



→ Robert J. Guite

Partner

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Rob Guite is a partner in the Business Trial Practice Group and Managing Partner of the firm's San Francisco office.

Areas of Practice

Rob focuses his litigation practice on class actions, involving ERISA, insurance, false advertising, commercial, construction and products liability matters. He regularly represents employers/plan sponsors, plan administrators and insurers in ERISA and fiduciary litigation involving health and welfare benefits, retirement benefits and compensation plans defending claims brought by individual participants or beneficiaries. In addition, Rob focuses his practice in defending food and beverage clients and retailers in class actions involving allegations of unfair competition and false advertising. He has extensive experience litigating cases involving business torts, bad faith, contracts, construction disputes, trade secrets, products liability and mass torts. Rob is admitted to practice in California, Montana and Washington and regularly represents clients in those jurisdictions.

Rob is co-editor of the LexisNexis Practice Guide: Washington Contract Litigation (2016) and the author of LexisNexis Practice Advisor articles on Trade Secret Misappropriation: Elements, Remedies and Defenses and False Statements, Defamation and Trade Libel. He is co-author of "DOL Final Fee Disclosure Rules May Have Consequences for Fiduciaries Beyond Fines - Could Result in Increased Litigation and Government Enforcement," appearing in Bloomberg BNA's *Pensions & Benefits Daily*, "ERISA Fiduciary Claims: Planning, Protecting and Preparing for Class Actions," appearing in the *Employee Relations Law Journal*. Rob has received an AV® rating by Martindale-Hubbell®, the highest rating an attorney can receive for legal quality and ethics. He is a member of the Board of Bar Examiners of the Washington State Bar Association.

Rob is a member of the San Francisco Recruiting Committee and Co-Chair of the firm's Out at Sheppard LGBTQ Group.

Honors

Martindale-Hubbell® AV Rated Lawyer

Northern California Super Lawyer, 2011, 2018-2019

Recommended Lawyer - Advertising and Marketing, Legal 500, 2019

Experience

Representative Experience

- Represented beverage retailer in false advertising class action. Prevailed on motion for summary judgment.
- Represented specialty foods manufacturer in false advertising class action. Prevailed on motion to dismiss.
- Obtaining a directed verdict and achieving dismissal of all remaining claims at trial on behalf of consumer products client, including dismissal of causes of action for unfair competition under the Lanham Act, defamation and tortious interference with business expectancy.
- Represented beverage retailer in false advertising class actions. Prevailed on motion to dismiss.
- Serving as primary counsel and obtaining a dismissal of claims in a breach of fiduciary duty matter against ERISA fiduciaries and trustees.
- Serving as primary counsel to an electrical products distributor in class action litigation arising from damages caused by allegedly defective in-wall heaters.
- Obtaining dismissal of numerous claims and negotiating a favorable settlement on behalf of the manufacturer of siding in litigation brought by the developer and owner of a newly constructed 286-unit residential development over claims of design and manufacturing defects, fraud, misrepresentation and breach of warranty.
- Filing suit and achieving a prompt and favorable settlement on behalf of a client whose trademarks were being used by a competitor as ad-words or keywords in online advertising.
- Representing the owner of three recently-constructed apartment communities in Northern California in litigation against the developers, design professionals, general contractors and specialty contractors arising from profound design and construction defects from investigation of the defects through successful resolution of claims at mediation.
- Advising in a commercial dispute arising from the expulsion of a minority shareholder from a closely held professional corporation.
- Obtaining summary judgment and dismissal of a claim for benefits under an ERISA-regulated employee welfare benefit claim over assertions of conflict of interest and breach of fiduciary duty.
- Obtaining summary judgment and dismissal of wrongful foreclosure and consumer protection act claims against a residential mortgage lender and argument before the Court of Appeals.
- Representing the former owner of contaminated sites in litigation arising under Washington's Model Toxics Control Act; achieving dismissal of certain claims and negotiating a favorable settlement.
- Representing a condominium homeowners association in arbitration of the owners' claims for misrepresentation, negligent design and construction following the conversion of the property from apartments to condominiums.
- Representing the board of directors of a 110-unit residential cooperative in arbitration against the design and build contractor of heating and ventilation systems and achieved a favorable settlement on behalf of the cooperative.
- Serving as primary counsel in bad faith and breach of contract litigation arising from claims under a disability income policy and obtaining summary judgment on behalf of the insurer.
- Serving as a member of a trial team that obtained a defense verdict in class action products liability litigation involving home heating oil.

- Obtaining summary judgment and dismissal of unfair competition and trade secret claims of competing chains of health clubs.
- Resolving successfully a class action under the Telephone Consumer Protection Act.
- Negotiating a favorable settlement in litigation involving the Uniform Trade Secrets Act.
- Successfully resolving a catastrophic personal injury claim on behalf of a snowboard binding manufacturer in a products liability matter.

Published Opinions

- *In re Williams-Sonoma, Inc.*, 947 F.3d 535 (9th Cir. 2020) (obtained writ of mandamus and reversal of district court's order compelling production of customer contact information to find a lead plaintiff to pursue a class action)
- *Cromwell v. Kaiser Found. Health Plan*, 2019 U.S. Dist. LEXIS 162591 (N.D. Cal. Sept. 23, 2019) (Obtained summary judgment of claims alleging violation of California's Mental Health Parity Act in ERISA litigation)
- *Cromwell v. Kaiser Found. Health Plan*, 2019 U.S. Dist. LEXIS 58617 (N.D. Cal. Apr. 3, 2019) (Obtained dismissal of all claims for breach of fiduciary duty under ERISA)
- *Strumlauf v. Starbucks Corp.*, 2018 U.S. Dist. LEXIS 2409 (N.D. Cal. Jan. 5, 2018) (Obtained summary judgment and dismissal of all claims in putative class action alleging claims for false advertising and unfair competition arising from the alleged fill of certain beverages)
- *Cascade Yarns, Inc. v. Knitting Fever, Inc.*, 2015 U.S. Dist. LEXIS 68623, 2015-1 Trade Cas. (CCH) P79,209 (W.D. Wash. May 27, 2015) (Obtained judgment as a matter of law at trial achieving dismissal of all causes of action, including claims for unfair competition under the Lanham Act, tortious interference with business expectancy and defamation)
- *Galanis v. Starbucks Corp.*, 2016 U.S. Dist. LEXIS 142380 (N.D. Ill. Oct. 14, 2016) (Obtained dismissal of putative class action)
- *Forouzesh v. Starbucks Corp.*, 2016 U.S. Dist. LEXIS 111701 (C.D. Cal. Aug. 19, 2016) (Obtained dismissal of putative class action)
- *Bush v. Liberty Life Assur. Co.*, 2015 U.S. Dist. LEXIS 123911 (N.D. Cal. Sept. 16, 2015) (Obtained dismissal of claims for breach of fiduciary duty, engaging in prohibited transactions and declaratory relief)
- *Bush v. Liberty Life Assur. Co.*, 77 F. Supp. 3d 900 (N.D. Cal. 2015) (Obtained dismissal of certain claims for equitable relief and failure to provide plan documents in putative ERISA class action)
- *Magana v. Sun Life Assur. Co. of Canada*, 2013 U.S. Dist. LEXIS 51206 (N.D. Cal. Apr. 9, 2013) (Obtained dismissal of bad faith and breach of contract claims in ERISA litigation arising out of participant eligibility)
- *Shappell v. Sun Life Assur. Co. of Canada*, 2013 U.S. Dist. LEXIS 1707 (E.D. Cal. Jan. 4, 2013) (Obtained judgment in favor of plan and dismissal of plaintiff's ERISA claims); 2012 U.S. Dist. LEXIS 87020 (E.D. Cal. June 21, 2012) (Obtained dismissal of plaintiff's fiduciary claims and state law claims)
- *Martorello v. Sun Life Assur. Co. of Canada*, 704 F. Supp. 2d 918 (N.D. Cal. 2010) (Obtained dismissal of fiduciary, bad faith and breach of contract claims in ERISA litigation)
- *Beamish v. CNA Group Life Ins. Co.*, 487 F. Supp. 2d 1196 (W.D. Wash. 2007) (Obtained dismissal of all claims on summary judgment)
- *Hedenburg v. Aramark Am. Food Servs.*, 476 F. Supp. 2d 1199 (W.D. Wash. 2007) (Obtained summary judgment on workplace discrimination, harassment and wrongful discharge claims)

- *Messer v. Unum Life Ins. Co. of Am.*, 370 F. Supp. 2d 1098 (W.D. Wash. 2005) (Obtained summary judgment in ERISA benefits and fiduciary duty litigation)
- *Futamura v. Unum Life Ins. Co. of Am.*, 305 F. Supp. 2d 1181 (W.D. Wash. 2004) (Obtained summary judgment over claims of conflict of interest and breach of fiduciary duty)
- *LaPrease v. Unum Life Ins. Co. of Am.*, 347 F. Supp. 2d 944 (W.D. Wash. 2004) (Obtained summary judgment and dismissal of all claims for benefits in ERISA litigation)

Articles

- 9th Circ. Clarifies What Consumers Must Read On Labels
Law360, 01.21.2021
- The Scoop on All that Vanilla Flavor Litigation
Food Navigator, 01.13.2021
- Food & Beverage Class Actions: What You Need to Know for 2021
Food Manufacturing, 01.06.2021
- Upping Hospitals' Liability Defenses For COVID Measures
Law360, 04.13.2020
- What's Trending in Food and Beverage Class Actions?
Food Manufacturing, 01.23.2020
- 'One A Day' Will Not Keep Plaintiffs Away
Law360, 09.20.2018
- The Puzzle Of Enforcing Class Action Bars Post-Shady Grove
Law360, 04.24.2018
- The Evolution Of Food & Beverage Class Actions: What You Need To Know For 2018
Food Manufacturing, 04.20.2018
- Co-editor, *LexisNexis Practice Guide: Washington Contract Litigation* (LexisNexis/Matthew Bender 2015)
- Candace L. Quinn & Robert J. Guite, *DOL Final Fee Disclosure Rules May Have Consequences for Fiduciaries Beyond Fines*, BNA Pension & Benefits Daily (April 25, 2012)
- D. Michael Reilly & Robert J. Guite, *ERISA Fiduciary Claims: Planning, Protecting and Preparing for Class Actions*, 31 Emp. Rel. L. Jour. 45 (2005)
- Robert J. Guite & Lisa A. Rodeghiero, *Stratemeyer v. Lincoln County: Mental Injuries and Workers' Compensation Policy*, 55 Mont. L. Rev. 525 (1994)

Class Action Defense Strategy Blog Posts

- "It's Not Pop Secret, Ninth Circuit Affirms that Plaintiff Didn't Have a Leg to Stand On," December 10, 2020
- "'Happy Cows' False Labeling Theory is Just 'Half Baked': Court Dismisses False Advertising Claims Against Ben & Jerry's," May 12, 2020
- "CBD Industry Beware: The False Labeling Class Action Has Arrived," September 30, 2019
- "Lack of Standing Dooms Organizational Plaintiffs' False Advertising Claims; Such a Challenge Can Be Brought at Any Time," August 5, 2019

- "Ninth Circuit Confirms Plaintiffs Are Not Required to Undermine Defendant's Evidence to Withstand Summary Judgment in False Labeling Class Actions," January 14, 2019
- "Ninth Circuit Panel Affirms Inadmissibility Alone is Not a Proper Basis to Reject Evidence in Support of Class Certification," November 29, 2018
- "'I'll Be Back;' Ninth Circuit Gives Arnold Schwarzenegger-Branded Supplement Purchasers Another Shot to Pursue UCL, FAL, CLRA and Warranty Claims," October 18, 2018
- "One A Day Will Not Keep Plaintiffs Away," September 12, 2018
- "Ninth Circuit Confirms that Class Action Plaintiffs Must Plausibly Establish Future Intent To Re-Purchase To Maintain Claims for Injunctive Relief," June 26, 2018
- "California Court of Appeal Confirms that There is Only One Standard for the Admission of Expert Testimony and that Expert Opinion Must Be Admissible to be Considered on a Motion for Class Certification," January 31, 2018
- "Seventh Circuit Holds Footlong Settlement Falls Short," September 20, 2017

FDA Law Blog Posts

- "Upping Hospitals' Liability Defenses For COVID Measures," April 14, 2020

Media Mentions

Sheppard Mullin, Smith Anderson Guide NovaQuest Buy of CoreRx
Bloomberg Law, 01.22.2021

Split 9th Circ. Nixes Bid For Williams-Sonoma Customer List
Law360, 01.13.2020

Big Law Celebrates 'Generations of Strength' at SF Pride Parade
The Recorder, 06.25.2018

Law360's Weekly Verdict: Legal Lions & Lambs
Law360, 03.15.2018

9th Circ. Clears Starbucks In Underfilled Iced Drink Suit
Law360, 03.13.2018

Kaiser Dodges Some Claims In Suit Over Excess Skin Surgery
Law360, 03.07.2018

Law360's Weekly Verdict: Legal Lions & Lambs
Law360, 01.12.2018

Starbucks Wins Toss Of Underfilled Latte Class Action
Law360, 01.05.2018

Starbucks Slims Scope Of Underfilled Latte Dispute
Law360, 11.29.2017

Starbucks Dumps Another Underfilled Ice Drink Suit

Law360, 10.14.2016

Starbucks Wins Discovery Halt In Underfilled Iced Drink Row

Law360, 09.21.2016

Starbucks Customer Slams Bid To Halt Cold Drinks Discovery

Law360, 09.19.2016

Law360's Weekly Verdict: Legal Lions & Lambs

Law360, 08.25.2016

Attorneys React To High Court ERISA Reimbursement Ruling

Law360, 01.20.2016

Speaking Engagements

Speaker/Moderator, *The Ethics of Elimination of Bias, Food Law CLE*, UCLA Faculty Center, Los Angeles, CA, June 6, 2019 (CLE)

Speaker, *Embracing Generational Diversity, Effective Communication Styles for Multi-Generational Teams*, Association of Business Trial Lawyers of Northern California, July 19, 2018

Speaker, *Recent Changes to the Federal Rules and the Impact on Class Actions*, Federal Bar Association for the Northern District of California 2016 Class Action Symposium, San Francisco, CA (CLE)

Speaker, *Bad Faith and Significant Case Law Update: Recent Developments in California, Washington and Montana Insurance Law*, Pacific Claim Executives Association 2014 Annual Meeting, Dana Point, CA

Speaker, *Keyword Advertising Litigation: Theory and Practice*, San Francisco, CA (2010) (CLE)

Speaker, *Department of Labor ERISA Compliance Audits*, 2009 Labor & Employment Seminar, Palo Alto, CA (CLE)

Speaker, *ERISA Developments and Litigation Trends*, 2008 Labor & Employment Seminar, Palo Alto, CA and Los Angeles, CA (CLE)

Speaker, *Employee Benefits: Introduction to ERISA Litigation*, Washington State Bar Association, Seattle, WA (2006) (CLE)

Events

Best Practices For Protecting Confidential Company Information In The New Work Environment

Sponsored by LGBTQ+ Lawyers LA

Webinar, 04.22.2021

In Windsor's Wake: Marriage Litigation in a Post-DOMA World

Sheppard Mullin San Francisco & New York, 05.30.2014

Practices

Litigation

Class Action Defense

Insurance Litigation

Toxic Tort and Product Liability

Labor and Employment

Employee Benefits/ERISA

Intellectual Property

False Advertising, Lanham Act and Unfair Competition

Employee Benefits

Industries

Construction

Fashion, Apparel and Beauty

Food and Beverage

Insurance

Education

J.D., University of Montana, 1995, *with highest honors*, Managing Editor of *Montana Law Review*

B.A., Seattle University, 1992, *magna cum laude*

Clerkships

Law clerk to the Honorable W. William Leaphart of the Supreme Court of Montana

Admissions

California

Montana

Washington

United States District Court for the Northern District of California

United States District Court for the Eastern District of California

United States District Court for the Central District of California

United States District Court for the District of Montana

United States District Court for the Western District of Washington

United States District Court for the Eastern District of Washington

United States Court of Appeals for the Ninth Circuit

United States Court of Appeals for the First Circuit