M.D.*** Following an administrative hearing, the Medical Board adopted the proposed decision of the Administrative Law Judge revoking the physician's and surgeon's certificate of Guillermo Cortes, M.D., a fellow in the cardiology program at the University of Southern California School of Medicine. Cortes committed unprofessional conduct when he sexually assaulted another physician in training while on duty at the hospital.

***Carmen A. Puliafito, M.D. v. Medical Board of California***. The trial court denied Puliafito's writ of administrative mandate seeking to set aside the Medical Board's decision revoking his medical license. Puliafito, the former Dean of the University of Southern California School of Medicine, used illicit drugs,

and engaged in a sexual relationship with a female companion to whom he prescribed medications. Despite knowledge of her recent discharge from a drug/alcohol rehabilitation program, he facilitated her to overdose on illicit drugs in his presence. In his writ, Puliafito argued that the Medical Board violated the Americans with Disabilities Act (ADA), alleging it failed to consider that his unprofessional conduct was wholly caused by his Bipolar II Disorder. The court independently found no ADA violation and ample evidence that Puliafito engaged in unprofessional conduct and was unfit to practice medicine. It held that the Board had statutory authority under Business and Professions Code section 822, to take disciplinary action against Puliafito's license in order to protect the public notwithstanding any mental illness.

**Tajinder Singh v. Kirchmeyer, et al.** The trial court sustained the Medical Board's third demurrer without leave to amend. Singh filed a Petition for Writ of Mandate (Civ. Proc. Code, § 1085) and Civil Complaint seeking injunctive relief under Title II of the Americans with Disabilities Act, the Rehabilitation Act, and Government Code section 12944. He contested the Board's rejection of his application for physician licensure after he failed the third step of his licensing examination four times, and passed on his fifth try. He alleged that he discovered his disability only after failing the exam four times, and that the Board failed to accommodate him and engage in the interactive process. The Court agreed with the Board's position, supported by statute, that passing the third step of the physician exam within four attempts was an essential eligibility requirement. The Court found that Singh was not a qualified individual under the disability statutes; that waiving the four-attempt maximum requirement would fundamentally alter the nature of the Board's licensing program; and that the request for a reasonable accommodation was untimely.

**James Gregory White v. Medical Board of California.** The trial court sustained without leave to amend the demurrer of White's complaint against the Medical Board for not processing his license reinstatement petition. White surrendered his medical license in 2015 in settlement of an Accusation charging him with overprescribing large quantities of opiates and benzodiazepines, without adequate justification, examination and follow-up contributing to at least nine patient deaths. White argued unconstitutionality and impossibility grounds, and sought declaratory relief to "correct" the Medical Board's handling of his incomplete petition for reinstatement of his surrendered medical license. The office demurred on the grounds that he failed to state a cause of action, the trial court lacked jurisdiction, and the matter was not ripe for adjudication in that he did not exhaust administrative remedies. The Court agreed that the Medical Board did not have to process the petition because it did not include two verifiable letters of recommendation from physicians licensed in any state who had personal knowledge of his activities since his license revocation, as required by Business and Professions Code section 2307.

**In the Matter of the Accusation Against James Bicher, M.D.** Bicher surrendered his medical license shortly after the filing of the Medical Board's Accusation alleging that he was incompetent in treating a patient with Stage IV prostate cancer in what he claimed was a "research study" using hyperthermia and radiation as curative modalities. In reality, Bicher treated the patient with a hyperthermia device that could never treat to the depth of the patient's cancer sites, and applied extended radiation in unacceptable and non-standard high doses that damaged the patient's healthy tissue and organs surrounding the cancer. Bicher was formerly a renowned radiation oncologist who for decades promised "pioneering" cancer treatment to vulnerable and terminal stage patients. In his long history of using experimental hyperthermia and radiation treatments the Board noted he "pushed the envelope" favoring research over established clinical protocols. In 1997, he was placed on probation for repeated negligent acts and dissemination of misleading statements when he used an FDA-approved device that he developed to treat cancer patients. In 2004 and 2006, Bicher was again placed on probation based on his use unorthodox medical treatment of terminal cancer patients with hyperthermia and radiation in an unconventional manner.

***In the Matter of the Accusation Against Jason Hui-Tek Yang, M.D.*** The Medical Board revoked Yang’s medical license for a mandatory period of 10 years following an administrative hearing. (Bus. & Prof. Code, § 2273, subd. (b).) The revocation was based on five felony criminal convictions for violating Insurance Code section 1871.4, subdivision (a)(1), making or causing to be made knowingly false or fraudulent material statements for the purpose of obtaining compensation through workers compensation. Yang was involved in a scheme with a revoked chiropractor to order specialty consults for referred patients without justification, and signing fraudulent psychiatric reports submitted for billing. In total, the scheme fraudulently billed Medi-Cal over \$98 million which paid out over \$12.4 million, of which Yang received over \$8.2 million.

***In the Matter of the Accusation against Kendra Armour, P.A.*** The Physician Assistant Board revoked the physician assistant license of Kendra Armour following a seven-day hearing. Armour created a sham professional medical corporation by hiring a succession of physicians to front as majority shareholders and supervising physicians, successfully evading limitations on her license for nine years. Physician assistants are not permitted to practice autonomously, without a supervising physician, and they are not qualified to enroll as individual providers for assigned patients in the Medi-Cal program. Armour claimed that her professional medical corporation was legitimate, that she held no more than the legally-permitted 49 percent ownership, and presented corporate documents to support her claims of minority ownership and proper supervision. The decision held that the professional medical corporations to be the alter ego of Armour herself, that she was the de facto sole owner, practicing without supervision and thereby engaging in the unlicensed practice of medicine. The Board found that in manipulating and violating the public protection laws governing the license of a physician assistant, Armour demonstrated a lack of integrity such that she could not be trusted to comply with any terms of probation, and revoked her license.

## **LICENSING SECTION**

The Licensing Section protects integrity in businesses and professions by providing legal services to regulatory agencies created to protect consumers from harm from more than one million licensed businesses and professionals who operate in California. The clients of the Licensing Section are responsible for the regulation of:

- Accountants
- Architects and Landscape Architects
- Automotive Repair Shops and Smog Technicians
- Barbers, Cosmetologists, and Estheticians
- Boxers, Martial Arts Fighters, and Promoters
- Cemetery and Funeral Businesses
- Certified Access Specialists
- Chiropractors
- Contractors
- Court Reporters
- Dentists, Dental Assistants, and Hygienists
- Electronics and Appliance Repair persons
- Engineers
- Fiduciaries
- Geologists and Geophysicists
- Harbor Pilots
- Home Furnishings Suppliers
- Household Movers
- Land Surveyors
- Marriage and Family Therapists, and Social Workers
- Occupational Therapists



- Optometrists and Opticians
- Pest Exterminators
- Pharmacists and Pharmacies
- Private Investigators, Security Guards, Locksmiths, and Repossessors
- Private Postsecondary Educational Institutions
- Public School Teachers
- Psychiatric Technicians
- Real Estate Appraisers
- Registered and Vocational Nurses
- Shorthand Reporters
- Veterinarians, Veterinary Technicians, and Assistants
- Yacht and Ship Brokers

The following significant cases are representative of the variety of work handled by the staff of the Licensing Section on behalf of their client agencies:

***Fusion IV Pharmaceuticals, Inc. v. Anne Sodergren, Executive Officer of the California Board of Pharmacy*** Plaintiffs were federally registered as an “outsourcing facility,” a category of pharmaceutical entity created by Congress in the 2013 Drug Quality and Security Act. California enacted a corresponding regulatory licensing scheme for outsourcing facilities. Plaintiffs, having been denied a California license, filed suit alleging that 1) California’s outsourcing facility regulations are preempted by the Act, and 2) California’s regulations violate the dormant Commerce Clause. The Ninth Circuit concluded that the Act does not expressly preempt California’s regulations under either field preemption or conflict preemption analyses. Finally, the court rejected plaintiffs’ dormant Commerce Clause challenge because they failed to establish that California’s regulations imposed a substantial burden on interstate commerce. The Ninth Circuit issued a decision affirming the district court’s grant of judgment on the pleadings in favor of defendant Anne Sodergren, the Executive Officer of the California Board of Pharmacy.

***Board of Behavioral Sciences Accusation Against Michelle Foreman.*** In May of 2016, Licensed Clinical Social Worker Michelle Foreman began a sexual relationship with a female military veteran to whom she had provided therapy while the patient was enrolled in the Domiciliary Residential Rehabilitation and Treatment Program at the West Los Angeles Veterans Administration Hospital. The patient was particularly vulnerable to boundary violations in that she had experienced sexual assault while in the military, and had a history of Borderline Personality Disorder and substance abuse. The sexual relationship began prior to two years after the termination date of therapy and while Ms. Forman continued to act as the patient’s social worker in non-therapeutic capacities. Business and Professions Code section 4992.33 requires that the Board revoke a Licensed Clinical Social Worker License upon a decision that contains any finding of fact that the licensee engaged in any act of sexual contact with a patient. Settlement negotiations therefore were primarily focused on whether the former therapy patient was still a patient of Ms. Forman in the context of the non-therapeutic social work Ms. Forman allegedly continued to provide to the patient (securing housing accommodations for her and serving as an advocate for her in criminal court) while the sexual relationship was ongoing. After a thorough review of patient records showing that Ms. Forman continued to make entries in the patient’s medical records following the commencement of their sexual relationship, a stipulated settlement was reached for outright revocation of Ms. Foreman’s Licensed Clinical Social Worker License.

***Board of Chiropractic Examiners Accusation against Reza Abusaidi, D.C.*** The Board of Chiropractic Examiners revoked the chiropractic license of Reza Abusaidi, D.C. Abusaidi was charged with performing unnecessary vaginal and anal examinations and treatments on five female patients. The case was tried over six days. The Administrative Law Judge issued a proposed decision recommending that Abusaidi’s license be placed on probation. However, the Board rejected the proposed decision and, after a review

of the evidence presented in the hearing, issued its own decision revoking the license outright, based on findings the chiropractor engaged in repeated negligent acts, gross negligence, unprofessional conduct, and dangerous conduct. In sum, the Board found that Abusaidi “unnecessarily exposed his patients to highly questionable, sensitive, and invasive examinations that carried a risk of bodily harm and is not fit to hold a license to practice chiropractic.”

**California Board of Accountancy Accusation against Hagen, Streiff, Newton & Oshiro, Accountants, P.C., et al.** Hagen, Streiff, Newton & Oshiro (HSNO) specialized in forensic accounting and expert witness services. HSNO issued two forensic “consulting” reports to the City of Irvine containing false and misleading findings about contractors, city staff, and politicians involved in the billion-dollar Orange County Great Park public works project. HSNO’s reports became the subject of government agency investigations, state legislative hearings, and a key issue in city elections. The State Auditor found that HSNO erred in reporting that \$38 million of project funds had gone missing, but left it to the California Board of Accountancy to determine if HSNO violated professional standards. After an in-depth investigation, the Board filed an Accusation alleging that HSNO’s Great Park reports violated professional standards by including, for example, a false statement that a councilmember intentionally misled the public about the project’s cost. The California Board of Accountancy adopted its first-ever disciplinary decision revoking the license of a national accounting firm for violating professional “consulting standards” and ordered it to pay \$550,000 in investigative costs and fines.

**Anthony Rudick, O.D.; Ridge Eye Care, Inc. v. State Board of Optometry.** In a case of first impression of statutory interpretation, the Court of Appeal issued a published decision affirming the trial court’s summary judgment order. Under Business and Professions Code section 3077, an optometrist may have only 11 optometry “offices.” The court ruled that an “office” under section 3077 is any place optometry is practiced, including a medical/ophthalmology practice that employs both optometrists and ophthalmologists. As a result, an optometrist who is a minority owner of such a medical practice with multiple offices still must comply with all the provisions of the Optometry Practice Act, including section 3077. The court rejected appellants’ argument that the medical practice was a place for the practice of ophthalmology only, and that any optometry practiced there was incidental or supportive.

**Radwa Mohamed Moustafa v. Board of Registered Nursing.** In a case of first impression, the Court of Appeal published an opinion affirming in part and reversing in part a decision by the superior court granting a writ of administrative mandamus overturning a decision by the Board of Registered Nursing on grounds that it did not comply with newly amended Business and Professions Code section 480. Radwa Mohamed Moustafa had applied for an RN license in California and been denied on grounds of a criminal history that included two convictions for shoplifting and another for vandalism, all of which had been dismissed before her application under Penal Code section 1203.4. The Superior Court had found that the new section 480 limitations prevented reliance on the convictions as grounds for denial, and had also determined that the new statute further precluded reliance on the conduct underlying those convictions. The Court of Appeal agreed that the statute precluded reliance on the convictions themselves, but disagreed that the statute precluded reliance on conduct underlying those convictions. The Court of Appeal determined that while the conduct underlying the vandalism conviction did not constitute sufficient grounds for denial, the dishonest conduct leading to the shoplifting convictions was sufficiently substantially related to the nursing profession to offer a basis for denial or license restriction following issuance of the license.

**IV Solutions, Inc., et al. v. California Board of Pharmacy.** The California Board of Pharmacy revoked the pharmacy permit of IV Solutions, Inc. and its pharmacist-in-charge after a 23-day administrative hearing, finding that they had been deceitful in their pricing practices, leading patients to believe that they would not have to pay the exorbitant fees they charged for IV medications that were not covered by their insurance companies, then later pursuing legal action against them to collect these fees. Although the fees charged to many patients exceeded \$100,000 each, the price of prescription drugs

is not regulated. However, the office was able to prove deceit based on representations made to the patients and the licensees' failure to abide by their own pricing and collection protocols. The Board's decision was upheld by the superior court on petition for writ of mandate, and the case is now pending in the Second District Court of Appeal.

***Oduyale vs. California State Board of Pharmacy.*** The court of appeal reversed a judgment by the Superior Court of Imperial County with instructions to enter judgment for the Board of Pharmacy and costs. The decision is significant because it states explicitly that an agency's decision need not explain why it did not select forms of discipline less than the one it imposed.

***Bureau of Automotive Repair Accusation against Azzam, Bilal Ahmad; dba Jordan Smog Check.*** The Bureau of Automotive Repair filed an accusation against Jordan Smog alleging the company had issued 20 fraudulent smog certificates. While the accusation was pending, the Bureau discovered that Jordan Smog had actually ramped up its fraudulent smog activity and had issued over 450 fraudulent certificates in just one week. The certificates were being issued during non-business operating hours and within minutes of each other. In response, the Bureau filed an Ex-Parte Interim Suspension Order that immediately locked out the licensees from the smog testing network and prevented them from issuing additional smog certificates. The Bureau subsequently revoked the license.

***California Dental Board Accusation against Robert Allen Smith, DDS.*** Dr. Robert Smith was a general dentist holding a conscious sedation permit. The Board brought an accusation against Dr. Smith alleging eight causes for discipline, including excessive prescribing and administering of drugs, gross negligence, repeated acts of negligence, and incompetence. Dr. Smith had administered sedation drugs to two different patients. One of those patients nearly died after Dr. Smith placed her in a state of deep sedation via use of drugs that the patient had directed Dr. Smith not to use. Dr. Smith ultimately entered into a stipulation calling for the voluntary surrender of his conscious sedation permit. Further, Dr. Smith agreed that his dentist's license would be placed on probation for three years subject to terms and conditions, including that Dr. Smith reimburse the Board cost recovery in the amount of \$17,309. The Board adopted the parties' stipulation as its Order.

***Commission on Teacher Credentialing Accusation against Hawanya Smith.*** Hawanya Smith was a teacher from the Los Angeles Unified School District who was reported to have sexually groped students in her Fifth Grade classroom. The LAUSD Police Department investigated the matter and it was referred to the District Attorney, who declined to prosecute. The Commission on Teacher Credentialing (CTC) then referred the matter to the Licensing Section, which prepared an Accusation seeking discipline against Smith's teaching credential. A six-day hearing resulted in a proposed decision from an Administrative Law Judge calling for two years of probation for unprofessional conduct, concluding the misconduct wasn't sexual, and finding that Smith was credible but her alleged student victims were not. CTC rejected that decision and called for briefing from the parties. The Licensing Section filed a 70-page brief that inventoried all the evidence and applicable law. CTC thereupon issued a decision that revoked Smith's credential for sexual misconduct, and found that Smith lacked credibility and that the student victims were credible.

## **TORT AND CONDEMNATION SECTION**

The Tort and Condemnation Section defends the state, its agencies, departments, and employees in civil actions for personal injury, wrongful death, property damage, and civil-rights claims brought in state and federal courts. The section handles litigation pertaining to:

- Civil-rights claims brought under 42 U.S.C. § 1983
- Public entity and public employee liability under the Government Claims Act for dangerous condition of public property, premises liability, breach of statutory duty, medical malpractice and medical negligence, and negligence

- Defense of law enforcement officers and agencies
- Automobile, boat, aircraft, bicycle, and skateboard accidents
- Various wrongful death matters

Further, the section also prosecutes matters relating to the acquisition of real property for public purposes (eminent domain) and defends against claims that a public project resulted in the taking or damaging of private property (inverse condemnation). The section also handles complex construction arbitration.

The section has an appellate practice with appeals ranging from trial verdicts in excessive force matters to summary judgment in deliberate indifference matters. In the Ninth Circuit and state appellate court courts, there were 30 decisions in 2020.

## **MAJOR ACCOMPLISHMENTS**

***Adams v. Department of Fish and Wildlife.*** The office represented the Department of Fish and Wildlife in this action arising out of the 2007 Pike Eradication Project undertaken at Lake Davis in Portola. The project was to eliminate and prevent invasive pike from entering into the San Joaquin Delta watershed and threatening fragile trout and salmon populations. Following a five-week jury trial, the jury reached a defense verdict finding that Department was not negligent in the manner in which it carried out the 2007 Pike Eradication Project at Lake Davis in Plumas County.

***Oroville Dam Cases (Department of Water Resources).*** The section is defending the Department of Water Resources in 10 separate cases arising out of the February 2017 failure of the Oroville Dam’s main spillway. In a class action case, brought on behalf of 188,000 individual and business evacuees, the Department of Water Resources successfully prevented class certification. The denial of class certification is currently on appeal. Three public entities sued for property damage they sustained. Two of the three public entity claims have settled. The remaining public entity, City of Oroville, seeks compensation for road damage and personnel expenditures for the evacuation and is based upon public and private nuisance and dangerous condition of public property theories. The Butte County District Attorney has sued the Department of Water Resources under a provision of the Fish and Game Code seeking to impose civil penalties in excess of \$30 billion. PG&E seeks reimbursement for having to relocate its power lines below the dam’s spillways under a theory of interference with its easement. The remaining cases involve approximately 60 property owners claiming lost income and damage to their property. The causes of action include public and private nuisance, dangerous condition of public property, and inverse condemnation. Of the 66 initial plaintiffs, approximately 44 remain following successful motions for summary judgement, settlements, and dismissals.

***Delta Conveyance.*** The Section represents the Department of Water Resources to obtain pre-condemnation entry orders and to acquire property for a water conveyance project to move water from the Sacramento-San Joaquin Delta to Central and Southern California. During the pre-condemnation entry process, the Department of Water Resources’ right to enter private property was challenged by property owners. The matter resulted in a published opinion that found the Eminent Domain Law’s pre-condemnation entry statutes constitutional and reformed the law to provide a jury trial on any damages a property owner incurred. Additional petitions for pre-condemnation entry to conduct geological testing are anticipated to be filed. The section is also defending the Department of Water Resources based upon a challenge by various Delta water agencies under the California Environmental Quality related to the Department of Water Resources’ Initial Study/Mitigated Negative Declaration for the geological testing to be conducted by the Department of Water Resources.

***Erskine Fire.*** The office represents the Department of Fish and Wildlife with respect to claims asserted against the Department of Fish and Wildlife for damages caused by the Erskine Fire. The Erskine Fire

started on June 23, 2016, in the Lake Isabella area of Kern County and ultimately burned more than 46,000 acres. Two people died during the fire, and the fire destroyed approximately 287 residences, damaged at least 12 other residences, destroyed or damaged numerous outbuildings, damaged one wireless communications facility, and destroyed numerous vehicles. The Department of Fish and Wildlife received demands for compensation from more than 500 individuals, who collectively claimed more than \$186 million in damages, as well 38 insurance companies which sought to recover approximately \$44 million, they had paid out in claims arising from the fire. The individual claimants and insurance companies claimed the Department of Fish and Wildlife was legally responsible for the fire based on the allegation that the fire started on property leased by the Department of Fish and Wildlife from the U.S. Bureau of Land Management. The Department of Fish and Wildlife, the insurance companies, and the individual claimants participated in a multiple-phase mediation process. The Department of Fish and Wildlife ultimately entered a settlement agreement with the 38 insurers in the amount of \$20,100,000, and 277 separate settlement agreements with individual claimants for a total amount of \$17,331,320. Most of the Department of Fish and Wildlife's defense costs have been paid by an insurer that provided liability coverage on the property where the fire allegedly started.

***Adams et al. v State Department of Social Services.*** The section represented defendant Department of Social Services employees in a case against the Creative Frontiers School, Inc. for its closure after an investigation revealed its principal, Robert Adams, sexually molested several children enrolled at the daycare facility. Plaintiffs filed a complaint alleging the daycare's license was wrongfully revoked due. In September 2012, plaintiffs filed – but did not serve – their complaint. In March 2013, plaintiffs requested a stay of proceedings while the criminal proceedings were pending, which was granted. The stay did not mention service of the complaint. Plaintiff Adams pled guilty to child molestation in March of 2016. The Complaint was then served in July 2016. Both the State and City defendants successfully moved to dismiss under Code of Civil Procedure sections 583.210 and 583.410. The Court of Appeal upheld the dismissal, finding that although a stay of proceedings had been granted at plaintiffs' request, the stay did not render service of the complaint impossible, impracticable, or futile. Code of Civil Procedure section 583.240, subdivision (b) expressly differentiates between a stay of the action and a stay on service of a complaint. Thus, the trial court's stay of an action did not automatically stay service of a complaint. The Third District Court of Appeal affirmed the trial court's dismissal of plaintiffs' lawsuit on the ground the Complaint was not timely served.

***Michele Lee v. California Department of Parks and Recreation.*** The California Court of Appeal affirmed summary judgment in favor of the California Department of Parks and Recreation finding that Government Code section 831.4, trail immunity, precluded liability for injuries plaintiff sustained while walking on a stone stairway built into a hill at Mt. Tamalpais State Park. In doing so, the Court of Appeal rejected plaintiff's arguments that trail immunity did not apply to the stairway because it was not a trail or an integral part of one, and that the nominal fee Mt. Tamalpais State Park charged for accessing the stairway abrogated the immunity. The court explained that treating the stairway as a trail fulfilled the purpose of the immunity statute — to keep recreational areas open to the public by preventing burdens and costs on public entities. Although the Department of Parks and Recreation sought and was awarded attorneys' fees and costs under California Code of Civil Procedure 1038 by the Superior Court, the Court of Appeal reversed, believing that plaintiff had reasonable cause to bring and maintain her suit because it was not settled law that stairways are immune under Government Code section 831.4.

***Jose and Maria Amargo, et al. v. Santa Clara Valley Water District.*** The court sustained defendant Department of Water Resources, Division of Safety of Dams' demurrer without leave to amend. On February 21, 2017, during a period of unusually heavy rains, Anderson Dam and Reservoir overtopped, flooding parts of San Jose and Santa Clara County. The Santa Clara Superior Court assigned all 18 lawsuits, filed by over 150 households and businesses for damage to real and personal property and personal injuries, to the Complex Litigation Department. After two rounds of demurrers, plaintiffs agreed to file an Omnibus Complaint setting forth all claims. Plaintiffs alleged that the Department



of Water Resources knew for decades that Anderson Dam and Reservoir could not accommodate a Probable Maximum Flood but did not order the defect to be fixed. Plaintiffs also alleged that in 2017, the Department of Water Resources had a mandatory duty to use its emergency powers to avert the overtopping of Anderson Dam and Reservoir using its own personnel and equipment. In its order sustaining the Department of Water Resources' demurrer without leave to amend, the court held that the element of "substantial participation" of an inverse condemnation claim cannot be based solely on a public entity's regulatory authority over the public project, and as to plaintiffs' statutory claims, that the immunity contained in Water Code section 6028 fully encompasses the Department of Water Resources' regulatory authority over dams, reservoirs, and appurtenant structures.

## **CRIMINAL LAW**

The Criminal Law Division represents the People of the State of California in criminal cases, as mandated by both the constitution and statute. The majority of the division's work involves criminal appeals and writs. The division also investigates and prosecutes investment fraud, business and technology crimes, and privacy issues. In addition, the division has a unit dedicated to serving the victims of crime.

The Criminal Law Division consists of the following sections:

- The **Appeals, Writs and Trials Section (AWT)** carries out the following functions:
  - o Represents the People in appeals and writs arising from criminal cases. AWT handled more than 9,000 criminal appeals and more than 2,000 writs during the biennial period.
  - o Handles criminal trials and investigations where local prosecutors cannot proceed because of conflicts or recusal. Also handles charges and trials for cases arising out of Bureau of Firearms and its use of the Armed and Prohibited Persons System (APPS).
  - o Advises the Governor on extradition, clemency and other criminal law matters; provides advice to local, state and federal law enforcement and prosecutorial agencies as well as state legislators regarding the state's criminal laws.
- The **Correctional Writs and Appeals Section (CWA)** is responsible for the following:
  - o Defending the policies and actions of prison officials.
  - o Ensuring that convicted felons properly serve their sentences under the conditions prescribed by law.
  - o Defending legal challenges brought by inmates, juvenile offenders, and parolees about conditions of confinement in prisons and state juvenile facilities, parole suitability, and conditions of parole.
  - o Defending quasi-class action lawsuits by groups of inmates seeking to invalidate a prison regulation or effect change in the parole system.

The section handled more than 900 matters filed by prison inmates during the biennial period.

- The **eCrime Unit** is responsible for the following:
  - o Investigating and prosecuting multi-jurisdictional criminal organizations, networks, and groups that perpetrate identity theft crimes, use electronic devices or networks to facilitate crimes, or commit crimes targeting electronic devices, networks or intellectual properties.
  - o Providing investigative and prosecutorial support to five California regional high-tech task forces funded through the High Technology Theft Apprehension and Prosecution Trust Fund Program (HTTAP).
  - o Providing investigative, legal, and prosecutorial support for technology crime investigations in rural counties that are not represented by HTTAP-funded task forces.

- o Coordinating out-of-state technology-crime investigations.
- o Supporting technology-crime investigations initiated by other California state agencies.
- o Providing legal support for state-operated digital forensic laboratories.
- o Providing training for judges, prosecutors, law enforcement officers, and the public on the importance of best information-security practices and evolving technology-related crime issues.

The eCrime Unit was created in 2011 and delivers on its mission to investigate and prosecute advance technology crimes. During the biennial period, the Unit accepted 117 matters that included investigations, investigative referrals, and case referrals. The Unit filed 42 criminal cases and referred one case for prosecution by a local district attorney’s office, and secured restitution for victims in excess of \$3.6 million.

- The **Fraud and Special Prosecutions Section** has statewide responsibility to investigate and prosecute complex, inter-jurisdictional criminal cases occurring in California, primarily related to financial, securities, mortgage and environmental fraud; public corruption, including violations of the California Political Reform Act; “underground economy” offenses investigated by the Tax Recovery in the Underground Economy (TRUE) task forces, including tax fraud, counterfeiting, and fraud perpetrated against workers; Bureau of Firearms cases, and human sex and labor trafficking. The section deploys vertical teams of prosecutors, investigators, auditors, and paralegals and provides assistance to law enforcement agencies along with training, education, and outreach. The size and scope of the section has expanded over the past several years, and most recently, has been augmented with additional positions to support the TRUE program and to combat offenses occurring in the underground economy.
- The **Victims’ Services Unit** (VSU) provides assistance, information and support to families in capital cases and cases in which the Attorney General is the lead prosecutor. The unit is also the statewide contact for inquiries on Marsy’s Law, which created additional constitutional and statutory rights for victims.

## MAJOR ACCOMPLISHMENTS

### APPEALS, WRITS AND TRIALS SECTION

**Sexton v. Beaudreaux.** The United States Supreme Court reinstated a Contra Costa County murder conviction at the Attorney General’s request. The Court held that the Ninth Circuit failed to follow the requirements of the Antiterrorism and Effective Death Penalty Act when it overturned the murder conviction on habeas corpus even though the state courts that had reviewed the case had found no prejudicial legal error in pretrial lineup procedures. A divided Ninth Circuit panel had conducted essentially a de novo review and held that the lineup procedures used before trial were impermissibly suggestive and that counsel was therefore ineffective for not moving to suppress the identification. With that predetermination, the panel concluded the state court decision rejecting the ineffective assistance claim was unreasonable. The Supreme Court reversed, holding that the Ninth Circuit panel “committed fundamental errors that this Court has repeatedly admonished courts to avoid” by failing to give the state court decisions the appropriate amount of deference. The Supreme Court explained that the state court could have reasonably concluded that the identification was not unreliable under the totality of the circumstances and that a suppression motion would therefore have failed.

**Cuero v. Cate.** The United States Supreme Court granted California’s petition and summarily reversed a Ninth Circuit decision that had overturned a state criminal conviction. Cuero pleaded guilty to various charges, including weapons charges, and entered into a plea agreement for a maximum sentence of 14 years, 4 months. Before sentencing, the prosecution discovered that one of Cuero’s prior convictions was a “strike,” which exposed him to a minimum sentence of 25 years to life. The trial court granted the prosecution’s motion to amend the charges to accurately reflect Cuero’s criminal history, and allowed

Cuero to withdraw his guilty plea. Cuero then entered into a new plea deal and was sentenced to 25 years to life. On federal habeas review, the Ninth Circuit held that this procedure violated Cuero's due process rights and ordered him to be resentenced according to the terms of his original plea. The Supreme Court reversed. It held that the Ninth Circuit's decision went beyond the proper limits of federal habeas review of state court decisions, because no clearly established federal law entitled Cuero to specific performance of his original plea. The decision had the important effect of vindicating California Penal Code section 969.5, which allows a prior conviction to be alleged at any time before sentencing, and furthers the equal treatment of criminal defendants with respect to prior convictions.

***Kirkpatrick v. Chappell.*** The United States Court of Appeals for the Ninth Circuit affirmed the denial of federal habeas corpus relief for William Kirkpatrick, Jr., essentially ending his 36-year quest to gain relief from his capital murder judgment. In 1983 Kirkpatrick murdered two fast-food workers execution-style during a takeover robbery of the restaurant where they worked; he was sentenced to death for his crimes in Los Angeles County in 1984. The Court had originally affirmed the denial of relief on most claims, but had held that the district court had erred in dismissing some claims as unexhausted. The office successfully sought rehearing, and convinced the Court that the claims were properly dismissed as unexhausted because, as the California Supreme Court had previously held, Kirkpatrick had knowingly, intelligently, and voluntarily abandoned those claims.

***Carter v. Davis.*** The United States Court of Appeals for the Ninth Circuit affirmed the denial of relief in two cases argued back-to-back involving serial rapist and murderer Dean Phillip Carter. This has effectively ended his decades-long challenges to the two death judgments entered against him—the first by Los Angeles County in 1989, and the second by Orange County in 1991—for a string of rapes and murders he committed in Southern California in the Spring of 1984. In both cases, the Court rejected his claims of ineffective assistance of trial counsel in the investigation and presentation of mitigating evidence.

***People v. Westerfield.*** The California Supreme Court affirmed the conviction and death sentence of David Westerfield, who in 2002 kidnapped his seven-year-old neighbor from her bedroom, then murdered her. Westerfield was sentenced to death in 2003 following a trial that was the subject of intense public interest. In affirming the convictions, the Court rejected all claims of error, including claims that search warrants executed during the investigation of the crime were not supported by probable cause and that a child pornography charge was improperly joined with the murder charge, and various claims related to the significant pretrial publicity his trial garnered.

***People v. Garr.*** Todd Garr, an off-duty commander with the California Highway Patrol, attacked a trucker in a road rage incident. Garr crossed double yellow lines over an overpass to pass the trucker's 80-foot long big-rig. Next, Garr abruptly pulled in front of the big-rig and stopped, nearly causing a collision. Garr and his passenger then jumped up on the big-rig's running board and threatened to assault the trucker. When Garr reached in and grabbed the trucker, the trucker, in self-defense, hit Garr, knocking him out. The trucker reported the incident immediately while Garr and his passenger fled the scene. The DOJ agreed to prosecute the case. At the week-long trial, Garr who is white, told the all-white jury a completely different version of the events. Unpersuaded, and crediting the version told by the trucker who is black/African American, the jury convicted Garr on both counts, misdemeanor battery and misdemeanor reckless driving. Garr was terminated by the CHP as a result of this matter. After the verdict, the trucker who grew up in South Central Los Angeles during the Rodney King riots expressed astonishment and gratitude that an all-white jury would believe a black man over a decorated white police officer.

**Officer Involved Shooting Report: Stephon Clark.** In March 2018, Sacramento Police officers responded to a call of an unidentified man, Stephon Clark, breaking car windows. Upon arrival, neighbors directed the officers to a nearby back yard where Clark was last seen. A law enforcement helicopter located Clark attempting to break into an adjacent residence. Officers followed Clark to another backyard, where he ignored the officers' calls to stop. As the officers rounded the corner of the residence, they saw Clark assuming what appeared to be a shooting stance approximately 50 feet away. The officers retreated behind the corner. When they peered around again, Clark had halved the distance, rapidly moving toward them. The officers opened fire, killing him. No gun was located, but a cell phone was underneath Clark. The shooting sparked protests across the nation. Attorney General Becerra agreed to conduct an independent review of the shooting, separate from the review performed by the Sacramento District Attorney. Subsequently, the Attorney General issued a report declining the filing of any criminal charges. Under the fast-moving circumstances established by the evidence, no charges could be proved beyond a reasonable doubt.

**People v. Veamahatau.** Following a stop, the defendant was searched and found in possession of cocaine base and 12 pharmaceutical pills. A crime lab criminalist consulted an online pharmaceutical identification database to determine that the pharmaceutical pills in appellant's possession were alprazolam, which the defendant possessed without a prescription. The defendant claimed on appeal that the criminalist's expert testimony about the online database was inadmissible case-specific hearsay. The California Supreme Court rejected the defendant's claim and held that the testimony conveying hearsay information contained in a reliable on-line database fell within the traditional hearsay exception for general background information, and was therefore admissible as expert testimony.

**People v. Foster.** Foster was civilly committed as a Mentally Disordered Offender (MDO) in 2010 and recommitted each year for over a decade. After he successfully petitioned to redesignate his underlying felony convictions as misdemeanors under Proposition 47, he sought dismissal of his MDO recommitment on the ground that he no longer had a qualifying felony conviction. In 2019, the California Supreme Court held that an MDO recommitment is not invalidated by the redesignation of the MDO's foundational felony to a misdemeanor under Proposition 47. The Court reasoned that redesignation does not alter the criteria governing MDO recommitment, which is predicated upon the patient's current disorder and dangerousness, not a felony conviction. Nor does the redesignation undermine the continued validity of Foster's initial commitment as it was legally sound at the time it was made. The Court also held that neither equal protection nor due process principles compel reversal as, unlike other cases in which a civil commitment or recommitment was invalidated, Foster's initial MDO commitment was valid from the outset.

**San Bernardino Conflict Cases.** Beginning in 2019, the AWT section of the DOJ handled an onslaught of conflict trial matters following the election of a former criminal defense attorney as the District Attorney of San Bernardino. Staffing dozens of cases with multiple homicide charges, serious-and-violent-felony charges, gang charges, and many others—all at the same time—is not the norm for AWT, which generally handles only a few trial cases a month. Some examples of successful outcomes: *People v. Gutierrez and Gondeck* – the defendants helped murder a member of a rival gang in a park in the City of Fontana. They were charged with murder with accompanying firearm and gang allegations. They pleaded guilty to murder in exchange for a sentence of 15 years to life. *People v. Spikes, et al.* – three defendants, all gang members, committed a home-invasion robbery during which one defendant shot and killed a man inside the house. The shooter pleaded guilty to murder and is serving a sentence of 28 years to life; the other two defendants are serving determinate terms of 23 years and 12 years respectively. *People v. Castillo* – defendant punched his girlfriend's infant daughter in the stomach, killing her. He pleaded guilty to various felonies, including four strike offenses, and is serving a 20-year, 8-month sentence in prison.

## CORRECTIONAL WRITS AND APPEALS SECTION

***In re Roy Butler.*** The DOJ, on behalf of the Board of Parole Hearings, successfully petitioned the California Supreme Court for relief from a settlement agreement the Board entered into in 2014, in which the Board agreed to set all life term inmates' minimum period of incarceration, known as a base term, at each inmate's initial parole hearing regardless of suitability. After the Board entered the agreement, the Legislature amended the parole scheme to no longer require the Board to set base terms as a condition of the inmate's release. The office moved to modify the settlement agreement based on a change in the law, but the Court of Appeal denied the motion. The California Supreme Court granted the petition for review and reversed the Court of Appeal. It held that the change in the law warranted modifying the agreement and that constitutional principles regarding disproportionate sentences did not require the Board to continue setting base terms. The decision relieved the Board from having to calculate hundreds of unnecessary base terms that no longer had any effect on parole date in light of the new legislation.

***In re Gregory Gadlin.*** On behalf of the California Department of Corrections (CDCR) and Rehabilitation, the DOJ successfully petitioned the California Supreme Court for review of the Court of Appeal's published decision striking down CDCR's regulation excluding sex offenders from early parole consideration under Proposition 57. In this case of first impression, the Supreme Court will determine whether CDCR may lawfully exclude sex offenders from early parole consideration based on the Secretary's determination that sex offenders pose a unique risk to public safety.

***In re Mohammad Mohammad.*** Also, on CDCR's behalf, the DOJ successfully petitioned the California Supreme Court for review of the Court of Appeal's published decision holding that Proposition 57—which guarantees early parole consideration to offenders serving nonviolent felony offenses—requires parole consideration for offenders convicted of both nonviolent and violent crimes. The Supreme Court will interpret Proposition 57 to determine the scope of offenders eligible for early parole consideration.

***People v. Barry Wiley.*** In a published decision and in a case of first impression, the Court of Appeal held that a parole revocation petition cannot be dismissed "in furtherance of justice" under Penal Code section 1385. In 1991, Barry Wiley was convicted of first-degree murder, second degree robbery, and kidnapping, and sentenced to 26 years to life in prison. In 2017, he was released on parole subject to re-incarceration in state prison if found guilty of a parole violation. Wiley violated his parole conditions, and CDCR successfully petitioned to revoke his parole. On appeal, Wiley claimed the superior court failed to recognize its authority to dismiss the parole revocation petition in the interests of justice under section 1385. The Court of Appeal disagreed, finding that a parole revocation petition is not a criminal "action" subject to dismissal under section 1385.

## eCRIME UNIT

***Technology Crime and Privacy Training.*** The Unit has provided more than 43 training programs on technology crime and privacy issues. The Unit also collaborated with the California District Attorneys Association to create a web-based eCommunity to share legal and privacy updates to both law enforcement and prosecutors.

***People v. Zeretzke.*** An Indictment was returned against Zeretzke for six counts of lewd acts upon children under the age of 14. Zeretzke operated Flutes Across the World and taught music lessons in schools and other organizations throughout Southern California. Zeretzke entered a plea and was sentenced to prison for 18 years.

***People v. Coffman et. al.*** (AKA Bully Boys). A 240-count Indictment was returned against 32 defendants that targeted local businesses' point of sale devices where the customer information was removed and



used to commit credit card fraud. All but seven defendants have entered pleas with four expected to go to trial in 2020. Sentences ranged from 164 months to probation.

**People v. Barker et al.** Charges were filed against 17 defendants for a 19-county burglary scheme targeting Apple retail stores that resulted in the loss of over \$1 million where Defendants entered open Apple retail stores in large groups wearing hoodies and grabbed products on display. Sentences ranged from 68 months to 50 days.

**People v. Nguyen et. al.** An Indictment was returned against two Defendants that targeted hundreds of identities to fraudulently rent vehicles, open credit accounts and drain funds from victims' bank accounts. Defendants were sentenced to prison for six and seven years.

**People v. Jawuan Gibson.** Gibson was charged in a sophisticated theft scheme involving the theft of EBT (Electronic Benefit Transfer) card information from various counties. Gibson tricked EBT card holders to provide information that could be used to change the PIN on the EBT card. Creating cloned EBT cards, Gibson withdrew \$750,000 from bank ATM machines.

## FRAUD AND SPECIAL PROSECUTIONS SECTION

**People v. Nasson Joaquin Garcia, et. al.** The leader of La Luz del Mundo, a worldwide religious organization headquartered in Mexico, was arrested and charged in 2019 with human trafficking, sex abuse of minors, rape and child pornography. Between 2015 and 2018, Joaquín García and his co-defendants allegedly coerced victims into performing sexual acts by telling them that if they refused any of his desires or wishes as “the Apostle,” that they were going against God. The defendants were held to answer following a preliminary hearing in 2020 and are awaiting trial.



Attorney General Xavier Becerra announcing the arrest of Joaquín García and his co-defendants .

**Tavaf, Ali dba, Nevada Tobacco Products.** From April 2012 through September 2017, Ali Tavaf and his business, Nevada Tobacco Products located in the city of San Gabriel, purchased tobacco products from outside California and distributed them inside California. The investigation revealed that during this period, Tavaf submitted false excise tax returns to the CDTFA in which he failed to report approximately \$50 million in tobacco distributions, and failed to pay \$14.5 million in excise tax to the CDTFA. After being held to answer on 54 felony counts of filing false tax reports in violation of the California Revenue and Tax Code, Tavaf entered guilty pleas in Los Angeles County Superior Court to six felony counts of false reporting and admitted a white-collar enhancement for excessive losses. As part of his plea, Tavaf will serve a minimum of 7 years in state prison and will be required to pay restitution of \$1 million.

**People v. Gregory Chapman, et. al. (“Authotecq”).** Greg Chapman ran a company called Authotecq Systems Inc. that purported to develop an Internet banking system with proprietary encryption technology to protect consumer credit information during online purchases. Authotecq used telemarketers to raise over \$11 million in funds from investors by means of misrepresentations and omissions. The company paid its sales force undisclosed commissions of 45 percent on each investment they closed, and spent investor funds on lavish personal expenses rather than on developing and marketing a product. Chapman was sentenced to 30 years in prison after being convicted by a jury of

139 counts of grand theft and securities violations. As part of sentencing, the court ordered \$5.2 million in victim restitution. Codefendant James Litzinger also pled guilty in connection with the scheme and was sentenced to 8 years in prison. Wallace Thomas, another conspirator, was sentenced to two years in prison.

***People v. Gary Cheung.*** Several Sam Woo restaurants in Los Angeles County were owned, operated, and managed by Gary Cheung. In a fraudulent scheme stretching from January 2012 through March 2019, Cheung failed to report and aided in the underreporting of \$16 million in sales to the Department of Tax and Fee Administration, \$14 million in taxable income to the Franchise Tax Board, and \$2.1 million in wages to the Employment Development Department, thereby evading the payment of \$2.9 million in sales, income, and payroll taxes. Cheung also failed to report \$2.1 million in wages to insurance carriers, evading payment of \$549,606 in workers' compensation insurance. After a 107-count felony complaint was filed against him, Cheung pleaded guilty to filing false tax returns and failing to pay payroll taxes, and admitted a white-collar enhancement for losses in excess of \$500,000. Defendant Cheung's plea included nearly \$4 million in restitution and other costs and a three-year sentence.

***People v. David Reimers.*** Using his financial advising company, Reimers Financial Service, located in El Dorado, defendant David Reimers solicited more than \$2 million from elderly investors under false pretenses. He promised investors a guaranteed return, but instead of investing their money, he diverted the funds for personal gain. After pleading guilty to 10 felony counts involving financial fraud against elders, Reimers was sentenced to 17 years in state prison and was ordered to pay \$1.8 million in restitution to crime victims.

***People v. Hazem Saba.*** Hazem Saba operated as an unlicensed tobacco distributor by receiving large amounts of untaxed other tobacco products ("OTP"), which he failed to report to the California Department of Tax and Fee Administration. Saba thereby filed fraudulent returns and evaded tobacco taxes in violation of California's Revenue and Taxation Code. An underground economy task force executed search warrants at Saba's residence and storage facilities, and seized \$1.5 million in contraband tobacco and \$115,999 in cash. After pleading guilty to tax evasion, defendant Saba was sentenced to 5 years felony probation with a county jail term and work service, and he paid \$461,233 in restitution.

***People v. Tarver, et. al.*** Tawnya Tarver and her codefendants, who are part of the "sovereign citizens" movement, defrauded mortgage lenders and owners of their lawful possession of residential properties, and defrauded homeowners of money and property through misrepresentations and false documents. After gaining possession of properties, the defendants engaged in "equity skimming" by obtaining rent while delaying foreclosure and unlawful detainer actions by filing false documents with county recorders and federal and state courts. Tarver who headed the scheme pleaded guilty to conspiracy, filing false documents, grand theft, and ID theft, and was sentenced to 6 years in state prison and ordered to pay \$4.2 million in victim restitution.

***People v. Joseph Zebulon Seidel.*** Bar None Enterprises conducted auctions of heavy equipment and vehicles. The owner of Bar None, Joseph Seidel, collected and failed to remit over \$4 million in sales taxes owed to the California Department of Tax and Fee Administration. After felony charges were filed against him, Seidel pled guilty to filing false tax documents. The court placed Seidel on probation with a term in county jail and a restitution order of \$4,488,580 to the CDTFA.

***People v. Andrew Valles, et al. ("SafeCare").*** Andrew Valles and two associates engaged in a massive statewide mortgage fraud "advance fee" and "bankruptcy dumping" scheme. The conspirators convinced distressed homeowners and new homebuyers that they could provide home loans through a complex insurance-based legal process, when in reality, defendants merely took advance fees from

the victims. When financing did not come, victims faced foreclosure and eviction actions. Victims were then referred to another conspirator who pretended to be a lawyer, took more fees from the victims, and filed numerous false documents including false bankruptcy and court documents that delayed foreclosure, eviction, and clouded title on the homes. Investigators discovered over 100 victims. Some victims lost the advance fees, others lost their homes, some lost their life savings. Defendant Valles pleaded guilty to conspiracy, fraud, forgery, and theft, and was sentenced to 13 years in state prison and ordered to pay \$2.3 million in victim restitution. Defendants Arnold Millman and Jemal Lilly also entered guilty pleas and were sentenced to 4 years, and 3 years 8 months, respectively, in prison for their part in the scheme.

## **VICTIMS' SERVICES UNIT**

***People v. Dekraai.*** VSU provided support services provided to family members of the victims in the high-profile murder prosecution. VSU staff regularly communicated with numerous family members and accompanied them to court hearings, providing essential emotional support that helped enable the victims to deliver victim impact statements. The judge handed down a sentence of life without parole.

***People v. Reimers.*** VSU provided support services provided to the victims in the financial fraud prosecution. VSU staff regularly communicated with numerous victims and accompanied them to court hearings, providing essential emotional support that helped enable the victims to deliver victim impact statements and assist with establishing restitution orders. Prosecutors in the DOJ were able to secure a plea deal which included 10 felony charges, one for each victim, a restitution order exceeding \$1.8 million dollars, and a 17-year prison sentence.

***People v. Litzinger, et al.*** VSU provided services to over 200 victims in the Division of Medi-Cal and Elder Abuse prosecution. Although the complaint was originally filed in 2015, the case did not fully resolve until the last defendant was sentenced in January 2020. Due to the fact many victims could not attend court proceedings, the VSU advocate maintained continual contact with all victims and kept them informed throughout the pendency of the case. The victim advocate also assisted with obtaining written victim impact statements which were submitted to the court at the sentencing hearings. Prosecutors in the DOJ were able to secure convictions for three defendants, with sentences to state prison for three years, eight years, and 30 years and an order to pay over \$11,000,000 for victim restitution.





# MEDI-CAL FRAUD AND ELDER ABUSE

Through the Affordable Care Act, Medi-Cal enrollment in California has grown significantly making the largest Medicaid program in the nation even larger. Integrity of the Medi-Cal program has never been more important. Attorney General Becerra believed we needed to develop a more robust program to create greater visibility for the Bureau of Medi-Cal Fraud and Elder Abuse and ramp up Medi-Cal fraud investigations and prosecutions. Additionally, the COVID-19 pandemic has shone a spotlight on the failures of nursing homes nationwide. Under Attorney General Becerra's leadership, he reprioritized the Department's efforts by making the Bureau of Medi-Cal Fraud and Elder Abuse into a full fledged division, now called the Division of Medi-Cal Fraud and Elder Abuse (DMFEA).

The DMFEA is California's Medicaid Fraud Control Unit. It executes its twin mission of investigating and prosecuting provider fraud against California's Medicaid program (Medi-Cal) and of investigating and prosecuting physical or financial abuse or neglect of elders and dependent adults in care facilities statewide. DMFEA's cases are assigned to unique teams, each of which handles the particular case from inception to resolution using a vertical prosecution model. Furthermore, the DMFEA adopts a multi-disciplinary approach to all matters civil or criminal, employing the law enforcement expertise of agents, financial and auditing expertise of investigative auditors and data analytics specialists, and the legal experience of its civil and criminal attorneys and paralegals. DMFEA collaborates closely with federal, state, and local partners to fulfill its mission.

The DMFEA is comprised of 239 employees working in eight regional offices statewide and is organized into the following four areas:

The Administrative Branch supports the day-to-day operations of the division and assists sections in administrative and technical areas such as accounting, budgeting, human resources, asset management, facilities, procurement, contracting, conferencing, regulations, recycling, training, and special projects. The Administrative Branch provides administrative support for the division's offices in Sacramento, Fresno, Dublin, Burbank, Riverside, Orange, San Diego, and West Covina, servicing a diverse staff of attorneys, special agents, investigative auditors, legal support, and analytical classifications.

The Investigation Section manages the complaint intake process and triages referrals for applicability to DMFEA jurisdiction and authority. Once a complaint is accepted, the investigative staff, both sworn (Special Agent series) and non-sworn (Investigative Auditor series), investigate the suspected Medi-Cal fraud and elder or dependent adult abuse and neglect.

The Investigation Section houses the following units:

- **Case Intake and Development (CID):** CID is responsible for the complaint/referral intake process as well as data development activities for criminal and civil investigations and prosecutions. Data development includes gathering background information on subjects of investigation and analyzing Medi-Cal data associated to providers and recipients.
- **Datamining Unit:** The datamining unit analyzes Medi-Cal data to proactively unearth anomalies to be used as investigative leads. For example, through data analytics, the datamining team was able to identify hospice providers whose patients have been on hospice for years despite the requirement that a hospice patient have a terminal diagnosis with a six-month prognosis.
- **Data Forensic Information Technology Unit (DFIT):** The DFIT processes and analyzes digital evidence (personal computers, data servers, laptops, cellular phones) seized from investigative actions such as search warrants. Additionally, DFIT manages confidential website and email presences for



investigative personnel.

- Investigative Auditors (IA): Independently, and working with Special Agents and Deputy Attorneys General, IAs perform complex criminal and civil Medi-Cal fraud and abuse or neglect investigations. IAs specialize in financial record tracking and have Penal Code mandated warrant authority.
- Special Agents (SA): Working across the State, SAs conduct complex and highly sensitive investigations arising from allegations of Medi-Cal fraud or elder or dependent adult abuse or neglect situations. In addition to the teams of Special Agents assigned to investigate general crimes, the Investigation Section also houses two specialized investigative teams: the Drug Diversion Team and the Facilities Enforcement Investigative Team.
  - o Drug Diversion Team: This team investigates cases focused on doctors overprescribing controlled substances or prescribing without medical necessity. The team also investigates medical professionals who dilute narcotic medications and falsify prescriptions and/or patients' records as well as the theft of prescription pads and provider numbers.
  - o Facilities Enforcement Investigative Team: This is a statewide team that investigations allegations of fraud or systemic abuse and/or neglect that occurs in care facilities.

The Civil Prosecution Section investigates and prosecutes fraud by Medi-Cal providers, at both a state and national level. The Civil Prosecution Section frequently works with other federal and other state prosecutors to combat fraud on the Medicaid system using the California False Claims Act and other civil enforcement statutes.

The Criminal Prosecution Section prosecutes crimes against elder and dependent adults committed by employees in care facilities. These crimes include physical abuse, financial abuse, homicide, sexual assault, false imprisonment, assault, and battery. The Criminal Prosecution Section also prosecutes Medi-Cal providers suspected of defrauding the Medi-Cal program and housed the Facilities Enforcement Team (FET).

- Facilities Enforcement Team: In conjunction with the Facilities Enforcement Investigative Team, the FET investigates and prosecutes owners and operators of facilities, such as skilled nursing homes, hospitals, and residential care facilities for the elderly, for adopting policies and/or promoting practices that lead to neglect and poor quality of care. These prosecutions frequently include the prosecution of corporate entities who facilities engage in institutional neglect or substandard care. The FET also oversees the Operation Guardians Program. The primary goal of the Operation Guardians program is to help protect California's elder and dependent adult residents residing in approximately 1,300 skilled nursing facilities statewide. The Operation Guardians team identifies instances of potential criminal abuse or neglect for further investigation and possible prosecution. With the impact the COVID-19 pandemic has had on skilled nursing facilities across the state, the FET has been at the forefront of investigating skilled nursing homes' practices related to infection control, staffing, and care.

DMFEA Statistics	2019-2020 Biennial Volume
Complaints Received (Criminal and Civil)	7,285
Cases Opened	1,207
Cases Closed	803
Criminal Convictions	210
Civil Settlement Dollars	\$103,084,982.98
Criminal Restitution Dollars	\$29,546,661.24
Operation Guardians Visits	28*

\*DMFEA conducted 23 Operation Guardians visits in 2019. Five visits were conducted in 2020. This number is significantly less than the average of two per month, but was severely impacted by the shut-down of skilled nursing facilities due to COVID-19.

## MAJOR ACCOMPLISHMENTS

### INVESTIGATIONS SECTION

#### ***People v. Mohamed El-Nachef.***

Defendant is a physician who participated in a prescription fraud scheme that cost Medi-Cal more than \$30 million. Dr. Mohamed El-Nachef is a nephrologist with no background in treating HIVpositive patients or patients with substance abuse disorders. Nevertheless, he prescribed expensive HIV drugs, antipsychotic medicines, and opioids to Medi-Cal recipient without good faith examinations nor medical justification. He did so in conjunction with two convicted felons who operated God's Property Sober Living. God's Property was a staging location for Medi-Cal recipients who were paid cash kickbacks to come to God's Property, tell Dr. El-Nachef they needed HIV meds, psych drugs and opioids, and then hand over to God's Property's owners the prescriptions El-Nachef wrote. In turn, God's Property filled the prescriptions at pharmacies and sold the medicines for large profits on the illicit market. On March 10, 2020, DMFEA filed a criminal complaint charging El-Nachef with 14 felonies.

***People v. Gevork George Ter-Mkrtchyan, et al. (All Care One).*** The owner, officers, and employees of All Care One Community Health Center, a community health clinic in Huntington Park, CA, are alleged to have committed theft in excess of \$2.5 million from Medi-Cal's Family Planning, Access, Care, and Treatment (FPACT) program. From 2014 to 2016, defendants engaged in widespread fraud against the FPACT program, including billing for nonexistent patients, conducting sham health fairs, paying kickbacks to both legitimate and illegitimate patients, and engaging in the diversion of birth control medications. On July 6, DMFEA filed felony charges against 10 defendants in connection with their wrongful activity. One defendant died prior to arraignment. Of the remaining nine defendants, five have plead guilty and agreed to cooperate with the prosecution.

***Undercover Investigation of Dr. Sawtantra Chopra.*** In DMFEA's joint collaboration with federal law enforcement and prosecution teams, DMFEA undertook an undercover investigation of a noted Modesto pulmonologist, leading to the arrest of Dr. Sawtantra Chopra. Dr. Chopra was federally indicted on 22 counts of drug-distribution charges. Dr. Chopra is alleged to have prescribed large amounts of controlled substances (Norco, Xanax, Promethazine with Codeine, e.g.) to younger subjects without a legitimate medical purpose.

***Undercover Investigation of Dr. Edmund Kemprud.*** The DMFEA's Drug Diversion Team received information from multiple pharmacies regarding suspicious prescribing practices (numerous narcotic

opioid prescriptions with identical dosages and diagnosis across various patients) by Dr. Edmund Kemprud. DMFEA, in collaboration with the United States Drug Enforcement Agency (DEA) and the United States Department of Health and Human Services (HHS), Office of the Inspector General (OIG) investigated the matter. DMFEA conducted 13 undercover operations which uncovered evidence that Kemprud was engaged in a cash for prescriptions operation executed in the evening hours from the back room of a medical beauty spa. Kemprud provided controlled substance prescriptions without medical necessity, more specifically, without proper referrals or medical history review, sham medical exams and diagnosis, lack of proper consultation with the state's prescription drug monitoring program, lack of utilization of drug screenings, diagnostic testing and alternative therapies. In December 2019, Kemprud was federally indicted on 14 counts to distribute a controlled substance.

***People v. Larry Dela Cruz, et al.*** This investigation began with a skilled nursing facility hiring a company called Access Benefits to assist a resident in qualifying for Medi-Cal services. The complainant alleged Access Benefits attempted to have the resident, who was lacking capacity, sign over Power of Attorney to the company. DMFEA opened an investigation which uncovered a group of affiliated individuals and business entities engaging in multiple fraud schemes, all with the general goal of finding vulnerable elders and defrauding them of their financial resources. Further investigation revealed an international Ponzi scheme involving an unbuilt Resort (Pagudpud Sands Resort) in the Philippines. On November 25, 2020, DMFEA filed a 10 count felony complaint with multiple charges against Larry Dela. Additionally, temporary restraining orders were obtained to freeze five bank accounts associated to Dela-Cruz. DMFEA anticipates filing on multiple other defendants.

***Data Mining Warehouse.*** DMFEA developed and launched a Data Mining Warehouse as a central repository for Medi-Cal data reports and formats, data and provider de-confliction efforts and activity logs for specialized data requests. The Warehouse serves as the real-time hub for the Division's data mining activities.

***Digital Forensic seizures.*** The Digital Forensic Unit seized 41 personal computers equating to 10,630,000 gigabytes of data. Also seized were 11 data servers filled with 16,020,000 gigabytes of information. Additionally, four seized laptops produced 2,752 gigabytes. For scale, one gigabyte yields approximately 100,000 e-mail messages or 65,000 document files or 15,000 images.

***Task Force Partnerships.*** The DMFEA's participation in High Tech Cyber Crime taskforces, located throughout California, is accelerating. These task forces act as force multipliers for the Division when investigating sophisticated, complex fraud schemes.

## **CIVIL LAW SECTION**

***California False Claims Act Settlement with Legacy Post-Acute Rehabilitation Center.*** DMFEA pursued civil fraud against the rehabilitation center in San Bernardino – San Bernardino Convalescent Operations, Inc., dba Legacy Post-Acute Rehabilitation Center and Legacy Standard, Inc. ("Legacy"), for violations of the California False Claims Act. Legacy was alleged to have billed for subacute care services unjustifiably in 2012 and 2013, doing so in two ways: first, by charging Medi-Cal for subacute care as to Medi-Cal patients who needed but were not provided care in the subacute care unit, which is equipped with specialized beds and equipment; second, by failing to maintain minimum nurse-staffing hours in its subacute care unit while nonetheless charging Medi-Cal as if all patients' services there were handled with the requisite nurse-staffing levels. The parties reached a settlement agreement under which Legacy will pay California \$1 million to settle claims related to these alleged violations of state law.

***Settlement with Memorial Health Services.*** DMFEA worked with the Health and Human Services, Office of Inspector General and the United States Attorney for the Central District of California to resolve overbilling to Medi-Cal by Memorial Health Services for drugs covered under the 340B program, which

is intended to ensure the affordability and distribution of drugs to disadvantaged patient populations. Memorial Health Services over-charged Medi-Cal for its reimbursement claims for all 340B covered drugs from January 2017 to May 2019. California and the federal government reached an agreement with Memorial in October 2020 which resulted in the recovery of \$18,919,607.40 for Medi-Cal.

**Settlement with Walgreens, Inc.** Walgreens offered incentives to beneficiaries to lure them into its prescription drug program and overcharged Medicare Part D and Medicaid programs in filling the prescriptions. DMFEA working with other states' Medicaid Fraud Control Units, through the National Association of Medicaid Fraud Control Units, reached a settlement with Walgreens on February 7, 2019. The gross combined settlement was \$9,506,294.73 with \$5,396,959.49 going to the State of California.

**Settlement with Reckitt Benckiser.** In October 2019, DMFEA, working with a team of states and the federal government, settled allegations that Reckitt Benckiser falsely marketed Suboxone, a drug approved by the FDA to treat opioid addiction (albeit an opioid drug itself), in various respects over the period 2010 to 2014. The heart of the false marketing was an effort to steer prescribers away from Suboxone tablets (and other companies' equivalents) and toward Suboxone film. The total recovery on all claims nationwide was \$700 million, of which California's share was \$2.8 million.

The California Justice Information Services (CJIS) Division, through its 1,200 authorized positions, provides accurate, timely, and comprehensive criminal history data and analysis to law enforcement, district attorneys, and local and state regulatory agencies. In addition, the division supports the Department's critical information technology (IT) infrastructure.







# CALIFORNIA JUSTICE INFORMATION SERVICES DIVISION

The CJIS Division consists of the following center and bureaus:

- **DOJ Research Center (DOJRC).** Established in 2018, the DOJRC consists of three program areas:
  - o **The Data Access and Analysis Section (DAAS)** provides access to DOJ data through the Data Request Process. The DAAS supports the work of internal and external data requestors by fielding requests and assessing the merit of the request, the security concerns (including background clearances), the research nature of the request, as well as whether the request is supported by statute. The DAAS thoughtfully releases data to support the Department's mission to provide access to those who need access while also best mitigating any departmental liability. Over the last year, this section fielded more than 100 requests (includes requests from external researchers, internal requests, and legislative requests); worked to reduce the Department's liability by ensuring proper closeout procedures; expanded the number of databases available for requests by researchers and other authorized users; and created the Secure Data Lab that allows external researchers to securely gain access to data on-site at the DOJ. The on-site access provides researchers the ability to complete projects requiring access to data elements not authorized for release within publicly available datasets.
  - o **The Social Justice Research and Policy Program (SJRPP),** analyzes data from various sources with the goal of furthering social justice. Using quantitative and qualitative approaches, the program provides decision makers with data-driven insights to inform public policy and make California safer and more equitable. The SJRPP has research portfolios dedicated to the topics of cannabis, environment, firearms, health, and immigration; produced a report on the cannabis black market in California; penned a memorandum that analyzed the cost of climate change litigation; contributed to the legislatively mandated Armed and Prohibited Person System Annual Report; collaborated with the Tobacco Grant Unit and University of California (UC)-Davis to evaluate the Department's Proposition 56 Tobacco Grant Program and collaborated with the Civil Rights Enforcement Section (CRES) to conduct and summarize the legislatively-mandated Immigration Detention Facility Review.
  - o **The Criminal Justice Research and Policy Program (CJRPP)** conducts quantitative and qualitative analyses of criminal justice data collected by the DOJ, which includes analyzing and interpreting criminal justice data and providing decision makers with analytical products that inform public safety policy and law enforcement activities. In addition to the research conducted by the Racial and Identity Profiling Act (RIPA) Lab, discussed below, CJRPP has portfolios dedicated to CalGang, hate crimes, and sex offender tiering research. In 2019-2020, CJRPP contributed to the generation of the CalGang regulations, published a publicly-facing data dashboard depicting trends in California hate crimes data, and continued its collaboration with the CRES on the independent assessment of the Sacramento Police Department's use of force-related policies, training, and practices.

Together, these program areas provide a wide variety of research and data services such as empirical social science studies and literature reviews, program evaluations and process improvement auditing, rigorous qualitative reviews, advanced statistical modeling, and data access and release.

- **Justice Data and Investigative Services (JDIS).** The JDIS bureau is comprised of two branches that offer investigative and field service functions to criminal justice and public safety partners,

regulatory agencies and the people of California. Information and technical assistance are provided on a variety of manual and automated systems. The JDIS is responsible for the following services and systems:

- o **Missing and Unidentified Persons Section and Application**
- o **Megan’s Law**
- o **Violent Crime Investigative Support Section**
- o **California Sex Offender Registry and California Sex and Arson Registry Application**
- o **Controlled Substance Utilization Review and Evaluation System Program and application**
- o **CalGang Section and Application**
- o **Stolen Vehicles**
- o **Automated Property**
- o **Supervised Release File**
- o **Wanted Persons System**
- o **California Pawn and Secondhand Dealer System**
- o **California Restraining and Protective Order System**
- o **Command Center**
- o **California Law Enforcement Telecommunications Systems, Criminal Offender Record Information and Database Audits**
- o **Cal-Photo**
- o **Electronic Recording Delivery System**
- o **NexTEST – online testing service for all California law enforcement agencies**
- o **Stop Data Collection System**
- o **OpenJustice**
- o **URSUS Data Collection application**
- o **California’s transition to the National Incident Based Reporting System**
- o **Criminal Justice Statistics Center**
- o **Electronic Recording Delivery System**
- **Criminal Information and Analysis (BCIA).** The BCIA bureau is comprised of three branches, which are:
  - o Record Management and Biometric Identification
  - o Applicant and Record Quality Services

Together they function to maintain and update California’s Criminal Offender Record Information (CORI) repository, maintain and update the Child Abuse Central Index, process state and federal level applicant background checks, issue department certifications, and provide oversight of the state’s Automated Fingerprint Identification System (AFIS).

- **Application Development (ADB).** The ADB bureau is responsible for designing, implementing and maintaining the DOJ’s statewide criminal justice information systems, supporting the DLE’s applications, providing analytical reporting, and information services.

- **Enterprise Services (ESB).** The ESB bureau consists of three branches:
  - o Enterprise Support Branch: provides enterprise support for the Department’s computing, applications, and shared services environments,
  - o Project Management and Procurement Branch, and
  - o the Cyber Security Branch.

ESB provides IT procurement, IT project management, independent IT project oversight, helpdesk customer support services, enterprise security and policy for the Department’s computing, applications and shared services environments. In addition, the ESB provides forensic investigation support to Legal, DLE, and CJIS.

- **Technology Support (TSB).** The TSB designs, coordinates, installs and provides 24-hour support for communications applications, server infrastructure, and networks used by the DOJ, state criminal justice agencies, and national criminal justice systems.

## **MAJOR ACCOMPLISHMENTS**

***Racial and Identity Profiling Act Research Portfolio.*** Since January 2018, a team of researchers from the DOJRC has worked together and with the DOJ Civil Rights and Enforcement Section to assist the RIPA Board with analysis to support the RIPA Board’s annual mandated report. The DOJRC continues to provide support to the RIPA Board’s annual report efforts using evidence-based practices and by analyzing the Citizen Complaint and Use of Force (URSUS) datasets. Additionally, the DOJRC has published a data dashboard that empowers members of the public by providing the ability to chart, graph, and analyze trends in RIPA stop data.

***Missing and Unidentified Persons Section (MUPS).*** The MUPS assists the public and criminal justice community with missing and unidentified person investigations utilizing various methods including Internet resources, governmental databases, and forensic dental and medical comparisons. In a recent case, dental x-rays identified the remains of a murdered man in Orange County in the middle of the prosecution of a no body homicide case. During 2019-2020, the MUPS assisted in locating 3,063 missing persons, identified 15 unidentified individuals, and assisted with 50 living doe cases.

***Violent Crime Investigative Support Section (VCISS).*** The VCISS analyzes investigative data providing an analytical case report detailing findings and investigative leads. The VCISS also provides expert testimony often using presentations, maps, charts, and timelines to illustrate facts and conclusions related to the crime. During 2019-2020, the VCISS received 65 new violent crime case requests for assistance, testified in 25 cases, and answered requests from law enforcement related to cold case investigations.

***California Sex and Arson Registry System Support (CSAR-SS) Section.*** CSAR-SS provides support, development, and training of CSAR, the state’s repository for sex and arson registration information, working with both business and technical teams to enhance, improve and update the application. Due to Senate Bill (SB) 384, changes to the CSAR application were required. Initial non-production releases include enhancements related to the CSAR, the Automated Criminal History System (ACHS), California Department of Corrections and Rehabilitation, Supervised Release File (SRF), Board-certified treatment program, court decisions, and court impacts on petitions.

The CSAR-SS, Offender Registration Application Unit (ORAU), and consultants have continued to complete both petitioning and database optimization. Currently in development are petitioning

technology phase one and two system enhancements, which consists of petitioning core functionality, interfaces, and petitioning reports. Petitioning system enhancements are broken up into several phases and a final production deployment is slated for December 2020 and visible to law enforcement agencies at specified programmatic dates.

One of the key components of the petitioning effort is to work harmoniously with local agencies to gather local incarceration data to aide in the petitioning process. The California Sex Offender Registry (CSOR) finalized and deployed the extract of sex offenders for custodial data collection. The ACHS in turn will be converting the data to agency optimized format and transferring this data using existing pipelines. The California Law Enforcement Website's (CLEW) SB 384 section has been updated with file details, contacts, and other pertinent information. This file and associated webpage are available for immediate agency use. Furthermore, the CSAR-SS has worked with the ORAU and consultants to deploy several releases of the CSAR application. This CSAR version consists of maintenance and operations fixes or enhancements to various parts of the CSAR application.

**California Sex Offender Registry.** The CSOR provides a wide range of services to support and assist the law enforcement community with registration and notification of over 150,000 California sex offenders. Services include maintaining and providing information to the general public on the Megan's Law website. During 2019-2020, pursuant to Senate Bill (SB) 384, the CSOR has been working to transition from a lifetime sex offender registration system to a tier-based sex offender registration schema, effective January 1, 2021. See more information on SB 384 and related efforts noted below.

**Senate Bill (SB) 384.** On October 6, 2017, the Governor signed into law SB 384 which requires California to transition from a lifetime registration schema that has been in place since 1947, to a significantly more complex tier-based registration schema by January 1, 2021. Tier-based registration establishes three tiers of registration for adult sex offender registrants for periods of 10 years, 20 years, and lifetime. Juvenile registrants would be subject to registration periods of five years and 10 years. This new law requires the registrant to petition the superior court for termination from the Registry at the expiration of his or her mandated, minimum registration period. Based on specified criteria, the court will either grant or deny the petition.

In order to comply with these new requirements, existing DOJ systems must undergo extensive enhancements and modifications to support new business processes that commenced on July 1, 2020. These systems include the CSAR and many of its interfaces that support registration at both the State and National levels. The ACHS, the Disposition Processor, and the Batch Processor will also undergo significant enhancements and modifications. The DOJ must also develop new policies, procedures, and training modules to support the new tier-based registration schema. The DOJ will be required to educate and train courts, district attorney, probation, parole, and law enforcement entities on these new policies, data exchange methods, and enhanced systems. The DOJ will require additional new positions and consulting resources to implement these significant systems enhancements and modifications in order to develop mid-level requirements to determine tier placements, community notification statuses, and to process granted petitions for terminations within an ambitious two-year timeline.

The SB 384's overall project timeline extends from July 1, 2018, through January 1, 2023, which includes developing and implementing the technology enhancements, performing the tier assessments and community notification posting statuses, and processing the initial surge of petitions for terminations. In 2019-2020, the DOJ made significant progress in the implementation of technology enhancements to the CSAR application as well as other DOJ technologies pertaining to SB 384. The DOJ also conducted statewide training efforts for criminal justice business partners on the mandates of this new law. The DOJ hosted a pilot project with the San Diego County to establish best practices for countywide implementation of SB 384. The SB 384 Key Stakeholder Group has also met quarterly in 2019-2020, to establish best practices and policies pertaining to this new law. Additionally, over 100,000 tiering

records have been processed by the DOJ to date with over 30,000 of these records placed in their final tier designation.

**California Sex Offender Registry Grants.** The CSOR has received approximately \$1.2 million in 2019 grant funds from the 2019 Adam Walsh Act (AWA) Grant and the 2019 Sex Offender Registration and Notification Act (SORNA) Reallocation Grant. Under the 2019 AWA Grant, the DOJ is developing a comprehensive Disaster Recovery (DR) Plan to enable the DOJ to recover quickly and appropriately should a disaster to the CSOR or other DOJ technologies occur. The Project will include a detailed analysis to identify and prioritize critical applications, identify threats and vulnerabilities that could disrupt operations, document recovery standards, and outline preventative measures to reduce risk. Under the 2019 SORNA Reallocation Grant, the DOJ is developing a Strategic Plan, which is intended to work in conjunction with the aforementioned DR Plan. The Strategic Plan will allow the DOJ, at an enterprise IT level, including all the technologies that support registration and notification in California, to identify technologically where the organization is now, where it wants to be in the future, and the roadmap to get there with an anticipated target completion in 2022. The DOJ also continues its partnership with the Judicial Council of California (JCC) under the 2018 SORNA Reallocation Grant Project where the JCC is developing a standard data exchange interface for courts using the National Information Exchange Model (NIEM).

**Controlled Substance Utilization Review and Evaluation System (CURES) Program.** The CURES Program is the state's Prescription Drug Monitoring Program that stores and reports prescription dispensation data for Schedule II-IV controlled substances dispensed in California. Pursuant to the California Health and Safety Code section 11165(a), the CURES information may be made available to health care practitioners to assist in their efforts to ensure appropriate prescribing, ordering, administering, furnishing, and dispensing of controlled substances; to law enforcement and regulatory agencies in their efforts to control diversion and resultant abuse of Schedule II-IV controlled substances; and for statistical analysis, education, and research. As of July 2020, there were over 221,000 registered CURES users. Of these users, approximately 171,000 are prescribers and 46,000 are pharmacists. During 2019-2020, the CURES Help Desk provided service to system users by responding to over 58,000 user calls and emails.

The CURES Program promulgated an extensive set of regulations addressing the access and use of the CURES, which became effective on July 1, 2020. This project entailed significant legal and policy analysis, coordination with various internal and external stakeholders, extensive drafting, and thoughtful consideration of public comments in order to deliver ahead of schedule regulations that provide guidance to the multitude of CURES stakeholders.

In October 2018, access to the CURES information was made available through a CURES Information Exchange Web Service (IEWS). As part of this access, a CURES IEWS Memorandum of Understanding (MOU) was developed which certifies that the entity operating the health information technology system meets specified requirements. In response to the evolving needs of stakeholders, the CURES Program successfully delivered an improved CURES IEWS MOU. Since the implementation of the CURES IEWS, 33 entities operating health information technology systems have enrolled for this service. During 2019-2020, there were over 12 million CURES IEWS transactions and the CURES web portal had over 23 million transactions.

**CalGang®.** Following passage of Assembly Bill (AB) 90 in January 2018, the CalGang Unit was established to administer and oversee the CalGang database, a shared database that houses criminal intelligence data on members of criminal street gangs and their associates. AB 90 required the DOJ to promulgate regulations governing the use, operation, and oversight of any shared gang database, including CalGang. To date, the CalGang Unit had drafted five regulation packages and collected and responded to over 900 public comments. Additionally, the Unit successfully coordinates, presents,



and conducts audits at California Gang Node Advisory Committee meetings three times a year. Every February, the CalGang Unit is responsible for publishing the *Attorney General's Annual Report on CalGang* as mandated by AB 90 which provides transparency to the public as it displays demographic information about the records contained in the system, the law enforcement agencies (LEAs) using the system, and audit results. In November 2019, the Unit began a large-scale IT project to document and implement all business requirements needed to update the system according to the new regulations. The CalGang Unit also began documenting a plan to implement all of the processes, tasks, and procedural changes needed to effectuate the regulations, including creating and providing e-training to all current users of the system, which is approximately 4,000 people. Lastly, the Unit continues to enhance the system to meet the needs of participating LEAs across the state.

**California Pawn and Secondhand Dealer System (CAPSS).** Pursuant to AB 391, the DOJ was required to develop and implement a single statewide, uniform electronic reporting system for secondhand dealers and pawnbrokers known today as the CAPSS. Business and Profession Code section 21628, mandates pawnbrokers and secondhand dealers to electronically transmit to the CAPSS the report of acquisition of tangible personal property. In addition, Business and Profession Code section 21625, indicates that the CAPSS was designed to curtail the dissemination of stolen property and to facilitate the recovery of stolen property. Since December of 2014, the CAPSS has been available to LEAs, secondhand dealers, and pawnbrokers.

Throughout 2019, the DOJ CAPSS team continued to work on developing regulations to clarify Business and Professions Code section 21628. The CAPSS Regulations became effective on January 1, 2020.

**National Crime Information Center (NCIC) Monthly VALIDATIONS.** The Federal Bureau of Investigation (FBI), NCIC requires automated records in selected files be periodically validated by their contributors, per NCIC Operating Manual section 3.4. It is the responsibility of the DOJ, and the CJIS Division, to coordinate the dissemination of these records and to notify NCIC of the status of validations each month. The purpose of this validation process is to ensure that the automated records are accurate, complete, and represent an active case. In February 2019, the DOJ automated the NCIC monthly validation process using the Peak Performance validation application.

The previous monthly validation process was time consuming, manual process and required several staff to organize and disseminate each agency's records. The new application streamlined the process and provided agencies with the following:

- Instant access and the ability to electronically validate records upon receipt.
- Automated acknowledgment for receiving/completing an agency's records.
- Ability to monitor validation progress.
- Ability to receive electronic reminders from the DOJ.
- Access to archived records for the agency's convenience.

The DOJ is currently working with agencies to ensure that records are validated within the required time-frame.

**California Restraining and Protective Order System (CARPOS).** The CARPOS is a CJIS statewide database that contains restraining and protective order data entered by criminal justice agencies. The CARPOS is accessible via the California Law Enforcement Telecommunications System (CLETS) 24 hours a day, seven days a week. The CARPOS is utilized by LEAs to obtain the terms and conditions of restraining orders. The database is accessed by the DOJ's Firearms Section, to process Dealer Record of Sales documents for firearms clearances. Penal Code sections 29825(a) and 30305(a) prohibit any person identified as the subject of certain restraining orders from possessing, owning, purchasing, or receiving firearms.

As a result of the Judicial Council's Emergency Rule #8 in response to the COVID-19 pandemic, on April 21, 2020, the DOJ provided information so agencies that have system limitations when modifying expiration dates for Emergency Protection Orders in the CARPOS. The information was posted on the CLEW.

The CARPOS team has been working with the Hawkins Data Center (HDC) in preparation for ABs 12, 61, and 1493. The CARPOS updates pursuant to these new laws will be implemented September 1, 2020. The updates to the CARPOS associated with each bill are as follows:

- AB 12
  - Will change the duration of the gun violence restraining order and the renewal of the gun violence restraining order from one year to a period of time between one to five years, subject to earlier termination or renewal by the court.
  - Authorizes a law enforcement officer to file a petition for a gun violence restraining order in the name of the LEA in which the officer is employed.
  
- AB 61
  - Authorizes an employer, or a coworker, who has substantial and regular interactions with the person and approval of their employer, or an employee or teacher of a secondary or postsecondary school, with approval of a school administrator or a school administration staff member with a supervisory role, that the person has attended in the last six months to file a petition for an ex parte, one-year, or renewed gun violence restraining order.
  
- AB 1493
  - Authorizes the subject of the petition to file a form with the court relinquishing the subject's firearm rights and stating that the subject is not contesting the petition.

**Wanted Person System (WPS).** The WPS was established in 1971 as the first on-line system for the DOJ. This CJIS statewide database contains felony arrest, misdemeanor arrest, and protective custody non-arrest warrant records. It is used to alert LEAs of the possibility that a subject on whom they are making an inquiry may be wanted or protected. Today, authorized agencies utilize various electronic methods to capture and forward warrant data to the DOJ via the CLETS. Information entered into WPS meeting specific criteria will be programmatically transmitted to the NCIC making warrant information available nationwide. As a result of the Judicial Council's Emergency Rules in response to the COVID-19 pandemic, on April 22, 2020, the DOJ provided information for agencies when entering \$0 bail amounts for warrants into the WPS, pursuant to Emergency Rule 4 (statewide Emergency Bail Schedule). The information was provided on the CLEW.

**Information Expedite Services Section (IESS) - Command Center.** The IESS is comprised of the Command Center and Child Abuse Central Index Expedite Unit. The IESS is responsible for providing support to LEAs 24 hours a day, 7 days a week, and assists LEAs with time sensitive information for investigative purposes. The Command Center is responsible for assisting agencies with emergency child placement and criminal history checks related to investigations. After hours and on weekends, the Command Center becomes the Department's back up call center for Missing Persons, Sex Offender Registry, Stolen Vehicles and Automated Boats, Wanted Persons, Automated Property, Restraining and Protective Order Units, and the Automated Latent Print Section (ALPS). Additionally, the Command Center is responsible for providing after hours assistance to LEA's for criminalist personnel for investigative purposes related to crime scene processing.

AB 2133 extended the authority to receive criminal history to a public defender or attorney of record when representing a person in a criminal case or a juvenile delinquency proceeding, including

on appeal or during any post-conviction motions, if the information is requested in the course of representation. The Command Center staff worked with the Bureau of Criminal Information and Analysis (BCIA) to develop a new procedure to address the new workload. In April 2019, the process was implemented and a new BCIA form was introduced.

The Command Center worked with the Network Security Unit (NSU) to implement a more secure and universally recognized encrypted email platform called ProofPoint. This new application allows the Command Center staff to disseminate confidential information more efficiently and minimizes data security risks.

**California Law Enforcement Telecommunication System.** The CLETS audit helps ensure each subscribing agency is following the CLETS Policies, Practices and Procedures, as well as the FBI CJIS Security Policy. An on-site review of the CLETS terminals is also conducted to ensure the physical security of the CLETS terminals. Staff completed 1,015 audits to close-out the triennial audit cycle, and conducted four CLETS Training for Trainers (T4T), which are multi-day POST-certified classes. To respond to COVID-19 restrictions, staff are also developing a web-based option for the T4T training, which should be available by late 2020.

**Criminal Offender Record Information (CORI) Audits.** During a CORI audit, auditors review usage of the ACHS to ensure agencies substantiate inquiries with a valid “need to know, right to know” and that all inquiries are properly documented. The audit process also reviews inquiries into the federal Interstate Identification Index. In 2019-2020, staff completed 634 agency audits.

**Cal-Photo and License Plate Reader NCIC Extract File.** For the implementation of Senate Bill (SB) 54, the Values Act, all agencies participating in these services had to sign an updated Agency Agreement/MOU. In total, over 1,000 agencies were contacted regarding their usage of Cal-Photo and/or the License Plate Reader NCIC Extract File. Additionally, the Cal-Photo application screens were updated to inform users of the proper use of the system.

Outreach to agencies regarding SB 54 updates began in February of 2019, and the deadline for compliance was July 31, 2019. All agencies responded, with the exception of two regional offices of the Immigration and Customs Enforcement using Cal-Photo. After several attempts to contact these offices, CJIS terminated their Cal-Photo access on October 15, 2019.

**Stop Data Collection System (SDCS).** Pursuant to AB 953, the California Racial and Identity Profiling Act of 2015, law enforcement agencies have set timeframes of when they are required to collect and submit stop data to the DOJ’s statewide repository, SDCS. The eight largest law enforcement agencies in the state were required to submit the first batch of stop data on April 1, 2019. These agencies successfully completed the “close-out” of their 2018 records by the April 1, 2019 deadline. Over 1 million records were received for 2018. Since then, nine additional agencies have been on-boarded to the system. Records for 2019 were due on April 1, 2020, and over 3.7 million records were received.

The team is currently working closely with 12 agencies to help with their preparation to start collecting stop data as of January 1, 2021. Additionally, the DOJ hosted two “Lessons Learned” sessions to bring all of these reporting agencies together to share information.

Due to COVID-19, on-site meetings have been replaced with teleconferences and webinars. This approach is working well and allows the team to continue providing support to the agencies who are collecting data as well as those that are preparing to start collecting.

**Criminal Justice Statistics Center Publications.** The DOJ collects statistics on crimes, arrests, homicides, arsons, domestic violence-related calls for assistance, hate crimes, adult probation, citizens’ complaints against peace officers, violent crimes committed against senior citizens, death in custody, law enforcement personnel, juvenile court and probation, law enforcement officers killed or assaulted, adult felony arrest dispositions, use of force incidents, and anti-reproductive-rights crimes.

In July of 2019-2020, the data was published in five mandated publications: *Crime in California*, *Juvenile Justice in California*, *Hate Crime in California*, *Homicide in California*, and *Use of Force Reporting in California*.

**California's transition to the National Incident Based Reporting System (NIBRS).** The DOJ is currently in the process of implementing the new California Incident Based Reporting System. The DOJ applied for and was awarded federal implementation funding through the National Crime Statistics Exchange effort. Throughout 2019, the DOJ worked through and completed the CA Department of Technology's (CDT) Project Approval Lifecycle process, obtaining final approval to begin the transition project in September 2019. The DOJ worked with the CDT's State Technology Procurement team to release the solicitation to obtain the new repository vendor and awarded the contract in October 2019. The repository solution is a commercial off the shelf, vendor-hosted product that is NIBRS certified by the FBI in multiple states.

The DOJ project team has been working through the various project phases and released technical specifications in February and May 2020 to assist local LEA Record Management System vendors in transitioning to the new format for data collection and submission. The team is currently in the User Acceptance Testing phase and expects to begin the NIBRS certification process with the FBI in September 2020. This project is currently on track and working towards implementation by the FBI's deadline of January 2021.

**Bureau of State Audits (BSA) Report on Hate Crime.** On May 31, 2018, the BSA released its findings after nearly a year-long audit on various aspects of hate crime training, outreach, identification, and reporting. The BSA proposed suggestions to improve DOJ's current practices such as updating training materials, hate crime reporting data verification, and auditing while also recognizing that in the absence of a mandate and proper funding, many of these duties may not be accomplished.

The DOJ continued to provide Hate Crime training throughout the state and improve upon its quality control and review processes. The DOJ has hired four positions which are dedicated to the development and implementation of the new training and audit processes. The audit process is currently in development and will be implemented within the next calendar year.

#### **Agency Outreach and Accomplishments:**

- Agencies onboarded for electronic reporting: 49 (47 NIEM, 2 Automated Transaction Disposition Reporting)
- Agencies onboarded for Justice Automated Data Exchange: 52
- Agencies onboarded for CJDE: 6
- Master Code Tables
  - o Currently tabled offense codes reviewed – 1,899
  - o Potential offense codes reviewed to be added to the table – 2,571
  - o Offense codes added to the table – 4
  - o New Laws offense code table additions – 18

**Record of Arrest and Prosecution (RAP) Sheet Training.** The CJIS provides RAP sheet training to criminal justice agencies throughout the state. The training includes the latest information on laws and mandates as well as how to read CORI from the statewide criminal history repository as displayed on a RAP sheet. In 2019-2020, more than 6,600 officers and other personnel attended 252 training sessions.

**Criminal Record Background Check Requests.** California law authorizes certain governmental and

private organizations to conduct criminal record background checks to help determine the suitability of a person applying for a license, employment, or a volunteer position working with children, the elderly, or the disabled. Public and private schools, non-profit organizations, in-home supportive care agencies, and law enforcement are some of the organizations authorized to conduct these fingerprint-based background checks. In 2018-2019 and 2019-2020, the DOJ processed 2.5 million and 1.9 million California level-of-service background check requests, and 1.7 million and 1.3 million federal level-of-service background check requests, respectively. The decreases experienced in 2020 are attributed to the COVID-19 pandemic and the closure of live scan sites.

In 2019, the Applicant Agency Justice Connection (AAJC) portal was released to the applicant agency community. The AAJC provides authorized agencies a secure web-enabled environment and self-service tools to assist with managing the criminal history background check process. The tools allow authorized users to submit agency change requests, check the status of background checks, retrieve background check responses, access information related to the fingerprint background-check process, and contact the DOJ Applicant Service Program directly for support.

**Criminal Record Challenges.** In 2019-2020, the DOJ processed over 70,000 record reviews and over 2,400 record challenges. During that time, the DOJ continued to heighten awareness of citizens' rights to refute erroneous or inaccurate information, and of the right to an administrative hearing to determine if material inaccuracies or incompleteness exists. In 2019, the DOJ deployed an on-line form to electronically process and manage applications to waive the record review fingerprinting fees for qualifying applicants. Through this effort the DOJ was able to electronically approve fee waivers for approximately 1,300 record review applicants.

**Certified Record Requests.** California law authorizes LEAs and certain governmental departments access to certified criminal record information when representing a person in a criminal matter or conducting a criminal related investigation of a person. In 2019, amendments to section 11105 of the California Penal Code statute expanded access of certified criminal records to include public defenders under certain criteria. In support of legislative changes, existing DOJ procedures were modified to support new business processes to meet the needs of law enforcement and provide information pertaining to certified records to the general public on the Attorney General's (AG's) website. The DOJ processed over 700 requests during 2019-2020.

**Automated Fingerprint Identification System.** The AFIS is the second largest fingerprint identification system in the nation, containing more than 27.3 million criminal and applicant fingerprint records. AFIS received 1.6 million criminal and 3.2 million applicant transactions during the biennial period. These transactions are submitted to the DOJ and consist of arrests and bookings at California LEAs. Additionally, the fingerprints are submitted to conduct criminal history background checks for licensing, certification and investigatory purposes.

**Palm Print Images to the FBI.** The DOJ forwards palm print images submitted by California LEAs to the National Palm Print System (NPPS) maintained by the FBI. A total of 1.5 million palm print images were submitted to the FBI's NPPS during the reporting period.

**Automated Latent Print Section.** The ALPS performs automated searches of finger and palm prints and conducts comparisons of latent prints developed based on evidence from crime scenes received from LEAs. The ALPS has received accreditation from ANSI-ASQ National Accreditation Board/FQS. From January 1, 2019 to June 2020, ALPS received 2,741 cases from LEAs that contain latent print images in which identifications are being sought. Two thousand four hundred twenty-six cases contained evidence that were suitable for identification; ALPS was able to make identifications in 440 of those cases, equaling a hit rate of 18.1 percent.

In April 2019, the DOJ started communicating with the FBI to send approximately 3.2 million palm print



records that resided in the DOJ's AFIS palm print database obtained as a result of a criminal arrest/detention event and submitted to the DOJ from LEAs in California during the period of September 2003 to August 2011. It is anticipated that this project will be completed by the end of September 2020.

**Latent Gateway.** The Latent Gateway offers an efficient and streamlined process for local LEAs to search latent fingerprints against the FBI and DOJ repositories. The Latent Gateway allows for disparate AFIS to communicate via web services, and search and/or register latent fingerprints in both the FBI and the DOJ ALPS databases. As of June 2020, ten counties and one police agency are using the Latent Gateway, and three more counties have either requested implementation, are in testing, or are in the enrollment process.

**Live Scan Support Section.** The Live Scan Support Section (LSSS) was responsible for overseeing approximately 1,658 law enforcement-owned and operated live scan devices, and 2,996 privately-owned and applicant agency-owned live scan devices. These live scan devices are utilized for law enforcement arrest and custody reporting, as well as applicant background check purposes, respectively. The LSSS is responsible for approving all new live scan device connections, answering questions and reviewing applications for completeness, testing and facilitating connectivity, and troubleshooting submission errors.

The LSSS has worked on critical projects during this time, including: working with contracted consultants to examine the Department's current live scan infrastructure and survey public and private live scan clients and vendors to develop recommendations to modernize the live scan system; working in conjunction with the Biometric Support Unit and DOJ-approved vendors to modify and execute the FLATS on APPS software functionality to provide live scan operators a method for contactless fingerprinting in response to the COVID-19 pandemic; updated the AG's website to provide information about live scan site closures and best practices relative to COVID-19; worked with a Cal-ID managers group to develop the Release type of transaction to assist agencies reporting detention data; and drafted new terms and conditions for live scan vendors to establish additional controls for data quality and security that did not exist before.

Lastly, the Fingerprint Rolling Certification Program, which reports to the LSSS, received and processed approximately 5,244 applications and referred 14 application denials to Administrative Hearing during this reporting period.





# EXECUTIVE PROGRAMS

Executive Programs consists of the following units:

- The **Office of the Solicitor General's** core mandate is to provide or promote excellent representation in appellate matters handled by the Department. The Office serves as a resource for Department leadership, attorneys, and staff, providing appellate advice and collaborating with the divisions and sections to foster consistent excellence in appellate practice.
- The **Office of Legislative Affairs** represents the Attorney General in the State Legislature. It is responsible for developing and advocating for the Attorney General's legislative priorities. It also coordinates the Attorney General's communications with the State Legislature and the Governor's Office on legislative matters.
- The Attorney General appoints the **Special Assistants to the Attorney General** to focus on the priorities of his administration, such as health care, the environment, immigration, consumer and economic justice, and criminal justice reform and law enforcement. Special Assistants also serve as the Attorney General's key advisors in his priority areas and work throughout the Department to lead teams and manage projects for the Attorney General.
- The **Office of Communications** oversees external communications for the Department. The office organizes speaking opportunities, press conversations, and events to highlight the initiatives the Department engages in on behalf of all Californians. In addition, the Office is responsible for the Department's digital presence including content on the public website, social media, and graphics.
- The **Office of External Affairs** develops and maintains relationships with key stakeholders such as community and non-profit groups, elected officials, and business organizations to foster a greater understanding of the initiatives taken by the DOJ.
- The **Public Inquiry Unit** provides information and assistance to the hundreds of thousands of Californians who contact the DOJ each year. A key priority of the Unit is resolving consumer complaints.
- The **Equal Employment Rights and Resolution Office** ensures equal employment opportunities (EEO) within the DOJ are consistent with state and federal laws. The office administers the employee discrimination complaint process, monitors departmental employment processes, and provides training to ensure a workplace free of discrimination and harassment
- The **Office of Program Oversight and Accountability** is the DOJ's primary internal audit organization, and ensures that the Department meets Government Code reporting requirements for accounting and internal control.

## MAJOR ACCOMPLISHMENTS

### OFFICE OF THE SOLICITOR GENERAL

The Office of the Solicitor General (OSG), under the leadership of the Solicitor General, has plenary authority and responsibility for ensuring the excellence of the DOJ's appellate practice, with a special emphasis on the office's work in the U.S. Supreme Court and the California Supreme Court. OSG serves as a clearinghouse for all appeals handled by the Department. It supports the improvement of appellate practice skills and provides advice on appellate matters to all sections and divisions within the Department. The Office frequently prepares appellate filings and its attorneys regularly present oral

argument in federal and state appellate courts. Select cases where OSG played an important or lead role during this reporting period are described below, organized under the most relevant division.

## **CIVIL LAW DIVISION**

OSG and the Government Law Section successfully litigated a challenge to the addition of a citizenship question to the 2020 Census. California sued in 2018 after the federal Department of Commerce announced its decision to add the question. The district court held that the decision violated the Administrative Procedure Act and the Enumeration Clause of the Constitution. The federal government filed a petition for “certiorari before judgment” in the U.S. Supreme Court. In March 2019, California asked the Court to expedite its consideration of the petition in that case, *In re U.S. Department of Commerce*, grant review, and consider the case alongside a similar lawsuit filed by New York, in which California also filed multiple amicus briefs. Shortly thereafter, the Court held that the federal agency failed to adequately explain its decision, as required by the Administrative Procedure Act. The Chief Justice noted that “[a]ccepting contrived reasons” for agency action “would defeat the purpose of the enterprise.”

In *South Bay United Pentecostal Church v. Newsom*, an expedited proceeding before the U.S. Supreme Court, OSG worked with the Government Law Section to defend state emergency restrictions on in-person gatherings to limit the spread of COVID-19. The office filed a response just five days after the church made its emergency request to enjoin state requirements for holding in-person worship services during the ongoing pandemic. In May 2020, the U.S. Supreme Court denied the church’s request. The Chief Justice, joined by Justices Ginsburg, Breyer, Sotomayor, and Kagan, voted to deny relief. In a concurrence, the Chief Justice reasoned that public health officials should be given “especially broad” latitude to respond to the unprecedented pandemic without being second-guessed by an “unelected judiciary.”

OSG continues to work in close collaboration with the Government Law Section to defend California gun safety laws against Second Amendment challenges. OSG led the Ninth Circuit briefing in *Flanagan v. Becerra*, a challenge to California’s laws regulating where firearms may be carried in public. In addition, OSG successfully opposed the petition for a writ of certiorari filed in the U.S. Supreme Court in *Pena v. Horan*, a lawsuit seeking to overturn aspects of California’s Unsafe Handgun Act. OSG also worked closely with Government Law Section attorneys in the Ninth Circuit briefing and argument in *Duncan v. Becerra*, a challenge to California’s ban on magazines that can hold more than ten rounds of ammunition; in *Rupp v. Becerra*, a challenge to California’s Assault Weapons Control Act; and in *Rhode v. Becerra*, a challenge to California’s background-check system for ammunition purchases.

Working with the Government Law Section, OSG helped to defeat a constitutional challenge to the California Voting Rights Act (CVRA) in *Higginson v. Becerra*. Responding to a private attorney’s threat to sue under the CVRA, the City of Poway changed from an at-large method of electing city councilmembers to a by-district method, thereby triggering the CVRA’s protection against attorneys’ fees. In response, the former mayor of Poway filed suit in federal court, claiming that the CVRA and its application violated the Equal Protection Clause. The Ninth Circuit affirmed the district court’s dismissal of the complaint, holding that “it is well settled that governments may adopt measures designed to eliminate racial disparities through race-neutral means.” The U.S. Supreme Court denied the challengers’ petition for a writ of certiorari.

In collaboration with the Government Law Section, OSG is defending California’s requirement that tax-exempt charitable organizations provide the Attorney General, on a confidential basis, with their Internal Revenue Service “Schedule B” tax forms. Those forms list the organization’s major donors and are filed with the IRS. The Ninth Circuit rejected First Amendment challenges to the Schedule B reporting requirement in September 2018 and declined to rehear the case. The challengers in these

cases—*Americans for Prosperity Foundation v. Becerra* and *Thomas More Law Center v. Becerra*—filed petitions for writs of certiorari in the U.S. Supreme Court in August 2019. OSG filed a combined response to the two petitions. The Court has called for the views of the U.S. Solicitor General. OSG, along with the Government Law and Charitable Trust Sections, met with various agencies of the federal government in April 2020 to discuss the case. The federal government has not yet filed its brief and the petitions remain pending.

OSG led the Department’s successful efforts to defeat two attempts by other States to invoke the U.S. Supreme Court’s original jurisdiction. In *Missouri v. California*, 13 States filed a motion asking the Court to hear as an original matter their constitutional challenges to California’s humane-egg laws—even though they had already lost those challenges in the federal courts, and the U.S. Supreme Court had denied discretionary review in 2017. Working with the Government Law Section, OSG opposed review. DOJ met with the U.S. Solicitor General’s Office to discuss the case, and that office ultimately filed a brief agreeing with California that “this is not an appropriate case for the exercise of this Court’s original jurisdiction.” The Court denied the States’ motion in January 2019. In *Arizona v. California*, the State of Arizona sought to invoke the Court’s original jurisdiction to hear its claim that the assessment of California’s minimum franchise tax against certain Arizona-based business entities was unconstitutional. Working with the Business and Tax Section, OSG argued against this expansion of original jurisdiction. OSG again met with the U.S. Solicitor General’s Office, and that office filed a brief taking the position that the case should not proceed as an original action. The Court denied Arizona’s motion in February 2020.

OSG is currently seeking a similar result in *Texas v. California*, where the State of Texas has moved for leave to file an original action in the U.S. Supreme Court against California. Texas’s proposed complaint challenges the constitutionality of AB 1887, a California statute restricting certain state-funded travel to other States that have enacted laws discriminating against lesbian, gay, bisexual, or transgender individuals. OSG, with assistance from the Government Law and Civil Rights Enforcement Sections, filed an opposition brief in May 2020 arguing that Texas’s claims do not satisfy the criteria for an original action and are meritless in any event. Texas’s motion is still pending.

OSG worked with the Business and Tax section and other attorneys from across the Department to draft a multi-state amicus brief in the U.S. Supreme Court in *Taggart v. Lorenzen*. California’s brief—signed by 25 States and the District of Columbia—urged the Court to rule that a creditor should not be held in civil contempt for violating a bankruptcy discharge if the creditor’s collection actions are objectively reasonable. The brief explained why a different standard might harm important state interests related to such things as environmental clean-up orders and tax collection. The brief was referenced at the oral argument, and the Court’s rationale for adopting the office’s preferred standard in its June 2019 decision largely tracks the arguments made in the brief.

In the previous reporting period, OSG worked with the Government Law Section on an amicus brief filed in the U.S. Supreme Court in *Janus v. American Federation of State, County, and Municipal Employees, Council 31*. In that case, the Court considered whether States could require public employees to pay “agency fees” to defray the cost to unions of providing representation to all employees. California long relied on agency fees as part of its system for managing labor relations in the public sector. The brief explained that the State developed its system of collective bargaining in response to widespread labor unrest and that agency fees served important interests of public employers. In July 2018, the Court in a 5-4 decision overruled its longstanding precedent that had permitted mandatory agency fees. Justice Kagan’s dissent cited California’s amicus brief.

OSG led or co-led the briefing and presented oral argument in the California Supreme Court in a number of important cases during this reporting period, defending state laws and programs and serving



Civil Law Division clients. Those cases include: ***National Shooting Sports Foundation v. California***, upholding a state law requiring that new models of guns include bullet-identification technology (with the Government Law Section); ***County of San Diego v. Commission on State Mandates***, clarifying the rule for determining whether voter-enacted laws impose new “state mandates” that must be funded by the State (with the Government Law Section); ***McClain v. Sav-On Drugs***, clarifying the roles and rights of consumers and retailers under the State’s sales tax and reimbursement laws (with the Business and Tax Section); ***City and County of San Francisco v. Regents***, holding that a city can require state universities and colleges to collect local parking taxes where the city agrees to pay the administrative costs (with the Business and Tax Section); ***Christensen v. Lightbourne***, upholding the Department of Social Services’ method for calculating welfare benefits (with the Health, Education, and Welfare Section); ***Mathews v. Becerra***, holding that plaintiff psychotherapists could pursue their claim that certain reporting requirements of the Child Abuse and Neglect Reporting Act violated state privacy rights (with the Government Law Section); and ***St. Francis Memorial Hospital v. State Department of Public Health***, holding that equitable tolling can extend the time for filing a writ of administrative mandate in certain circumstances (with the Health, Education, and Welfare Section).

## **CRIMINAL LAW DIVISION**

OSG worked with the Appeals, Writs, and Trials Section (AWT) and the Correctional Writs and Appeals Section (CWA) on a wide variety of appellate matters during the reporting period.

OSG worked with AWT to respond to dozens of certiorari petitions in the U.S. Supreme Court in criminal appeals and habeas cases. OSG took the lead in drafting several non-capital responses, and supported AWT in a large number of capital and non-capital responses. The Supreme Court did not grant review in any such case during the reporting period.

OSG worked with AWT on the California Supreme Court proceedings in ***People v. Buza***, which considered whether the collection of DNA identification information from adults arrested for felony offenses, as mandated by the voters in Proposition 69, violates the state or federal Constitutions. A Deputy Solicitor General argued the case in January 2018. In April 2018, reversing the Court of Appeal, the Supreme Court agreed with the Attorney General’s position and rejected the constitutional challenges to Proposition 69.

In collaboration with AWT, OSG has continued to advance the Attorney General’s efforts to reform California’s bail system in criminal cases. In ***In re Humphrey***, the California Supreme Court will decide whether due process and equal protection require consideration of a criminal defendant’s ability to pay in setting or reviewing the amount of monetary bail. The Attorney General filed an amicus brief in this matter in June 2018. In January 2020, the Court substituted the Attorney General as petitioner, in place of the San Francisco District Attorney’s Office, at the Attorney General’s request and with the District Attorney’s consent. In its May 2019 decision in ***In re Webb***, the California Supreme Court agreed with the Attorney General’s argument, advanced as amicus curiae, that courts have power to impose reasonable conditions on the release of defendants who post bail pretrial, instead of detaining them with unaffordable bail levels. That holding will reduce disparities due to economic circumstances.

OSG also worked with AWT on a variety of cases in the California Supreme Court interpreting and applying Proposition 47—the Safe Neighborhoods and Schools Act of 2014. That initiative reclassified as misdemeanors certain offenses that previously were or could be charged or punished as felonies. It also allowed those previously convicted of felonies that Proposition 47 reduced to misdemeanors to petition to have such felony convictions resentenced or redesignated as misdemeanors. OSG, working with AWT, led the briefing in Proposition 47 cases such as ***People v. Buycks*** (decided July 2018), clarifying the initiative as applied to sentence enhancements (argued by an AWT Deputy); ***People v. Lara*** (April 2019), holding that defendants convicted of unlawfully driving a stolen car (as opposed to

vehicle theft) are not eligible for sentencing relief (argued by a Deputy Solicitor General); and ***People v. Bullard*** (March 2020), holding that permanent and temporary vehicle takings are treated the same for the purposes of sentencing relief (argued by a Deputy Solicitor General).

OSG worked with AWT and the Employment and Administrative Mandate Section in preparing an amicus brief in the California Supreme Court in ***Association of Los Angeles Deputy Sheriffs v. Superior Court***, a case addressing the interplay between prosecutors' disclosure duties under *Brady v. Maryland* and the privacy protections for peace officer personnel files codified in state statutes. The brief argued that the Court should not construe the statutes to forbid law enforcement agencies from informing prosecutors that a peace officer's personnel records contain information potentially subject to disclosure under *Brady*. A Deputy Solicitor General argued the case. In August 2019, consistent with the Attorney General's position, the California Supreme Court held that law enforcement agencies are permitted to disclose to prosecutors the names of officer-witnesses with potential impeachment information in their personnel records for the purpose of complying with federal constitutional disclosure requirements.

In collaboration with AWT, OSG served in a leading role in a number of other criminal appeals and habeas matters in the California Supreme Court. Cases decided during the reporting period include ***In re Butler***, releasing the Board of Parole Hearings from obligations under a 2013 settlement governing the calculation of base terms for life prisoners in light of 2016 statutory reforms to the parole system (with CWA); ***People v. Perez***, holding that defendants who failed to assert a Confrontation Clause objection at a trial held before the Court's 2016 opinion in *People v. Sanchez* are not deemed to have forfeited the objection in light of the subsequent change in the law (with AWT); ***People v. Maya***, holding that a court may consider an individual's time spent in immigration custody after a judgment of conviction, as part of the determination whether that individual has "lived an honest and upright life" for purposes of conviction expungement (with AWT); ***People v. Anderson***, holding that the imposition of certain sentencing enhancements not alleged in the information was improper under the facts and circumstances of the case (with AWT); and ***People v. Ovieda***, holding that the Fourth Amendment's "community caretaking exception" does not allow warrantless searches in circumstances short of an exigency or emergency (with AWT). OSG attorneys presented oral argument in each of the above cases. Together with AWT, OSG also litigated and assisted with a number of habeas matters pending in federal court. OSG led the Ninth Circuit en banc briefing in ***Ellis v. Harrison***, in which the defendant contended that his defense attorney provided constitutionally ineffective assistance. There was undisputed evidence that the defense attorney held deeply racist beliefs about the defendant in particular and African Americans in general. The Ninth Circuit panel opinion held that circuit precedent required it to reject the claim. After the petitioner filed a petition for rehearing en banc, OSG prepared a response arguing that the Court should grant rehearing en banc, overrule its precedent, and hold that a showing of extreme racial animus on the part of a defense attorney warrants a presumption that the defendant has been prejudiced. A Deputy Solicitor General argued the case. The Ninth Circuit summarily reversed the district court's denial of Ellis's petition and directed the district court to enter an order granting a conditional writ of habeas corpus.

## **PUBLIC RIGHTS DIVISION**

***Department of Homeland Security v. Regents of the University of California***, which took place in the summer and fall of 2019. The Solicitor General argued the case in November 2019. In June 2020, in a 5-4 decision authored by the Chief Justice, the Court agreed with the Attorney General's position that the decision to terminate DACA violated the Administrative Procedure Act. The Court's decision—the culmination of the nearly three-year effort to defend the DACA program—restored the original DACA program in its entirety. The federal government subsequently decided to leave the DACA program in place in some respects, but to change or terminate it in other respects, and that new decision is the subject of ongoing litigation.

In ***United States v. California***, the Department successfully defended SB 54, a state law limiting the circumstances under which state and local law enforcement officials may participate in federal immigration enforcement efforts, as well as two related state laws. The United States sued California in March 2018, and a cross-divisional team of attorneys from the Civil Rights Enforcement and Government Law Sections largely defeated the U.S.’s motion for a preliminary injunction. On appeal, attorneys from OSG joined the litigating team. A three-judge panel of the Ninth Circuit substantially affirmed the district court’s denial of provisional relief in a unanimous opinion. After the Ninth Circuit denied rehearing en banc, the federal government filed a petition for a writ of certiorari. The office filed the brief in opposition in December 2019. In June 2020, the Court denied the federal government’s petition with only two Justices noting a dissent.

OSG has continued to work closely with the Civil Rights Enforcement Section, the Environment Section, and the Natural Resources Law Section in seeking to block federal agencies from diverting funding from congressionally authorized purposes to pay for construction of unauthorized border barriers in California and elsewhere. California has filed its own challenges against the federal Administration and participated as an amicus in parallel actions filed by environmental organizations. An appeal in the State’s case—***California v. Trump***—resulted in a June 2020 Ninth Circuit decision holding that the Administration’s Fiscal Year 2019 transfers totaling some \$2.5 billion were illegal. That decision is currently the subject of a petition for a writ of certiorari in the U.S. Supreme Court. A second appeal concerning additional transfers—also titled ***California v. Trump***—was argued in March 2020; the office is awaiting the Ninth Circuit’s decision in that appeal.

Representing California, OSG and the Healthcare Rights and Access Section led a coalition of nineteen States, the District of Columbia, and the Governor of Kentucky in defending the constitutionality of the Affordable Care Act (ACA) after the federal government refused to defend it. The coalition intervened in a lawsuit, ***Texas v. United States***, which was filed by a group of States and individuals seeking a court order declaring the ACA invalid in its entirety. After the district court issued an order in favor of the plaintiffs, the team secured a stay pending appeal. OSG led the briefing team in the U.S. Court of Appeals for the Fifth Circuit, and a Deputy Solicitor General argued the appeal in July 2019. After the Fifth Circuit held the ACA invalid in part and remanded for further proceedings, OSG successfully petitioned for certiorari. OSG led the briefing in the U.S. Supreme Court. The case will be argued in November 2020 and a decision is expected by June 2021.

California and other States also challenged new rules expanding the religious exemption to the Affordable Care Act’s contraceptive coverage mandate and creating a new moral exemption. In California’s case, OSG worked closely with the Healthcare Rights and Access Section on the briefing on appeal. The Ninth Circuit upheld the district court’s injunction in ***California v. Health and Human Services***, and federal defendants and the private intervenor-defendants sought review in the U.S. Supreme Court. OSG, consulting with the Healthcare Rights and Access Section, filed California’s opposition brief in March 2020. The Court granted review in two similar cases arising out of Pennsylvania, ***Little Sisters of the Poor v. Pennsylvania*** and ***Trump v. Pennsylvania***, and OSG and the Healthcare Rights and Access Section worked with Massachusetts in preparing a multi-state amicus brief on the merits. The Court heard argument in the Pennsylvania cases in May 2020. The Court ultimately rejected Pennsylvania’s challenges to the exemptions. The next day, the Court granted review in California’s case, vacated the Ninth Circuit’s decision, and remanded the matter for further consideration in light its new precedent.

In ***California v. Azar***, the State sued the federal government challenging the federal Department of Health and Human Services’ abortion “gag rule,” which would prevent recipients of Title X family planning grants from referring patients for abortion. The Healthcare Rights and Access Section obtained a preliminary injunction in the district court barring the rule’s implementation; district courts in Oregon

and Washington issued similar orders. The federal government appealed, and OSG worked with the Healthcare Rights and Access Section to file an answering brief in the Ninth Circuit. Meanwhile, a Ninth Circuit motions panel granted a stay of the injunctions; the full Ninth Circuit granted en banc review of the stay order; and an en banc panel then ordered the stay kept in place pending further proceedings. The Ninth Circuit issued an en banc ruling adverse to us in February 2020.

OSG also worked with the Civil Rights Enforcement Section and the Government Law Section in defending California's Reproductive Freedom, Accountability, Comprehensive Care and Transparency Act against a First Amendment challenge in the U.S. Supreme Court. That law requires certain pregnancy counseling centers to disclose that they are not licensed medical facilities, and requires certain licensed clinics to inform patients of the existence of free or low-cost state programs providing comprehensive pregnancy-related care. After the lower federal courts refused to enjoin the law, the U.S. Supreme Court granted review in ***National Institute of Family & Life Advocates v. Becerra***. OSG led the certiorari- and merits-stage briefing and a Deputy Solicitor General argued the case. In June 2018, the Court ruled 5-4 that the statute likely violated the First Amendment and remanded for further proceedings.

In ***O.T.O. v. Kho***, OSG successfully opposed a petition for a writ of certiorari in the U.S. Supreme Court on behalf of the California Labor Commissioner. The petition sought review of a California Supreme Court decision that held an arbitration agreement to be unconscionable and therefore unenforceable. It contended that the decision contravened the Federal Arbitration Act and showed hostility toward arbitration agreements. The opposition brief highlighted the state high court's specific findings about the high level of oppression and surprise in this case, and the fact-bound nature of its decision. The Court denied the petition in June 2020.

In March 2020, working with the Healthcare Rights and Access Section, OSG submitted an amicus brief in the U.S. Supreme Court in ***Rutledge v. Pharmaceutical Care Management Association***. The brief was filed on behalf of 45 States and the District of Columbia, and argued that the Employee Retirement Income Security Act of 1974 (ERISA) does not preempt state laws regulating pharmacy benefit managers (PBMs)—entities that serve as liaisons between health plans, pharmacies, and pharmaceutical companies. In addition, the brief addressed the major role that PBMs play in the modern health care system; the harms that certain PBM business practices have caused to pharmacies, patients, and States; and the common ways in which States regulate PBMs. The office filed a similar multi-state amicus brief at the certiorari stage in November 2018. The Court will hear the case in October 2020.

OSG worked with attorneys in the Public Rights Division on a number of important cases before the California Supreme Court. For example, OSG took a leading role in ***United Auburn Indian Community of Auburn Rancheria v. Brown***, working with the Indian and Gaming Law Section to represent Governor Brown. The case concerns whether the Governor violated the separation of powers doctrine of the state Constitution when he concurred in the U.S. Secretary of the Interior's determination that a certain parcel of land is suitable for gaming activity by a federally recognized Indian tribe. The Solicitor General argued the case in June 2020. The Court ultimately held that California law does empower the Governor to concur in such a determination, and that Governor Brown's concurrence did not violate the separation of powers doctrine. And in ***County of Butte v. Department of Water Resources***, OSG worked with the Natural Resources Law Section to prepare a brief arguing that the Federal Power Act does not preempt the application of the California Environmental Quality Act in the context of a state-owned hydroelectric facility. Oral argument has not yet been set.

The Civil Rights Enforcement Section and OSG worked together to successfully challenge certain immigration-related funding conditions that the U.S. DOJ imposed on grants to law enforcement under the Edward Byrne Justice Assistance Grants for the 2017 fiscal year. These conditions effectively

required grant recipients to agree to assist certain aspects of federal immigration enforcement. In a pair of cases—*California ex rel. Becerra v. Barr* and *City and County of San Francisco v. Barr*—the district court held the conditions to be illegal and enjoined their application nationwide. OSG led the briefing on appeal, and a Deputy Solicitor General argued the case in December 2019. In July 2020, the Ninth Circuit affirmed the district court injunction insofar as it prevented the U.S. DOJ from withholding \$28 million in law enforcement grants from California. While the Ninth Circuit narrowed the scope of the injunction to California, it affirmed that the three challenged grant conditions were not a valid reason for withholding funding from law enforcement entities in this State.

## **OFFICE OF LEGISLATIVE AFFAIRS**

The DOJ sponsored several bills during the biennial period. Sponsored bills included:

- AB 3212 (2018; Irwin) focused on easing the legal and financial burdens placed on military personnel and their families from the demands of active duty service. It achieved this by expanding and strengthening several consumer protections that are provided to California service members through the California Military & Veterans Code (CMVC). It extends the length of time to 120 days that service members who leave active duty may receive various protections, including protections against default judgment and non-judicial foreclosure. It also updated and sharpened the CMVC's existing protections, including the right to terminate motor vehicle leases, expanded protections against lien sales, and explicitly confirmed that interest rates above the 6 percent cap on pre-service obligations were forgiven and not merely deferred.
- AB 3229 (2018; Burke) provided the DOJ access to the same type of bank records that are available to local law enforcement agencies in fraudulent check cases. This access allows the DOJ to more effectively go after the perpetrators of fraudulent check operations that occur throughout California.
- AB 669 (2019; Holden) provides the Attorney General with authority to use a type of settlement tool called an “assurance of voluntary compliance” (AVC). AVCs help facilitate the efficient use of public resources and streamline settlements in multistate consumer protection cases and other types of multistate cases that protect public rights.
- AB 824 (2019; Wood) protects Californians’ access to affordable prescription drugs by making it harder for drug companies to engage in collusive behavior with rival drug manufacturers to delay the launch of competing versions of brand-name drugs. AB 824 requires that if an agreement between two companies is found to be a so called “pay for delay” agreement, then drug companies must prove that the agreement will not have an anticompetitive effect on the market or that the benefits to consumers outweigh any negative anticompetitive effects.
- AB 1130 (2019; Levine) strengthened California’s data breach notification law and provided further protection for consumers. AB 1130 requires businesses to notify individuals whenever their passport number or biometric information has been compromised in a data breach and to maintain security measures to protect these types of personal information.
- AB 1296 (2019, Gonzalez; SB 1272, 2018, Galgiani) supports California’s efforts to combat the underground economy by codifying the Tax Recovery in the Underground Economy Criminal Enforcement Program (TRUE). The TRUE team investigates and prosecutes the most egregious felony-level multijurisdictional underground economic crimes from a tax prospective.
- AB 1313 (2019; L. Rivas) ensures that students are not handcuffed in pursuing educational and career opportunities by certain schools and colleges that attempt to withhold the transcripts of



students who owe or are alleged to owe debt as a tactic to collect debt.

- AB 1669 (2019; Bonta) addressed the inconsistency with which firearms and ammunition vendors at California gun shows are treated under state law. It required “independent ammunition vendors” – those that only sell ammunition, are federally-licensed, and are based outside of California – to obtain the same state licenses required of California-based vendors who sell ammunition at gun shows.

The graphic is a light blue rectangular box with a faint watermark of the California State Seal in the background. It contains three items, each with a teal circular icon on the left and text on the right. The first item has an icon with 'SB 376' and text: 'PREVENTS INDIVIDUALS FROM SELLING LARGE NUMBERS OF FIREARMS WITHOUT A LICENSE.' The second item has an icon with 'AB 1009' and text: 'SETS IN PLACE EFFICIENT PROCESSES TO HELP LAW-ABIDING GUN OWNERS REPORT THEIR FIREARMS ON CADOJ'S WEBSITE.' The third item has an icon with 'AB 1669' and text: 'ENSURES THAT ALL VENDORS WHO PARTICIPATE IN CALIFORNIA GUN SHOWS ARE REQUIRED TO OBTAIN THE SAME LICENSES AND RECEIVE THE SAME TREATMENT UNDER THE LAW.' A small circular seal is in the top right corner of the graphic.

Social media graphic outlining DOJ sponsored bill SB 376, AB 1009 and AB 1669.

- SB 376 (2019; Portantino) provides clarity and standardization to California’s gun laws. It limited the number of transactions for unlicensed firearms sellers to no more than five transactions per year without regard to the types of firearms being transacted. It also reduced the number of firearms an individual could manufacture without having to obtain a license from 100 down to 50 per year. Additionally, it closed a loophole by requiring sales or transfers of firearms other than handguns that occur at auctions, raffles or similar events organized by nonprofits and public benefit corporations recognized under California law to be processed through a licensed dealer thereby ensuring the recipients are subject to background checks.
- SB 647 (2019; Mitchell) protects Californians—especially children, women, and modest-income communities— from the harms of lead and cadmium exposure from jewelry by strengthening and improving the state’s outdated metal-containing jewelry laws to better reflect current science and international standards on the toxicity of lead and cadmium in jewelry.
- AB 2208 (2020; Irwin), a bill that would have ensured transparency and protected California donors from deceptive or misleading charitable solicitations made through Internet platforms. It would have ensured a level playing field for all platforms, regardless of business model. Additionally, it would have required platform entities to provide meaningful and conspicuous disclosures on the platforms, promptly distribute donations made through platforms, and prohibit solicitations for charities not in good standing with the Attorney General’s Registry.
- AB 2570 (2020, Stone; AB 1270, 2019, Stone) attempted to strengthen efforts to protect public funds by harnessing the California False Claims Act to uncover and prosecute cases of large-scale tax fraud that would not have become known to authorities but for a whistleblower’s tip.
- SB 977 (2020; Monning) would have ensured access to affordable health care by ensuring proper oversight of large health care systems and strengthened Californians’ access to affordable, quality health care. It would have achieved this by requiring health care systems to prove that an affiliation or acquisition between a health care system and a health care facility or provider either to increased care coordination, and/or increased access and affordability of care to an underserved population.

## **PUBLIC INQUIRY UNIT**

In 2019, the Unit recovered more than 1.5 million dollars for consumers through its complaint mediation program. In 2020, the Unit took a leading role in helping the Department to respond to the COVID-19 crisis, handling more than 10,000 complaints regarding price gouging and unfair business practices related to the pandemic.

## **EQUAL EMPLOYMENT RIGHTS AND RESOLUTION OFFICE**

***Understanding Diversity & Implicit Bias Training.*** The EER&R Office collaborated with the Employment and Administrative Mandate Section in the Civil Law Division to create a training that defines and explores diversity, inclusion, and implicit bias in relation to the workplace. This training demonstrates the Department's commitment to fostering a diverse and inclusive workforce and supports Department leaders in creating a work environment that is respectful and welcoming to all employees. All Department employees are required to attend the training on a bi-annual schedule.

***Understanding & Respecting Gender Training.*** The EER&R Office has developed a training for all Department staff regarding gender identity, gender expression, and sexual orientation. This training meets the requirements of the Transgender Work Opportunity Act and sets the expectation for a professional and respectful work environment. This training is an important component of the Department's commitment to preventing harassment and creating an inclusive work environment for transgender and gender non-conforming employees. All Department employees are required to attend the training on a bi-annual schedule.

***Employee Advisory Committee Activities.*** The EER&R Office facilitated the formation of a new Employee Advisory Committee (EAC), the Middle Eastern and South Asian EAC. The Office also assisted several EACs with cultural and recruiting events. In addition, the Office coordinated a meeting between EAC chairs and the DOJ's Recruitment Unit regarding the utilization of EACs to assist with the recruiting and hiring of talented candidates. The Office also facilitated a series of Equal Employment Opportunity Advisory Committee meetings with EAC chairs, Executive Staff, Division Chiefs and Directors to address recommendations, issues and concerns for each EAC.

***Expanding Opportunity for People with Disabilities.*** The EER&R Office manages the Limited Examination and Appointment Program (LEAP), which provides an alternate examination and appointment process to facilitate recruitment and hiring of persons with disabilities into California civil service. During this biennial period, the DOJ hired 12 qualified LEAP candidates for positions throughout the agency.

***Creation of the Upward Mobility Committee.*** The EER&R Office formed an Upward Mobility (UM) Committee comprised of members of the EER&R Office, the Office of Human Resources, the Office of Professional Development, DOJ's Recruitment Unit, Career Counselors statewide, and Chiefs and Directors from each division within DOJ employing individuals in certain lower level occupations. The UM Committee was established in an effort to improve department wide collaboration and information sharing relating to career development, identify ways to improve the UM Program, identify classifications or programs with the greatest need for UM efforts and develop special UM projects and events.

## **OFFICE OF PROGRAM OVERSIGHT AND ACCOUNTABILITY**

**Biennial DOJ-wide Operation Risk Assessment.** Facilitated the 2019- 2020 Biennial Risk Assessment Report and the June 30, 2020 -Six-month – Ongoing Risk Monitoring Status of Implementation Plan pursuant to the State Leadership Accountability Act (SLAA). SLAA provides the AG the responsibility of overall establishment and maintenance of the internal control and monitoring systems.

**External Audit Coordination.** Coordinated the following audits performed by the California State Auditor’s office (CSA):

- Statewide Hate Crime Policies and Procedures
- Follow-Up—Sexual Assault Evidence Kits
- Gambling Control Fund
- Automated Plate License Plate Readers
- Lanterman Petris Short Act

**External Audit Resolutions.** Assisted DOJ program staff in responding to the following audits performed by CSA as wells letters to the California State Legislature:

- Statewide Hate Crime Policies and Procedures
- Gambling Control Fund
- Armed Persons with Mental Illness
- Sexual Assault Evidence Kits
- CalGang Criminal Justice System
- California State Department of Social Services Criminal Background Checks
- K-12 School Violence Prevention

**Operational Surveys and Audit Resources.** Performed ten audits in 2019 of the California Witness Relocation and Assistance Program (CALWRAP) to assist the Division of Law Enforcement (DLE) in evaluating the County District Attorney (DA)’s Offices assertions that they have followed the policies and procedures of the CalWRAP and have claimed only reimbursable costs. Ventura County