



Neal Ross Marder

Partner

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Education

J.D., Loyola Law School, *cum laude*, 1986

B.A., University of California, Los Angeles, *cum laude*, 1982

Bar Admissions

California

Areas of Experience

Class Actions • Complex Commercial Litigation • Intellectual Property • Securities Enforcement and Litigation • White Collar Defense and Government Investigations • Litigation • Antitrust/Competition • Consumer Class Actions • Consumer Protection Defense and Compliance • North America

Neal Marder is the head of the litigation practice in the Los Angeles office and the head of the firm's consumer class action litigation practice. He concentrates his practice on complex business, high-profile, and oftentimes bet-the-company commercial litigation, white collar, securities, internal investigations and intellectual property disputes, with an emphasis on the defense of consumer fraud class and mass actions.

Practice & Background

Mr. Marder maintains a diverse civil litigation practice and handles disputes in federal and state courts across the country and around the world involving business and consumer torts, intellectual property, securities, white collar, RICO, antitrust and unfair competition.

Mr. Marder, named among the 2016 *Litigation Trailblazers* by *The National Law Journal*, is one of the preeminent litigators in the United States and maintains an extensive cross-border litigation practice representing and litigating against foreign companies, auditors and individuals in securities fraud, shareholder derivatives and other litigation. On numerous occasions, he has achieved outstanding results for his clients including dismissals at the pleading stage, rulings striking entirely or narrowing class claims, decisions denying class certification, and highly favorable nationwide, global or state specific class action

settlements in cases representing a wide range of clients, including major restaurant chains, medical care product suppliers, certified public accountants, beverage distributors and a post-natal supplies company.

Mr. Marder led the trial team that secured a \$42.5 million jury verdict, including \$30 million in punitive damages, on behalf of a California-based distributor of home comfort products in a federal lawsuit against one of the world's largest manufacturers of air conditioners and dehumidifiers. The verdict led the "Top Plaintiff Cases" section of the *Daily Journal's* "Verdicts & Settlements" report, ranked 45 on the "Top 100 Verdicts of 2015" and was listed as the top verdict in Business Law in *The Recorder's* California's "Million Dollar Verdicts."

Representative Matters

Mr. Marder's representative matters include:

Recent Class Action Successes

- Currently representing a prominent trucking company in "bet the company" class action litigation regarding whether 18,000 drivers were defrauded into serving as independent contractor drivers based on alleged misrepresentations about their earning potential and benefits.
- Secured the dismissal with prejudice on behalf of major restaurant chain of a putative consumer class action in federal district court alleging misleading and deceptive business practices in connection with suggested gratuity amounts on split checks. In a similar case in California state court, obtained dismissal at the demurrer stage of six out of seven causes of action.
- Successfully resolved a shareholder class action lawsuit alleging insider trading and control person liability on behalf of a fund after obtaining orders denying a second attempt at class certification and shortening the proposed class period, and forcing plaintiffs to withdraw a key expert witness.
- Represented a leading national animal healthcare company and its board of directors in a number of federal securities fraud class actions arising from a proposed multi-billion dollar merger.
- On behalf of the insurance underwriting entity of a premier global insurance company, obtained nationwide approval of a class action settlement resolving more than dozen putative statewide class actions filed around the country.
- Successfully resolved a TCPA class action matter on behalf of a home furnishings retailer after persuading plaintiff's counsel to voluntarily dismiss the case with prejudice.
- On behalf of a concert promoter, won a motion to dismiss a third amended complaint without leave, based on a lack of Article III standing in a consumer fraud class action complaint that received wide publicity.
- Represented an insurance company and provider of warranty services in successfully resolving a TCPA class action in an Illinois federal court.

2015 Jury Verdict

- Represented a California-based distributor of home comfort products in a federal lawsuit against one of the world's largest manufacturers of air conditioners and dehumidifiers; the client was awarded a \$42.5 million jury verdict, including \$30 million in punitive damages, and was recognized as a top verdict by the *Daily Journal* and *The Recorder*.

2015 Class Action Decisions

- Defeated plaintiffs' motion for class certification in a high-profile action against an Internet-based nutritional supplement merchandising and sales company, and several current and former officers and directors. Plaintiffs alleged primarily that the client was an "endless chain" or pyramid scheme that made false and misleading statements about its products. A certified class would have numbered tens of thousands of individuals, with alleged damages exceeding \$150 million. After defeating class certification, plaintiffs' class counsel withdrew from the case, and plaintiffs then agreed to stipulate to voluntarily dismiss the case, with prejudice, in its entirety, resulting in a complete victory for the client.
- On behalf of a Chinese e-commerce company, successfully obtained a ruling striking class allegations in an earlier-filed action and subsequently obtained a ruling in a later-filed action that plaintiffs' counsel was not adequate to represent the class of Chinese consumers who alleged that the company was running an illegal endless chain.
- On behalf of the general insurance underwriting entity of a premier global insurance company, successfully obtained an order granting a motion to dismiss the class action in its entirety without leave to amend, setting aside a prior order that had allowed the action to proceed past the pleading stage.
- Defeated a motion for class certification in a shareholder securities fraud case, a decision widely publicized as being one of the first involving a Chinese merger company that entered U.S. markets through a reverse merger. The 2nd Circuit denied plaintiffs' petition for leave to file an appeal of the trial court's decision denying class certification.
- Won a motion to dismiss a shareholder derivative case without leave to amend on behalf of a major power steering components and systems supplier in China.
- Won, in part, the appeal of a demurrer that was sustained without leave to amend in a fraudulent conspiracy case against an investment services firm.
- Won a motion to dismiss on behalf of a Hong Kong citizen in a RICO and securities fraud class action. The 9th Circuit affirmed on appeal.
- Demurrer sustained without leave in two mass actions alleging a scheme to originate mortgages that the plaintiffs could not afford with the secret purpose of selling those mortgages on the secondary market at excessive prices. The dismissals were affirmed on appeal.

Additional Securities Class Action Experience

- Prevailed in a shareholder derivative suit on behalf of an integrated clinical documentation solutions company as reported in a published opinion by the 3rd Circuit Courts of Appeal, on a motion to dismiss a claim alleging that several of current and former board members of the company breached their fiduciary duties.
- Obtained a motion for summary judgment on behalf of an American diversified holding company in an action by investors who alleged various disclosure failures in securities offerings in various investment transactions, arguing that the company had participated in a Ponzi scheme. The Los Angeles Superior Court concluded that the client did not owe a duty of disclosure to the plaintiffs, did not assist in the alleged securities violation and did not conspire to defraud the investors.
- Resolved bet-the-company litigation against a medical transcription provider after the company publicly announced that it would not be able to file its Annual Report for 2003 pending completion of an independent review of the company's billing practices, sparking a firestorm of class actions, investigations by the SEC, DOJ and Department of Labor, and delisting from the NASDAQ:

- Obtained the dismissal of a shareholder derivative class action alleging that several current and former board members breached their fiduciary duties. Affirmed on appeal, as reported in a published opinion by the 3rd Circuit.
- Negotiated a nuisance value settlement of a shareholder securities fraud class action filed on behalf of all persons who purchased common stock in the company from March 29, 2000 through June 14, 2004.
- Favorably settled a nationwide employee class action brought on behalf of more than 25,000 present and former transcriptionists with no direct payment to the settlement class and no payment of attorney's fees.
- Won dismissal of the RICO and Section 17200 claims and favorably settled the fraud claims in a nationwide consumer class action brought on behalf of more than 4,500 hospitals and health care organizations.
- Obtained the dismissal, with prejudice, in a securities fraud class action in the U.S. District Court, Central District of California on behalf of a global investment management firm.
- Was a member of the team that defended an employee of one of Wall Street's former most powerful firms in securities fraud class action litigation in New York and California arising out of the collapse of the firm.
- Representing a beverage manufacturer in two securities fraud shareholder class actions alleging that the company's registration statement filed with the SEC in connection with a public offering and certain other SEC filings were materially misleading; preliminary settlement approval was recently granted. Settlement was also reached in a threatened shareholder derivative suit.
- Representing the Hong Kong partners of an international accounting firm in the defense of a securities fraud class action brought by investors in a China-based technology company alleging that certain of their financial statements, which were audited by the accounting firm, were false and misleading.
- Defending a medical supplies company in a consolidated shareholder class action alleging breach of fiduciary duty by the company's board of directors in connection with its approval of an offer by the company's CEO to acquire all the outstanding shares of the company in a going-private transaction. Preliminary settlement approval was recently granted.

Additional Consumer Class Action Experience

- Represented a national mortgage association in a putative class action case involving claims of violating Section 17200 of California's Unfair Competition Law, the California Code of Civil Procedure and Section 580e. Plaintiffs alleged that the mortgage association and an involved bank owed certain payments to California borrowers who sold properties in connection with short sales during the relevant time frame. Mr. Marder and his team were able to convince plaintiffs to voluntarily dismiss their action in its entirety.
- Obtained a nationwide settlement as lead counsel for a breast pump manufacturer in a consumer fraud class action alleging violation of California's Unfair Competition Law, False Advertising Law and The California Consumers Legal Remedies Act, along with California and federal warranty laws in connection with the advertising of its bottles as safe for freezing breast milk when, allegedly, they could break when frozen and dropped.
- Obtained the dismissal of the named plaintiff in a false advertising class action, which was part of a series of cases against a major food manufacturer concerning several of its products. The plaintiff alleged that certain statements on the labels for the products at issue were false and misleading, because the products contain trace amounts of trans fat and high fructose corn syrup.

- Defended a chain of automotive service centers and their international corporation in a consumer class action relating to the sale and advertisement of brake pads alleging violations of Sections 17200 and 17500 of the Business and Professions Code, violation of the Consumer Legal Remedies Act, breach of contract, and breach of implied and express warranties. Succeeded in getting the lead plaintiff stricken as a class representative.
- Defeated class certification and obtained dismissal of all class claims in a nationwide class action on behalf of a chain of automotive service centers that alleged breach of warranty under the consumer protection statutes and Uniform Commercial Codes of all 50 states.
- Defended one of the world's largest providers of automotive services in a consumer class action alleging deceptive business and advertising practices with respect to its oil services.

Mass Tort/Product Liability Experience

- Defended a major oil and gas company in a multi-plaintiff mass tort and class action suit brought by more than 400 individual plaintiffs in the Los Angeles Superior Court, alleging that one of the company's refineries released toxic chemicals into the soil, air and water, causing property and personal injuries to the surrounding area and its residents. Succeeded in getting the class claims stricken from the complaint and limiting the remaining individual plaintiffs' theories for relief to their specifically alleged medical injuries.
- Obtained a dismissal on behalf of a worldwide health care company in a nationwide class action in the Western District of Missouri as part of a multidistrict litigation coordinated proceeding claiming that the company failed to disclose that the packaging for certain of its liquid infant formula products allegedly contained trace amounts of the chemical Bisphenol-A.

Antitrust Class Action Experience

- Defended two global manufacturers of engineered composite materials in several class actions coordinated before the Alameda County Superior Court alleging price-fixing in the laminates industry, involved alleged antitrust violations under the Cartwright Act and unfair competition under California Business and Professions Code §17200.
- Secured summary judgment for a pharmaceutical company in several class action lawsuits alleging antitrust violations under the Cartwright Act and unfair competition under California Business and Professions Code §17200. The cases arose from the company's settlement of a patent infringement action.
- Defended a global paint supplier in several class actions coordinated before the Alameda County Superior Court alleging price-fixing in the paint refinishing industry and claims for antitrust violations under the Cartwright Act and unfair competition under California Business and Professions Code §17200.

Mr. Marder is admitted to practice in the state of California.

Mr. Marder is a member of the Los Angeles County Bar Association, the American Bar Association, the Litigation Section of the State Bar of California and the Association of Business Trial Lawyers. He is also a member of the Strafford Class Action Advisory Board, the American Business Trial Lawyers Association and Bet Tzedek.

Awards & Accolades

- "Top Attorneys in Southern California," *Los Angeles Magazine*, 2018

- Named a 2016 *Litigation Trailblazer* by *The National Law Journal*
- Recognized by *The Best Lawyers in America* for Mass Tort Litigation/Class Actions - Defendants category, 2008-2018
- “Best Lawyers in Los Angeles,” *Best Lawyers*, 2015
- “California Future Litigation Star,” *Benchmark Litigation*, 2015
- “Los Angeles Top Attorney,” *Best Lawyers*, 2013, 2017
- *Best California Attorneys*, 2013
- Noted in *Lawdragon Magazine's* 2010 and 2006 guides, and the *Lawdragon* “500 Leading Litigators in America”
- *Southern California Super Lawyers*, 2007-2018
- *Cambridge Who's Who Registry Among Executives and Professionals*, 2008-2009
- *Strathmore's Who's Who*, 2009-2010
- *Los Angeles' Top Attorneys, American Registry*, 2013

Speaking Engagements

- “Implications of *ACA International v. F.C.C., et al.*,” Retail Litigation Center’s Meeting of the Members & Board of Director Meetings – Washington, D.C., May 8, 2018
- “Class Certification and Article III Standing After *Spokeo*” and “Hot Topics and Trends in the Prosecuting & Defending of Consumer Class Actions,” speaker and moderator, Bridgeport’s Class Action Litigation & Management Conference – Los Angeles, April 6, 2018
- “Fairness in Class Action Litigation Act of 2017,” Association of Corporate Counsel – Southern California’s Annual In-House Counsel Conference, January 17, 2018
- “Trends in Consumer Class Actions: How to Avoid Becoming a Target,” Beverly Hills Bar Association, January 19, 2017
- “Trends in Consumer Class Actions: How You (Yes, You) Can Avoid Becoming a Target,” Association of Corporate Counsel – Southern California’s Annual In-House Counsel Conference, January 17, 2017
- “Current State of the Law on Ascertainability and Standing,” Bridgeport’s Annual Consumer Class Action Litigation Conference, January 13, 2017
- Featured participant during the *Daily Journal's* “Weekly Appellate Report” podcast which addressed the circuit split in class action administrative feasibility cases, January 2017
- “Trends in Consumer Class Actions: How to Avoid Becoming a Target,” Akin Gump In-House CLE Series, October 2016
- “Consumer Class Action Settlement: Evaluating, Negotiating and Structuring Settlements Pre- and Post-Certification,” CLE webinar, January 19, 2016
- “Securities Law: Fraud-on-the-Market Theory Demystified,” The Knowledge Congress Webinar, July 23, 2013
- “False Advertising Consumer Class Actions: Best Practices and Latest Developments,” Strafford Webinar, July 18, 2013
- “False Advertising Consumer Class Actions: Latest Developments,” American Bar Association, December 5, 2012

- “Securities Litigation in 2012 and Beyond: New Targets, New Solutions,” panel presentation for the Association of Corporate Counsel – Southern California Chapter, November 13, 2012
- “Class Actions in the United States: Lessons for Collective Actions in Mexico,” September 28, 2012
- “False Advertising Consumer Class Actions: Latest Developments - Best Practices for Bringing and Defending Misleading Advertisement Litigation,” Strafford Webinar, September 6, 2012
- “Pre-Certification Dispositive Motions, Pleadings Challenges, Class vs. Merit Discovery, *Ex Parte* Communication with Putative Class Members, Pre-certification Production of a Class List,” moderator, Bridgeport’s 12th Annual Class Action Litigation Conference, April 19-20, 2012
- “False Advertising Consumer Class Actions: Latest Developments - Best Practices for Bringing and Defending Misleading Advertisement Litigation,” Strafford Webinar, November 22, 2011
- “The Dodd Frank Act and its Potential Impact on Class Action Lawsuits,” Law Seminars International – Litigating Class Actions, May 9, 2011
- “Saving the Franchise: How to Avert and Survive Unexpected Crises,” Association of Corporate Counsel – Southern California Chapter DoubleHeader® Event, March 31, 2011
- “California Consumer Class Actions Post *In re Tobacco II*,” Strafford Webinar, January 27, 2011
- “Bet the Company Litigation in the New Economy,” 22nd Annual General Counsel Conference, New York, June 8, 2010
- Conference co-chairman, Bridgeport’s 9th Annual Class Action Litigation Conference, Los Angeles, April 22-23, 2010
- “When Good Contracts Go Bad: A Litigator’s Perspective on Common Contract Disputes,” Association of Corporate Counsel - Southern California Chapter Webinar, April 21, 2010
- “Consumer Class Action Litigation, Leveraging New Developments in Class Certification, Causation and Reliance,” Strafford Webinar, April 20, 2010
- “Preparing for the Rebound,” The Forecast for Complex Litigation and Government Enforcement, presented by the Association of Corporate Counsel, November 17, 2009
- “Trends in Class Action Litigation,” presented by Association of Corporate Counsel, November 17, 2009
- “Managing Client Relationships,” Sandpiper Partners’ Second Annual California Legal Market, October 28, 2009
- “Bridgeport/Consumer Class Actions: The Effects of *In Re Tobacco II* on California Consumer Class Actions,” October 23, 2009
- “Ethical Dilemmas for Corporate Counsel – Privilege and Internal Investigations,” 48th Annual Corporate Counsel Institute Conference presented by Northwestern Law, October 2009
- “Making the Argument to Win: Advanced Tactics and Strategies for Winning the Class Action Case at Trial,” American Conference Institute’s 3rd Annual Defense Counsel Forum on Positioning the Class Action Defense for Early Success, September 23-24, 2009
- “Effective Class Action Settlement Strategies: Best Practices to Secure Court Approval and Favorable Outcomes,” CLE Teleconference, May 14, 2009
- “Litigation Management — Getting Out in Front of Major Litigation Early,” Northwestern Law School 47th Annual Corporate Counsel Institute December 2008
- “When Bet-the-Company Litigation Strikes,” ALM GC Conference November 2008

- “Complex Litigation — The First Hundred Days,” West LegalEdcenter Webcast, October 2008
- Instructor, “Class Action Update: Today’s Trends & Strategies For Success,” and speaker and moderator for the PLI National Symposium on Class Actions January 2007
- Speaker, “Keys to Successful Pre-Trial Preparation” seminar, National Business Institute, November 2005

Articles

May 21, 2018	"TCPA Shakeup: Analysis of the D.C. Circuit's Long-Awaited Decision in 'ACA International'" <i>New York Law Journal</i>
March 22, 2018	"The Supreme Court Holds That State Courts Have Jurisdiction over Certain Securities Class Actions"
March 21, 2018	"ACA International v. F.C.C., et al."
February 22, 2018	"U.S. Department of Justice Will Likely Become More Active in Reviewing Proposed Class Action Settlements"
February, 9, 2018	"Defeating Class Certification in TCPA Cases" <i>New York Law Journal</i>
January 30, 2018	"Ninth Circuit Vacates Nationwide Class Action Settlement Due to Material Differences in State Laws"
January 25, 2018	"Judge Dismisses Nationwide Class Claims for Lack of Jurisdiction Following Bristol-Myers"
December 2017	"Defeating Class Certification in Telephone Consumer Protection Act Cases" <i>The Review of Banking & Financial Services</i>
December 14, 2017	"The U.S. Supreme Court to Clarify the Application of American Pipe Tolling to Class Actions"
December 12, 2017	"Class action litigation in the 9th Circuit" <i>Daily Journal</i>
December 8, 2017	"The Most Noteworthy Class Action Developments Of 2017" <i>Law360</i>
December 4, 2017	"The 9th Circuit Adopts the “Ordinary Person” Standard for “Personally Identifiable Information” Under The Video Privacy Protection Act of 1988"
November 29, 2017	"The 9th Circuit Rejects Securities Class Action Premised on Businesses' Complaints About Yelp's Practices"
October 26, 2017	"9th Circuit Resolves Split on False Advertising Injunctions"
September 19, 2017	"Top Five Developing Issues in Class Action Litigation"
August 17, 2017	"9th Circuit Clarifies Standard For Article III Standing Based On Statutory Violations"
August 17, 2017	"Waffle House Arbitration Ruling May Reach Past 11th Circ." <i>Law360</i>
July 14, 2017	"A New Wave of Class Actions Against Banks and Credit Card Companies? The CFPB's New Rule and Its Likelihood for Survival"

July 13, 2017	"The 2nd Circuit Clarifies that Administrative Feasibility Is Not a Requirement for Class Certification"
June 30, 2017	"7th Circuit Balks At Class Action Defendant's Attempt To Pick-Off Lead Plaintiff"
June 2017	"Examining the GOP's class action reform plan" <i>Westlaw Journal Class Action</i>
June 14, 2017	"Appellate Jurisdiction over Class Certification Denials: Microsoft v. Baker"
May 19, 2017	"Ruling Extends heightened securities fraud pleading standard" <i>Daily Journal</i>
April 21, 2017	"Defeating Class Actions: When to Target Plaintiffs' Standing Claims and Damages Models" <i>Washington Legal Foundation</i>
April 10, 2017	"McGill v. Citibank and Arbitration Agreements"
January 6, 2017	"Class action split deepens" <i>Daily Journal</i>
January 5, 2017	"The 9th Circuit Declines to Adopt Administrative Feasibility Requirement for Class Certification"
December 13, 2016	"Four Steps of Cooperation During an SEC Investigation" <i>Corporate Counsel</i>
November 11, 2016	"Will Professional Class Action Objectors Be Deterred If Proposed Amendments to Rule 23 Are Adopted?" <i>Bloomberg BNA</i>
October 6, 2016	"Guidance on Deceptive Advertising Claims from 9th Circuit"
October 6, 2016	"9th Circ. Dole Decision May Spark More 'All Natural' Claims" <i>Law360</i>
July 26, 2016	"Nixing A Class After Jury Verdict—It's Possible" <i>Law360</i>
July 21, 2016	"2nd Circuit Affirms Decertification of Class After Jury Verdict"
October 14, 2013	"Directors and officers prevail in securities fraud, derivative challenges to China Automotive's accounting practices" <i>Westlaw Journal: Delaware Corporate, Volume 28, Issue 7</i>
April/May 2013	"Defending Chinese Companies Listed on U.S. Exchanges" <i>Today's GENERAL COUNSEL</i>
December 10, 2012	"The Impact of Mazza v. American Honda Motor Co. on Nationwide Consumer Protection Class Actions" <i>Bloomberg BNA Product Safety & Liability Reporter</i>
October 26, 2012	"Collective Actions in Mexico: Similarities, Differences, and Implications" <i>Bloomberg BNA Class Action Report, Vol. 13, No. 20</i>
April 19, 2012	"Debating Preclusion of State Law Securities Claims" <i>Law360</i>

March 2012	"The 'Reasonable Consumer's' View of Green Labels—Lessons From Two Greenwashing Cases" <i>GCI Magazine</i>
October/November 2011	"Out-of-Court Settlement Programs Can Avert a Class Action: They Must Be 'Superior'" <i>Executive Counsel</i>
October 10, 2011	"Courts Give Guidance on Greenwashing Claims" <i>happi.com</i>
August 25, 2011	"Supreme Court Holds the 'Fraud on the Market' Presumption Sufficient on Class Certification" <i>Westlaw Journal — Class Action</i>
August 2011	"Class Actions after Tobacco II" <i>California Lawyer</i>
July 1, 2009	"Up in Smoke" <i>The Recorder</i>
June 2009	"Standing Straight" <i>Los Angeles Daily Journal</i>
