



## → Neil A.F. Popović

### **Partner**

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Neil Popović is a partner in the Business Trial Practice Group in the firm's San Francisco office and is Team Leader of the International Litigation and Arbitration team and the ESG and Sustainability Team.

### **Areas of Practice**

**ESG and Sustainability.** Having taught International Environmental Law for 25 years, Neil draws on his deep knowledge of the field to advise clients on climate change-related issues, as well as environmental marketing claims and the intersection of human rights and the environment. Neil's ESG and Sustainability practice includes counseling and dispute resolution. Neil helps clients address ESG and Sustainability as a way to enhance their business interests.

**International Disputes.** Neil's international practice includes multijurisdictional litigation, international commercial arbitration and investment arbitration. His arbitration experience includes AAA, CIETAC, ICC, ICDR, ICSID, JAMS, LCIA, and UNCITRAL arbitration rules, among others. Neil also practices international environmental law, including counseling and representing clients in international negotiations. Neil also serves as a Project Complaint Mechanism Expert for the European Bank for Reconstruction and Development.

**Domestic Litigation.** Neil's litigation experience includes a wide range of commercial disputes, including consumer class actions, as well as white collar criminal matters (including internal investigations). Neil has developed expertise in California's Unfair Competition Law, Business and Professionals Code section 17200, as well as legal issues related to environmental marketing and federal preemption.

**Pro Bono.** Neil serves on the firmwide Pro Bono Committee and coordinates pro bono activities in the San Francisco office.

**Academic.** Neil teaches courses in International Litigation and Arbitration, International Environmental Law, and Law, Politics and Policymaking (Rule of Law) at the University of California, Berkeley.

Prior to joining Sheppard Mullin, he was a shareholder at a major San Francisco law firm; before that, he was an attorney with the Sierra Club Legal Defense Fund (now called Earthjustice) International Program in San Francisco; and prior to that, he practiced with a San Francisco civil and criminal litigation boutique.

## Honors

Deans Emeritus Lecturer, *Berkeley Law*, 2022

Recognized for Commercial Litigation, *Best Lawyer*, 2021, 2022

*The Legal 500*, Construction, 2018-2019

Northern California Super Lawyer, *Super Lawyers*, 2012-2021

Highest Possible Rating in Both legal Ability & Ethical Standards, *Martindale-Hubbell*, 2016-2018

Recipient of the Robert G. Sproul, Jr. Award, Lawyers' Committee for Civil Rights of the San Francisco Bay Area, 2015

Leading Environmental Practices Lawyer, *The Recorder*, 2012

Top 10 Pro Bono Efforts of 2012

## Experience

### ESG and Sustainability

Advised multinational biotechnology company regarding corporate social responsibility issues, including human rights, environmental and labor relations.

Co-authored amicus brief in United States Supreme Court on behalf of Amnesty International, Center for Constitutional Rights, and international and foreign bar associations in *Graham v. Florida*, 560 U.S. 48 (2010), and *Miller v. Alabama*, 567 U.S. \_\_\_, 132 S. Ct. 2455 (2012), discussing relevance of international human rights and foreign law in 8th Amendment challenge to life without parole sentences for non-homicide juvenile offenders.

Obtained complete dismissal with prejudice in putative class action alleging "greenwashing" based on *Fiji Water's* use of green drop, "fijigreen.com" and "every drop is green" on labels of Fiji Water bottles, including successfully arguing appeal. *Hill v. Roll International Corp.*, 195 Cal. App. 4th 1295 (2011).

Obtained voluntary dismissal of claims challenging Fiji Water's statements about carbon negativity based on future carbon credits.

Advised foreign government regarding potential investor-state arbitration claim arising out of threatened cancellation of hydropower project due to environmental concerns.

Represented green dental products company in connection with dispute over distribution and marketing of products.

Represented energy drink company in putative class action over marketing of products as "natural".

Represented women-owned B Corporation organic produce distribution business in business ownership dispute.

### International

Represented Japanese distributor of medical products in ICC arbitration involving alleged breach of international distribution agreement with related intellectual property claims.

Represented French distributor of artificial heart pumps in ICC arbitration in dispute over multi-jurisdictional distribution agreement.

Representing California publisher of art books in defense of action seeking recognition of French judgment involving use of photographic images in *catalogue raisonnée* of the works of Pablo Picasso under California's Uniform Foreign-Country Money Judgments Recognition Act.

Represented Korean construction company in ICSID arbitration under Korea-Oman BIT.

Represented international medical products company in threatened international arbitration regarding distribution rights. Successfully prevented other party from initiating arbitration.

Represented Indonesian chemical company in international arbitration before London Court of International Arbitration arising out of sale of chemical manufacturing facilities.

Represented Taiwanese business owner in series of disputes arising out of sale of textile-related businesses. Includes first-chair experience in international arbitration before China International Economic and Trade Arbitration Commission (CIETAC).

Represented *Republic of Congo (Brazzaville)* in action to collect defaulted loan obligation under Foreign Sovereign Immunities Act, creating new Ninth Circuit law on scope of "commercial activity" exception to foreign sovereign immunity. *Af-Cap, Inc. v. Chevron Overseas (Congo) Ltd.*, 475 F.3d 1080 (9th Cir. 2007).

Represented *Republic of Argentina* in defending against attempt to seize Argentine presidential airplane ("Tango 01") to collect debt arising out of Argentine financial crisis. Case dismissed under Foreign Sovereign Immunities Act. *Colella v. Republic of Argentina*, 2007 WL 154204 (N.D. Cal., May 29, 2007).

Represented *Republic of Argentina* in litigation over attempts to execute judgments obtained by creditors in connection with distressed debt.

Co-authored amicus brief in United States Supreme Court on behalf of law professors in *Animal Science Products, Inc. v. Hebei Welcome Pharmaceutical Co. Ltd.*, No. 16-220 (decided June 14, 2018), regarding appropriate degree of deference U.S. courts should give to foreign government's interpretation of its own law. Court adopted "respective consideration" standard proposed in our brief.

Advised foreign government as special counsel in negotiations for free trade agreements with United States and third country.

Represented foreign employee of overseas chip manufacturer in criminal antitrust investigation involving DRAM computer chips.

Represented Russian freight forwarding company *Concern Sojuzvneshttrans* in litigation involving alleged breach of guaranty on lease of shipping containers.

## Domestic

Represented *Seagate* in class actions challenging disclosures about computer hard drive storage capacity, including arguing leading case regarding class action settlements, *Cho v. Seagate Technology Holdings, Inc.*, 177 Cal. App. 4th 734 (2009).

Obtained summary judgment (affirmed on appeal) for hospital group in putative class action alleging unfair practices in connection with rates charged to uninsured patients.

Defeated class certification, leading to dismissal of putative class action against community hospital challenging reasonableness of prices charged to uninsured patients for emergency care.

Represented *Palm Inc.*, in consumer class actions involving Palm products and services, including data security issues and alleged product defects.

Represented *McDonald's* in highly publicized, multiple class action "french fries" litigation in California, Washington, Texas, New Jersey and Illinois, involving alleged non-disclosure that fries contain beef flavoring.

Represented flash memory and computer hard drive manufacturers in consumer class actions alleging inadequate disclosure of memory storage capacity.

Successfully defended pharmaceutical manufacturer in administrative disciplinary proceedings to suspend license.

Represented major insurance brokerage firm in class action litigation challenging its disclosure of commissions and fees.

## Articles

- High Court's Foreign Discovery Question, Take 2  
*Law360*, 12.21.2021
- What 9th Circ. Arbitration Case May Mean For Insurance  
*Law360*, 10.04.2021
- Pay attention: Discovery in international arbitration cases  
*Daily Journal*, 04.26.2021
- "Supreme Court May Be Asked to Decide Whether State Insurance Laws Reverse-Preempt the New York Convention," *International Arbitration Law Blog* (September 20, 2021)
- "SCOTUS Finally Agrees to Address Discovery for Use in Foreign Arbitration," *International Arbitration Law Blog* (March 22, 2021)
- "Insisting on Live, In-person Arbitration Hearings During The Pandemic," *International Arbitration Law Blog* (March 8, 2020)
- "Supreme Court Opens the Door for Non-Signatories to Enforce Arbitration Agreements, Resolving Circuit Split," *International Arbitration Law Blog* (June 9, 2020)
- "Rolls-Royce Seeks to Resolve Circuit Split on Whether District Courts Can Order Discovery For Use in Private Arbitration," *International Arbitration Law Blog* (May 22, 2020)
- "Major Arbitral Institutions Update Guidance Regarding COVID-19," *International Arbitration Law Blog* (April 28, 2020)
- "The Impact of COVID-19 on International Arbitration Hearings," *International Arbitration Law Blog* (March 20, 2020)
- "French Picasso Judgment is Abstract Expression to U.S. Law," *International Arbitration Law Blog* (September 24, 2019)
- "Privacy And Confidentiality Are Siblings, Not Twins," *International Arbitration Law Blog* (June 27, 2019)
- Can a California Court Invalidate Agreements on International Service of Process, *San Francisco Daily Journal* (June 28, 2018)
- "Pursuing and Responding to Discovery Requests Under 28 U.S.C. § 1782," *International Arbitration Law Blog* (with Shin Hahn) (March 29, 2019)
- "The Singapore Convention Allows for Recognition of Settlement Agreements Made Outside of Court or Arbitral Proceedings," *International Arbitration Law Blog* (February 9, 2019)

- "US Law Allows Discovery for Foreign Proceedings," *International Arbitration Law Blog*, (February 8, 2019)
- "Contracts with Foreign Companies May Require a Rewrite," *Corporate and Securities Law Blog* (June 13, 2018)
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- "Justice with International Human Rights and State Constitutions." *Global Network for the Study of Human Rights and the Environment* (April 16, 2016)
- Data Loss Issues, in *Cloud Computing Deskbook* (Thompson Reuters 2013; updated 2014, 2015, 2016)
- "Sovereign Litigation in Latin America: Top Five Issues To Think of When Doing Business With a Latin American Country," *Latin American Blog* (August 18, 2014)
- "All Natural Litigation," *Food & Drink Magazine* (with Paul Seeley) (Summer 2014)
- "Corporate Liability for Human Rights Violations After Kiobel: Judge Scheindlin Opens the Door," *Travaux: Berkeley's International Law Blog* (April 25, 2014)
- "Environmental Litigation Against Corporations: Where Now?" in *Corporate Responsibility for Human Rights Impacts: New Expectations and Paradigms* (ABA 2014)
- Proposition 37 Permits "Natural" Labeling for Non-GMO Processed Food (with Peter S. Hecker & Robert J. Uram) (Sheppard Mullin, October 8, 2012)
- Hotspots and Trends in International Discovery, in *Inside the Minds: Complying with International Discovery Regulations* (Aspatore 2012)
- "The Chevron Ecuador Saga Continues as Second Circuit Overturns Anti-Enforcement Injunction," *Latin American Blog* (with Rachel Tarko Hudson) (March 12, 2012)
- "Court of Appeal Reminds Litigants That Settling With Named Plaintiff Does Not Necessarily End Putative Class Action," *Class Action Defense Strategy Blog* (with Lai Lam Yip) (January 3, 2012)
- In Pursuit of Environmental Human Rights: Commentary on the Draft Declaration of Principles on Human Rights and the Environment, in Dinah L. Shelton ed., *Human Rights and the Environment* (Edward Elgar 2011), reprinted from *27 Columbia Human Rights Law Review* 487 (1996)
- Sometimes the System Works, *Daily Journal* (January 25, 2011)
- "U.S. Courts Order Discovery for Use Overseas in Chevron-Ecuador Disputes," reprinted in *Law360* as In Context: The Chevron-Ecuador Litigation (with Rachel Tarko Hudson) (December 17, 2010)
- "Ninth Circuit Makes CAFA Jurisdiction Stick," *Class Action Defense Strategy Blog* (April 23, 2010)
- Don't Cry (Too Much) For Us, *Transcript - UC Berkeley School of Law* (Spring/Summer 2009)
- "Foreign Matters: How to obtain recognition of foreign-court judgments," *The Recorder* (May 1, 2009)
- "How a U.S. Climate Change Bill Could Lead to Trouble at the WTO," *Climate Change and Clean Technology Blog* (March 26, 2009)
- "Do you recognize this?" Domestication of Foreign-Country Money Judgments in California, *Berkeley Journal of International Law Publicist* (2009)
- Recovery Tactics Outlined for Foreign Takeover Losses, *Oil and Gas Journal* (with Alex Lathrop) (June 25, 2007)
- BIT Implications of Recent Government Activities in Bolivia and Venezuela, *Heller Ehrman Bulletin* (Summer 2000)

- Some Thoughts on KOREA SUPPLY—Monetary Remedies Under Section 17200, *Heller Ehrman Bulletin* (April 15, 2003)
- Some Thoughts on Kraus and Cortez, *Heller Ehrman Bulletin* (Summer 2000)
- Women and the Environment, in Kelly Askin & Dorean Koenig, eds., *Women and International Human Rights Law* (Transnational Publishers 1999)
- Environmental Injustice on United States Bases in Panama: International Law and the Right to Land Free from Contamination and Explosives, 38 *Virginia Journal of International Law* 401 (1998) (with J. Martin Wagner)
- The Myth of Objectivity, in *Human Rights, Environmental Law, and the Earth Charter* (Boston Research Center for the 21st Century 1998)
- CCRI's Hidden Conflict: Prop. 209 Would Violate Human Rights Treaties Recently Ratified by the U.S. Senate, *The Recorder* (October 9, 1996)
- Environmental Racism in the United States and the Convention on the Elimination of Racial Discrimination, 14 *Netherlands Quarterly of Human Rights* 277 (1996)
- In Pursuit of Environmental Human Rights: Commentary on the Draft Declaration of Principles on Human Rights and the Environment, 27 *Columbia Human Rights Law Review* 487 (1996)
- Pursuing Environmental Justice With International Human Rights and State Constitutions, 15 *Stanford Environmental Law Journal* 338 (1996)
- U.N. Special Rapporteur on Toxic Dumping, 8:1 *International Toxics Investigator* 9 (1996)
- Humanitarian Law, Protection of the Environment and Human Rights, 8 *Georgetown International Environmental Law Review* 67 (1995)
- The Game of the Name, *Ms. Magazine* (November-December 1994)
- Lawmaking in the United Nations: The UN Study on Human Rights and Environment, 3 *Review of European Community and International Environmental Law* 197 (1994) (with Adriana Fabra Aguilar)
- Sex, Violence & Rock 'n' Roll: The First Amendment at the Close of the Millennium, *St. Hieronymus Press* (1994) (with David Lance Goines)
- Using Environmental Law for Effective Environmental Management—Hungary, *Sierra Club Legal Defense Fund/Environmental Management and Law Association* (1994) (editor)
- The Right to Participate in Decisions that Affect the Environment, 10 *Pace Environmental Law Review* 683 (1993)
- Comment, A Human Rights Approach to the Labor Rights of Undocumented Workers, 74 *California Law Review* 1715 (1986) (published under former name Neil A. Friedman)

## Media Mentions

Cultural Fluency  
*Daily Journal*, 08.24.2018

Legislature Allows International Arbitration in State  
*Daily Journal*, 07.18.2018

Seagate Hard Drive Consumers Denied Class Cert.

*Law360*, 07.06.2018

Calif. Looks To Make Itself An Arbitral Hub With New Law

*Law360*, 07.05.2018

Samsung, Oman Reach Deal On Refinery Bidding Row

*Law 360*, 01.22.2018

U.S. judge dismisses lawsuit over Buffett's See's 'kosher' chocolate

*Reuters*, 08.04.2017

Q&A With Sheppard Mullin's Neil Popovic

*Law360*, 05.25.2016

Neil A.F. Popovic Receives the 2015 Robert G Sproul Jr Award from the Lawyers' Committee for Civil Rights 2015

## Speaking Engagements

Speaker, "Environmental Green Claims and Sustainability, Current Trends Beyond the Beltway," Sixth Food Law Conference (CLE International), March 11, 2022

Speaker, "Climate Justice & Vulnerable Populations," Human Rights Advocates, October 28, 2021

Presenter, "Parallel Proceedings In International Arbitration: How To Avoid Or Mitigate The Undesirable Effects," New York State Bar Association Webinar, June 22, 2020

Panelist, "Why California?" Dispute Resolution Law Journal Symposium at Pepperdine University, Malibu, CA, February 27, 2020

Panelist, "International Commercial Arbitration Panel," International Arbitration Association at Berkeley Law, Berkeley, CA, April 18, 2017

Presenter, "Avoiding Ethical Pitfalls in Pro Bono Representation," Pro Bono and Community Service Committee of the Barristers Club, San Francisco, CA, January 26, 2017

Presenter, "The Unreasonable Consumer, or When Can a Court Determine as a Matter of Law that a Food Label is Not Misleading?" May 11, 2016

Moderator, McGeorge School of Law Investment Treaty Dispute Settlement Symposium "What and Who Really Decide Who Decides and How It's Decided?," February 19, 2016

Presenter, "ICSID Arbitration," November 20, 2015

Presenter, "Accountability and Sustainability: Views from Practice on Regional and Global Environmental and Social Performance Standards," November 3, 2015



"How Can International Environmental Law Reduce Disaster Risk?" Stanford Law School, May 21, 2015

"The Role of International Courts?" Berkeley Law, April 6, 2015

"Litigating the Argentine Debt Crisis," Santa Clara Law School, February 26, 2015

Effective Advocacy in International Arbitration, "Initiation of Arbitration, Emergency Relief and Interim Measures," UC Berkeley School of Law, February 20, 2015

ACI's Summit on Food & Beverage Marketing and Advertising, "State vs. Federal Rights as to Food Claims – The State of Preemption in Food Marketing and Advertising Compliance," July 30, 2014

"International Arbitration and Domestic Priorities: How Do They Coexist?" UC Berkeley School of Law, June 6, 2014

Current Trends in International Arbitration, "International Arbitration in California: California-Specific Issues and Travels," San Francisco, September 6, 2013

New Dimensions in International Dispute Resolution, "Discovery in International Arbitration Proceedings," Milan, Italy, December 13, 2012

"Dispute Resolution with Non-US Companies: Is International Arbitration the Answer?" SMRH Del Mar, November 15, 2012

University of Pennsylvania Journal of International Law Symposium, "Recognition in a Corrupt World," November 2, 2012

"Boalt at the Vanguard: Evolving Legal Education," September 22, 2012

Riesenfeld Symposium at Berkeley Law, "Lessons from Latin America: Case Studies in Enforcement of Foreign Judgments," March 13, 2012

A3: A Conference on Climate Justice at UC Irvine Law School, "Climate Change Litigation: One Pathway to Past & Future Relief for Climate Change Victims," April 1, 2011

ABA Section of Dispute Resolution, 9th Annual Advanced Mediation and Advocacy Skills Institute, "Negotiating in the Caucus Stage of Mediation," Nov. 4, 2011

The Environmental Law Conference at Yosemite, "Green Pitch or Green Wash -- What's Legal in Green Advertising?" Oct. 22, 2011

"*Human Rights, Environment & Community: A Workshop*: Presentation by Neil A.F. Popović," 7 Buffalo Environmental Law Journal 239 (1999-2000)



## Events

6th Annual Food Law Conference  
Current Trends & Perspectives Beyond the Beltway  
Virtual, 03.11.2022

Commercial Leasing RoundUp - 7th Annual Women in Leasing Law (Virtual) Symposium  
California Lawyers Association  
Webinar, 06/01, 06/08, 06/10

Remote Arbitration Hearings – A View from the Trenches  
Webinar, 10.06.2020

Early and Efficient Resolution of International Commercial Disputes: the New Rules of the German Arbitration Institute (DIS)  
Sheppard Mullin San Francisco, 06.12.2019

2016 International Arbitration Series  
The Value of a Multi-cultural Approach in Resolving International Disputes Through Arbitration  
Summer 2016

Accountability and Sustainability: Views from Practice on Regional and Global Environmental and Social Performance Standards  
11.03.2015

## Memberships

Advisor to the Executive Committee, International Law Section, State Bar of California

American Health Lawyers Association

American Society of International Law

Board of Directors, EarthRights International (1999-2013)

Board of Directors, Center for Youth Development Through Law

Advisory Board, Center for Law, Energy and the Environment

Board of Directors, Bar Association of San Francisco's Justice & Diversity Center, successor to the Volunteer Legal Services Program

International Law Association (American Branch)

Northern California International Arbitration Club

## Podcasts & Webinars

Remote Arbitration Hearings – A View from the Trenches  
10.06.2020

Nota Bene Episode 57: Understanding International Enforcement of Judgments with Neil Popovic  
11.06.2019

## Practices

Litigation

Alternative Dispute Resolution

Appellate

Class Action Defense

International Reach

International Arbitration

International Trade and Investment

South Asia

Environmental

White Collar Defense and Corporate Investigations

Healthcare

Construction

Appellate

ESG and Sustainability

International Arbitration

## Industries

ESG and Sustainability

Food and Beverage

Healthcare

Sports

## Education

J.D., University of California, Berkeley, 1987, Note and Comment Editor, *California Law Review*

M.A., Tufts University, The Fletcher School of Law and Diplomacy, 1992, Ford Foundation Fellow in Public International Law

Academy of European Law, Summer Session 1995

A.B., University of California, Berkeley, 1983

## Clerkships

Mr. Popovic served as a law clerk to the Honorable Alicemarie H. Stotler of the U.S. District Court in Los Angeles and Santa Ana.

Mr. Popovic was a judicial extern for Justice Joseph R. Grodin of the Supreme Court of California.

## Admissions

California

United States Supreme Court