



## Evelyn F. Heidelberg, Partner

Practice Areas	Litigation Environmental and Land Use
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Ms. Heidelberg's practice emphasizes business, real estate, land use and environmental litigation. She has successfully represented businesses, governmental entities, non-profit organizations and individuals in state and federal courts.

A particular emphasis of her litigation practice is defending mortgage lenders and servicers against predatory lending and wrongful foreclosure claims. Representative cases in which she has successfully defended against such claims in the past several years include the following:

- *Calvert v. American Home Mortgage Servicing, Inc.* (Superior Court for the County of San Diego, Case No. 37-2008-00074298-CU-OR-SC): Class action complaint for wrongful foreclosure alleging violations of RESPA, the Unfair Competition Law, the Consumers Legal Remedies Act, and breach of the covenant of good faith and fair dealing. Obtained dismissal of the class action allegations and the Consumer Legal Remedies Act claim on motion for judgment on the pleadings. Case settled with a loan modification; no payments to plaintiffs or to their counsel.
- *Alvarez v. American Home Mortgage Servicing, Inc.* (U.S. District Court for the Southern District of California, Case No. 09-CV-0651 JLS NLS): Wrongful foreclosure case, initially filed in state, alleging violations of the Unfair Competition Law and breach of fiduciary duty, and to quiet title. Following removal to federal court and filing of motion to dismiss all claims, defendant dismissed case with prejudice.
- *Garcia v. Mortgage Electronic Registration Systems, Inc., et al.* (Superior Court for the County of San Diego, Case No. 37-2009-00089946-CU-OR-CTL): Wrongful foreclosure case alleging violations of California's nonjudicial foreclosure statute, the Unfair Competition Law, the Rosenthal Fair Debt Collection Practices Act, and to quiet title. After motion for judgment on the pleadings was granted as to all claims but one alleging violations of Civil Code § 2943 (requiring provision of beneficiary statement upon request within specified time frame), plaintiff agreed to dismiss remaining claim and have judgment taken against him to facilitate his appeal, but never appealed.
- *Permpoon v. Wells Fargo Bank, N.A., et al.* (U.S. District Court for the Southern District of California, Case No. 09-CV-1140 H BLM): Predatory lending and wrongful foreclosure action alleging 17 claims, including violations of TILA, HOEPA, RESPA, Fair Credit Reporting Act, Equal Credit Opportunity Act, the Unfair Competition Law, California's nonjudicial foreclosure, fraud, usury, slander of title, and to quiet title. After motion to dismiss all claims was granted with leave to amend, plaintiff dismissed action without prejudice.
- *Ybarra v. Option One Mortgage Corporation, et al.* (Superior Court for the County of San Diego, Case No. 37-2008-00081817 CU-BT-CTL): Wrongful foreclosure action, involving claimed misappropriations of insurance proceeds after home was damaged in fire, alleging fraud, negligence, conversion, intentional infliction of emotional distress and violations of the Unfair Competition law. After successfully moving to compel arbitration, case settled upon nominal payment to plaintiff and her attorney.

- *Zuniga v. Option One Mortgage Corporation, et al.* (U.S. District Court for the Southern District of California, Case No. 09-CV-1030 LAB RBB): Predatory lending and wrongful foreclosure action initially alleging 18 causes of action, including violations of TILA, HOEPA, RESPA, Fair Credit Reporting Act, Equal Credit Opportunity Act, the Unfair Competition Law, California's nonjudicial foreclosure, fraud, usury, slander of title, and to quiet title. After motion to dismiss all claims was granted with leave to amend, plaintiff amended by alleging violations of TILA, RESPA, HOEPA, fraud and the Unfair Competition Law. After plaintiff failed to oppose defendant's motion to dismiss all claims in the amended complaint, the Court dismissed the case with prejudice.
- *Sobel v. Option One Mortgage Corporation, et al.* (Superior Court for the County of San Diego, Case No. 37-2008-00081319-CU-OR-CTL): Predatory lending action alleging fraud, breach of contract and violations of the Unfair Competition Law, and to quiet title. After demurrers to original and amended complaints reduced the number of causes of action, case settled upon nominal payment to defendants and their lawyer.
- *Gutierrez v. American Brokers Conduit, et al.*: (Superior Court for the County of Stanislaus, Case No. 638956): Represented Mortgage Electronic Registration Systems in wrongful foreclosure action alleging fraud, negligence per se, breach of the covenant of good faith and fair dealing, breach of fiduciary duty. Plaintiff failed to oppose demurrer to entire complaint, and judgment was entered for MERS.
- *Atta v. Option One Mortgage Company, et al.* (Superior Court for the County of San Diego, Case No. 37-2009-00064350-CU-BC-EC): Represented American Home Mortgage Servicing, Inc. and Option One Mortgage Corporation in this predatory lending case alleging claims for fraud and breach of contract. Demurrer sustained without leave to amend to all causes of action, and judgment of dismissal entered in favor of defendants.
- *Lapurga v. Union Bank of California, N.A., et al.* (U.S. District Court for the Southern District of California, Case No. 10 CV 0879 WMc): Represented Union Bank, N.A. in predatory lending action. Case settled with stipulated judgment involving loan modification at market rates, with no admission of liability.
- *Clemenson v. Wells Fargo Bank, N.A., et al.* (Superior Court for the County of San Diego, Case No. 37-2010-00051673-CU-OR-NC): Wrongful foreclosure action alleging claims for violation of California's nonjudicial foreclosure statute, the Rosenthal Fair Debt Collection Practices Act, Consumers Legal Remedies Act, negligence per se, breach of contract, and to quiet title. Action settled with loan modification.
- *Ross v. First American Specialty Insurance Company, et al.* (Superior Court for the County of San Diego, Case No. 37-2009-00065562-CU-IC-EC): Case alleging breach of insurance contract; claim against lender/servicer is for declaratory relief re entitlement to additional insurance proceeds that may be paid. Action dismissed by plaintiff.
- *Permpoon v. H & R Block Mortgage Corporation, et al.* (Superior Court for the County of San Diego, Case No. 37-2010-00088752-CU-OR-CTL): Predatory lending and wrongful foreclosure action alleging fraud, breach of contract, violation of the Fair Debt Collection Practices Act, RICO, and to quiet title. Demurrer to all causes of action sustained without leave to amend.
- *Parker v. Fidelity National Title Company, et al.* (Superior Court for the County of San Diego, Case No. 37-2009-00070301-CU-OR-EC): Predatory lending and wrongful foreclosure case, alleging fraud, violations of TILA and California's nonjudicial foreclosure statute. Demurrer to all causes of action sustained without leave to amend.
- *Davis v. Financial Freedom Senior Funding Corporation, et al.* (Superior Court for the County of San Diego, Case No. 37-2010-00094906-CU-FR-CTL): Fraud in the inducement claim against reverse mortgage lender. Demurrer to all causes of action sustained without leave to amend.