



## GERARD MOONEY

### Partner

Litigation and Trial

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Orange County

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Gerard (“Gerry”) Mooney handles complex litigation and transactional matters for large and small businesses and their owners in a wide array of industries, including residential and commercial real estate development, healthcare, entertainment, banking and finance, employment services and construction. Gerry practices in both State and Federal courts, and has successfully tried numerous cases for his clients before judges and juries. Gerry is also an experienced appellate attorney, having handled more than 50 appeals before the California Courts of Appeal, the California Supreme Court, and the Ninth Circuit Court of Appeals.

After a recent six week trial, Gerry and his colleagues at the Firm obtained a judgment in favor of a client in the healthcare field against several of the client’s former officers and agents for breaches of fiduciary duties and contractual obligations, theft of corporate information and other acts of unfair competition. Gerry also obtained a favorable jury verdict for an on-line mortgage banker client in an action involving false statements made about the client on a website maintained by the client’s competitor. In addition, Gerry and his colleagues won judgment in favor of a behavioral health management company in a dispute over earn-out provisions in asset acquisition agreements. Gerry also recently obtained a substantial favorable settlement for a client against an apparel manufacturer which was using the client’s intellectual property to market millions of dollars of products globally on-line, without authorization.

Gerry is the Chair of the Firm’s Appellate Practice Group, consisting of attorneys at the Firm well-versed in representing clients’ interests before various Federal and State appellate courts. Among the numerous appellate matters Gerry has handled on behalf of his clients, Gerry recently worked with Rutan & Tucker, LLP Labor & Employment partners James Morris and Brian Sinclair to obtain a unanimous decision from the California Supreme Court holding that employees cannot circumvent their arbitration agreements by using the California Private Attorneys General Act of 2004 (more commonly known as PAGA) to pursue a claim for unpaid wages as so-called “civil

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### Related Services

- Litigation and Trial
- Appellate Practice Group
- COVID-19 Resources
- Insurance and Dispute Recovery

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### Related Industries

- Builders and Land Developers
- Entertainment and Media
- Life Sciences and Healthcare
- Real Estate
- Sports and Entertainment
- Insurance

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### Bar & Court Admissions

- State Bar of California
- U.S. District Court for the Central, Eastern and Southern Districts of California
- U.S. Court of Appeals for the Ninth Circuit

penalties.” This decision represents a substantial victory for employers, and reverses six appellate courts which had held that employees could recover unpaid wages as part of the civil penalties allowed under PAGA. (*ZB, N.A. v. Superior Court* (2019) \_ Cal.5th \_, 2019 WL 4309684.)

Gerry also obtained reversal in the United States Court of Appeals, Ninth Circuit, of a District Court order granting summary judgment against the client and for the client’s insurer. The District Court found that an “interrelated claims” provision in the client’s insurance policy eliminated the insurer’s duty to defend the client against various claims made by a prior employee, because one of the employee’s claims supposedly arose outside of the policy period. On appeal, Gerry successfully argued that the insurer had a duty to defend the client against all of the employee’s claims, and that the insurer breached that duty when it refused to provide a defense. (*Eastwood Insurance Services, Inc. v. U.S. Specialty Ins. Co.* (9th Cir. 2010) 391 Fed.Appx. 611.)

In addition, Gerry represented a beneficiary of a multi-million dollar trust before the California Court of Appeal, obtaining reversal of the Probate Court’s judgment against the client, and confirming the client’s on-going equal interest in the trust. (*Ammerman v. Callender* (2016) 245 Cal.App.4th 1058.) Gerry also obtained on appeal an order directing entry of judgment in favor of the client, reversing a prior trial court judgment against the client and ultimately entitling the client to a substantial award pursuant to a multi-party loan transaction. (*Voit, et al. v. Malliet, et al.* (Jan. 25, 2019, G053757) [nonpub. opn.]

Gerry won a reversal in the Court of Appeal of a trial court order requiring that the client account for decades-old transactions involving sale of a business and related real estate. (*Estate of Sakaida* (Nov. 28, 2017, B277158) [nonpub. opn.] ) Gerry also represented a sub-escrow company on appeal of a judgment which erroneously released a deed of trust. The Court of Appeal reversed the judgment and ordered entry of a new judgment in favor of the client. (*First AFG Financial Corporation v. Security Union Title Insurance Company* (Jan. 28, 2013, G046179 [nonpub. opn.] )

Gerry has also represented various amici curiae before the Courts of Appeal, and handled numerous emergency petitions for writ relief to California’s Courts of Appeal, as well as petitions for review to the California Supreme Court.

## Areas of Focus

- Commercial Litigation
- Real Estate Litigation
- Appellate Law

## Representative Matters/Cases

- Represented a client in the healthcare field in litigating claims against several of the client’s former officers and agents for breaches of fiduciary duties and contractual obligations, theft of corporate information and other acts of unfair competition. Obtained a judgment for the client for compensatory and punitive

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## Education

- University of California, Hastings College of the Law (J.D., 2002)
- Santa Clara University (B.S., 1999)

damages after a multi-week trial.

- Served as lead counsel in defending an accountancy firm and two of its principals against claims brought by a former partner of the firm regarding dissolution of the partnership. Obtained a pre-trial settlement favorable to the clients, removing the former partner and permitting the clients to continue operating the firm.
- Represented a behavioral health management company and its principals in litigation concerning a dispute over earn-out provisions in multiple asset acquisition agreements. Obtained a judgment in favor of the clients after a lengthy trial, and successfully defended the judgment on appeal.
- Represented an on-line mortgage banker in a multi-week trial in an action involving false statements made about the client on a website maintained by the client's competitor. Obtained a jury verdict for the client for compensatory and punitive damages.
- Represented corporate shareholders in litigation with a dissident shareholder following a statutory short-form merger. In the face of the client's motion seeking summary judgment for the client shareholders, the dissident shareholder settled the matter on terms highly favorable to the clients.
- Represented a property developer in litigation concerning the opposing party's breach of a real property purchase and sale contract. Obtained early summary judgment in arbitration and an award of attorneys' fees to the client.
- Represented a sub-escrow company in litigation brought by a lender concerning refinance of real property that resulted in an erroneous release of the lender's deed of trust on property. Obtained a complete reversal in the Court of Appeal of a judgment previously entered against the client, and an order for entry of judgment in favor of the client on all claims.
- Represented a web content developer in a malicious prosecution action filed against the client by a former business associate. Achieved an early dismissal and attorneys' fees award in favor of the client pursuant to a successful Anti-SLAPP motion.

## Memberships & Associations

- American Bar Association
- Orange County Bar Association