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## Professional Profile - Dahlberg, John D. - Partner (AV-Rated)

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### LEGAL EXPERIENCE

I litigate a wide array of cases. These include business and commercial disputes, class actions, embezzlement recovery, construction defect, real estate and commercial lease issues, personal injury, professional liability, civil rights, false arrest, and other intentional tort litigation.



#### Five Recent Cases:

**1. Defeated Certification of a Purported Class Action: Andrew Lee v Pep Boys et al.** On December 23, 2015, the United States District Court in San Francisco denied the motion by plaintiff to certify a class in an FDCPA and UCL case against our clients. One month later, the court denied a motion brought by plaintiff and his attorneys to have a new plaintiff intervene. Trial of the plaintiff's remaining individual claims is set for this Summer.

**2. Obtained Gross Negligence Award Against LLC Manager:** On January 14, 2015, I obtained a complete victory in arbitration for a long time real estate client under the demanding "gross negligence" standard.

In fact, we proved gross negligence in four different ways. Law Firm client and Claimant Alpha Company LLC, an investment firm, brought a claim against its former manager, Respondent John Doe, alleging that he was grossly negligent by bidding \$750,001.00 of Alpha's funds to obtain title to a residential property at a non-judicial foreclosure auction sale in San Francisco. The Respondent manager John Doe did not discover that the 2007 loan in foreclosure was in third position, resulting in the loss of the Company's invested funds. Claimant sought all of its compensatory damages as well as prejudgment interest, costs, and attorney fees.

In the absence of an LLC Operating Agreement provision to the contrary, a California LLC is entitled to a statutory recovery for its losses if the manager was "grossly negligent." Few California business cases discuss the meaning of gross negligence. The general California test for "gross negligence" is the failure to exercise any care to protect the victim, or an "extreme departure" from the care a reasonably prudent person would exercise under the same conditions to protect the victim from harm.

We established by a preponderance of the evidence that the Respondent was grossly negligent with regard to each of the two senior liens he failed to discover. Moreover, the arbitrator after an evidentiary hearing found that Doe was grossly negligent under both of the alternative definitions for each breach. The arbitrator awarded all of the Claimant's compensatory damages and prejudgment interest. The parties subsequently resolved the issues of attorney fees and costs.

The Superior Court subsequently affirmed the award.

**3. Anti-SLAPP Dismissal of Business Tort Case Affirmed on Appeal with a Fee Award.** On January 30, 2015, the First District Court of Appeal, Division Five, affirmed dismissal of a business tort case brought by Steve and Anna Smith against firm clients James Elliot and Café Real Estate, Inc. dba Delmar Properties. The Smiths alleged that they had been damaged because the firm's clients made complaints about their business practices to the government. We demonstrated that even if the allegations were true, they arise from protected constitutional activity and must be dismissed for that reason. On June 24, 2015, the Superior Court granted our application for \$154,945 in fees.

**4. Retailer Not Liable for Accident Caused by Drunk Driver Who Did Not Purchase the Alcoholic Beverage:** In *Ruiz v Morse*, I represented a retailer client sued by the parents of a deceased adult child who was killed in a motor vehicle collision at the hands of a drunk driver. The parents alleged that the retailer client sold an alcoholic beverage to the drunk driver 27 minutes before the collision. We demonstrated by a successful motion for summary judgment that the retailer had no potential liability under California Business and Professions Code Section 25602.1, because it sold the beverage to a friend of the driver, who presented ID and appeared to be sober at the time of the purchase, meaning that the client never furnished anything to the drunk driver. Retailers

are not liable for what seemingly sober customers do with merchandise after they leave the store.

**5. Lawyers Not Liable if Clients Fail to Execute Documents:** In *La Rosa v Klamm*, I obtained judgment on behalf of a veteran and well-respected trust and estates lawyer accused by a non-client trustee of not properly advising his client trustors about how to convey property into their trusts before their deaths. We proved that the attorney met all of his professional duties, and could have no potential liability if his client did not follow through. We then turned the tables and negotiated a settlement of our client's claims of malicious prosecution against the trustee, resulting in a large payment back to our client.

#### **PREVENTING CIVIL TRESPASS IN FRONT OF RETAIL STORES**

*Customers* should be free to shop without distraction, harassment and insults from storefront trespassers who demand their attention, their signatures and their money. *Retailers* should be able to control their storefront sidewalks and provide customers with a serene and pleasant place to shop, free of distraction and unwanted interruptions.

We help California retailers and shopping centers stop trespassing. Contrary to what trespassers are programmed to say, the law strongly favors the retailer's rights to stop trespassing in front of stores. We persuade trespassers and their managers to leave client stores voluntarily most of the time based upon well-settled case law and common sense.

When we can't, we get court orders barring them permanently. Trespass by all diminishes after the retailer enforces its rights against a few.

#### **EMBEZZLEMENT RECOVERY**

I also enjoy helping employers get their money back from embezzling employees, because these cases are usually over quickly, and advantageously. Our clients understandably expect to get back everything the embezzler stole from them plus interest and the cost of investigation and litigation. We have been successful on a number of occasions in doing just that.

#### **Education**

J.D. Yale University Law School.  
A.B. University of California, Berkeley.  
Lowell High School, San Francisco

#### **Personal**

Native San Franciscan. Member, City of Oakland Police Department 1988-1996, Reserve Unit Sergeant; Life Member of the Dolphin Swimming and Boating Club; Advisor, St. John Armenian Church, Parish Council.

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