



# Matthew Evan Lewitz

## Member

### Santa Monica, New York

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#### Practice Areas

- Commercial Litigation
- Real Estate Litigation
- Class Actions
- Privacy Litigation – Emerging Trends

#### Industry Sectors

- Cannabis
- Real Estate & Construction

#### Education

- George Washington University Law School, J.D., *with honors*, 2011
- University of Michigan, B.A., *with high distinction*, 2008

#### Bar Admissions

- New York
- California

#### Court Admissions

- U.S. District Court -- Eastern District of New York
- U.S. District Court -- Southern District of New York
- U.S. District Court -- Northern District of New York
- U.S. District Court -- Southern District of California
- U.S. District Court -- Central District of California

Matthew is an experienced litigator, representing clients in state and federal business litigation matters. Matthew focuses his practice on complex commercial litigation, including financial services and securities fraud litigation, contract disputes and actions involving business torts, and privacy and data-related class actions, including cases involving Illinois' Biometric Information Privacy Act and the Video Privacy Protection Act. He has represented clients in city and state administrative proceedings, as well as clients facing federal and state investigations. Matthew has substantial experience in various aspects of litigation including handling appeals, and has international arbitration experience before the International Chamber of Commerce. He routinely helps clients to craft practical and effective solutions to mitigate legal and business risk.

Matthew recently obtained dismissal of a Video Privacy Act class action against a national digital media company by raising novel jurisdictional and other issues and is in the incipient stages of representing a newly sued entity in cookie consent litigation. He co-leads a team focused on video privacy, pixel and cookie litigation pending in California and throughout the United States.

Matthew previously practiced in the New York office of a national law firm where he represented mortgage lenders, loan servicers, and investors in actions involving predatory lending allegations and federal and state consumer protection claims. He also defended law firms and lawyers in high-stakes legal malpractice actions.

Matthew graduated with honors from The George Washington University Law School, where he was a member of The George Washington International Law Review and The George Washington University Law School Moot Court Board. Matthew was awarded the honors of Best Brief and Best Overall Competitor in the law school's annual Judge Grenadier International Law Moot Court Competition. Matthew graduated *Phi Beta Kappa* from the University of Michigan, where he received his Bachelor's Degree in Psychology and Organizational Studies.

#### Experience

Secured dismissal with prejudice of all claims against a subsidiary of our cannabis industry client. The plaintiff asserted claims for breach of contract and fraud arising from an alleged oral consulting agreement with the company and its former principal, under which the plaintiff purportedly agreed to help secure financing for the purchase of a cannabis grow facility and to provide consulting services for three years in exchange for monthly compensation and 1.5 million shares in the company. The plaintiff was given leave to amend the complaint twice, and at each turn we convinced the court that the claims failed to satisfy the Statute of Frauds.

Secured dismissal with prejudice of all claims against our cannabis industry client in a case centering on an oral agreement, entered into in the late 2000s, which the plaintiff claimed created a partnership between it and our client (among other named defendants) with the intention to sell cannabis seeds when it became legal to do so. In dismissing the claims, the Court accepted our argument that because the partnership was allegedly formed as a for-profit entity at a time when it was illegal to cultivate cannabis for profit in California, the alleged contract was unenforceable.

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Secured a favorable decision for the client seller from the California Court of Appeal in a years-long dispute arising from the failed purchase and sale of a retail shopping center in Los Angeles. The prospective purchaser's failure to follow through with the purchase caused our client to sustain, among other harm, consequential damages including lost rental income and triple net expenses. The parties pursued competing claims for breach of contract and fraud after the purchaser refused to authorize the release of the earnest money deposit. At the conclusion of the arbitration hearing, our client was granted its consequential damages, attorneys' fees, and the earnest money deposit that remained in escrow. In seeking to confirm the arbitration award in California State Court, the trial judge vacated our client's recovery of consequential damages but entered judgment in our client's favor with respect to the recovery of attorneys' fees. On appeal and after extensive briefing, the Court of Appeal reinstated the arbitrator's award of full consequential damages and affirmed the entire amount of the the trial court's judgment of attorneys' fees in our client's favor.

Successfully represented a veteran, on a pro bono basis, before the U.S. Board of Veterans' Appeals in connection with a benefits claim.

Secured a victory for a defendant-guarantor in a matter of first impression before the California Court of Appeal in a case centering on prevailing party attorneys' fees. The underlying case was a landlord-tenant dispute involving breach of contract and breach of guaranty claims, and it came before the Court twice. The initial issue was whether the prevailing plaintiff-landlord could collect attorneys' fees from the individual guarantor, who had deposited the funds at issue with the trial court, under the prevailing party attorneys' fee clause contained in the lease guaranty. We successfully moved to strike the plaintiff's prayer for attorneys' fees, and Court of Appeal affirmed in a published decision. On remand, we successfully moved for an award of attorneys' fees on behalf of the guarantor for fees she incurred both on appeal and in significant ancillary appellate proceedings, and the landlord again appealed. In its second published decision in the case, the Court announced for the first time that debtor defendants can escape contract liability for attorneys' fees, even after an action has been brought against them, if they tender the full amount owed before answering the complaint.

Prevailed on behalf of the plaintiffs -- the CEO of a full-service real estate investment and advisory firm, and his wife -- in a five-day injunction hearing before the Orange County Superior Court. The hearing was in connection with a civil harassment action against a former contractor who had hacked into the firm's computer systems and stolen privileged and confidential materials. She then hacked into the plaintiffs' personal computer and phone systems. The hearing revealed that the defendant had been engaged in a relatively sophisticated hacking campaign -- she even pled the Fifth Amendment rather than respond to certain questions. The Court determined that our clients had shown by clear and convincing evidence that the defendant had engaged, and was continuing to engage, in a pattern and practice of illegal hacking against the plaintiffs, and enjoined her from any continued hacking or other harassing conduct against them. The Court also issued a substantial attorneys' fee award -- a rarity in this type of action.

Negotiated a favorable settlement on behalf of a beauty company in an administrative proceeding before the New York City Department of Consumer Affairs.

Obtained dismissal of a New York state action in which claims of fraudulent concealment, breach of fiduciary duty, and unjust enrichment claims were asserted against a real estate developer arising from the sale of security interests in an investment fund.

Successfully opposed a motion for class certification in a federal action alleging breach of contract and consumer protection claims against a student loan servicer.

Obtained dismissal of a \$13 million legal malpractice action arising out of the handling of an underlying

directors and officers insurance coverage action concerning alleged breach of a stock option agreement.

Successfully mediated an insurance coverage dispute involving residential property damage arising from Superstorm Sandy.

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