



## → James M. Burgess

### Partner

1901 Avenue of the Stars  
Suite 1600  
Los Angeles, CA 90067

T: +1.310.228.3722

F: +1.310.228.3922

[jburgess@sheppardmullin.com](mailto:jburgess@sheppardmullin.com)

James M. Burgess is a trial lawyer and partner in the firm's Century City office.

### Areas of Practice

James represents businesses in commercial litigation, including through trial and appeal. His practice focuses on class actions and cases under the Unfair Competition Law (Business and Professions Code Section 17200), and he speaks and writes frequently on those issues. James also has substantial experience handling the following types of disputes:

- Corporate matters involving governance, fiduciary duties, duty of loyalty, mergers and acquisitions, asset purchase agreements, earn-outs, working capital adjustments, and indemnity issues.
- Healthcare litigation relating to IPAs, purchase agreements, billing, revenue cycle management, EMR installation disputes, non-competition agreements, employment issues, medical device manufacturing agreements, internal medical practice disputes between doctors.
- Intellectual Property matters concerning trademarks and trade secrets.
- Entertainment litigation involving distribution agreements, collection accounts, idea submission issues, copyright, and ADA access to online videogames and other websites.
- International disputes concerning manufacturing, distribution and collections.
- Real Estate litigation relating to purchase agreements, development agreements, hotel management agreements, lis pendens, leasing, broker fees, and tenant repair obligations upon termination.
- Product Defect matters relating to, among other things, lead acid batteries and fire suppression systems for jet aircraft.

James has extensive trial and arbitration experience. As trial counsel for defendants, he won the following trials:

- Change Healthcare, et al. v. Schoengold (arbitration);
- A&J Liquor v. State Fund (class action);
- Ronald L. Wolfe & Associates, Inc. v. State Fund;
- Westrup v. Nordstrom (representative action);
- Atlas Mill Supply, Inc. v. State Fund

As trial counsel for plaintiffs or cross-complainants, he has won over \$50 million in settlements or judgments for various clients.

He also has substantial appellate and federal case experience that resulted in the following published cases;

- Advanced Building Maintenance v. State Compensation Insurance Fund (1996) 49 Cal. App. 4th 1388;
- Scheffield Medical Group, Inc. v. Workers' Compensation Appeals Board (1999) 70 Cal. App. 4th 868;
- Conversive, Inc. v. Conversagent, Inc. (C.D. Cal. 2006) 433 F.Supp.2d 1079, 79 U.S.P.Q.2d 1284;
- Mitan v. Feeney (C.D.Cal. 2007) 497 F.Supp.2d 1113, 68 Fed.R.Serv.3d 809;
- Koszdin v. State Compensation Ins. Fund (2010) 186 Cal. App. 4th 480;
- Fenton v. Balick, 821 F.Supp.2d 755 (E.D. Pa. 2011).

## Other opinions include:

- A&J Liquor v. State Comp. Ins Fund (2003) 2003 WL 21419826 affirmed at 2006 WL 806767;
- In Re Judicial Assistance Pursuant to 28 USC 1782 by Macquarie Bank, Ltd., (D.Nev. 2015) 2015 WL 3439103 affirmed at 2015 WL 7258483;
- Stern v. Sony Corp. (C.D.Cal. 2010) 2010 WL 8022226, affirmed by Stern v. Sony Corp., (9<sup>th</sup> Cir. 2011) 2011 WL 5854299;
- Wall Units v. State Comp. Ins. Fund (2008 2 Cal. WCC 652);
- American Recycling Int'l, Inc. v. State Comp. Ins. Fund (2006) 2006 WL 1101646;
- State Comp. Ins. Fund v. Notis Enterprises, Inc. (2014) 2014 WL 5317862;
- Atlas Mill Supply v. State Comp. Ins. Fund (1996) 22 Trials Digest 2d 54, 1996 WL 526070;
- Landshark, LLC v. First Look Studios, Inc. (2011) 2011 WL 1360365.

## Honors

Southern California Super Lawyer, Super Lawyers, 2012-2020, 2022

*St. James Inn*, Father Pat Traynor Award for exemplary community service, 2015.

*Catholic Charities of Los Angeles*, Scott and Jean Adam Light of Christ Award for outstanding community service, 2011.

*State Bar of California*, Wiley W. Manual Certificate for Pro Bono Legal Services, 2010.

*Martindale-Hubbell*, AV Preeminent Rating.

## Experience

### Representative Matters

- A&J Liquor Co., et al. v. State Fund: Mr. Burgess was trial counsel for State Fund in this certified class action, which involved allegations of premium overcharging due to allegedly excessive reserves set by adjusters. After a seven month bench trial involving over 50 witnesses and 1,200 exhibits, the court entered a judgment in favor of State Fund and against the plaintiffs and a class of over 160,000 policyholders. The judgment was

affirmed in full by the Court of Appeal.

- Westrup v. Nordstrom: He was lead trial counsel for Nordstrom in a 17200 class action that was tried in Los Angeles Superior Court as a representative action. The plaintiff contended Nordstrom collected excess sales tax reimbursements when merchandise certificates distributed pursuant to a rewards program were redeemed. The Court held that Nordstrom did not engage in any unlawful, unfair or fraudulent business conduct and that it collected the proper amount of sales tax.
- Ronald L. Wolfe & Assoc. v. State Fund: He was lead trial counsel for State Fund in an insurance bad faith case arising out of the cancellation of an insurance policy. The plaintiff sought compensatory and punitive damages. The trial resulted in a unanimous defense verdict in favor of State Fund in the Santa Barbara Superior Court.
- Ohline Corporation, American Recycling and Wall Units v. State Fund: Mr. Burgess represented State Fund in this class action brought by approximately 25,000 policyholders who sought \$40 million in damages. After two appeals, the case was later dismissed by the Court in its entirety, with prejudice, for no payment of money. The plaintiffs' counsel had filed at least 8 similar lawsuits and had never before lost class certification. Other carriers paid many millions to settle similar cases.
- Acro Constructors v. State Fund: He represented State Fund in this class action brought by policyholders who alleged that State Fund improperly failed to distribute dividends to policyholders. The case was dismissed upon State Fund's demurrer. The Court ruled that State Fund did not have a duty to declare or maximize dividends.
- State Fund v. Cover-All, Inc., et al.: He represented State Fund in this fraud and collections case. The Plaintiff agreed to pay \$6.3 million – the full amount claimed. The corporate defendant also was convicted of insurance fraud.
- Conversive, Inc. v. Conversagent, Inc.: He was lead trial counsel for plaintiff Conversive in a trademark infringement action. After the Court granted partial summary judgment and issued a preliminary injunction precluding the Defendant from using its top line brand, company name and website domain name, the Defendant settled by agreeing to a permanent injunction, and paying \$400,000 in Plaintiff's attorney's fees.
- Atlas Mill Supply v. State Fund: Mr. Burgess was trial counsel for State Fund in this insurance bad faith case arising out of allegations of claims mishandling and over-reserving. After trial, the jury returned a unanimous defense verdict in favor of State Fund in the Los Angeles County Superior Court.
- Go Motorboards v. EnerSys: He was lead trial counsel for EnerSys in a product liability case arising out of the sale of batteries to an electric scooter manufacturer. The Court dismissed all fraud claims with prejudice. After the deposition of the plaintiff's expert, the Plaintiff dismissed its entire case with prejudice and agreed to entry of judgment for the full amount of EnerSys' counterclaim.

## Articles

- Adding Business Owners To Judgment Got Easier In Calif.  
*Law360*, 01.09.2014
- Courts Cling to Tradition on CAFA Removal Burden  
05.15.2006
- Class-Action Puts New Limits on Plaintiffs, Venue  
*Los Angeles Daily Journal*, 03.04.2005

- Toss Suits Affected By Proposition 64  
11.17.2004
- Unfair-Competition Law Reform May Encourage Class Actions  
08.25.2004
- adbriefs  
Winter 2004
- "Unfair Competition Law Reform May Encourage Class Actions," Daily Journal (August 25, 2004). This article discusses the fact that the changes resulting from Proposition 64 might encourage some plaintiffs to file class actions
- "Broad Unfair Competition Standing To Be Reviewed," Daily Journal (1999). This article discusses the dilemma facing the Supreme Court in Kraus and Cortez and the need to alter the broad standing rules under the Unfair Competition Law. This issue was later addressed by Proposition 64
- "Agencies Can't Sue Under Unfair Competition Law," Daily Journal (June 8, 1998). This article discusses the fact that government agencies are not within the definition of a "person" that can sue or be sued under the Unfair Competition Law, Business & Professions Code Section 17200. Several decisions were issued after this article was published which followed the conclusion of the article

## Healthcare Law Blog Posts

- "California Court of Appeal Makes It Easier to Add Business Owners to a Judgment," January 7, 2014
- "When Is a Non-Binding Term Sheet or Letter of Intent Enforced as a Binding Contract?" September 11, 2013

## Media Mentions

LA Partner Jim Burgess Talks the Value of Giving Back  
*USC Law Magazine*, 07.2019

## Speaking Engagements

Numerous MCLE presentations and speeches concerning strategies for defending against Unfair Competition Law claims, as well as the impact of the federal Class Action Fairness Act.

Participated in two televised debates in favor of Proposition 64, which was passed by the voters in November 2004 and significantly reformed the Unfair Competition Law.

## Memberships

*Legal Aid Foundation of Los Angeles*, President (2018-Present), Secretary (2014-2018), Board Member (2013-present).

*Marymount High School*, Los Angeles, Secretary (2012-2016), Board Member (2010-2019).

*Association of Business Trial Lawyers*, Board Member (2009-2013).

## Practices

Litigation

Class Action Defense

Insurance Litigation

Toxic Tort and Product Liability

Entertainment, Technology and Advertising

Intellectual Property

False Advertising, Lanham Act and Unfair Competition

Trademarks and Trade Dress

Alternative Dispute Resolution

Healthcare

International Reach

Korea

## Industries

Entertainment, Technology and Advertising

Healthcare

Insurance

Life Sciences

## Education

J.D., University of Southern California Law Center, 1990, *Order of the Coif*

B.A., Claremont McKenna College, 1984

## Admissions

California

District of Columbia

United States Supreme Court

United States Courts of Appeals for the Ninth Circuit and District of Columbia Circuit

United States District Courts for the Central, Northern, Eastern and Southern Districts of California, and the District of Columbia

*Pro hac vice* admissions include:

Eastern District of Pennsylvania

Southern District of Texas

District of Nevada

State of Washington

State of Delaware (Court of Chancery)