

*Monthly Memo*

**MEGAN'S WEB SITE MAY BE REVIEWED  
BY PROSPECTIVE EMPLOYERS**

California's Penal Code Section 290.46 prohibits the "use of any information that is disclosed on the MLW (Megan's Law Website) . . . for purposes relating to . . . employment and . . . any use of the information disclosed on the MLW for such a purpose" shall make the user liable for actual damages, attorney fees and exemplary damages or a civil penalty not to exceed \$25,000.00.

A California Court of Appeal decided on March 23, 2010, that the foregoing may not be true in *William Mendoza v. APS Screening and Selection Services, Inc.* (APS).

The trial court had dismissed the law suits filed by Mr. Mendoza. A prospective employer used a background search organization, APS, to determine the qualifications of Mr. Mendoza. APS used the MLW "for the sole purpose of denying employment to individuals who were registered sex offenders." Mr. Mendoza's law suit does not disclose whether or not Mr. Mendoza was, or is, a registered individual on the MLW. There is no allegation directly made or denied in Mr. Mendoza's law suit that the prospective employer denied Mr. Mendoza a job because of a violation. The court opinion does say that the two foregoing thoughts are implied. The bottom line is that Mr. Mendoza was not offered employment from the prospective employer.

APS was challenged by Mr. Mendoza for a violation of California's anti-SLAPP statute. SLAPP means Strategic Law Suits Against Public Participation. The statute is used against people who have spoken out against particular matters by filing litigation. In this case, the trial court and the Appellate Court found that there was no violation since APS was defending itself and the anti-SLAPP allegation would not prevail.

The Court wrote, ". . . (W)e are satisfied that the MLW statute is not intended to create *liability for damages* on the part of employment screening business who access, compile and republish information disclosed on the MLW."

APS requested in its appeal that Mr. Mendoza pay APS' attorneys' fees and costs. The Court of Appeal determined, APS "argues we should award its attorneys fees and costs in responding to Mendoza's appeal." APS' argument is well taken. The case was referred back to the trial court for reasonable attorney fees and costs from Mr. Mendoza.