



## Matthew I. Kaplan

### Partner

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Matthew Kaplan focuses his practice on class action false advertising and unfair competition cases, business and real estate disputes, and environmental matters. He counsels companies on litigation avoidance strategies, supply chain relationships, and regulatory matters, including FDA, USDA, FTC, advertising and labeling issues.

Matt defends businesses before government agencies and in the trial and appellate courts. Believing the fastest route to a favorable resolution is trial preparation, he concentrates on framing the trial issues from the outset in order to obtain a fast and positive settlement. Should that fail, the trial plan is in place so he can efficiently pursue the case through verdict.

Matt counsels food, beverage, cosmetic, and supplement companies on FTC, FDA, and USDA regulations and advertising issues and defends them in all types of business and commercial disputes. He also works with charter schools on issues related to funding, management best practices, and litigation matters.

A former environmental crimes prosecutor, Matt defends civil and criminal environmental enforcement and cost recovery actions, citizen suits, and related toxic tort matters. His prosecutorial experience provides him unique insights into the goals and strategies employed by the government to obtain favorable resolutions quickly and efficiently. He has extensive experience with California's Proposition 65, the laws governing the storage, transportation, handling, and disposal of hazardous substances, as well as toxic exposure cases, sewage and wastewater treatment plants, and drinking water systems.

### Education

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- University of Minnesota Law School (J.D., cum laude, 1993)
- University of Michigan (B.A., class honors, 1989)

### **State Admissions**

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- California, 1995
- Illinois, 1993
- Missouri, 1994

### **Federal Admissions**

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- United States Court of Appeals, Ninth Circuit
- United States District Court, Central District of California
- United States District Court, Eastern District of California
- United States District Court, Northern District of California
- United States District Court, Southern District of California
- United States District Court, Northern District of Illinois
- United States District Court, Southern District of Illinois

### **Service Areas**

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- Business Litigation
- Class Action Litigation
- Environmental & Renewable Energy
- Financial Services Litigation
- Food, Cosmetics & Dietary Supplements
- Regulatory Issues

### **Industries Represented**

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- Consumer Products
- Environmental Quality Programs
- FDA Law & Regulations
- Food Manufacturing
- Insurance
- Manufacturing
- Pharmaceutical & Medicine
- Real Estate
- Waste Management

## Experience

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- Represent a clothing manufacturer and retailer in a consumer false advertising class action with CLRA claims alleging supply chain representations in Vendor Code of Conduct about compliance with labor and employment laws, along with various sustainability claims, are false and misleading
- Obtained favorable settlement for a clothing manufacturer and retailer of a consumer class action alleging violations of wire-tapping laws through use of automated chat tool on company website
- Represent a pet food manufacturer in a consumer class action alleging PFAS chemicals in packaging renders product worthless and entitles nationwide class to economic damages
- Obtained dismissal of class action false advertising, unfair competition (Business & Professions Code § 17200), and Consumer Legal Remedies Act case for national food manufacturer involving alleged violation of FDA nutritional content labeling requirements
- Obtained dismissal of class action false advertising, unfair competition (Business & Professions Code § 17200), and Consumer Legal Remedies Act case for builder of manufactured homes that were allegedly susceptible to mold
- Obtained dismissal of class action false advertising, unfair competition (Business & Professions Code § 17200), and Consumer Legal Remedies Act case for supplement manufacturer related to auto-shipment program and alleged excessive shipping and handling charges
- Obtained dismissal of class action false advertising, unfair competition (Business & Professions Code § 17200), and Consumer Legal Remedies Act case for cleaning equipment manufacturer related to excessive shipping and handling charges
- Obtained dismissal of class action false advertising and unfair competition case against prescription drug manufacturer related to alleged manufacturing defects
- Successfully defended appeal of trial court dismissal of class action false advertising and unfair competition case against prescription drug manufacturer
- Obtained dismissal of class action false advertising, unfair competition (Business & Professions Code § 17200), and Consumer Legal Remedies Act case alleging invasion of privacy by telephone company
- Negotiated non-payment dismissal of class action false advertising, unfair competition (Business & Professions Code § 17200), and Consumer Legal Remedies Act case for anti-wrinkle cream cosmetic manufacturer
- Negotiated favorable settlement of class action false advertising, unfair competition (Business & Professions Code § 17200), and Consumer Legal Remedies Act false labeling case for nut butter manufacturer
- Negotiated favorable settlement of class action case for protein supplement manufacturer involving Made in U.S.A. claims
- Negotiated favorable settlement of class action false advertising, unfair competition (Business & Professions Code § 17200), and Consumer Legal Remedies Act case for luxury resort hotel related to Internet advertising
- Negotiated favorable settlement of class action for food manufacturer of case alleging false and

- misleading health claims, nutrient content claims, and violation of FDA labeling regulations
- Obtained dismissal of trademark infringement suit for regional brewery
- Obtained insurance coverage for regional brewery under liability insurance policies
- Recovered breach of contract and fraud court judgment against defendant that failed to deliver equipment
- Advise supplement manufacturers regarding FDA labeling regulations and FTC substantiation issues
- Counsel start-up food manufacturers on FDA and local jurisdiction permitting and labeling requirements
- Defeated environmental review challenge opposing redevelopment of commercial property under California's Environmental Quality Act in trial court and successfully defended appeal
- Defend Centralized Wastewater Treatment operator in environmental enforcement action
- Defended mass environmental tort action involving more than 1,400 individual plaintiffs alleging groundwater contamination polluted drinking water systems causing personal injury, wrongful death and property damage
- Represented community group plaintiffs suing utilities over former manufactured gas plant facility that contaminated neighborhood park and homes in Resource Conservation and Recovery Act citizen suit and related personal injury and property damage case in state court
- Negotiated favorable de minimis settlement for national grocery retailer in "Superfund" litigation under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)
- Negotiated favorable settlement for aerospace manufacturer in state enforcement action brought under the Federal "Superfund" laws (CERCLA)
- Negotiated favorable plea bargain for transportation company in criminal prosecution for violation of state hazardous waste disposal laws
- Negotiated dismissal for commercial landlord of criminal prosecution of local zoning ordinances related to storage of hazardous waste
- Obtained successful abandonment of prosecution by Regional Water Quality Control Board of Administrative Complaint seeking \$12 million in penalties against mobile home park operator for discharges from wastewater treatment plant in violation of permit requirements
- Negotiated favorable settlements of numerous Proposition 65 cases for manufacturers and retailers concerning food, beverages, children's products, automobile accessories, environmental exposures, and other products
- Successfully defended mortgage broker from financial elder abuse claims in jury trial
- Successfully defended international trust company from fraudulent transfer claims and alleged violation of the Racketeer Influenced Corrupt Organizations Act (RICO) in jury trial
- Defend promotional products company in case alleging interference with contract, aiding and abetting breach of fiduciary duties and trade secret theft
- Negotiated favorable settlement for commercial tenant in dispute over landlord's failure to make promised repairs and improper imposition of late fees
- Represented aerospace manufacturer in arbitration concerning sub-supplier's deficient electromagnetic laches
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Successfully defended county Office of Education and Superintendent of Schools in writ proceedings and appeal of action challenging suspension of golden parachute payments to School Board members

- Obtained favorable settlement for minority shareholder in partnership dispute

## Publications & Events

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### SPEAKING ENGAGEMENTS

- “Update on Consumer Class Actions,” Hot Topics in Advertising & Marketing Law, New York City Bar Association (October 2024)
- “Food, Drugs, Cosmetics, Dietary Supplements, Advertising – and the Special Legal Rights of Senior Citizens: What All Senior Citizens Need to Know When They Make Decisions Regarding Their Purchases,” Beverly Hills Bar Association Webinar (November 2020)
- “A Deep Dive into Current State Level Priorities and Regulations,” 5th Annual Legal, Regulatory, and Compliance Forum on Cosmetics & Personal Care Products, New York, New York (March 2018)
- “NPA Prop 65 Webinar,” Natural Products Association webinar (December 2017)
- “Advertising Risks and Brand Protection – Claim Substantiation, Enforcement, and Consumer Class Actions” and “The New Environmental Regulatory Climate,” 2016 In-House Counsel Summit, Tucker Ellis LLP, Cleveland, Ohio (October 2016)
- “Advertising in Regulated Industries,” BAA Marketing Law Conference (November 2015)
- “Is Your Business Ready for the US Marketplace?,” Panelist, Sabor Latino, Latin Food Industry Trade Show (May 2015)
- “The Role of a Motion for Summary Judgment in Civil Litigation: The ABC’s of Summary Judgment,” SGVLSA (January 2015)
- “Juror Impressions: Inside the Courtroom—Consumer v. Food Company, What to Expect During Trial of an ‘All Natural’ Case,” Mock Trial Presenter, Momentum Event Group (September 2014)
- “Legal Issues for Start-Up Food Aggregators and Distributors,” Local Orbit Hub Camp, Occidental College (March 2014)
- “The Safe Drinking Water and Toxic Enforcement Act of 1986; What Could Possibly Be Wrong with That? – Proposition 65, An Update,” GMA Litigation Conference (February 2014)
- “Challenges Facing Food & Beverage Industries in Complex Litigations” (June 2013)

### PUBLICATIONS

- [“CBD in Consumer Goods: The Class Action Lawsuits Have Arrived,”](#) *Nutrition Industry Executive* (January/February 2020)
- [“Social Media Marketing: The Path to Riches or Ruin?,”](#) *Nutrition Industry Executive* (March 2019)
- [“Ninth Circuit Rules Supplement Companies Can Fend Off Challenges to Structure/Function Claims with Preemption Arguments, but That’s No Defense to False Advertising,”](#) Tucker Ellis Client Alert (January 2019)
- [“The California Consumer Privacy Act of 2018: How Can Businesses Use Consumer Data?,”](#) *Nutrition Industry Executive* (January/February 2019)
- [“When Supplement Product Advertising Goes Too Far,”](#) *Nutrition Industry Executive* (January/February 2018)
- [“The Tricky Side of Brand Partner Agreements,”](#) *MultiBriefs* (January 2018)
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- “FDA Tackles Terrorism and Adulteration,” *Food Quality & Safety* (September 2016)
- “FDA’s New Rule on Sanitary Transport of Food,” *Nutraceuticals World* (September 2016)
- “Federal Jury Clears Leading Homeopathic Flu Remedy Manufacturer in Class Action Trial,” Tucker Ellis Client Alert (June 2016)
- “‘Evaporated Cane Juice’ – FDA Releases Final Guidance Critical of the Term,” Tucker Ellis Client Alert (May 2016)
- “Website ‘Terms of Use’ May Not Bind Users,” *Nutraceuticals World* (March 2016)
- “FDA Warning Letters Target Internet Testimonials,” *Nutraceuticals World* (February 2016)
- “Congress Loses Its COOL, Repeals Meat Labeling Rule,” *Law360* (February 2016)
- “FDA Warning Letters Target Internet Testimonials,” Tucker Ellis Client Alert (January 2016)
- “For the COOL – Congress Repeals Country-of-Origin Labeling Rule for Beef and Pork,” Tucker Ellis Client Alert (December 2015)
- “OEHHA Adds Aloe Vera, Non-Decolorized Whole Leaf Extract and Goldenseal Root Powder to List of Cancer-Causing Chemicals Under California Prop 65,” Tucker Ellis Client Alert (December 2015)
- “California to Loosen ‘Made in USA’ Labeling Standard,” Tucker Ellis Client Alert (September 2015)
- “Subscription Services Beware! Failure to Follow Automatic Renewal Laws May Convert Your Sales into Unconditional Gifts to Your Customers!”, Tucker Ellis Client Alert (February 2015)
- “Graphene: Regulatory Considerations for the ‘Wonder Material,’” *Nanotechnology Law & Business* (Fall 2014)
- “Keeping Tabs On ‘Natural’ Beauty And Food,” *Law360* (June 2013)
- “SCOTUS – Evidentiary Proof Required for Class Certification as Merits Are Considered,” *IADC Product Liability Committee Newsletter* (May 2013)
- “California Becomes the First State to Require Energy Usage Disclosures by Commercial Property Owners,” *Shopping Center Legal Update* (Summer 2011)
- “California Supreme Court Expands Scope of Consumer Class Actions,” *Client Alert* (January 2011)
- “In Another Blow to Federal Preemption, States Can Enforce Unfair Lending Laws Against National Banks,” *Client Alert* (July 2009)
- “Statute of Frauds Mortgage Forebearance,” *Client Alert* (October 2008)
- “Ninth Circuit Rules Mortgages are Like Dog Food,” *Client Alert* (May 2008)

#### **MEDIA QUOTES**

- “Nature’s Bounty Wins in False Advertising Suit,” *Vitamin Retailer* (January 2019)
- “Nature’s Bounty Prevails in False Advertising Suit – Again,” *Natural Products Insider* (January 2019)
- “FDA: You Can’t Call HPP-Treated Juice ‘Fresh’ ... But Can You Call it ‘Raw?’”, *Food Navigator-USA* (February 2014)
- “Food Companies Confront Spike in Consumer Fraud Lawsuits,” *Thomson Reuters* (June 2013)

**Honors**

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- Martindale-Hubbell® AV Preeminent® Peer Rating

**In the Community**

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- Los Angeles County Bar Association
- Provisors, Group Leader, Mid City
- The Food Maker Hub
- Food Industry Business Roundtable
- Beauty Industry West