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***WHOLESALE SALES REPRESENTATIVES –  
BEWARE OF SPECIAL CONTRACT REQUIREMENTS.***

TO: Clients and Friends of The Firm  
DATE: March 6, 2002

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We wish to bring to your attention a little-known California statute related to manufacturers' relationships with their wholesale sales representatives, known as the "Independent Wholesale Sales Representatives Contractual Relations Act of 1990," California Civil Code Sections 1738, *et seq.* Although the law is very rarely addressed, much less recognized, by the great majority of the populace, it can lead to significant liability for those entities subject to, and not complying with, its requirements.

This law, in effect for more than 10 years, was enacted to "provide security and clarify the contractual relations between manufacturers and their nonemployee sales representatives." In order to accomplish this goal, the statute imposes certain requirements on any "manufacturer, jobber, or distributor" who uses the services of a non-employee wholesale sales representative. Meanwhile, the law also provides protections to any wholesale sales representative who enters into a contract with one of the identified entities to solicit orders and who receives commissions. The law's protections, however, do not extend to sales representatives who sell directly to consumers.

The statute requires that the parties enter into a written contract, in which they must specify details of the commission arrangement, including its rate and method of computation, the time when it will be paid, and the types of chargebacks to be made, if any. After the contract is executed, the sales representative must be provided with a signed copy of the written contract and be required to sign an acknowledgment that he or she received the copy. In addition, when the business pays the commission, the sales representative must be provided with specific information regarding each of the commissions received, including

SWERDIOW FLORENCE  
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March 6, 2002

Page 2

the rate of commission on each order, the customer's name and invoice number for which each payment is made, and information on any chargebacks made. None of these requirements can be waived by the parties.

The statute also specifies the damages to be awarded for violations of the law. Specifically, a covered entity that "willfully fails to enter into a written contract . . . or willfully fails to pay commissions as provided in the written contract" is liable to the sales representative for treble damages. In addition, the prevailing party is entitled to recover reasonable attorneys' fees and costs. Consequently, it is most important for all companies subject to the requirements of this statute to comply with its terms. Each entity must enter into written contracts with their wholesale sales representatives and must fully abide by the contract's terms.

We encourage you to call your SFSR attorney at (310) 201-4700 to discuss this statute, the impact of its requirements on your Company's operations, and how to best implement written sales-commissions agreements.

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By way of background information for your assistance, the statute provides definitions of certain terms, including the following:

- < "Manufacturer:" "any organization engaged in the business of producing, assembling, mining, weaving, importing or by any other method of fabrication, a product tangible or intangible, intended for resale to, or use by, the consumers of this state."
- < "Jobber:" "any business organization engaged in the business of purchasing products intended for resale and invoicing to purchasers for resale to, or use by, the consumers of this state."
- < "Distributor:" "any business organization engaged in offering for sale

SWERDIOW FLORENCE  
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March 6, 2002

Page 3

products which are shipped from its inventory, or from goods in transit to its inventory, to purchasers and intended for resale to, or use by the consumers of this state."

- < "Chargeback:" "any deduction taken against the commissions earned by the sales representative which are not required by state or federal law."
- < "Wholesale sales representative:" "any person who contracts with a manufacturer, jobber, or distributor for the purpose of soliciting wholesale orders, [and] is compensated, in whole or part, by commission, but shall not include one who places orders or purchases exclusively for his own account for resale and shall not include one who sells or takes orders for the direct sale of products to the ultimate consumer."