



→ Phillip A. Davis

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Phillip Davis is special counsel in the firm's Los Angeles office, where he specializes in corporate and securities litigation; director, officer, shareholder and partnership litigation; real estate litigation; and creditor's rights.

Areas of Practice

Phillip represents public and private companies, directors and officers, investment bankers, underwriters and analysts, special committees and advisors, shareholders and venture capital funds in federal and state securities fraud class actions, shareholder derivative suits, breach of fiduciary duty claims and other disputes between corporations, shareholders and partners. He also represents partnerships, LLCs, joint ventures and partners/members in partnership disputes involving breach of fiduciary duty and mismanagement.

Phillip has successfully obtained the dismissal of numerous securities fraud claims, and has successfully opposed class certification. He has defended claims of mismanagement and breach of duty under Delaware and California law arising out of mergers, acquisitions and going-private transactions, and has successfully opposed motions to enjoin mergers. He has significant experience asserting the defenses provided by the PSLRA, SLUSA, the business judgment rule, exculpatory provisions, special litigation committees and the exclusive right of appraisal. He has filed and defended actions involving buy-sell agreements, the removal and appointment of directors, accountings and dissolutions. He also represents owners, developers and lenders in real estate litigation. He has litigated complex real estate joint venture, purchase and sale and development disputes involving resorts; hotels; large apartment complexes; and industrial, commercial and retail developments.

Phillip has significant experience representing owners, developers, sellers, buyers, landlords, tenants and brokers in all types of real estate disputes, including joint venture formation disputes, development disputes, purchase and sale litigation, quiet title, proscriptive easement and adverse possession claims, zoning and set-back matters, Mello-Roos defaults, complex exclusive listing agreement litigation, specific performance and lis pendens actions and unlawful detainer and breach of lease matters. He also represents owners in litigation involving industrial accidents, wrongful death and personal injury claims, premises liability and Cal-OSHA regulatory investigations.

Phillip has also represented financial institutions in a wide range of complex litigation matters. He has defended numerous "lender liability," RICO, securities fraud, ERISA, breach of duty, breach of contract, negligence and tort actions brought against many of California's largest lenders. He has significant experience enforcing rights and remedies through attachments, injunctions, judicial and non-judicial foreclosures and receiverships. He has litigated letters of credit and guarantee issues, and well as Mello-Roos foreclosures.

Recently, Phillip has successfully defended a number of consumer class actions filed under the Song Beverly Act.

Fiduciary/Philanthropy

Co-Trustee of The Harry Bronson and Edith R. Knapp Foundation
The Gregory Rogers Charitable Remainder Unitrust

Honors

Recognized for Real Estate Litigation, *Best Lawyers*, 2021

Experience

Representative Matters:

Securities Litigation

- *Lin v. Bank of America; Maggi v. Bank of America; Sussman v. Nations Capital Growth; Wasserman v. Lewis; Sayegh v. Janus*. Represented the Bank of America defendants in the "market timing" and "late trading" mutual fund cases filed in state and federal courts in California. Worked closely with the Bank's national coordinating counsel, Wachtell Lipton, to get the matters rolled up into MDL 1586 and transferred to the U. S. District Court in Maryland.
- *Cooper v. CPS Systems*. Defended the lead underwriters in half a dozen consolidated class action securities fraud cases filed under Section 11 and Rule 10b-5. First round of motions to dismiss were granted. Second round of motions to dismiss were granted in part. Favorable settlements were ultimately finalized.
- *In re Wilshire Technologies Securities Litigation*. Defended the underwriters in this class action securities litigation arising out of an IPO. Obtained a voluntary dismissal of our client after filing motions to dismiss.
- *In re Touchstone Software Securities Litigation*. Defended the underwriters in this securities class action filed under the Private Securities Litigation Reform Act of 1995. Obtained a very favorable settlement.
- *In re Quarterdeck Securities Litigation*. Defended the issuer and its officers and directors in this securities fraud class action arising from Quarterdeck's IPO. Successfully defeated class certification, and obtained several dismissals and judgment on the pleadings. See *In re Quarterdeck Securities Litigation* CCH Fed. Sec. L. Rep. 97,646 (granting motions to dismiss) and 98,092 (denying class certification), and 854 F. Supp. 1466 (C.D. Cal. 1994) (partial grant of motion for judgment on the pleadings).
- *Steinberg v. Mossimo; Gludnikov v. Mossimo; Frenkil v. Mossimo*. Defended the issuer and two directors in two class action securities fraud cases filed in Orange County Superior Court, under Corporations Code §§ 25400, 25500, 25401, 25501, 25402 and 25502, Civil Code §§ 1709 and 1710 and B & P Code §§ 17200, et seq., and in a parallel federal court securities fraud class action. In the first round of demurrers, we successfully obtained dismissal of all claims and dismissal with prejudice of the Section 17200 claim.
- *Western Airlines and Frontier Airlines v. Security Pacific Investment Managers*. Defended an investment advisor in a federal court action alleging various violations of federal and state securities laws, as well as ERISA and RICO violations.
- *In re HOMESTORE.COM, Inc. Securities Litigation*. Defended a software firm sued in a consolidated class action complaint filed by against Homestore.com and 27 other corporations and individual defendants. Motion to dismiss was granted and the case was dismissed with prejudice.

Merger and Acquisition Litigation and Breach of Fiduciary Duty

- *Ulrich v. Raytel*. Defended two directors, members of the Special Committee, in a class action based on the two-step merger of Raytel into SHL TeleMedicine Ltd. Successfully defeated a TRO to enjoin the merger. Two rounds of demurrers to the complaint were sustained.
- *Lukoff v. G & L Realty; Weisman v. G & L Realty*. Defended Houlihan Lokey in this case alleging breach of fiduciary duty, interference with prospective economic relationship, unjust enrichment and unfair competition. Based on a demurrer, plaintiffs entered into a tolling agreement and never re-filed.
- *Schneider v. Fidelity; Miller v. Lowther; Rossi v. Lowther*. Defended four directors of ANFI, Inc., members of the Special Committee, in these class actions brought by Milberg Weiss and Weiss & Yourman, arising out of the negotiated merger of ANFI and Fidelity National Financial. Plaintiffs decided against seeking a TRO after conducting early discovery. After defendants filed demurrers to the amended complaint, plaintiffs dismissed their cases.
- *Presant v. Wilshire Oncology Medical Group*. Defended the directors and officers in a state court shareholder derivative action involving a mixture of alleged intentional and negligent breaches of fiduciary duties and mismanagement. Implemented groundwork for a special litigation committee defense.
- *Fireman v. Sterling Healthcare Corporation*. Defended the company, subsidiaries, directors, officers and venture capital shareholders in a state court action involving a mixture of alleged intentional and negligent breaches of fiduciary duties and mismanagement. The case was dismissed after the court granted a forum non conveniens motion.
- *Farrar v. California Department of Corporations*. Defended the California Department of Corporations in a state court class action arising out of the demise of the First Pension/Vestcorp Securities investment portfolios—two rounds of demurrers were sustained, and then the case settled.

Trust Litigation and Breach of Fiduciary Duty

- *Smith v. Grist Mill Trust*. Represented Donna Smith in her dispute with the Grist Mill Trust, Wayne Bursey and Benefit Plan Advisors, over her beneficial rights to certain benefits funded by Penn Mutual. After an AAA arbitration hearing, the arbitrator made a substantial award in her favor.
- *Keck v. Keck*. Represented a Keck family member in litigation pending in Texas and the Central District of California, alleging breach of fiduciary duty and declaratory relief.

Song Beverly and Unfair Competition Class Actions

- *Johnson v. Ashley Furniture*. Representing Ashley Furniture in this Song Beverly putative class action filed in the Southern District of California. Obtained preliminary settlement approval of a favorable early settlement.
- *Folgelstrom v. Lamps Plus, JCCP No. 4532*. Represented Lamps Plus in this coordinated class action alleging Song Beverly violations, unfair competition and invasion of privacy. Demurrers were sustained by Judge Mohr without leave to amend. On appeal, the court reversed as to the Song Beverly claim, in light of *Pineda*, but affirmed the judgment of dismissal in favor of Lamps Plus on the right of privacy and unfair competition claims. See *Folgelstrom v. Lamps Plus, Inc.*, 195 Cal. App. 4th 986 (2011).
- *Krinsk v. The Container Store; Georgino v. The Container Store, Inc.* Represented The Container Store in these Song Beverly putative class actions filed in San Diego and San Francisco Superior Courts.
- *Berthiaume v. Shaw Industries, Inc. and Berkshire Hathaway, Inc.* Represented Shaw Industries and Berkshire Hathaway in this class action brought on behalf of all Shaw dealers in California, alleging violations of Song Beverly and Magnuson-Moss. The California Court of Appeal issued a writ reversing the trial court's

nationwide class certification. Obtained a favorable class action settlement.

- *Flooring 101 v. Shaw Industries*. Represented Shaw Industries in a Song Beverly case brought by one of its distributors, arising out of the Berthiaume settlement.
- *Finch v. Lamps Plus; Taylor v. Lamps Plus, JCCP No. 4532*. Represented Lamps Plus in these coordinated class actions alleging Song Beverly violations and unfair competition. Obtained a favorable class action settlement.
- *Kummerle v. The Children's Place, Bowers v. The Children's Place, Martinez v. The Children's Place, JCCP No. 4418*. Represented The Children's Place in these coordinated class actions alleging Song Beverly violations, unfair competition and invasion of privacy. Certain claims dismissed without leave to amend. Obtained a favorable class action settlement.
- *Barajas v. The Container Store, Uldall v. The Container Store*. Represented The Container Store in these consolidated class actions alleging Song Beverly violations and unfair competition. Obtained a favorable class action settlement.
- *Pinkney v. Disney Store*. Represented the Disney Stores (Hoop Retail) in this class action alleging Song Beverly violations and unfair competition. Obtained a favorable settlement.
- *Fabrikant v. The Container Store*. Represented The Container Store in this putative class action alleging Song Beverly violations. Obtained a favorable individual settlement.

Real Estate Litigation

- *Cornerstone Apartment Venture III v. Windstar Communities*. Represented MassMutual in the defense of various cross-claims for breach of fiduciary duty and breach of contract. After multiple demurrers, negotiated a favorable settlement with motions for summary adjudication pending.
- *Altamirano v. Matsu, LLC and Lexington Asset Management*. Represented the owner and property manager in this complex matter filed by over 70 tenants.
- *CC Western v. Keller*. Represented the subtenant in a number of disputes arising out of the termination of the master lease. Claims included unlawful detainer, specific performance, breach of lease, declaratory relief and interference with contract. The landlord asserted various grounds for termination of the sublease. After a five-day AAA arbitration, the arbitrator ruled in subtenant's favor and found that the sublease was not terminated.
- *Zehenni v. Chinois*. Represented some of the tenant in common landlords in an unlawful detainer action. The tenant moved to quash the complaint, on the grounds that all tenant in common landlords had not joined in the complaint, and the non-party landlords objected to the lawsuit. Judge Rico denied the motion, the appeals court denied the tenant's Petition for Writ of Mandate and the California Supreme Court denied the tenant's Petition for Review.
- *Palmdale v. Moorefield*. Represented Palmdale in asserting claims for trespass and interference with prospective economic advantage. Obtained a favorable recovery through settlement.
- *Owensmouth C2B v. All American Distributing and Jinnah*. Represented the landlord in asserting claims for unlawful detainer, breach of lease and fraudulent conveyance, and defending against claims for breach of contract, rescission, interference with contract and prospective business advantage. Obtained possession of the premises and a favorable recovery through settlement.
- *Cornerstone Apartment Fund I v. BRE Properties*. Represented this MassMutual/Cornerstone Fund in a dispute over capital accounts under a complex joint venture agreement.

- *MassMutual/Grand Apartments Litigation*. Represented the landlord in a number of unlawful detainer lawsuits and breach of warranty actions arising out of the Northridge earthquake. Structured an arbitration/mediation procedure for resolution of the claims.
- *Los Angeles Plaza v. Honeywell*. Represented Honeywell in the damages re-trial of this breach of contract, breach of warranty case.

Corporate/Partnership/Shareholder Litigation

- *Adir/Curacao Litigation*. Represented various Adir entities in connection with dissolution proceedings filed in California and Delaware. After successfully obtaining a buy-out decree under Corporations Code Section 2000, the parties entered into a global settlement.
- *Austin McNamara v. Obagi Medical Group*. Asserted various breach of duty, breach of contract, employment discrimination and tort claims on behalf of Mr. McNamara, under California and Delaware law. Engaged in an independent three-expert valuation procedure pursuant to a stockholder agreement. Obtained a favorable settlement that provided for the sale of Mr. McNamara's stock.
- *Petroholland v. Sathiya*. Represented Petroholland in asserting claims for fraud, unjust enrichment and breach of contract. Recovered a substantial judgment for Petroholland.

Judicial/Non-Judicial Foreclosure Actions/Receiverships/Lender Liability/Breach of Promissory Note/Breach of Guaranty

- *MassMutual v. Galleria Associates*. Represented lender in judicial and non-judicial foreclosure actions. Obtained various provisional remedies, including a TRO, preliminary injunction and the appointment of a receiver.
- *MassMutual v. 6464 T-W Associates*. Represented lender in judicial and non-judicial foreclosure actions. Obtained various provisional remedies, including a TRO, preliminary injunction and the appointment of a receiver, who was able to repair the damages caused to the building by the Northridge earthquake, in time to preserve the valuable long term lease. Succeeded in opposing the borrower's motion to exclude the earthquake proceeds from the lender's collateral.
- *MassMutual v. Crow-Los Angeles #12*. Represented lender in judicial and non-judicial foreclosure actions. Obtained various provisional remedies, including a TRO, preliminary injunction and the appointment of a receiver.
- *MassMutual v. Linpro Van Nuys Associates I*. Represented lender in judicial and non-judicial foreclosure actions. Obtained various provisional remedies, including a TRO, preliminary injunction and the appointment of a receiver.
- *MassMutual v. Gaon*. Represented lender in judicial and non-judicial foreclosure actions. Obtained various provisional remedies, including a TRO, preliminary injunction and the appointment of a receiver.
- *MassMutual v. Geronimo Business Park*. Represented lender in judicial and non-judicial foreclosure actions. Obtained various provisional remedies, including a TRO, preliminary injunction and the appointment of a receiver.
- *MassMutual v. Painewebber Growth Partners*. Represented lender in judicial and non-judicial foreclosure actions. Obtained various provisional remedies, including a TRO, preliminary injunction and the appointment of a receiver.
- *MassMutual v. Anaheim Hills Enterprises*. Represented lender in judicial and non-judicial foreclosure actions. Obtained various provisional remedies, including a TRO, preliminary injunction and the appointment of a

receiver.

- *MassMutual v. Miramar Investors*. Represented lender in judicial and non-judicial foreclosure actions. Obtained various provisional remedies, including a TRO, preliminary injunction and the appointment of a receiver.
- *MassMutual v. Orangethorpe & Imperial Associates*. Represented lender in judicial and non-judicial foreclosure actions. Obtained various provisional remedies, including a TRO, preliminary injunction and the appointment of a receiver.
- *Bank of America v. Landmark Square Associates*. Represented lender in judicial and non-judicial foreclosure actions. Obtained various provisional remedies, including a TRO, preliminary injunction and the appointment of a receiver.
- *Bank of America v. Cal-State Lumber Sales*. Represented lender in judicial and non-judicial foreclosure actions. Obtained various provisional remedies, including a TRO, preliminary injunction and the appointment of a receiver.
- *Bank of America v. Tishman University Venture*. Represented lender in judicial and non-judicial foreclosure actions. Obtained various provisional remedies, including a TRO, preliminary injunction and the appointment of a receiver.
- *Bank of America v. GBC Venture*. Represented lender in judicial and non-judicial foreclosure actions. Obtained various provisional remedies, including a TRO, preliminary injunction and the appointment of a receiver.
- *U.S. Bancorp Financial v. SGJC Limited Partnership*. Represented lender in judicial and non-judicial foreclosure actions. Obtained various provisional remedies, including a TRO, preliminary injunction and the appointment of a receiver.
- *The Dai-Ichi Kangyo Bank v. South Paw Partners*. Represented lender in judicial and non-judicial foreclosure actions. Obtained various provisional remedies, including a TRO, preliminary injunction and the appointment of a receiver.
- *Kearny Street Real Estate Company v. Gannam*. Represented lender in judicial and non-judicial foreclosure actions. Obtained various provisional remedies, including a TRO, preliminary injunction and the appointment of a receiver.
- *Security Pacific National Bank v. Madison Square Development II*. Represented lender in judicial and non-judicial foreclosure actions. Obtained various provisional remedies, including a TRO, preliminary injunction and the appointment of a receiver.
- *Security Pacific National Bank v. Kern*. Represented lender in judicial and non-judicial foreclosure actions. Obtained various provisional remedies, including a TRO, preliminary injunction and the appointment of a receiver.
- *Security Pacific National Bank v. RB Motel*. Represented lender in judicial and non-judicial foreclosure actions. Obtained various provisional remedies, including a TRO, preliminary injunction and the appointment of a receiver.
- *Security Pacific National Bank v. Mark*. Represented lender in judicial and non-judicial foreclosure actions also asserting breach of promissory note, and breach of guaranty claims. Obtained various provisional remedies, including a TRO, preliminary injunction and the appointment of a receiver.
- *Security Pacific National Bank v. Frankfurt Group*. Represented lender in judicial and non-judicial foreclosure actions. Obtained various provisional remedies, including a TRO, preliminary injunction and the appointment of a receiver.

- *Cathay Bank v. Best Chance*. Represented lender in judicial and non-judicial foreclosure actions. Obtained various provisional remedies, including a TRO, preliminary injunction and the appointment of a receiver.

Commercial Litigation, Breach of Contract and Tort

- *American Buillion v. Regal Assets, Kelly Felix*. Successfully obtained relief from default and opposed contempt proceedings.
- *Rain or Shine v. Continental Wind Power*. Represented the company in this action involving claims for breach of contract, common counts and various torts, and cross-claims for breach of contract and interference with economic advantage.
- *Naftzger v. ANS*. Represented Mr. Naftzger in claims for quiet title and claim and delivery, involving George Clapp's gift of large cents to the American Numismatic Society. Mr. Naftzger's demurrer was sustained without leave to amend, on statute of limitations grounds under C.C.P. 338(c). On appeal, the appeals court reversed in a poorly reasoned decision that read a discovery rule into the statute and imposed no duty of investigation or diligence on the museum to pursue recovery of property it knows is supposedly missing. *Naftzger v. American Numismatic Society*, 42 Cal. App. 4th 421 (1996). After a two-week bench trial, Judge Aviva Bobb found for the museum, despite substantial evidence that the ANS did not know what coins it had received from George Clapp, that the ANS knew in 1974, if not earlier, that coins it supposedly received from Clapp were in Mr. Naftzger's possession, and that Mr. Naftzger had suffered substantial prejudice as a result of the ANS' 20-year delay. Mr. Naftzger had purchased the coins from William Sheldon, who died in 1977. Sheldon was the large cent collector and expert, who had supposedly switched coins while visiting the ANS. A proverbial travesty of justice! At least two courts have since criticized the *Naftzger* opinion, *Society of Cal. Pioneers v. Baker*, 43 Cal. App. 4th 774, 783, fn. 10, 784 (1996) and *Adler v. Taylor*, 2005 U.S. Dist. LEXIS 5862 (C.D. Cal., February 2, 2005). In *Adler*, Judge Klausner wrote: "As the *California Pioneers* court notes, the *Naftzger* court failed to address California precedent that rejected the application of a discovery rule. *California Pioneers*, 43 Cal. App. 4th at 780-83. This precedent establishes that the statute of limitations begins to run against a subsequent purchaser of stolen property at the time the subsequent purchaser obtains the property. *Id.* Thus, in this case, the statute of limitations began to run in 1963. It has long since expired."
- *Alfieri v. Sideout Sport*. Represented Sideout and its president and CFO in litigation filed by a distributor. After an Evidence Code § 402 hearing, the court excluded plaintiff's evidence of lost profits, and the case settled.

Articles

- Constraints On Calif. Credit Card Class Actions
Law360, 06.23.2011
- Structuring Mergers, Acquisitions and Going Private Transactions to Reduce Litigation Risks
2004

Corporate & Securities Law Blog Posts

- "California Court Of Appeal Affirms Dismissal Of Shareholder Derivative Action Where Company Refused Demand", May 7, 2010

Class Action Defense Strategy Blog Posts

- "In *Pineda's Wake*", May 24, 2011

Memberships

- Volunteer Judge Pro Tem and Arbitrator, Los Angeles Superior and Municipal Courts
- Member, The California Club
- Member, Association of Business Trial Lawyers

Practices

Litigation

Financial Services Litigation

Securities Litigation

Class Action Defense

Alternative Dispute Resolution

Education

J.D., University of California, Hastings College of the Law, 1983

B.A., Stanford University and Trinity College, Oxford, 1980

Admissions

California

U.S. Court of Appeals for the Ninth Circuit

U.S. Court of Appeals for the Federal Circuit

U.S. District Court for the Central District of California

U.S. District Court for the Southern District of California

U.S. District Court for the District of Connecticut

Languages

Spanish