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MEMORANDUM

December 4, 2002

To Our Clients and Friends

Re: California's Data Security Law

A law recently was enacted in California which requires any person or business that conducts business in California, and that owns or licenses computerized data that includes personal information, to disclose any breach of the security of the system to any resident of California whose unencrypted personal information was, or is reasonably believed to have been, acquired by an unauthorized person. This disclosure must be made following discovery or notification of the breach in the most expedient time possible and without unreasonable delay.¹ In addition, if a person or business maintains computerized data that includes personal information that the person or business does not own, the person or business must notify the owner or licensee of the information of any breach of the security of the data immediately following discovery, if the personal information was, or is reasonably believed to have been, acquired by an unauthorized person. The law is effective July 1, 2003.

The law supersedes and preempts all rules, regulations, codes, statutes or ordinances of all local jurisdictions and agencies dealing with this subject matter.

DEFINITIONS

“Breach of the security of the system” means unauthorized acquisition of computerized data that compromises the security, confidentiality, or integrity of personal information maintained by the person or business. Good faith acquisition of personal information by an employee or agent of the person or business for the purposes of the person or business is not a breach of the security of the system, provided that the personal information is not used or subject to further unauthorized disclosure.

¹ The notification may be delayed if a law enforcement agency determines that the notification will impede a criminal investigation.

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“Personal information” means an individual’s first name or first initial and last name in combination with any one or more of the following data elements, when either the name or the data elements are not encrypted:

- Social security number
- Driver’s license number or California Identification Card number
- Account number, credit or debit card number, in combination with any required security code, access code, or password that would permit access to an individual’s financial account.

“Personal information” does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records.

“Notice” may be provided by one or more of the following:

- Written notice
- Electronic notice, if the notice is consistent with the provisions regarding electronic records and signatures set forth in the federal E-Sign Act
- Substitute notice, if the person or business demonstrates that the cost of providing notice would exceed \$250,000 or that the affected class of persons to be notified would exceed 500,000 or if the person or business does not have sufficient contact information. Substitute notice shall consist of all of the following:
 - E-mail notice
 - Conspicuous posting of the notice on the Web site page of the person or business
 - Notification to major statewide media.

A person or business that maintains its own notification procedures as part of an information security policy for the treatment of personal information shall be deemed to be in compliance with the notification requirements of the law if the person or business notifies subject persons in accordance with its policies for a breach of security and the notification is consistent with the timing requirements of the law.

The text of the law can be found at <http://www.schwartzandballen.com/Whatsnew.htm>.

If you have any questions concerning this law, please call Gilbert Schwartz, Robert Ballen or Tom Fox at (202) 776-0700.