

Katharine & George Alexander Community Law Center

La Voz del Centro

DECEMBER 2011



As KGACLC law students delve into their case, they discover that human trafficking and work-related abuses go hand-in-hand

Thanks to former and current law students Karen Wynholds-Schulz '10, Iustina Mignea '12 and Nicole Hess '11, the Alexander Community Law Center provided its clients a one-stop solution for their immigration and workers' rights issues. As the students delved into the case, they discovered that a common form of human trafficking, at least in the South Bay, involves forced labor and work-related exploitation.

Mr. and Mrs. K traveled to the South Bay from Thailand over two years ago, lured by promises of employment by a former colleague of theirs, a US resident, who offered to triple their salary once

in the United States. Soon after their arrival, they started working at one of the restaurants owned by their former colleague-turned-boss. They earned \$40 to \$45 per 10-to-12-hour shift. Initially, Ms. K bused tables but was soon required to "train" in the kitchen. She received no compensation at all during her six-week training period.

There were other conditions of employment, too. For instance, the couple was obligated to live in the boss' house, and all rent and utility expenses were subtracted from their salaries. They also took care of many domestic chores, in addition to their work at the restaurant. Additionally, they were obligated to purchase a car for their use, but the title of the car was held under the boss' name. They had to make a down payment of \$5,000, and the monthly car and insurance payments were deducted from their paycheck automatically. All these

continued on page 3



SERGIO LOPEZ

Iustina Mignea '12 and Karen Wynholds-Schulz '10

IN THIS ISSUE

- 2 | A Message from the Director
- 4 | A Recent Supreme Court Decision Likely to Affect Consumers
- 5 | KGACLC Develops New Partnership to Serve Community
- 6 | Law Center Students Win Sewer Service Case
- 7 | Community, Commitment & Courage Award Recipients
- 8 | Thanks to Our Supporters

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Published by the Katharine & George Alexander Community Law Center at Santa Clara Law

A Message from the Director



CHARLES BARRY

We also highlight a new partnership with the Silicon Valley Independent Living Center (SVILC) that expands our interviewing and counseling services that we conduct in conjunction with the Legal Aid Society-Employment Law Center. We are now offering advice clinics with the SVILC to help ensure that individuals with disabilities are able to exercise their workplace rights in areas such as wage and hour claims, unemployment, and discrimination. This program offers new experiences for our law students and helps diversify and expand the KGACLC's base, in addition to providing key services to clients.

Happy Holidays! The past year, which marked the Centennial of the Santa Clara University School of Law, has been a highly successful one for the Katharine & George Alexander Community Law Center.

As we highlight in this edition of our newsletter, the past year saw a series of successes, including victories in consumer protection litigation, immigration applications, and workers' rights cases. The story of Mr. and Mrs. K, our Thai clients whose dramatic and powerful case is featured in this issue, and the story of Mr. M and his wife (p. 6) provide just some examples of our work. Indeed, we served hundreds of clients through our interviewing and counseling clinics and helped educate community members about their rights through our educational workshops, which cover key areas of law such as workers' rights, consumer fraud, and landlord-tenant law.

The past year saw some transitions in the Alexander Community Law Center family as well. Erika Henderson joined the staff this fall as our financial administrator, focusing on grant administration and program development. Erika worked previously at the Superior Court of Santa Cruz County, and prior to that at the University of California, Santa Cruz.

We also welcome Caroline Chen, who is the new director of the Low-Income Taxpayer Clinic (LITC) at Santa Clara University. Although the LITC is a separate program from the Alexander Community Law Center, it will be housed at the Center as it begins operations and enrolls clinical law students in January 2012. Caroline is an experienced tax attorney who has worked for the federal government and in private practice.

In addition, we saw the departure of two KGACLC staff over the past several months.

Rani Reddy-Gil, our financial administrator, recently moved with her family to the Sacramento area. James Lindfelt, a recent alum and fellow at the Alexander Law Center, will be joining his firm, Pillsbury Winthrop Shaw Pittman LLP, which generously sponsored his fellowship during the past year. We wish them the best in their new positions.

As always, we want to thank all of our students, volunteers, and supporters who have worked with the Community Law Center throughout this year. Our students continue to be our most important asset, combining their legal training with key services to low-income clients. The Community Law Center's work would not be possible without them. Through the work of our students, staff, and volunteers, we were able assist over 1,000 individuals in our various programs.

Of course, the government agencies, law firms, foundations, and individuals who provide financial support to the Center remain in our deepest gratitude. We cannot thank you enough for this support, and we hope that you will sustain your efforts in the coming year to guarantee that we remain a vibrant resource for Santa Clara University and the local community.

Best wishes,

Angelo Ancheta

Human trafficking and work-related abuses go hand-in-hand

continued from page 1

expenses left very little money for personal use.

By the end of 2010, the couple had grown tired of the increasingly long hours, their vanishing salaries and the mounting stress associated with the deteriorating relationship with their boss and landlord. When they hinted that they would be leaving the house, their boss warned that they would lose their jobs and that she would report them to immigration officials – a threat she had made repeatedly in the past. Given their possible escape, the boss also threatened to call the police if they did not surrender their car immediately. Much to their dismay, the couple gave up the car, which by then had been paid in full.

“The shocking part about this is that I used to live very, very close to the restaurant – I know the place! ...This means that if it happens in my neighborhood, then it can be happening anywhere else as we speak, and we don't even know it!”

— KAREN WYNHOLDS-SCHULZ

“The shocking part about this is that I used to live very, very close to the restaurant – I know the place!” says Wynholds-Schulz, who worked on the immigration component of the case during her last year of law school. “This means that if it happens in my neighborhood, then it can be happening anywhere else as we speak, and we don't even know it!” Having worked on a similar case at the Alexander Law Center that involved domestic servitude and violence, she

noted that although Mr. and Mrs. K's case did not involve physical abuse, the mental abuse can be just as damaging.

Human trafficking brings to mind images of people being transported into the country by unscrupulous individuals with clear plans to force victims to work in sweatshops or similar settings. In fact, perpetrators do not necessarily have to be directly involved in the transportation of individuals across borders. As it relates to labor, Section 214.11(a) of the Code of Federal Regulations, Title 8, provides that “severe forms of trafficking in persons means...the recruitment, harboring, transportation, provision or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage or slavery.” Clearly, the restaurant owner in this case had crossed various lines of the law when she recruited, harbored and coerced the couple into performing many tasks at her restaurant and her home.

Mignea inherited the case from Nicole Hess. They were both involved in the worker rights part of the case, but Mignea can attest to some of her immigration colleague's observations. “Working with our clients was very rewarding but also very challenging because they were emotionally drained, so it was difficult to assess the number of hours that they had worked over many months under much stress.” The husband, Mignea recalls, was not very talkative during the first few interviews, “so we decided to interview them separately, and that technique seemed to work.” She learned other things in this case that re-affirmed her interest in law, as well as things that are not always so straightforward. For instance, she observed that

her clients were uncomfortable seeking payment for some of the tasks they had performed at the boss' home. Although her clients did not acknowledge it explicitly, Mignea figured that this had to be cultural issue that she had to respect.



SERGIO LÓPEZ

Justina Mignea '12 interviews Ms. M at the Alexander Community Law Center

These three students shared notes, techniques, victories and setbacks during their handling of this case. Their constant interaction highlights the close cooperation that exists among the different legal components of the Alexander Law Center. In fact, when the clients first came to discuss their labor-related issues, their case was flagged as a potential human trafficking case that deserved prompt attention. For the clients, dealing with a single agency ameliorated an already stressful situation. As for results, while Mr. and Mrs. K have received immigration relief, their labor-related settlements is still being negotiated.

A recent Supreme Court decision is likely to limit consumers' ability to defend their rights collectively through class actions



CHARLES BARRY

Scott Maurer, KGACLC Consumer Rights Supervising Attorney

“There can be little doubt that all - or nearly all - consumer contracts will contain class action bans going forward. It is only a matter of time until we see whether or not industry treats these bans as a license to push the boundaries of good business practices to their furthest limits.”

—SCOTT MAURER

In April, the Supreme Court handed down its most anti-consumer decision in at least twenty years in the case of AT&T Mobility LLC v. Concepcion, 131 S. Ct. 1740 (U.S. 2011). In essence, the Court decided that an eighty-five-year-old statute allows businesses to insulate themselves from class actions by inserting an arbitration clause which bans class action cases into their form contracts.

The Supreme Court was interpreting the provisions of the Federal Arbitration Act (FAA). Prior to the 1925 passage of the Act, courts were frequently refusing to enforce contracts between businesses to arbitrate their disputes. The stated purpose of the Act was to place arbitration agreements on an equal footing with other contracts. The FAA preempts state laws which discriminate against arbitration clauses, but such clauses are subject to the same kinds of defenses which exist at

law or in equity for the revocation of any contract.

California courts had repeatedly held that class action bans in any kind of consumer contract are unenforceable. In 2001, a court refused to enforce a consumer contract clause requiring any litigation to take place in Virginia, where class actions are not permitted. The court held that “[t]he unavailability of class action relief ... is sufficient in and by itself to preclude enforcement of the ...forum selection clause.” *America Online, Inc. v. Superior Ct.*, 90 Cal. App. 4th 1, 17-18 (2001). In 2002, another court found that by inserting a class action ban in its credit card agreements, a bank “ha[d] essentially granted itself a license to push the boundaries of good business practices to their furthest limits, fully aware that relatively few, if any, customers will seek legal remedies.” *Szetela v. Discover Bank*, 97 Cal. App. 4th 1094, 1101 (Cal. App.

4th Dist. 2002). In 2004 the California Supreme Court noted that class action bans can act as exculpatory clauses when the amounts in controversy are likely to be small. It held that adhesion contracts containing arbitration clauses with class actions bans were unconscionable and unenforceable.

Justice Scalia, normally a critic of broad federal preemption, penned the majority decision in *AT&T Mobility*. Although the vast majority of FAA Supreme Court jurisprudence had focused on putting arbitration agreements on an equal footing with other contracts, Scalia claimed that the FAA essentially expressed a strong federal policy favoring arbitration over litigation. To buttress his argument, Scalia pointed to a section of a House report extolling the virtues of private arbitration. This is especially ironic given Scalia’s usual hostility to legislative history. Scalia felt that a class action in arbitration would be too risky for a business defendant and therefore class actions were incompatible with arbitration. The court ultimately held that California’s jurisprudential rules limiting class action bans stood as an obstacle to the goals of the FAA, and that such rules were preempted.

There can be little doubt that all - or nearly all - consumer contracts will contain class action bans going forward. It is only a matter of time until we see whether or not industry treats these bans as a license to push the boundaries of good business practices to their furthest limits.

KGACLC develops a new partnership to assist in the protection of workplace rights of people with disabilities

The Alexander Community Law Center has developed an exciting new partnership with the Legal Aid Society - Employment Law Center (LAS-ELC) and the Silicon Valley Independent Living Center (SVILC) to offer free Workers’ Rights clinics at the SVILC. The Workers’ Rights Clinic assists individuals with work-related issues such as unemployment issues, wrongful termination, unpaid wages, harassment and discrimination in the workplace, retaliation from employers, help with Family and Medical Leave Act and California Paid Family Leave Act issues, assistance with representation at the Labor Commission and the Unemployment Insurance Appeals Board, and other related issues. Thanks in great part to the outreach efforts of Ruth Silver Taube, supervising attorney for the Workers’ Rights Clinic at the Community Law Center and Special Counsel for the Legal Aid Society - Employment Law Center, the three organizations held one such clinic on the SVILC premises this year, with more already scheduled for next year.

According to Sarah Triano, SVILC’s Executive Director, the SVILC is “a non-profit organization which serves people with disabilities in Santa Clara County. SVILC provides people with disabilities the support and tools needed to live interdependently, and advocates for policies that ensure equal access and opportunity for all. It is a cross-disability, intergenerational, and multicultural disability justice organization that creates fully inclusive communities that value the dignity, equality, freedom and worth of every human being.” The SVILC does this by building disability identity, culture

and pride; creating opportunities for personal and community transformation; and partnering with others to ensure that civil and human rights are protected.

“The Silicon Valley Independent Living Center provides people with disabilities the support and tools needed to live interdependently, and advocates for policies that ensure equal access and opportunity for all....Many of our clients cannot afford an attorney to help them with their issues, so bringing the services to them, free of charge, was much appreciated.”

—SARAH TRIANO
EXECUTIVE DIRECTOR,
SVILC

“The clinic attendees received excellent service during our first clinic. Many of our clients cannot afford an attorney to help them with their issues, so bringing the services to them, free of charge, was much appreciated,” states Triano. Her organization provides direct services to 800 people and offers indirect services and referrals to over 1,500 people annually. There is additional information at <http://www.svilc.org>.

“According to the 2010 census, households headed by persons with

disabilities have seen their income decline by 8.5% last year. We see a need to protect the workplace rights of people with disabilities, and our partnership with the SVILC will help us achieve this goal more effectively,” states Silver Taube.



SERGIO LÓPEZ

Eliza Riley, Youth Leadership and Outreach Coordinator at SVILC

KGACLC students set aside ten-year-old default judgement in sewer service case

In 2009, Mr. M was shocked to learn that his bank account had been drained by a collection agency. It was the first time Mr. M learned that a default judgment had been entered against him many years earlier.

He and his wife spent hours reviewing and copying court documents, trying to determine what had happened. They learned a suit had been filed in 2000 claiming that Mr. M owed nearly \$8,000; that a process server had claimed that Mr. M was personally served; and, that the judgment had since doubled to about \$16,000 due to accrued interest.

Mr. M called the collection agency to explain that had never received notice of the suit which had been filed in 2000. The collection agency refused to listen and so Mr. M contacted the Community Law Center.

In California, most default judgments are final after two years. But there is no time limit to set aside a default judgment where the defendant was truly never served. "At first, I was reluctant to get involved trying to set aside a judgment that was so old," said Supervising Attorney Scott Maurer, "but Mr. M was so adamant that he didn't owe the debt and that he had never received notice I decided that we should give it a try."

Prior to filing their motion, Alexander Community Law Center students subpoenaed the original credit card issuer and received a statement that the bank had no records indicating Mr. M owed any debt. Law students Allison (Mi Seop) Lee '11 and Brian Pakpour '11



Allison (Mi Seop) Lee '11 and Mr. M

put together the motion and supporting declarations and Pakpour argued the motion. Fortunately, the judge who heard the motion was familiar with the problem of 'sewer service' (instances where service was never actually attempted; so named on the theory that the server tossed the papers into the sewer). The judge set the motion for an evidentiary hearing in 2011. When the process server failed to appear to contradict Mr. M's sworn testimony, the judge set the ten year old judgment aside. The result was remarkable according to Maurer: "I don't know of any other case where the process server

claimed personal service and a judgment was set aside ten years later."

Shortly thereafter, the debt collector dismissed the case against Mr. M, and Mr. M was able to recover his costs.

"It was great to work with Mr. M and his wife," Allison Lee stated. "They were extremely kind and very appreciative of the work that we did." Ms. Lee had the pleasure of presenting Mr. M with a check at the end of the case. "It was frustrating to see the way Mr. M was treated by the debt collector but the outcome of this case made me very happy," she concluded.

The incidence of sewer service appears to be on the rise and the Alexander Community Law Center is currently assisting several other consumers who have judgments entered against them despite never having been served.



Winners of the 2011 Community, Commitment & Courage Awards

The Alexander Community Law Center held its annual Celebration of Community Commitment & Courage in the Locatelli Student Center, on the SCU campus, on October 13 of this year.

The celebration is a way for KGACLC to recognize the firms and individuals who contribute to its dual mission of educating law students in the highest standards and serving the community with conscience, competence and compassion. The 2011 CCC Award winners are listed below.

Community Award corecipient: Ronald Wilcox and Rand Bragg, both Consumer Law attorneys.

For years, Mr. Wilcox has been a frequent volunteer at the Consumer Advice Clinic; in fact, he attends every clinic unless he has a schedule conflict. He is a role model to the many law students who aspire to empower the Community Law Center's clients. Mr. Bragg has devoted his nationwide practice to protecting the rights of consumers, especially through class action lawsuits that involve abuse by third-party debt collectors.

Commitment Award corecipients: Karen Wynholds-Schulz '10 and Niels Van Naarden '10

Karen Wynholds-Schulz enrolled in the KGACLC Immigration course during her third year of law school. While awaiting the July 2010 Bar results, she returned to the Community Law Center to volunteer as a Law Graduate, and then as a Volunteer Attorney upon admittance to the California Bar. Niels also enrolled in the Skills I course in Immigration. He soon showed great

diligence and commitment to his clients – many of them victims of domestic violence and other violent crimes. He mastered the processes for submission of applications for U-visas, T-visas and Adjustment of Status.

Courage Award Recipient: Juanita Swain, Consumer client.

Ms. Swain's courage is truly exemplary because, in spite of her serious health problems and many other personal issues, she stood strong in defense of her rights and the rights of other people in a similar legal situation. As the representative in a class action against a finance company that committed many irregularities, she decided to press on when the company tried to settle the case in her favor but to the detriment of the class members. Her determination and commitment to justice eventually won the day in court, and her actions benefitted not only the class members but many other consumers as well.



Ms. Juanita Swain (middle). Former students Forest Wade '09 and Brittany Hysni '09 worked on Ms. Swain's case.

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About us:
 The Katharine & George Alexander Community Law Center (KGACLC) is a civil legal component of Santa Clara University School of Law. Its mission is to educate law students in accordance with the highest professional and ethical standards by serving individuals and communities in need with competence, conscience and compassion through pro bono legal representation and education.

You may learn more about KGACLC at <http://law.scu.edu/kgac/c/>. We are located at: 1030 The Alameda San José, California, 95126. Telephone: (408) 288-7030; Fax: (408) 288-3581

Santa Clara Law, founded in 1911 on the site of Santa Clara University, California's oldest operating higher-education institution, is dedicated to educating lawyers who lead, with a commitment to excellence, ethics, and social justice. One of the nation's most diverse law schools, Santa Clara Law offers its 975 students an academically rigorous program, including graduate degrees in international law and intellectual property law; a combined J.D./ MBA degree; a combined J.D./MSIS degree; and certificates in intellectual property law, international law, and public interest and social justice law. Santa Clara Law is located in the world-class business center of Silicon Valley, and is distinguished nationally for its top-ranked program in intellectual property. For more information, see <http://law.scu.edu>.

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Thanks to you, the KGACLC is able to educate law students with competence, conscience, and compassion while assisting the most vulnerable members of our community with their legal issues.

(We apologize for any unintended omissions)

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