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Thomas R. Freeman

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Practices:

Securities Litigation, Entertainment, Complex Business Litigation, Class Actions

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Thomas R. Freeman is a partner at Bird Marella and a graduate of the Northwestern University School of Law (1987). He is certified as an appellate specialist by the State Bar of California Board of Legal Specialization and has argued countless cases before federal and state appellate courts and major motions at the trial court level.

Mr. Freeman has handled a broad range of complex matters, including claims brought under federal and state antitrust and false claims statutes, federal communication laws, California's Unfair Competition Law and Consumers Legal Remedies Act, healthcare law, copyright law, securities laws, the U.S. and California Constitutions, California's anti-SLAPP statute, and RICO.

Recently, Mr. Freeman was lead appellate counsel for the Mountains Recreation and Conservation Authority (MRCA) in a 2022 case where he successfully argued that the Court of Appeal lacked jurisdiction to hear an appeal by Malibu residents after the first phase of a bifurcated trial resulted in a court order declaring that the residents must have a legal obligation to remove signs and refrain from taking other actions that curtail public access to MRCA property and an adjoining public trail.

He is currently representing a wireless communications provider appealing a trial court's dismissal of its negligence claims against a private contractor retained by the California Public Utilities Commission to administer a PUC program for providing free telephone services to low-income households. The appeal raises important questions of preemption under the Public Utilities Code and the existence of a duty owed by the contractor to exercise reasonable care to avoid inflicting purely economic injury on those who provide telephone services under the PUC program.

In 2017, Mr. Freeman filed a successful petition for writ of mandate challenging a trial court's order overruling a demurrer filed by an established California law firm in a qui tam action based on California's False Claims Act. He filed a second petition for writ of mandate in 2019, challenging the trial court's order overruling the law firm's demurrer to the qui tam plaintiff's amended complaint. Within days of receiving the Court of Appeal's order directing the plaintiff to file an opposition brief,

the case settled.

Mr. Freeman successfully represented the proponents of Measure B, a 2012 ballot initiative in Los Angeles County mandating the use of condoms in adult films, in an appeal brought by adult film producers and actors challenging the measure's constitutionality. In *Vivid Ent. v. Fielding*, 774 F.3d 566 (9th Cir. 2014), the Ninth Circuit held that the ballot proponents had standing to defend the measure's constitutionality on appeal and that the measure was not unconstitutional.

Mr. Freeman has been lead appellate counsel in a wide variety of precedent-setting appeals. In *Prospect Medical Group v. Northridge Medical Emergency Group* (2009) 45 Cal.4th 497, he successfully argued in the California Supreme Court that emergency-care providers cannot "balance bill" HMO enrollees for the difference between the amount billed by the provider and the amount paid by the HMO.

Mr. Freeman filed a successful petition for writ of mandate in *Canon U.S.A., Inc. v. Superior Court* (1998) 68 Cal.App.4th 1 after the trial court denied a pleading challenge to the plaintiff's allegation of a *nationwide* class. In a precedent-setting opinion, the Court of Appeal held that the nationwide scope of the putative class was properly challenged at the pleading stage. Prior to that ruling, trial courts had commonly ruled that any challenge to the nationwide scope of an alleged class must await the completion of expensive nationwide discovery.

And in the precedent-setting case of *Rifkind v. Superior Court* (1994) 22 Cal.App.4th 1255, Mr. Freeman successfully argued that contention-style deposition questions are improper because it is the lawyer's (not the client's) role to determine which facts support the client's contentions, even where, as in Rifkind, the client happens to be an attorney.

Mr. Freeman is an elected member of the California Academy of Appellate Lawyers, has an AV Preeminent Rating from Martindale-Hubbell, is a Fellow of the American Bar Foundation and the Litigation Counsel of America (the Trial Lawyer Honorary Society), and is listed in Best Lawyers in America (Appellate Law and White Collar Criminal Defense) and in *Los Angeles Magazine*'s "Southern California Super Lawyers."

Education & Admissions

- Northwestern University School of Law, J.D., cum laude, Order of the Coif, 1987
- Rollins College, B.A., Philosophy, with honors, 1983

- California, 1987

Notable Matters

Twentieth Century Fox Film Corp. v. Netflix, Inc., 2021 Westlaw 5711822 (2021): Represented

Screen Actors Guild in amicus brief cautioning against the use of broad language in ruling on an issue where such language may have unintended consequences that conflict with established public policy.

Austin v. Los Angeles Unified School District, 244 Cal.App.4th 918 (2016): Represented pro bono client in her successful effort to seek relief from entry of judgment based on mistake or excusable neglect under Section 473(b) of the California Code of Civil Procedure.

Buchalter Nemer v. Superior Court, 2017 Westlaw 3188524 (2017): Successful petition for writ of mandate challenging trial court's denial of demurrer in a case brought under the California False Claims Act.

Vivid Ent. v. Fielding, 774 F.3d 566 (9th Cir. 2014): Represented proponents of Measure B, mandating the use of condoms in adult films, before the Ninth Circuit. Prevailed (1) against an attack on the intervening ballot proponents' "standing" to participate and (2) on the merits, with Circuit holding that the condom mandate was reasonably tailored to protect public health.

Paramount Petroleum Corp. v. Superior Court, 227 Cal. App. 4th 226 (2014): Prevailed on behalf of roofing manufacturer GAF in published opinion affirming trial court's grant of summary adjudication of the defendant oil company's "mistake of fact" defense to GAF's breach of contract claim.

Prime Healthcare Services v. Brotman Medical Center, U.S. Supreme Court Case No. 11-459 (2012): Retained to represent Brotman in successfully opposing a petition for certiorari after the U.S. Supreme Court directed the filing of an opposition brief.

Rappaport v. Gelfand, 197 Cal. App. 4th 1213 (2011): Successfully represented a dissociating partner of a law on a question of first impression under the Uniform Partnership Act.

Culver v. Prospect, 2011 Westlaw 5120838 (Cal. App. 2011): Filed an appeal on behalf of a corporate client challenging the trial court's entry of a preliminary injunction precluding the corporation from making a stock offering, which was essential to the restructuring of corporate debt. The appellate court reversed, holding that the preliminary injunction was improperly granted.

City of Hermosa Beach v. Superior Court, 2010 Westlaw 459609 (Cal. App. 2010): Filed a petition for writ of mandate on behalf of our client, the City of Hermosa Beach, attacking the trial court's entry of summary adjudication in favor of the plaintiff oil company. The appellate court ruled in favor of the City, concluding that there was a triable issue of fact on the element of proximate cause.

La v. Nokia Inc., 2010 Westlaw 4245533 (Cal. App. 2010): Defended Nokia against a putative class action based on the allegation that a model of its cellular phone was defective. The trial and appellate courts ruled that the plaintiff lacked standing under California's Unfair Competition Law.

Prospect Medical Group v. Northridge Medical Emergency Group, 45 Cal. 4th 497 (2009): Argued successfully that emergency medical providers cannot "balance bill" HMO enrollees.

Henneford v. Castaneda, 130 S.Ct. 487 (2009): Lead author of successful petition for certiorari challenging an adverse decision by the United States Court of Appeals for the Ninth Circuit on the scope of immunity for federal officers and employees. Shortly after the Supreme Court granted cert, the plaintiff voluntarily dismissed all claims against our client.

Dicon Fiberoptics, Inc. v. FTB, 173 Cal. App. 4th 1082 (2009): Argued appeal challenging FTB's rejection of tax credits awarded under the Enterprise Zone Act of 1996.

Beck v. City of Upland, 527 F. 3d 853 (9th Cir. 2008): Successfully represented a civil rights plaintiff/businessman in precedent-setting case against a municipality for retaliation in violation of the First and Fourth Amendments to the U.S. Constitution.

Pollard v. Ericsson/Clausen v. Nokia, 125 Cal. App. 4th 214 (2004): Obtained dismissal of claims under Consumer Legal Remedies Act, which was affirmed on appeal.

Ferguson v. Lieff, Cabraser, *Heimann & Bernstein*, 30 Cal. 4th 1037 (2003): Filed Amicus Brief for Bar Associations of Los Angeles County, Orange County and Beverly Hills addressing availability of

"lost" punitive damages in legal malpractice cases.

Thrifty Oil Co. v. Superior Court, 91 Cal. App. 4th 1070 (2001): Filed a successful writ application, requiring entry of summary adjudication on plaintiff's class action claim concerning credit card surcharges.

Smith v. Robbins, 528 U.S. 259, 120 S. Ct. 746 (2000): Served as lead author of indigent defendant's merits brief in this habeas case addressing the constitutional right to counsel in criminal appeals.

Linder v. Thrifty Oil Co., 23 Cal. 4th 429 (2000): Drafted California Supreme Court merits brief in class action lawsuit raising question concerning the trial court's authority to deny class certification.

Canon U.S.A. v. Superior Court, 68 Cal. App. 4th 1 (1998): Filed successful writ application in a putative nationwide class action lawsuit.

Vu v. California Commerce Club, Inc., 58 Cal. App. 4th 229 (1997): Succeeded in arguing before appellate court that a gambler could not sue a casino to recover losses based on alleged "cheating" in poker because gambling losses are inherently speculative.

Podolsky v. First Healthcare Corp., 50 Cal. App. 4th 632 (1996): Represented, on a pro bono basis, family members of those admitted into nursing homes in a precedent-setting case invalidating deceptive third-party guarantees.

Rifkind v. Superior Court, 22 Cal. App. 4th 1255 (1994): Argued successfully, and established precedent of widespread use that "contention" deposition questions are improper.

In re Owens-Illinois, Inc., 115 F.T.C. 179 (1992): Co-authored respondent's briefs in successful antitrust appeal before Federal Trade Commission involving merger between two leading manufacturers of glass containers.

Associations

- Elected Member, California Academy of Appellate Lawyers
- Fellow, Litigation Counsel of America
- Fellow of the American Bar Foundation, 2018
- Member of the Editorial Board, Litigation Magazine, 2018-present
- Certified Specialist in Appellate Law, The State Bar of California Board of Legal Specialization
- Center For Law In The Public Interest, Board, 2004-2006
- Rules Advisory Committee for the Ninth Circuit Court of Appeals, 2006-2012

Awards & Recognitions

- Certified Specialist in Appellate Law, The State Bar of California Board of Legal Specialization
- Elected Member, California Academy of Appellate Lawyers
- Legal Lions of the Week: *California v. Silverado Senior Living Management Inc. et al.*, *Law360*, 2025
- Best Lawyers in America, Appellate Law; Criminal Defense: White-Collar, Best Lawyers®, 2017-present
- Fellow of the American Bar Foundation, 2019
- Fellow of the Litigation Counsel of America, 2014-present
- AV Preeminent® Ranking, Martindale-Hubbell
- Southern California Super Lawyers, *Super Lawyers Magazine*, 2006-2013, 2015-present

Articles & Publications

- Co-Author, "'Isn't that Special: The Limited Powers of Special Masters," *California Litigation*, Vol. 34, No. 3, 2021
- Author, "Left at the Altar: SCOTUS Promises to Clarify its Cryptic Marks Rule for Divining the Precedential Impact of Plurality Decisions – But Doesn't," *California Litigation*, Vol. 31, No. 2, p.8 (2018)
- Author, "Aguilar v. Atlantic Richfield Corp.: The Definitive Analysis of California Summary Judgment Law," 23 CEB Civ. Lit. Rptr. 143, Aug. 2001
- Author, "Guardians at the Gate: Judicial Scrutiny of Expert Testimony," *Los Angeles Lawyer Magazine*, July-August 2001
- Author, "Summary Judgment: Untangling The Moving Party's Initial Burden," 22 CEB Civil Lit. Rep. 230, Nov. 2000
- Author, "Put Up or Shut Up: Summary Judgment in California and Federal Courts," *Los Angeles Magazine*, Nov. 1999