



Tom Mayhew

Partner

tmayhew@fbm.com

San Francisco: 415.954.4948

As a trial lawyer, Tom Mayhew has represented a broad range of clients in every form of high-stakes dispute, in federal and state courts, domestic and international arbitrations, SEC administrative proceedings, and criminal cases.

Tom's clients hire him for judgment and creativity, not because he specializes in any one area of business litigation. He becomes a specialist in the facts and law of their particular situation, and then leverages his particular strengths in strategy and pragmatic problem-solving, and coming up with the best solution for a client's current issue or case, rather than applying a playbook or cookie-cutter approach. His intellectual curiosity means he loves learning the complexities of different business contexts so that he can crystallize and teach the concepts to decision-makers in language that is simple, relatable, and understandable.

Tom represents a number of leading consumer brands, ranging from bottled water to cosmetics to appliances to premium chocolate, wine, and alcoholic beverages. He serves as lead counsel in consumer class action litigation across the country – especially in California, New Jersey, and New York, where so many of these cases are brought – and has litigated over 30 class actions involving claims of false advertising or labeling, pricing/antitrust violations, and other allegedly “unfair” and “unlawful” business practices. When the situation requires it, he is as comfortable on offense as defense, representing companies in business-vs.-business claims involving product or technology development, supply chain disruption, and co-manufacturing problems, or in investment or internal corporate disputes and interactions with regulators.

Distinctions

- *Best Lawyers in America*, Commercial Litigation (2016-2022)
- *Benchmark Litigation*, Litigation Star (2012-2021)
- *Super Lawyers*, Northern California (2006, 2008, 2011-2018)

Memberships and Affiliations

- President of the Northern California Chapter of the Association of Business Trial Lawyers (2017)

Experience

SEC Administrative Proceeding

We defended, in a hearing before an SEC administrative law judge, a case where the SEC Division of Enforcement sought disgorgement and a bar against a venture capital partner, who was accused of fraud and self-dealing under the Investment Advisers Act and Exchange Act based on his parallel investment in a portfolio company as part of the syndication of the investment.

Confidential AAA Arbitration

Services

- Business Litigation
- Consumer Products + Manufacturing
- Private Equity and Venture Capital

Education

- University of California, Berkeley, School of Law (J.D., 1995)
 - . Order of the Coif; Moot Court Board
- University of California, Santa Barbara (B.A., 1992)
 - . High Honors, Distinction in the Major
 - . Economics

Bar Admissions

- California

Clerkships

- U.S. District Judge sitting by designation on the 9th and 3rd Circuit Courts of Appeals, William Schwarzer
- U.S. District Court (E.D. Cal.), David F. Levi

After a three-week arbitration hearing, our trial team won a \$4 million-plus arbitration award on behalf of a small technology startup against a multinational corporation for breach of a nanotechnology development agreement.

Confidential International Arbitration

We defeated plaintiffs' main claims in a multi-million dollar international arbitration under UNCITRAL rules relating to deep-sea diving pipeline work in an offshore oil field off the coast of Angola.

Confidential JAMS Arbitration

We represented an independent contractor with the job of soliciting clients for an investment manager in a dispute about payment of his sales commissions. After a five day arbitration hearing, we obtained a multi-million dollar award for the client, and a defeat of the cross-claim against him.

Confidential Securities Industry Arbitration

We obtained a \$13 million damages award on behalf of our client, a portfolio manager, in a dispute over cost-sharing in an investment management industry subadvisory agreement.

State Court Felony Case

As co-counsel with another firm, obtained an acquittal on all charges after a three week felony jury trial in Alameda County Superior Court.

Win Properties v. Interstate Brands

In an arbitration with a commercial landlord, we obtained a ruling that the client was responsible for only \$3,500 of the cost of resurfacing a parking lot at a distribution center after a long-term lease.

Roz v. Nestle Waters North America, Inc.

In addition to retail sales of bottled water, Nestle Waters, dba Arrowhead, also makes recurring monthly deliveries to home and office customers (i.e., water coolers). Plaintiffs brought a class action under a new California statutory scheme that regulates "automatic renewal contracts" – i.e., contracts where a credit card is charged on a repeated basis for continued deliveries of goods or services. Precedent in this area was limited because the statute is relatively new. In September 2017, the court denied class certification; plaintiff sought to try the case in order to preserve the right to appeal, and the case was set for trial in December 2017. After a pretrial ruling interpreted the statute to reject most of plaintiffs' claims, the plaintiff agreed to dismiss with prejudice for a waiver of costs.

Area 51 Productions v. City of Alameda

On appeal, we won a dismissal on anti-SLAPP grounds of an event promotions company's business tort claims against a local city and its officials, with an award of attorney's fees. Plaintiff voluntarily dismissed the rest of the suit. *Area 51 Productions, Inc. v. City of Alameda*, 20 Cal. App. 5th 581 (2018).

Claydon v. Nestle Waters North America

We successfully defended Nestle Waters in an alleged nationwide consumer class action filed in Los Angeles Superior Court, claiming that Nestle Waters intentionally delivered unordered products to residential and commercial customers. After four years of litigation, we obtained summary judgment against plaintiff's nationwide class breach of contract theory, and then defeated class certification on the remaining false advertising, Business & Professions Code section 17200 unfair competition, and fraud claims.

Haggarty v. Stryker Orthopaedics

We represented Stryker in a class action alleging unlawful kickbacks to physicians in order to encourage them to select Stryker medical devices. We substituted in as co-counsel after the matter had been litigated

for two years and a motion to dismiss had been denied, and within six months convinced plaintiff to dismiss the case with prejudice in exchange for a waiver of costs.

Hang Loose Rum v. Frank-Lin Distributors

Represented start-up alcoholic beverage company in lawsuit against co-manufacturing facility, on claim alleging negligent quality control caused product launch to fail. Case settled for \$1.1 million on second day of trial.

BART v. GE Transportation Systems

We represented GE in a \$500 million federal court litigation in the Northern District of California involving the development of an experimental train control technology for BART. The case successfully settled after a partial summary judgment motion knocked out BART's breach of contract claim based on the exclusive remedy provision of the contract.

Howard v. Hui (Everex Securities Litigation)

In this securities shareholder class action, we defended two Hong Kong companies accused of insider trading and "control person" liability for false financial statements. Plaintiffs sought over \$300 million in damages. We secured a complete dismissal of the Third Amended Complaint, with prejudice, before discovery. The plaintiffs later dropped the appeal.

Kristensen et al. v. Great Spring Waters of America, et al.

We defended two consumer class actions against a manufacturer of nationally known bottled water products alleging consumer fraud arising from its labeling and sale of spring water products. The claims were successfully resolved and the matter dismissed.

McKesson HBOC Securities Litigation

We defended an officer of McKesson HBOC in one of the largest class action securities cases in U.S. history. Dozens of cases were filed and consolidated in federal court in San Jose, California. We successfully obtained dismissal of our client from the derivative suit filed in the Chancery Court in Delaware.

RAF Enterprises v. Trident

In a case brought on behalf of a local restaurateur, we obtained a \$9.89 million judgment (the largest in Marin County at the time) against a pair of landlords who owned and leased building in Sausalito. In response to our client's request to take over the lease in connection with his purchase of the current tenant, the landlords demanded that he sell half of the business to them before they would agree. The jury found that the landlords intentionally interfered with our client's agreement to purchase the existing tenant's business.

Publications

1/4/2008

Choosing Federal or State Court in Consumer Class Actions

Federal or State Court in Consumer Class Actions - PDF

Outside the Office

In his spare time, Tom likes backpacking or vacations to somewhere outdoors—recent adventures include the national parks of the Southwest, Yosemite, and the Canadian Rockies. He recently taught himself how to play the guitar using YouTube videos.

