

# Brendan F. Macaulay

Partner | San Francisco

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Brendan Macaulay is a real estate and commercial litigator. His real estate experience includes resolving disputes over commercial leases, land use issues, real estate sales, development, property management, boundary issues, title insurance, and claims involving brokers and contractors.

Brendan has 30 years of experience in real estate and complex business litigation in state and federal court, including litigation related to trade secrets, real estate, business torts, commercial transactions, contracts, professional malpractice, partnership disputes, and bankruptcy matters.

He has first chaired a number of arbitrations and trials, and briefed and argued cases before the California and Ninth Circuit Courts of Appeal.

## EXPERIENCE

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### REAL ESTATE LITIGATION

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***State of California v. Segerblom, et al.*** Led successful defense of County of Los Angeles in quiet title and damages action relating to a 1968 bond foreclosure sale of property in Malibu. Current record owner cross-complained against County for \$20 million value of property. Achieved complete dismissal of all claims against County. Defending appeal.

***Republic Metropolitan, LLC v. City of Santa Clara.*** Led successful defense of municipality against breach of contract and other claims by a developer seeking damages of \$57 million for terminated mixed-use development. All claims dismissed through motion practice.

***ProSet Construction v. Rohnert Park Lodging.*** Represented owner of hotel in multi-million dollar construction dispute with general contractor over delays, non-conforming work and change orders.

***AgLand Trust v. Uni-Kool, LP, et al.*** Co-counsel for agricultural land trust seeking to enforce agreement to convey fee title to 200 acre farm in Salinas, CA. Obtained favorable verdict and title to property worth \$11.7 million.

***Crossroads Hemet v Food Management Partners.*** Trial counsel in defense of restaurant chain in claim for breach of lease. Defeated majority of damages claim at trial despite undisputed breach of lease.

***Legacy Golden State v. Catalina Restaurant Group, et al.*** Defended owner of 200+ restaurants against landlord's claim of waste, breach of lease, etc. Landlord sought \$1.5 million and legal fees. Settled with Landlord for ~6% of claim.

**Oakdale Mgmt. Co. v. Gorilla Farms.** Represented purchaser of farm against seller/landlord in claim for breach of an asset purchase agreement and long term agricultural lease. Settled for a reduction in purchase price.

**Lease Disputes for Restaurant Chains.** Represent owner of several restaurant chains in multiple lease disputes relating to lease termination, renewals, waste, assignments, buyouts, market rent, subleases, and option exercises.

**Schellinger Bros. v. Cotter.** Represented owner of 20+ acre property in action against purchaser arising from failed development in Sebastopol, CA. Issues included enforceability of sales contract under Subdivision Map Act and measure of damages for breach of contract to sell land.

**Feldstein Enterprises LP v. XYZ.** Defended tenant in \$4 million breach of lease claim by landlord under long term industrial lease relating to condition of property at termination.

**In Re Lompa.** Represent owners of real estate portfolio in Ch. 11 bankruptcy proceeding; case involves sales, leasing, lender, boundary, entitlement and water issues for agricultural and developable residential parcels. Included separate suit against adjacent landowner to enforce EIR mitigation measure requiring access for 50+ acre development property. Key property sold and client successfully emerged from bankruptcy with discharge and surplus assets.

**Metropolitan Life Ins. Co. v. LSI Corporation.** Assisted in defense of lessee in breach of lease suit by owner of 166,000 s.f. office building. Owner claimed \$2.7M in damages for claimed failure to repair/restore the property. Lessee prevailed at trial and was awarded attorneys' fees.

**In Re Acosta.** Represented owners of industrial and residential real estate in bankruptcy proceeding; case involves sales, leasing, lender, and entitlement issues. First chaired trial on valuation of vacant 20 acre waterfront parcel in SF valued at \$25M.

**Kensington v. Masonite Corporation.** Represented manufacturer (NYSE: IP) of hardboard siding product against claims of product defect and related construction defect litigation arising from 300+ unit apartment complex. Plaintiff claimed \$30 million in damages. Settled at trial.

## COMMERCIAL LITIGATION

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**County Sanitation District 2-3 v. City of San Jose, et al.** Defending co-owner of regional wastewater facility against claims by five sanitary districts who seek to avoid \$400 million in contractually required capital contributions, plus \$200 million in operations and maintenance obligations.

**Copper Harbor v. Central Garden & Pet Supply.** Lead trial counsel for creator of automated manufacturing process against maker of ant stakes for misappropriation of trade secrets under the Uniform Trade Secrets Act, breach of contract/NDA and unfair competition. Obtained multi-million dollar verdict after two month jury trial. Prevailed on appeal in every respect.

**In Re Specs.** Represented U.S. distributor of scientific research equipment in claims against German manufacturer over breach of distribution agreement, trademark infringement, cybersquatting, and related claims in federal court.

**Vemics, Inc. v. XYZ.** Represented publicly traded technology escrow company in multi-jurisdictional action in state and federal courts arising from claimed loss of software source code. Case involved claims of copyright infringement, breach of fiduciary duty, breach of contract and claimed damages of \$100 million.

**Securities and Exchange Commission v. Pattison.** Defended controller of Embarcadero Technologies (NASDAQ: EMBT) in action by SEC over claimed stock options backdating and false SEC filings. Obtained defense verdict on all securities fraud claims after 3 week federal jury trial.

**Mayorga v. XYZ.** Defended putative class action lawsuit against publicly traded client for claims of unfair competition (Bus. & Prof. Code § 17200) and alleged violations of the Consumer Legal Remedies Act and RICO.

**Amtower v. Photon Dynamics, Inc. et al.** Represented Photon Dynamics, Inc. (NASDAQ: PHTN) in a securities fraud and breach of fiduciary duty case. Plaintiff alleged federal and state law claims of fraud arising out of a merger agreement and registration statement, claiming the acquiring company misrepresented transferability of the shares and the acquirer's insider trading policy. After a 5 week trial, the jury returned verdicts for all defendants on all causes of

action.

***Transitional Investors, LLC. v. Michael J. Jackson, MJ Publishing Trust, et al.*** Represented private equity client in action against entertainer and his trusts for breach of contract arising from \$330 million refinancing.

## INSIGHTS

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### SPEAKING ENGAGEMENTS

Moderator, "Front Line Privacy: The General Counsel's Perspective on Private Sector Cybersecurity," Nossaman & University of California, Irvine's 2015 Cybersecurity Symposium, Los Angeles, CA, 10.12.2015

Speaker, "Legal Strategies to Win your Fee Disputes in Court," Valeo Partners Webinar, 05.15.2013

Speaker, "Does Your Arbitration Clause Have Claws?," Association of Corporate Counsel San Francisco Bay Area Chapter CLE Program, San Francisco & Palo Alto, CA, 04.02.2008

### PUBLICATIONS

Author, "Planning for Breach Notification Requirements in Your Customer Contracts," *Nossaman eAlert*, 05.01.2015

Author, "Defining Atty Fee Enforceability in Illegal Contracts," *Law360*, 02.25.2015

Author, "Is the Attorney's Fees Clause Moot in an Illegal Contract? – Depends on Your Involvement, Explains First Appellate District Court," *Nossaman eAlert*, 02.18.2015

Author, "Disclosing Data Collection Practices: is an Opt-Out Program Enough?," *Nossaman eAlert*, 02.04.2015

Co-Author, "A Subsequent Owner Is Liable for Prior Owner's Violations of Rent Control Ordinance," *Nossaman eAlert*, 01.21.2009

Author, "Specific Performance: Still the Law of (the) Land," *Nossaman eAlert*, 04.29.2008

## HONORS & RECOGNITIONS

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Bar Association of San Francisco Award of Merit, 2001

## COMMUNITY & PROFESSIONAL

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San Francisco Bar Association, Member

Urban Land Institute, Member

University of California, Hastings School of Law, Legal Writing Instructor, Fall 2002; Moot Court Instructor, Spring 2003

The Bethany Center (low income senior housing), Vice President of Board of Directors, 2003-2007

## PRACTICES

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Litigation

Construction Law, Claims & Litigation

Real Estate

Real Estate Litigation

Privacy, Cybersecurity & Data Protection

## INDUSTRIES

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Real Property

## EDUCATION

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Duke University School of Law, J.D., 1992

Whittier College, B.A., 1989

## ADMISSIONS

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California

U.S. Court of Appeals, Ninth Circuit

U.S. District Court, Central District of California

U.S. District Court, Eastern District of California

U.S. District Court, Northern District of California

U.S. District Court, Southern District of California