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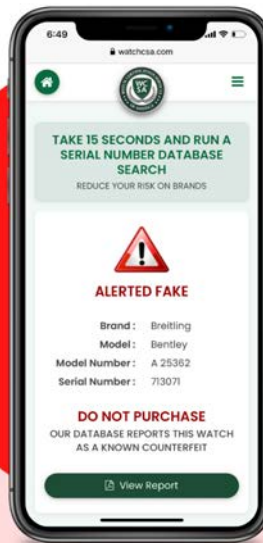
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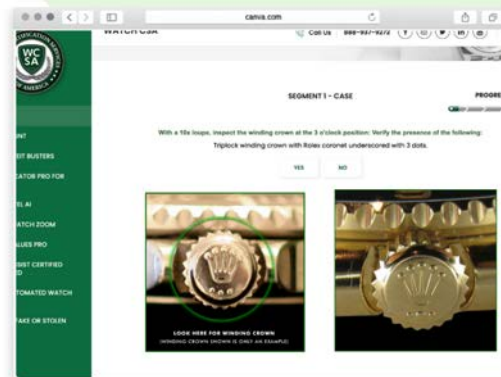


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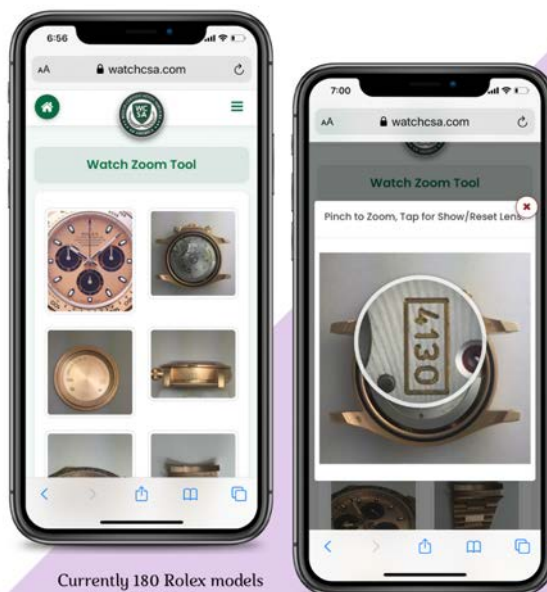
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## Light at the End of the Tunnel

Whether it be due to true scientific data or political expediency, it looks like California is finally starting to open up. Restaurants are being allowed to have indoor dining once

again. Our kids and grandkids are playing sports and going back to the classroom. Concert venues and movie theaters are selling tickets. But will our businesses ever be the same? What will our "new normal" be?

The pandemic has shown us that life goes on in a digital world. For the past year we have kept our pantries stocked using Instacart. Instead of going out to eat we used Doordash and Uber Eats. Amazon has brought everything from Clorox wipes to pet supplies to our front doors.

I know that many, if not all of us are still looking at shrinking loan books. The federal and state governments continue to find ways to give away free money. Many of our customers have left the state for places where the cost of living is cheaper. Our world has changed, and we must learn to adapt and find

new revenue streams. It is time to pivot towards new technologies and platforms to sell merchandise, service our loan customers and move money. Will you be ready?

CAPA will be hosting our Annual Spring Conference in May via virtual format. There will be some very informative and business forward seminars that you won't want to miss. We will once again have some of the best speakers in the industry addressing topics and strategies that you can implement immediately in your shops. And your CAPA Board of Directors meeting will be held in conjunction with the conference so that you can hear directly from us what we are doing for our members.

I hope you will register and I look forward to seeing all of our CAPA members, albeit virtually, in May. Don't miss this great educational opportunity.

Please don't hesitate to call or email me directly if I can be of any help to you. My contact information is in your CAPA directory.

*Jan Schneider*  
CAPA President ■

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Tony DeMarco

## Legislative Chair Update

I am thrilled to announce the hiring of our new legislative team, former Assemblyman Alberto Torrico, who is CAPA lobbyist, and his partner former Senator Cathleen Galgiani, who will act as advisor and consultant on CAPA's issues. It goes without saying that we had an incredible advocate in Bill Duplissea, and we will miss him and his incredible leadership forever. But having Alberto, who shared an office with Bill for many years and who knew and loved him, is a gift that I feel was exactly what is needed for CAPA's legislative future.

As we all continue to struggle with the downturn in our loan businesses from the pandemic, know that CAPA has been strategizing on how best to rebuild and defend our California model; a formula that we know is fair and beneficial for our customers and their families.

Our 2021 legislation to extend our sunset period on foreclosed loans with the BOE in moving well through

the legislative process as you will see from Alberto's update on page 9. This is a must this year since the sunset is due to expire on Dec 31<sup>st</sup> 2021. Remember, this

I am committed to all of you to continue to fight the fight and to keep you all updated on our progress and work in Sacramento

has to do with the original pledgor returning for their forfeited items and being able to purchase them back without a taxable event occurring.

I am committed to all of you to continue to fight the fight and to keep you all updated on our progress and work in Sacramento....much more to come!

Tony DeMarco ■

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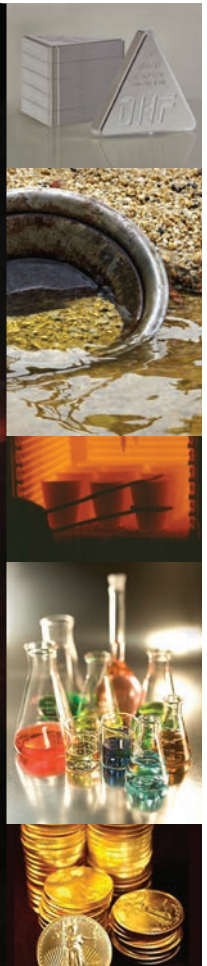


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Alberto Torrico



Cathleen Galgiani

## Capitol Report

*As the calendar continues to turn and as we all start to feel growing optimism of a “return to normal” sometime this year, CAPA’s work continues in the State Capitol. Former State Assembly Member and State Senator Cathleen Galgiani and Former Assembly Majority Leader Alberto Torrico have joined the CAPA Team. While no one will ever replace our beloved Bill Duplissee, these two former legis-*

*lators bring over 50 years of combined local and state government experience, as well as a wealth of experience and relationships throughout California politics.*

### Newsom Recall Election Likely

Proponents of the Newsom recall campaign submitted over 2 million signatures by the court-imposed deadline of March 17. Over the past several months, the “validity” rate for submitted signatures has hovered around 85%. As a result, it is extremely likely that the recall will qualify and that following various reviews by County Registrars, the Secretary of State, and the Legislature, the election will be scheduled for late this year.

### Assembly Member Bonta Nominated Attorney General

As California’s influence in Washington D.C. continues to grow by the influx of high-level appointments by the Biden Administration, Governor Newsom has once again been given the opportunity to make history by filling vacancies created by those appointments. On the heels of historic appointments for the vacant U.S Senate seat (Alex Padilla) and the vacant Secretary of State position (Shirley Weber), Governor Newsom appointed the state’s first Filipino American to the position of Attorney General – Assembly Member Rob Bonta. It is expected that he will be confirmed by the Legislature sometime in April.

Senator Galgiani served with Assembly Member Bonta in the Legislature, and Majority Leader Torrico also has strong ties to Bonta, as they both represented portions of Alameda County. In fact, Bonta’s first chief of staff started his legislative career in Sacramento working on Torrico’s staff in the Assembly.

Assembly Member Bonta has a strong record of support for CAPA legislative priorities. In fact, he co-authored with Assembly Member Miguel Santiago two high priority bills: AB 1182 in 2015 and AB 2236 in 2016. Our advocates will build on this relationship as Assembly Member moves on to the office of Attorney General.

### CAPA Sponsored Bill AB 296 (Gipson) Advances Through Assembly

The Pawnbrokers Association is off to a strong start this legislative session with our sponsored bill, AB 296 by Assemblymember Mike Gipson (D-64), gaining Assembly co-

authorship from Assemblymembers Bill Quirk (D-20) and Tim Grayson (D-14) in its first committee hearing. AB 296 extends the sunset on existing law which protects our borrowers from “double taxation” by ensuring that they aren’t required to pay sales tax when buying back property used as collateral on a defaulted loan.

Because Pawnbrokers are considered Retailers under the law, they were previously required to remit Sales and Use Taxes (SUT) to the same extent as any other retailer in this state. However previous SUT law failed to consider the unique circumstances when a borrower defaulted on a loan, the collateral became the vested property of the Pawnbroker, and the borrower sought to repurchase their former property for which they had already paid sales tax upon the initial purchase.

To address this inequity, AB 327 (2017) was sponsored by CAPA and all five members of the Board of Equalization, exempting collection of the SUT when a customer subsequently sought to purchase their former collateral. AB 327 included a sunset date of January 1, 2022 that would require the Legislature to revisit this exemption after 5 years. These provisions were enacted in AB 119 (Committee on Budget), Chapter 21, Statutes of 2017. This year, CAPA’s sponsored legislation, AB 296, proposes to extend the sunset to January 1, 2027.

On March 22<sup>nd</sup>, AB 296 was heard without opposition and moved to the Committee’s “Suspense File” where it awaits consideration along with other tax credit and exemption legislation, until the initial state budget has been prepared and policymakers have a better sense of available revenue. While our members recognize that the extension of an already existing exemption will not pose any new cost pressures to the State, placing AB 296 on the Suspense File is a procedural action which provides the Legislature and Administration with a uniform process to review all tax credit and tax exemption proposals. Both the Appropriations and Revenue and Taxation Committees require that any legislative proposal with a potential annual cost of more than \$150,000 be placed in their respective “suspense files” where they will be considered comprehensively as part of the budget deliberations in both houses.

On April 5, the bill was removed from the suspense file and passed the committee unanimously on a 10 to 0 vote. The bill will now move to the Appropriations Committee. ■

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# ABANDONED PROPERTY: WHAT DO I DO?

## *AUTHOR?*

In California, property is generally presumed abandoned if it has remained unclaimed by the owner for more than three years after it became payable or distributable. Pawnbrokers deal with property that has been left behind on a frequent basis. This prompts pawnbrokers to follow specific steps to either claim their right to the property, or exhaust their means to get the property back to the customer.

### **Loan Expires**

As many of you are aware, if a customer does not pay off their loan and a replacement loan is not entered into, this triggers a procedural step the pawnbroker must follow in order to claim the property. After the term of the loan has expired, within thirty days, the pawnbroker should notify the customer of the beginning of the ten-day grace period via mail or other methods of communication the customer has expressly agreed to in writing. This ten-day grace period allows a customer to either pay off their loan, or enter into a replacement loan for the pawned item. If at the end of the ten-day grace period no replace-

ment loan is entered into and the customer has not paid in full all charges and fees, the pawnbroker will become vested with all right, title, and interest to the property.

It is vital that pawnbrokers follow this procedure in order to obtain proper legal right to the abandoned property. NOTE: as discussed in prior articles, if the customer files bankruptcy notice before the mailing of the notice, everything is stayed. Moreover, you must act promptly to ensure your rights to the property are preserved.

### **Non-Responsive Customer**

While there is a set procedure for the above-mentioned scenario, the law is unclear what the exact procedure to follow is when a customer pays off their loan and does not come to the store to collect the property. This leaves pawnbrokers in a precarious position, particularly if the customer is non-responsive for long periods of time.

If the customer is non-responsive for long periods of time, the conservative approach will be to store the abandoned property for a minimum of three years allowing the customer the opportunity to pick up their property. The cus-

customer should be advised that their property is available for pick-up and pawnbrokers should store the proof of this correspondence. If significant time has passed and the customer still has not picked up their item, a letter should be sent via U.S. certified mail detailing the item and where it is available to pick up. As such, pawnbrokers should have accurate contact information for each customer to contact them and advise them that their property is available for pick-up.

One practical approach that pawnbrokers may utilize to avoid this situation is requiring their customers to make their final payment in-person at the pawnshop—this will ensure they make their final payment and pick up their property simultaneously. However, this method may not be feasible for all pawnbrokers or they may have their own procedures for handling this situation.

### Found Property

Now if a customer leaves behind property that a pawnbroker later finds, pawnbrokers must report the property to CAPSS. The pawnbroker must include any information known to them and if no claim is made for the property for a period of 60-days after it is reported, the pawnbroker may treat the found property as property regularly acquired in the due course of business.

### Conclusion

Each circumstance is unique and pawnbrokers should handle these situations on a case-by-case basis. Ultimately, it will be in the pawnbroker's best interest to advise the customer often, have accurate and up-to-date contact information, and hold the property for a minimum of three years. ■

## LEGAL COUNSEL UPDATE

As part of your CAPA membership you are entitled to a free 30-minute legal consult every month with a qualified attorney. Ever since Mastagni Holstedt became counsel for CAPA in 2019, we have seen an explosion of legal questions incoming from the CAPA membership. In order to provide even better service to the CAPA membership, we at Mastagni Holstedt are adding new attorneys, experienced in navigating the laws regulating pawnbrokers, to assist you with your various legal needs. Additionally, we are adding additional ways for CAPA members to communicate with an attorney.

Starting April 1, 2021, we are launching an exclusive, CAPA members only email. Any member with a question will be able to email their request for legal assistance to [CAPA@mastagni.com](mailto:CAPA@mastagni.com). By emailing us your legal issue, a whole team of CAPA attorneys and support staff will receive your communication instantly and will be able to respond as soon as they are available.

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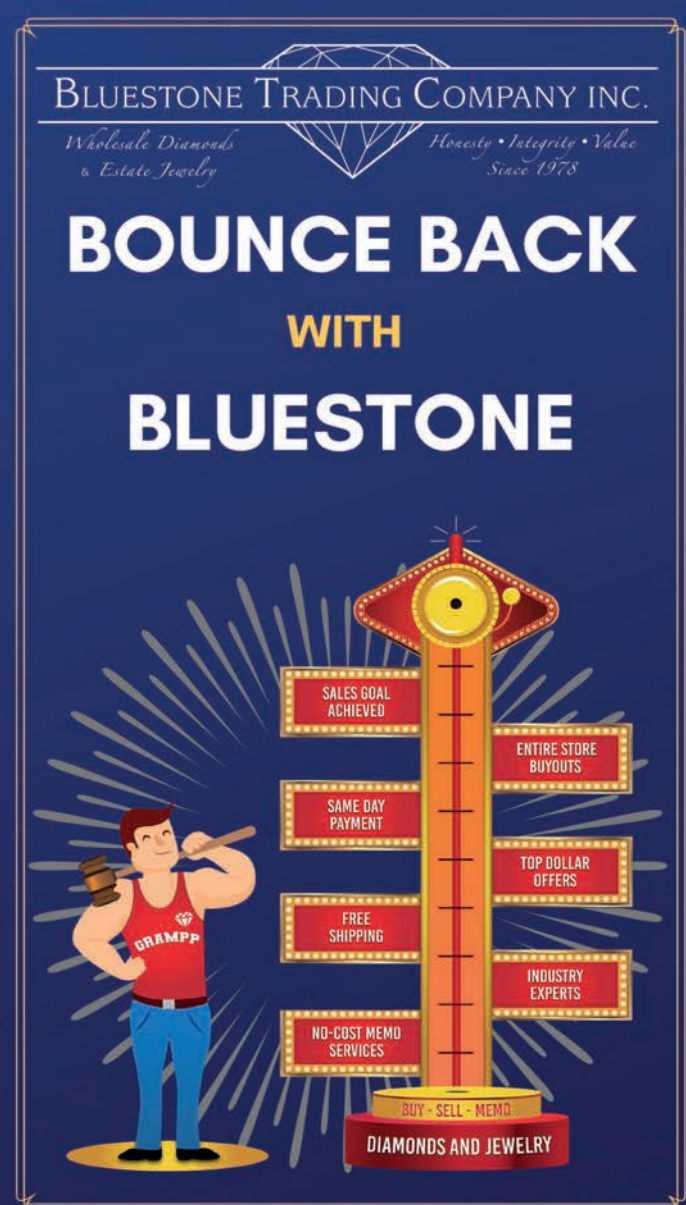
Over the last several weeks, I have seen on forums references to what many believe is a resurgence of the old bank discontinuance. Some are even referencing its old “Operation Chokepoint” name although this isn’t really accurate. So, are banks actually ramping up the shedding of their “high-risk” accounts? The short answer is, yes, at least from the uptick in volume I am seeing in calls for my services.

Why is this happening? Well, there are a couple of reasons, but first let’s identify what is really occurring. Operation Chokepoint was an underhanded program borne during the Obama/Holder administration that was officially stopped years ago. After the program was put out to pasture, the banks continued to engage in two behaviors that were (and are) detrimental to us as pawnbrokers. The official term used was “de-risking”. As pawnbrokers, we were either flat out cancelled by our banks for ‘no reason’, or we were denied services and accounts strictly because of our industry.

Many of you reading this either have been a victim of de-risking or know someone who has. In January 2020, I was asked by a CA pawnbroker to help their company find a bank after Wells Fargo “de-risked” them. It took us calling twenty-

six banks before we found one that would actually talk to and eventually bank them. Twenty-six banks said “no” over the phone. Twenty-six! All because of the industry.

De-risking has gotten so bad that the reasons behind which the banks hide to shed these unwanted customers have been kept top secret. Most of you, if your account was cancelled, were never given a reason. The fact is, the bank had to jump through extra hoops to bank you due to your status as a “high-risk” business. It costs them money to perform the due-diligence required to satisfy the regulators and it was just easier to tell you they could not do business with you. In reality, they were being told by the OCC and regulators that they what



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they were doing was counter to the banking rules and guidelines. However, there was no enforcement provision behind the rules, so the behavior went on for ten years. Of course, it was all about the banks bottom line.

The OCC (Office of the Comptroller of the Currency) finally had enough when 6 of the 7 major banks in Alaska weaseled out of providing funding and services for those in the oil and gas exploration industry. This of course was strictly political, but the banks had the power (and audacity) to weasel and weasel they did. It would be the straw that broke the camels back. Imagine the majority of the major banks in the Mid-West saying they would no longer support the farming industry?

In November of 2020, the OCC proposed the Fair Access Rule which is set to become effective April 1. "The rule codifies more than a decade of OCC guidance stating that banks should conduct risk assessments of individual customers, rather than make broad-based decisions affecting whole categories or classes of customers, when provisioning access to services, capital, and credit".<sup>1</sup>

The catch is that if the banks are required to perform their due diligence, and they will, the very first thing on their list will be to make sure that any precious metals business has an AML program in place.

The rule requires, "covered banks (those with \$100 Billion or more in assets) to make those products and services they choose to offer available to *all customers in the communities they serve based on consideration of quantitative, impartial, risk-based standards*<sup>2</sup> established by the bank." The banks covered by the rule are ironically the same bad actors that were (and currently still are) cancelling accounts. Think B of A, Wells Fargo, Chase, Capital 1, US Bank, etc.

Further, the OCC states, "As Comptrollers and staff in previous administrations have made clear in speeches, guidance, and testimony, banks should not terminate services to entire categories of customers without conducting individual risk assessments. It is inconsistent with basic principles of prudent risk management to make decisions based solely on conclusory or categorical assertions of risk without actual analysis."<sup>3</sup>

So, this is good news, right? Well, it is, but you need to know that like all good things, there is almost always an offset. It will likely now be an offense punishable by a monetary fine for a large bank to either discard you without giving you a chance to measure up, or to ignore you outright just because you are a pawnbroker. Small banks are exempted, however, there will be pressure for them to follow the same guidance without the possibility of a monetary fine hanging over them.

The catch is that if the banks are required to perform



their due diligence, and they will, the very first thing on their list will be to make sure that any precious metals business has an AML program in place. It should go without saying that the program will need to actually be current and not sitting in the bottom of a file cabinet somewhere with 10 years of dust on it. There is little else separating you from the other businesses they bank, so the only tool they have to discard you is the AML program.

The program that has been required since 2005 and has been widely ignored in the pawn industry is now going to be pivotal in helping you maintain your banking relationship. Risk going without and it is a matter of time before the hammer comes down. So many wait until the bank asks to see the program and then in a panic make the frantic call. To date, we have been able to help every single customer in that situation that has called our firm. We believe, however that will be evolving and that banks will have the ability to determine that a brand new program does not make one compliant since they were supposed to be compliant long ago.

Programs require annual training and reviews. Reviews, by the very nature of the word, are backward looking processes. You cannot review the future; only the past. Ergo, if you have a new program it is impossible to review your adherence to what it prescribes because you did not have it in place over the period in the past under review. Remember, they set the rules and can still boot you with the slightest infraction if they so choose. The good news is they have to let us know the rules, and we can hold them accountable to their own Fair Access Rule. The rules are changing, and they will continue to be more challenging, not less. If you think back 20-25 years, if you have been in the industry that long, you know that the whole Compliance piece was not a thing that you had to worry about. Well, now you do. You are kidding yourselves if you think that the industry will have less compliance requirements directed its way in the future. At best we can hope for the status quo.

How do we help minimize future regulatory burdens? Take the time to get involved with your local and state legislators. Do it now. Proactively.

Build relationships with them now. Before you need to ask them for a favor. Hiding in your store does not in any way influence legislators. At least it doesn't allow you to influence them in a positive way. Rather it allows them to formulate their own opinions.

Our industry has a perpetual black-eye. That means our industry still has not done enough to change our image. That image is going to cost us in many ways if we don't stop being ignorant. It is why we have to fight to prove we are essential. It is why we end up on a high-risk list when the banks who can cast aside in an instant are the ones who are high risk.

Decide to do now what it takes for


your business, and your industry. Get your compliance house in order (It is far easier than you can imagine but you will never know if you do not reach out) and get your advocacy hat on like your life depends on it and you will be fine. Or, keep doing the same thing but remember...

If you always do, what you've always done, you will always have what you've always had.

The Fair Access Rule has been put on hold to allow the incoming Comptroller of the Currency the courtesy of reviewing it before it takes effect.<sup>4</sup> ■

1. OCC News release 2021-8 | January 14, 2021 2nd paragraph
2. OCC News Release 2021-8 | January 14, 2021 5th paragraph
3. OCC News Release 2021-8 | January 14, 2021 3rd paragraph
4. News Release 2021-14 | January 28, 2021

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# ALL THINGS CONSIDERED: THE SYSTEM WORKS BUT CAN BE IMPROVED

*Tim Cassidy*

A few years ago the California Pawnbrokers Association worked with the Department of Justice to install a new, state-wide and uniform reporting system. This replaced the old reporting system whereby the daily pawns and buys were only reported to the local police departments. With the old system that meant something stolen in Southern California and pawned in Northern California had little chance of being identified.

A recent event shows just how efficient the new system is.

On October 18, 2019, a man in Las Vegas was attacked and his \$30,000 Rolex watch was stolen. The next day a Rolex watch was pawned at Mr. Steve's Pawnshop in Los Angeles for \$16,500. Steve sent in the reports of all his loans that day as required by law. The report included a description of the Rolex watch along with its serial number and model. It also included a description of the person who pawned the Rolex. A match was made with the Rolex that was stolen in Las Vegas. The victim was notified and the watch eventually returned with the end results being the pawnbroker was out \$16,500.

The reporting system does work to the benefit of those who have their items stolen. It does work for the police who now have descriptive information of the person pawning the stolen items. Where the system does not work is with the second victim, the pawnbroker. The pawnbroker now suffers the financial loss even though he or she has done ev-

everything according to the law. Because the pawnbroker can suffer a financial loss, he is very careful with the loans he makes. Is this a good thing? Lets examine the problem.

Lets say a person brings in a 14 kt gold watch with initials engraved on the back. The pawnbroker asks the customer about the initials and the customer has no clue. The pawnbroker now assumes that the watch could possibly be stolen and turns down the loan. The person takes the watch and sells it on the street, on the internet, or to one of the many businesses that does not report. The person from whom the watch was stolen now has very little chance of recovering the item. Many items that are family heirlooms are lost this way.

So what is the answer? The answer is a system in which the pawnbroker, who is also a victim, needs to be compensated for their loss. California has a victim relief fund that may be the answer to this problem or some portion of our licensing fees could be set aside for this purpose. It may be possible to have an insurance company setup a fund.

The benefits of such a fund would be many, not the least of which would be to see many precious items returned to the original owner and the police having a direct path to the person who pawned/sold the stolen item. There are details to be worked out, but I believe that this is something that is very doable. ■



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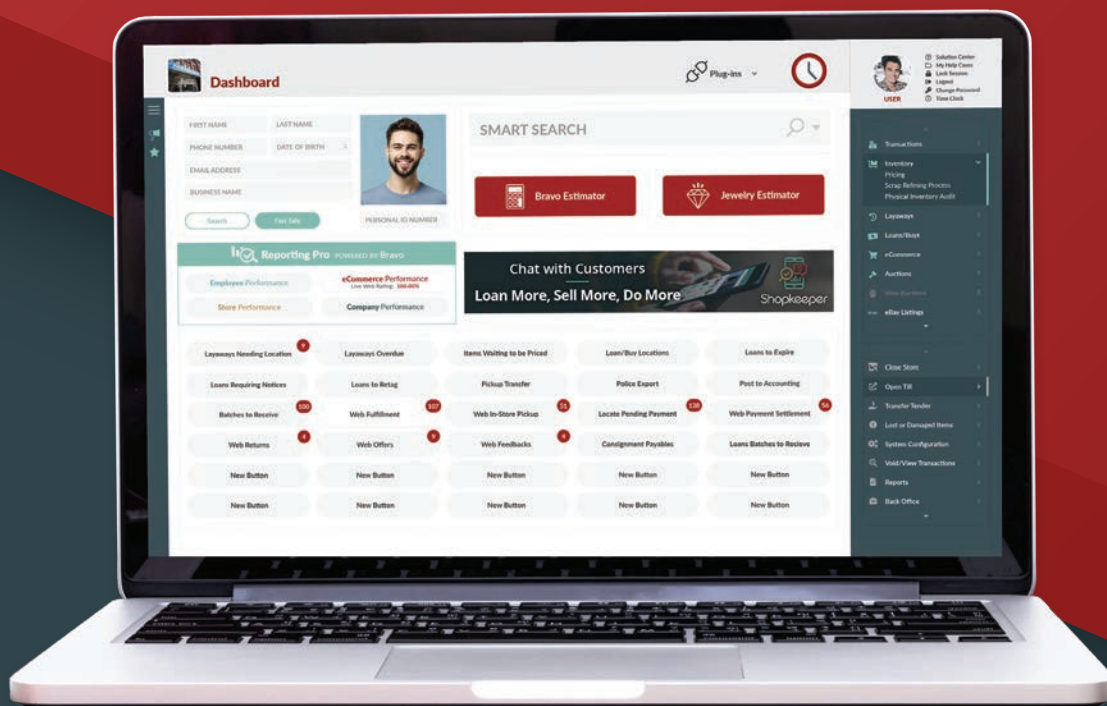
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