

## James R. Evans, Jr.

Partner

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James Evans is a highly skilled trial attorney with decades of experience handling complex cases in state and federal courts. Jim is also an expert in alternative dispute resolution (negotiation, mediation, and arbitration). With more than 30 years of experience, his clients rely on him to solve their most challenging disputes. Jim offers clients his thoughtful avoidance strategy counsel as a preventive measure, and his substantial courtroom experience when high-stakes litigation is unavoidable.

He focuses his practice on class action matters, including claims of wage and hour violations and employee misclassification, unfair competition, the validity of advertising and marketing claims, privacy violations under California's Song Beverly Act, violations of the ADA, intentional torts and violations of the California Franchise Investment Act.

He represents clients across a broad spectrum of industries, including retail, financial services, consumer products, manufacturing, real estate, transportation, software, technology, automotive and insurance.

Jim has been recognized by the *Daily Journal* and the State Bar of California for his pro bono efforts. He currently serves as special counsel to the Office of the Chief Trial Counsel, of the State Bar of California.

### ***Representative Experience***

#### ***Labor & Employment***

- An employment class action alleging \$2 billion in damages based on purported misclassification of taxi drivers as independent contractors; class certification motion denied and appeal dismissed.
- An employment class action against national retailer alleging misclassification of managers; class claims dismissed with prejudice on motion and affirmed on appeal.
- An employment class action against national transportation company alleging misclassification of drivers; class certification motion denied.
- Arbitrations before the American Arbitration Association in numerous matters including claims for wage and hour violations, sexual harassment, pregnancy discrimination, disability discrimination, and meal and rest period violations.
- Federal race discrimination claims against national retailer.
- Claims brought against national retailer under California's Fair Employment & Housing Act. Tried before a jury with motion for non-suit granted and defendant awarded all of its attorneys' fees.
- Administrative law proceedings before the California Department of Labor Standards and Enforcement.
- Defense of numerous California Private Attorney General Act claims for labor code violations (meal and rest period, minimum wage, wage statements, etc.).

#### ***Expertise In Drafting and Enforcing Employment Arbitration Agreements and Class Action Waivers***

- In 2002, Jim was the principal architect of a national transportation company's employee arbitration policy that included a class action waiver. The company does business in all 50 states. After the company had been sued in numerous class actions alleging wage and hour violations (that cost the company millions in cases Jim did not handle), upon Jim's recommendation the company asked him to draft a uniform arbitration policy that would assist it in forcing claims into arbitration. Jim opted to draft an agreement that was governed by the Federal Arbitration Act in order to include a class action waiver since federal case law tended to support such waivers. The company rolled out the arbitration policy in all 50 states prior to *Concepcion* (and *Gentry* which is the California Supreme Court case holding that in some cases class action waivers in employment agreements are enforceable).
- After drafting the arbitration policy, and assisting our client with implementing it, the company continued to be sued in employment class actions. Both prior to and after the rulings in *Gentry* and *Concepcion*, Jim successfully enforced the class action waiver at the trial court level and successfully defended the policy in the California Court of Appeal. Since creating it, Jim has enforced this class action waiver successfully in numerous actions, and he has not lost a motion to dismiss class claims based upon this form of class action waiver.
- For the same client, Jim recently brought a motion to coordinate four pending employment class actions because they are all subject to the class action waiver and arbitration policy. The California Judicial Council granted the motion to coordinate. Now, all future actions against this employer will be coordinated before the same trial court judge. The judge has enforced our client's class action waiver several times—both before and after the *AT&T v. Concepcion* decision. Coordination insures that our client won't get different results simply because the cases were filed in different venues.
- Jim has assisted numerous employers in adopting similar arbitration policies. It is Jim's opinion, with demonstrated results, that employers have a very powerful weapon available to them to avoid future employment class actions. Some clients mistakenly believe that the law is unsettled. Although the case law continues to evolve, a well drafted employment class action waiver and arbitration policy is likely to be enforced in California.

### ***Commercial and Complex Litigation***

- A California class action brought under the Fair Credit Reporting Act with more than \$2 billion claimed; class certification motion denied.
- A California consumer class action brought against a national retail company; class certification motion denied.
- A California consumer class action brought against a national retailer alleging false advertising; class certification motion denied.
- The trial of a California consumer class action alleging false advertising against a national retailer; claim for restitution rejected and a single word of advertising was eliminated in the very favorable judgment.
- A California false advertising class action brought against a national retailer; class certification motion denied.
- A Washington state federal court class action brought for violation of federal privacy laws; case dismissed on motion and affirmed on appeal in 9th Circuit.
- ADA class actions brought against a national truck rental retailer; multiple actions dismissed with prejudice on motion based upon the enforcement of a national class action settlement agreement (negotiated by prior counsel).
- ADA actions (individual) brought against a national retailer; actions dismissed with prejudice on motions.

- An ADA class action brought against a national apparel retailer; resolved for nominal payment.
- A federal class action brought in connection with subprime loan foreclosures; case dismissed on motion and affirmed on appeal in the 9th Circuit.
- California class actions brought for privacy violations against retailers under California's Song Beverly Act (actions pending).
- The defense of a tire manufacturer in tire design patent infringement case; resolved for nominal payment.
- An intellectual property licensing dispute against the nation's largest credit reporting agency; settled on eve of arbitration.
- A Louisiana federal court action brought in connection with a software licensing dispute (case settled for <5% of total amount claimed) in which a division of Wal-Mart sought to recover more than \$10,000,000 it paid to resolve a class action.
- A California federal court action brought on behalf of a French insurer seeking to domesticate French judgments and to set aside fraudulent conveyances. The Court issued a writ of attachment in favor of Jim's client resulting in multimillion dollar payment by defendants.
- A California action against one of the nation's largest insurance brokers alleging intentional torts; settled for nominal payment while client's dispositive motion was pending.
- An action brought for construction delay damages in connection with the construction of a Los Angeles Unified School District school. The matter was tried to verdict in a six week jury trial, and the jury awarded an amount equal to the settlement offer Jim's client made more than two years prior to trial. The trial court denied the plaintiff's claim for more than \$1,000,000 in attorneys' fees.
- An action brought for construction delay damages in connection with the construction of a Capistrano Unified School District school. The matter was resolved prior to trial.
- A California action (and Texas Probate Court action) brought by heirs against owner of automobile franchises; resolved while appeal of anti-SLAPP motion pending.
- A California action brought by an independent dealer alleging violations of California Franchise Investment Act; defense verdict, upheld on appeal in published opinion.
- A California action alleging construction delay damages in connection with the construction of the San Francisco Civic Center; resolved by settlement.

## ***National Counsel***

- Jim leads an Alston & Bird team of product liability attorneys who try high stakes lawsuits brought against a national truck and trailer rental company. In that role, Jim has successfully defended numerous product liability claims involving serious injury or death. Although products liability is a secondary area of concentration, Jim was hired to serve in this role because of his depth of trial experience.

## ***Publications & Presentations***

### ***Publications***

- "Department of Labor Proposes Rule to Clarify Independent Contractor Conundrum," *Occupational Health & Safety*, November 16, 2020.
- "Expert Q&A on the Impact of California's Fair Pay Act," *Practical Law*, April 2016.
- "Courts and Regulators Scrutinizing Independent Contractor Relationships," *Today's General Counsel*, Vol. 13, No. 1, February/March 2016.

- “Independence Days in Court,” *Workforce.com*, September 22, 2015.
- “On-Call Shifts Draw Regulator Attention—and Liability?,” *Corporate Counsel*, September 1, 2015.
- “2014 Roundtable Series,” *California Lawyer's Labor & Employment Roundtable*, December 1, 2014.
- “On Mandatory Arbitration, Proceed With Caution,” *The National Law Journal*, November 10, 2014.
- “10 Principles for How and When to Use Mediation,” *Corporate Counsel*, September 2, 2014.
- Jim Evans Discusses Trends in Employment Litigation
- “Top Labor & Employment Lawyer - James R. Evans, Jr.,” *The Daily Journal*, July 16, 2014.

### ***Professional & Community Engagement***

- Quoted as a labor and employment expert in *The Wall Street Journal*, *Bloomberg*, *MarketWatch*, *Reuters*, *USA Today*, *Benefit News*, *Society for Human Resource Management*.

### ***Education***

- University of California, Berkeley (J.D., 1985)
- University of Southern California (B.S., 1981)

### ***Admitted to Practice***

- California

### ***Related Services***

Class Action & Multidistrict Litigation | Commercial | Labor & Employment | Litigation | Products Liability