

David A. Diepenbrock

Shareholder



Sacramento

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EXPERIENCE

David A. Diepenbrock is a Shareholder in the Firm's Litigation and Real Estate practice groups, representing clients in a wide spectrum of business and real estate disputes.

He regularly assists buyers, sellers, developers, landowners, and lenders in resolving disputes arising from the ownership and development of real property. David has extensive experience in land use and commercial real estate issues, including eminent domain and inverse condemnation matters, as well as defending against government enforcement actions seeking to recover substantial administrative penalties for alleged violations of state and local laws. His commercial real estate experience also includes disputes arising from purchase and sale contracts, long-term leases, permitting issues, easements, and land use entitlements.

David also represents clients in a wide range of complex business disputes, including those involving fraud and unfair competition, as well as partnership and shareholder disputes. David has litigated cases for clients in a broad range of industries, including agribusiness, energy, finance, healthcare, manufacturing, and mining.

David takes a pragmatic approach to helping clients attain the best possible outcome as efficiently as is feasible. He uses alternative dispute resolution methods such as mediation and direct negotiations whenever possible and takes cases to trial whenever necessary.

David's expertise and effectiveness have been repeatedly recognized by his clients and peers, as reflected by his inclusion among the Northern California Super Lawyers, the Best Lawyers in America, and the Best of the Bar.

REPRESENTATIVE MATTERS

Business Litigation

PRACTICE AREAS

Business Litigation

Litigation

Real Estate

Real Estate Litigation

BAR ADMISSIONS

California

COURT ADMISSIONS

U.S. District Courts for the Eastern, Central, Northern, and Southern districts of California

U.S. Court of Appeals for the Ninth Circuit

U.S. Supreme Court

EDUCATION

Oberlin College, B.A.,
History, 1988

San Francisco State
University, M.A, U.S. History,
1995

University of California,
Davis, School of Law (King
Hall), J.D., 2001

- Successfully defended mining operator against claims brought by air quality management district seeking civil penalties exceeding \$91 million for alleged violations of state and local air quality laws. After taking or defending over 30 depositions and defeating the district's motion for summary adjudication regarding clients' civil rights cross-complaint, the parties agreed to a mutual release of claims. David's client paid nothing as part of the settlement.
- Defend individual assessed over \$11 million in civil penalties by the State Mining and Geology Board in multiple actions, including writ proceedings in state court and action filed in federal court seeking monetary recovery from Board for violating client's civil rights.
- Arbitrated value of Bay 101 Casino, located in San Jose, California pursuant to the buy-sell agreement on behalf of client with a substantial ownership interest in Casino. Assisted client in obtaining State Gambling Control Commission approval of stock sale and licensing of the client to receive sale proceeds.
- Prosecuted state securities and common law fraud claims on behalf of claimants seeking recovery of approximately \$20 million from California Finance Lender that failed to disclose material information regarding its real estate investment portfolio. Clients obtained a favorable settlement following extensive discovery and after the finance lender filed for bankruptcy protection.
- Represented minority shareholders in action seeking involuntary dissolution of corporation based on alleged misfeasance by controlling shareholder. Obtained fair value for clients' ownership interest through settlement after controlling shareholders sought buy-out under Section 2000 of the Corporations Code.
- Represented company in claim against its prior controlling shareholder based on his breach of non-compete covenant contained in purchase and sale agreement.
- Represented flooring distributor in dispute with manufacturer concerning parties' performance under distributor agreement. Negotiated favorable settlement following extensive discovery, which included multiple out-of-state depositions.

- Prosecuted claim under California Producer's Lien Law to establish priority to proceeds earned on sale of clients' consigned farm products, where proceeds had been received by insolvent processor and deposited with defendant lender. Case involved complex issues raised by intersection of Uniform Commercial Code and bailment law.
- Represented agricultural commodity processors in contract disputes with two suppliers regarding their obligations under long-term marketing agreements. Both cases involved allegations of anticipatory repudiation and demands for adequate assurances of performance under the Commercial Code.
- Defended two limited liability companies (and their members) that developed a time-share resort in Napa Valley against fraud, breach of fiduciary duty, and breach of contract claims brought by project investors. Case was settled to clients' satisfaction while their motion for summary judgment was pending.
- Represented co-owner of business in a dispute involving allegations of defalcation, breach of fiduciary duty, and overall mismanagement of the company's affairs. Succeeded in negotiating a resolution to clients' satisfaction prior to initiating lawsuit.
- Successful pleading-stage defense of claims brought against members of a limited liability company sued for breach of contract, fraud, and breach of fiduciary duty.
- Represented independent insurance marketing organization in asserting claims against competitors for breach of contract, trademark infringement, and unfair competition. Favorable settlement obtained immediately after trial court granted our motion for preliminary injunction.
- Representation of Fortune 100 corporation in obtaining pleading-stage dismissal of putative class action seeking injunctive relief and damages under Consumer Legal Remedies Act for alleged misleading advertising.
- Representation of division of Fortune 500 corporation in defending against lawsuit seeking over \$20 million brought under California Franchise Investment Law. Obtained highly favorable settlement prior to trial.

Real Estate & Land Use Litigation

- Successfully defended seller against specific performance and breach of contract claims arising from failed transaction involving a proposed commercial development in Yolo County. Obtained favorable judgment following a two-week arbitration and an award of attorney's fees.
- Defended seller of multi-family housing complex-valued in excess of \$10 million against breach of contract and fraud claims brought by buyer who failed to fully perform its contractual obligations by the close of escrow deadline. Successfully represented seller on appeal after winning a three-week bench trial and a full award of attorney fees.
- Represented landowner in the voluntary partition of approximately 3,000 acres of farmland located in Yolo County. Case involved eleven parcels of uneven size and quality, including large parcels suited for cattle grazing and smaller parcels with permanent crops. Matter was resolved to client's satisfaction through a voluntary exchange agreement.
- Prosecuted fraud and False Claims Act claims to arise from conveyance of deed of trust valued at approximately \$13 million on behalf of large Bay Area municipality that resulted in highly favorable settlement following protracted discovery battles and complete trial preparation.
- Prosecuted specific performance action on behalf of investment company that contracted to purchase downtown Sacramento property improved with 187 apartment units and over 17,000 square feet of commercial space. After extensive discovery, seller agreed to consummate sale.
- Defended lender in actions brought by a county and a district attorney seeking injunctions, civil penalties, and damages, relating to alleged releases of hazardous waste and county code violations at a marina. Following extensive negotiations, and after conducting substantial discovery and filing a cross-complaint, resolved case through a stipulation for consent decree under which client paid no money to either plaintiff.
- Represented landowner in complex commercial leasing dispute with tenant farmer occupying substantial portion of 497.80-acre parcel under a long-term lease.
- Defended owner in condemnation action brought in connection with freeway interchange project located at Sheldon Road and Highway 99.
- Defended owners of 305.75-acre parcel located at the intersection of Highway 99 and Elverta Road in eminent domain action.

- Defended owners of 86.7 acres of land located in Sacramento County in condemnation action brought by the Sacramento Area Flood Control Agency as part of its development of the Natomas Levee Improvement Program.
- Represent owner of marina located in San Joaquin County in inverse condemnation action seeking damages resulting from reclamation district's modification of levee abutting marina.
- Prosecuted inverse condemnation claims on behalf of property owners seeking damages resulting from large public works project carried out in Plumas County.
- Representation of owner in condemnation action brought by the Bay Area Rapid Transit district in connection with the development of a BART station located in San Mateo County.
- Obtained favorable settlement on behalf of developer asserting vendor's lien and equitable servitude claims against entity that purchased property through foreclosure sale from bankrupt lending institution that had acquired property from defaulting purchaser.
- Represented owners of parcel located south of Vacaville in connection with proposed specific plan for development of Vanden Meadows and related Environmental Impact Report.
- Represented developer of natural gas storage facility in contested proceeding before California Public Utilities Commission.
- Represented owners of historic mining property in appellate proceedings seeking to establish vested mining rights based upon mineral patents issued by the federal government and mining conducted on property in subsequent decades.

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AFFILIATIONS & AWARDS

American Leadership Forum, Mountain Valley Chapter, Senior Fellow

Sacramento Metro-Chamber Board, General Counsel, 2016-2019

Los Rios Colleges Foundation, Past Board Chair, Board Member, 2009-2019

Sacramento Metro-Chamber's Leadership Sacramento Class of 2009

65th Street Redevelopment Advisory Committee, Member, 2008-2011

East Sacramento Improvement Association, Past Board Member

Pro Bono Counsel, Fair Oaks Community Coalition, 2005-2006

Awards

Sacramento Magazine's Top Lawyers List, 2019, 2021, 2022 Business Litigation

Northern California Super Lawyers, 2019-2022

The Best Lawyers in America© 2019, 2021-2023

Best of the Bar List 2018

AV® Preeminent™ Rating, Martindale-Hubbell®