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## **DAVID NOLTE**

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### **SUMMARY**

With over 30 years of experience, Mr. Nolte has worked with a broad range of firms and industries in both litigation and non-litigation settings. His ability to analyze and explain complex financial matters has proved useful in numerous commercial disputes.

Mr. Nolte's client work focuses primarily on valuation of businesses and intangible business assets, economic studies, royalty and fraud auditing, and litigation-related financial analysis.

### **LICENSES & CERTIFICATIONS**

Certified Public Accountant (CPA), 1979 to present

Accredited Senior Appraiser (ASA), 1995 to present

Certified Management Accountant (CMA), 1992 to present

### **EMPLOYMENT**

Fulcrum Financial Inquiry LLP (May 2002 to Present)

Founded firm. Fulcrum has grown to approximately 20 full-time client-service professionals, plus part-time affiliations with professors and retired professionals. Actively serves as the leader for numerous client engagements, as well as remaining responsible for Fulcrum's overall growth and direction. See [www.fulcrum.com](http://www.fulcrum.com) for additional information.

Andersen LLP (1977 to 2002)

Responsible for the Southern California forensic accounting and damage analysis practice of this international accounting and consulting firm. This practice was one of the largest such groups in the western United States. In addition to leading the local group, served on the firm-wide steering committees for the litigation consulting and the bankruptcy & troubled company consulting service lines.

Prior to working as a full-time consultant, performed audits for large publicly traded and private companies, including serving as the overall audit partner for such services.

## Other Employment

Adjunct Professor at Whittier College (1981 to 1986) - Taught upper division accounting and auditing classes

Darling Wold & Agee (1975 to 1977) Performed tax, business management, and accounting work at this CPA firm.

## EDUCATION

MBA, California State University, Los Angeles, 1982

BA, Whittier College (graduated first in his class), 1977

## MEDIA COVERAGE

Mr. Nolte has been quoted in or been published in the following (most of these on multiple occasions):

The Wall Street Journal  
Los Angeles Times  
The Associated Press  
The New York Times  
The Washington Post  
Los Angeles Lawyer  
Los Angeles Business Journal  
Compliance Week  
Benefit News  
Defined Contribution News  
Plan Sponsor  
Investment News  
Legal Management magazine  
Corporate Secretary magazine  
QSR (Quick Service Restaurant) magazine  
Numerous internet and local news mentions as a consequence of the above

## OTHER PROFESSIONAL ACTIVITIES

Past Chapter President, Institute of Management Accounting  
Journal of Forensic Accounting, Editorial Board  
California Bankruptcy Journal, Past Accounting Editor  
Senior Member, American Society of Appraisers  
Member, American Institute and California Society of CPAs

## REPRESENTATIVE TESTIMONY EXPERIENCE

The following listing lists only projects where testimony was provided, and is not complete. This list does not include written reports, declarations, administrative or bankruptcy court appearances, or appearances as a special referee/master. Separate sections towards the end of this resume provide representative non-testimony experience.

|   | <u>Testimony on<br/>Behalf of</u> | <u>Law Firm Client</u>     | <u>Nature of Testimony</u>   |
|---|-----------------------------------|----------------------------|--|
| <b>Intellectual Property and Loss of Intangible Value</b> |                                   |                            |  |
| 1   | Plaintiff                         | Jones, Day, Reavis & Pogue | Damages caused by breaches of fiduciary duty and thefts of trade secrets.  |
| 2   | Defendant                         | Gibson, Dunn & Crutcher    | Copyright damages.   |
| 3   | Defendant                         | Daniels, Barrata & Fine    | Lost profits resulting from adverse publicity  |
| 4   | Plaintiff                         | Squire, Sanders, & Dempsey | Royalty damages involving related international sales.   |
| 5   | Plaintiff and Cross-Defendant     | Christie, Parker & Hale    | Value of a patent. Trade secret damages.   |
| 6   | Defendant                         | Bryan Cave                 | Trade secret damages.  |
| 7   | Defendant                         | Greenberg, Glusker, et al. | Royalty reporting.   |
| 8   | Defendant                         | Nagler & Associates        | Lost profits analysis involving adverse publicity and loss of customers.   |
| 9   | Plaintiff                         | Christie, Parker & Hale    | Trademark and trade dress damages.   |
| 10  | Plaintiff                         | Pircher, Nichols & Meeks   | Trademark and trade dress damages.   |
| 11  | Defendant                         | Irell & Manella            | Valuation of a classic cartoon/children's character in various entertainment markets.                              |
| 12  | Defendant                         | Proskauer Rose             | Value of technology. Appropriateness of related party billings for technology and intellectual property transfers. |
| 13  | Defendant                         | Sherman & Sterling         | Value of lost customers and other business intangibles.  |

**Testimony on  
Behalf of**

**Law Firm Client**

**Nature of Testimony**

**Intellectual Property and Loss of Intangible Value**

|    |                                    |   |  |
|----|------------------------------------|---|--|
| 14 | Plaintiff                          | Christensen, Miller,<br>Fink, Jacobs, Glaser,<br>Weil & Shapiro | Reasonable royalty for trade name and trademark.<br>Investment value of a business.                      |
| 15 | Defendant                          | Proskauer Rose  | Value of entertainment properties.   |
| 16 | Defendant and<br>Cross-Complainant | Stradling, Yocca,<br>Carlson & Rauth                            | Damages analysis involving adverse publicity and<br>loss of customers.                                   |
| 17 | Plaintiff                          | Gordon & Silver   | Patent infringement damages.   |
| 18 | Defendant and<br>Cross-Complainant | Troop, Steuber, Pasich,<br>Reddick & Tobey                      | Future market size related to intellectual property.<br>Accounting to a profit participant.              |
| 19 | Defendant                          | Garrett & Tully   | Value of a covenant not-to-compete.  |
| 20 | Plaintiff                          | Hong & Chang  | Trade secret damages.  |
| 21 | Defendant                          | Berger Kahn   | Value of a trademark and trade name.   |
| 22 | Defendant                          | Pillsbury Winthrop  | Trade secret damages.  |
| 23 | Plaintiff                          | Horton, Barbaro &<br>Reilly                                     | Value of a patent; How the patent's value is changed<br>due to additional competition and market forces. |
| 24 | Plaintiff                          | Sheppard, Mullin,<br>Richter & Hampton                          | Reasonable royalty associated with Internet domain<br>name   |
| 25 | Plaintiff                          | Allen, Matkins, Leck,<br>Gamble & Mallory                       | Value of lost customer relationship.   |
| 26 | Plaintiff                          | Kutak Rock  | Trade secret damages.  |
| 27 | Plaintiff                          | Irell & Manella   | Value of software; Forecast of achievable sales.   |
| 28 | Plaintiff                          | Manatt, Phelps &<br>Phillips                                    | Trademark damages; reasonable royalty rate.  |
| 29 | Defendant                          | Berger Kahn   | Trade dress damages.   |

**Testimony on  
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**Nature of Testimony**

**Intellectual Property and Loss of Intangible Value**

|    |                                    |  |   |
|----|------------------------------------|--|---|
| 30 | Defendant                          | Fogel, Feldman, Ostrov,<br>Ringler & Klevens | Value of a script.  |
| 31 | Defendant                          | Sedgwick, Detert,<br>Moran & Arnold          | Copyright damages.  |
| 32 | Defendant                          | Beach, Proctor,<br>McCarthy & Slaughter      | Trade secret damages.   |
| 33 | Defendant                          | Berger Kahn                                  | Trade secret damages.   |
| 34 | Plaintiff                          | Breidenbach, Huchting,<br>& Hamblet          | Lost customers and related profits occurring with a<br>product recall.                  |
| 35 | Plaintiff                          | Morris, Sullivan, &<br>Vivoli                | Trademark damages   |
| 36 | Plaintiff                          | Fox Spillane Shaffer                         | Copyright damages.  |
| 37 | Plaintiff                          | Jones Walker                                 | Trade secret damages.   |
| 38 | Plaintiff                          | Hennigan, Bennett &<br>Dorman                | Reasonable royalty rate.  |
| 39 | Plaintiff                          | Orrick, Herrington &<br>Sutcliffe            | Value of technology.  |
| 40 | Defendant                          | Hogan & Hartson                              | Valued programming rights.  |
| 41 | Defendant                          | Lewis Brisbois Bisgaard<br>& Smith           | Copyright damages.  |
| 42 | Plaintiff                          | Sheppard, Mullin,<br>Richter & Hampton       | Reasonable royalty patent infringement damages.   |
| 43 | Defendant                          | Fox & Spillane                               | Value of copyrighted material. Effect of<br>infringement on value of entire enterprise. |
| 44 | Defendant and<br>Cross-Complainant | Stradling, Yoca, Carlson<br>& Rauth          | Software copyright damages.   |

**Testimony on  
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**Nature of Testimony**

**Intellectual Property and Loss of Intangible Value**

|    |           |   |   |
|----|-----------|---|---|
| 45 | Plaintiff | O'Connor, Christensen,<br>McLaughlin, LLP | Reasonable royalty damages involving patent infringement.             |
| 46 | Defendant | Akin, Gump, Strauss,<br>Hauer, Feld       | Reasonable royalty and lost profits in a patent infringement dispute. |
| 47 | Defendant | Sheppard, Mullin,<br>Richter & Hampton    | Trademark damages.  |
| 48 | Defendant | O'Connor, Christensen,<br>McLaughlin      | Trademark damages.  |
| 49 | Defendant | Orrick, Harrington &<br>Sutcliff          | Trade secret damages.   |
| 50 | Plaintiff | Morris & Sullivan                         | Trademark damages.  |
| 51 | Defendant | Sidley & Austin                           | Trade secret damages. Trademark damages.                              |

**Business Valuation Cases**

|   |           |  |  |
|---|-----------|--|--|
| 1 | Defendant | O'Melveny & Myers  | Valuation of a software company. Lost profits analysis involving lender liability allegations. |
| 2 | Plaintiff | Holland & Knight   | Valuation of a business involved in international licensing.                                   |
| 3 | Defendant | Nichols, Nichols &<br>Andrews                                  | Value of the plaintiff's business. Credit analysis.  |
| 4 | Defendant | Dewey Ballantine   | Business valuation practices. Capital structure and cash flow analyses.                        |
| 5 | Defendant | Shapiro, Posell,<br>Rosenfeld & Close                          | Valuation principles. Damages analyses   |
| 6 | Defendant | Christensen, Miller,<br>Fink, Jacobs, Glaser,<br>Weil, Shapiro | Valuation of a sizable entertainment company.  |
| 7 | Plaintiff | Sutin, Thayer & Browne   | Value of a high-tech business.   |
| 8 | Defendant | Richmond, Lawrence,<br>Mann, Greene, Arbiter<br>& Chizever     | Valuation of a company.  |

|                                 | <u>Testimony on<br/>Behalf of</u> | <u>Law Firm Client</u>                             | <u>Nature of Testimony</u>  |
|---------------------------------|-----------------------------------|--|---|
| <b>Business Valuation Cases</b> |                                   |  |   |
| 9                               | Defendant and<br>Cross-Defendant  | O'Melveny & Myers                                  | Value of business and value of real estate.<br>Forensic accounting analysis.                          |
| 10                              | Defendant                         | DLA Piper Rudnick                                  | Critique of fairness opinion.   |
| 11                              | Plaintiff                         | Holland & Knight                                   | Value of "junk" bonds involved in troubled debt<br>restructurings.                                    |
| 12                              | Defendant                         | Gary Reddish, Esq.                                 | Financial analysis of a business. Determination of<br>owner's reasonable compensation.                |
| 13                              | Plaintiff                         | Burton, Barton &<br>Glogovac                       | Fair value of a business in a dissenting shareholder<br>action.                                       |
| 14                              | Defendant                         | Chapin, Shea, McNitt &<br>Carter                   | Valuation of a business.  |
| 15                              | Defendant                         | Kern & Wooly                                       | Fair market value of a business.  |
| 16                              | Plaintiff                         | Miller & Holguin                                   | Valuation of a nonprofit healthcare enterprise.   |
| 17                              | Defendant                         | White & Case                                       | Reasonable profit potential of a business and<br>related value of that business.                      |
| 18                              | Defendant                         | Simpson, Thacher &<br>Bartlett                     | Value of a portion of a business. Reasonableness of<br>employee compensation.                         |
| 19                              | Plaintiff                         | Robert Loventhal, Esq.                             | Value of options.   |
| 20                              | Defendant                         | Stradling, Yocca,<br>Carlson & Rauth               | Valuation of a company. Effect on such valuation<br>of alleged inappropriate transactions /contracts. |
| 21                              | Defendant                         | Troop, Steuber, Pasich,<br>Reddick & Tobey         | Performance and value of large portfolio of<br>entertainment properties.                              |
| 22                              | Plaintiff                         | Bingham McCutchen                                  | Value of a business; Market analysis of internet<br>companies.  |
| 23                              | Defendant                         | Liner, Yankelevitz,<br>Sunshine & Regenstreif      | Lost investment opportunities. Analyses of<br>investment results.                                     |
| 24                              | Defendant                         | Reback McAndrews<br>Kjar, Warford &<br>Stockaloper | Value of a business allegedly destroyed through a<br>wrongful death.                                  |

|  | <u>Testimony on<br/>Behalf of</u> | <u>Law Firm Client</u>              | <u>Nature of Testimony</u>   |
|--|-----------------------------------|-------------------------------------|--|
| <b>Business Valuation Cases</b>                                  |                                   |                                     |  |
| 25   | Defendant                         | Jones Day                           | Value of a business. Reasonableness of a bankruptcy filing.  |
| 26   | Plaintiff                         | Costell & Cornelius                 | Value of a start-up business and comparison of same to industry-wide performance.                      |
| 27   | Defendant                         | Murphy Rosen & Cohen                | Value of an enterprise. Division of such value between different classes of stock.                     |
| 28   | Defendant                         | Fulbright & Jaworski                | Value of a business. Explanation of differing profit levels based on changed industry conditions       |
| 29   | Seller                            | Pircher, Nichols & Meeks            | Value of a business under California dissolution proceedings   |
| <b>Unfair Business Practices, Antitrust, and Related Matters</b> |                                   |                                     |  |
| 1  | Plaintiff                         | Oppenheimer, Wolff & Donnelly       | Patent infringement and anti-trust damages.  |
| 2  | Defendant                         | Ballard, Spahr, Andrews & Ingersoll | Lost Profits involved alleged unfair competitive practices.  |
| 3  | Defendant                         | Chapin, Shea, McNitt & Carter       | Analysis of competition and other reasons for business failure   |
| 4  | Defendant                         | Dewey Ballantine                    | Relevant competition for a business. Value of the business.  |
| 5  | Defendant                         | Call, Ferrell & Jensen              | Appropriateness of a lender's actions in exercising a pledge agreement; analysis of plaintiff damages. |
| 6  | Defendant                         | Sheppard, Mullin, Richter & Hampton | Cost analyses. Damages in an unfair business practice dispute.   |
| 7  | Plaintiff                         | Rutan & Tucker                      | Lost profits involving unfair competition.   |
| 8  | Defendant                         | Sheppard, Mullin, Richter & Hampton | Lost profits involving a breach of a restrictive competition clause.                                   |
| 9  | Plaintiff and Cross-Defendant     | Snell & Wilmer                      | Damages analysis involving a breach of covenants not to compete and unfair business practices.         |
| 10   | Defendant                         | Gibson, Dunn & Crutcher             | Analysis of selling below cost.  |



|  | <u>Testimony on<br/>Behalf of</u> | <u>Law Firm Client</u>                 | <u>Nature of Testimony</u>  |
|--|-----------------------------------|--|---|
| <b>Unfair Business Practices, Antitrust, and Related Matters</b> |                                   |  |   |
| 11   | Plaintiff and<br>Cross-Defendant  | Miller & Holguin                       | Size and definition of a market in an antitrust dispute. Forensic reconstruction of records and related damages valuations. |
| 12   | Defendant                         | Sheppard, Mullin,<br>Richter & Hampton | Damages involving the effect of additional competition on a business.   |
| 13   | Plaintiff                         | Rutan & Tucker                         | Market size and competition. Damages involving an interrupted contract.   |
| 14   | Defendant                         | In-house counsel                       | Market and competitive analysis; lost profits calculation.  |
| 15   | Defendant                         | Morgan, Lewis &<br>Bockius             | Whether the conduct of an investment banker and certain bond holders was fair and reasonable; damages calculations.         |
| 16   | Defendant                         | Hogan & Hartson                        | The effect of vertical marketing arrangements on the terms of specific transactions.  |
| 17   | Plaintiff and<br>Cross-Defendant  | Miller & Holguin                       | Accounting of profits in a risk sharing arrangement. Damages involving breaches in competitive restrictions.                |
| 18   | Plaintiff                         | Paul, Hastings,<br>Janofsky & Walker   | Analysis of selling below cost, and related damages.  |
| 19   | Defendant                         | Sheppard, Mullin,<br>Richter & Hampton | Class action damages requiring cost analysis of a particular contract provision.  |
| 20   | Defendant                         | Buchalter Nemer                        | Financial assessment of whether aspects of the defendant's business model violated laws administered by the FTC             |
| 21   | Plaintiff                         | Sonnenschein Nath &<br>Rosenthal       | Damages caused from interference with business relationships  |
| 22   | Defendant                         | Severson & Werson                      | Unfair advertising damages  |

**Testimony on  
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**Law Firm Client**

**Nature of Testimony**

**Fraud Investigation and Forensic Accounting**

|    |                                    |  |   |
|----|------------------------------------|--|---|
| 1  | Defendant                          | Alschuler, Grossman,<br>Stein, & Kahan | Analysis of alleged overcharges and related cost accounting. Test of accounting records.                                      |
| 2  | Plaintiff                          | Sheppard, Mullin,<br>Richter & Hampton | Analysis of alleged inappropriate transactions on behalf of a minority shareholder. Reasonableness of executive compensation. |
| 3  | Plaintiff and<br>Cross-Defendant   | Baker & Hostetler                      | Class action damages requiring cost analysis of a particular contract provision.  |
| 4  | Plaintiff                          | Smith & Smith                          | Analysis of preference payments in a bankruptcy. This required significant accounting record reconstruction.                  |
| 5  | Defendant                          | Sanders, Curtis,<br>Ginestra & Gore    | Flow of funds in a money laundering matter.   |
| 6  | Plaintiff                          | Squire, Sanders, &<br>Dempsey          | Amount of inventory stolen in a defalcation. This required a reconstruction of accounting and other records.                  |
| 7  | Defendant and<br>Cross-Complainant | Buchalter, Nemer                       | Analysis of allocated costs. Comparison of the results achieved by different management.                                      |
| 8  | Defendant                          | Proskauer Rose                         | Analysis of overcharges. Lost profits analysis.   |
| 9  | Plaintiff                          | Morrison & Foerster                    | Fraud investigation and forensic accounting in the construction industry.   |
| 10 | Defendant                          | Brobeck, Phleger &<br>Harrison         | Reconstruction of financial information.  |
| 11 | Plaintiff                          | Baker & McKenzie                       | Forensic analysis of accounting records to determine amounts delivered and owed.  |
| 12 | Plaintiff                          | Stephan, Oringer,<br>Richman & Thedora | Identification of inappropriate expenditures made by controlling executive.   |
| 13 | Plaintiff                          | Kaye Scholer                           | Results of fraud investigation.   |
| 14 | Defendant                          | Paul, Hastings,<br>Janofsky & Walker   | Reconstruction of accounting records. identification of the use of invested funds and related inappropriate expenditures.     |

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**Nature of Testimony**

**Fraud Investigation and Forensic Accounting**

|    |                                 |   |   |
|----|---------------------------------|---|---|
| 15 | Defendant                       | Dewey Ballantine  | Forensic reconstruction of business and accounting records, and analysis of the same.   |
| 16 | Defendant and Cross-Complainant | Beck, De Corso, Daly, Barrera & Kreindler                       | Forensic reconstruction of accounting records, and related cost allocations.  |
| 17 | Plaintiff and Cross-Defendant   | Miller & Holguin  | Reconstruction of accounting records to show actual impact of certain events on plaintiff's and defendant's business.   |
| 18 | Plaintiff                       | Sheppard, Mullin, Richter & Hampton                             | Reconstruction of business records to determine the cause of business failure and breaches of fiduciary duty.   |
| 19 | Defendant                       | Brobeck, Phleger & Harrison                                     | Use of loan proceeds and interest calculations under various alternatives.  |
| 20 | Defendant                       | Paul, Hastings, Janofsky & Walker                               | Accounting for inventory.   |
| 21 | Plaintiff                       | Brobeck, Phleger & Harrison                                     | Methods of allocating revenue and costs. Results of a large data accumulation.  |
| 22 | Plaintiff                       | Booth, Mitchell, & Strange                                      | Reconstruction of decades of investments and investment results.  |
| 23 | Plaintiff                       | Rutan & Tucker  | Reconstruction of accounting records involving fraudulent conveyances.  |
| 24 | Plaintiff                       | Liner Grode Stein Yankelevitz Sunshine Regenstreif & Taylor LLP | Results of a forensic examination of computer records that demonstrated customer lists had been stolen by a departing employee. Related disgorgement damages. |
| 25 | Plaintiff                       | Buchalter Nemer   | Large data compilation that demonstrated a multi-million dollar bank fraud.   |
| 26 | Defendant                       | Sheppard, Mullin, Richter & Hampton                             | Reconstruction of accounting records. Calculation of royalties due. Estimation of royalties under different licensing circumstances.                          |
| 27 | Defendant                       | Crane Robinson & Seal   | Alter-ego assessment.   |
| 28 | Plaintiff                       | Sheppard, Mullin, Richter & Hampton                             | Reconstruction of accounting records spanning multiple decades  |

|                                     | <u>Testimony on<br/>Behalf of</u> | <u>Law Firm Client</u>                 | <u>Nature of Testimony</u>  |
|-------------------------------------|-----------------------------------|--|---|
| <b>Real Estate and Construction</b> |                                   |  |   |
| 1                                   | Defendant                         | Baker & McKenzie                       | Lost profits as a result of using non-qualifying parts in a construction project.                       |
| 2                                   | Defendant                         | Lewis, D'Amato,<br>Brisbois & Bisgaard | Feasibility of obtaining financing and profits for a proposed real estate development project.          |
| 3                                   | Defendant                         | Lionel, Sawyer & Collins               | Value of a real estate project and a partial interest therein.  |
| 4                                   | Defendant                         | Gustin, Golob & Bragin                 | Value of a profit's interest in several real estate ventures (both development and operating projects). |
| 5                                   | Defendant                         | Holland & Knight                       | Value of the profits, if any, from a foreign investment and attempted development of real estate.       |
| 6                                   | Defendant                         | Proskauer Rose                         | Cost of constructing a facility and the use of profits from operating the facility.                     |
| 7                                   | Plaintiff                         | Rudin, Appel &<br>Rosenfeld            | Cost of constructing two residential real estate developments.  |
| 8                                   | Defendant                         | Burke, Williams &<br>Sorensen          | Damages incurred by a contractor as a result of impairment of capital; related causation issues.        |
| 9                                   | Defendant                         | Morrison & Foerster                    | Feasibility of achieving a cash flow forecast for a residential real estate development.                |
| 10                                  | Plaintiff and<br>Cross-Defendant  | Tuttle & Taylor                        | Real estate accounting principles and practices.<br>Damages analysis.                                   |
| 11                                  | Defendant                         | Fierstein & Sturman                    | Profits earned on a real estate development and other real estate transactions.                         |
| 12                                  | Defendant                         | Browne & Woods                         | Real estate projections. Damage causation.  |
| 13                                  | Defendant                         | Folger, Levin, & Kahn                  | Analysis of a real estate operation. Valuation principles.  |
| 14                                  | Defendant                         | Munger, Tolls & Olson                  | Damages in connection with a failed real estate development.  |
| 15                                  | Plaintiff                         | Troy & Gould                           | Cost allocations and accounting in the real estate industry.  |

|                                     | <u>Testimony on<br/>Behalf of</u> | <u>Law Firm Client</u>                      | <u>Nature of Testimony</u>  |
|-------------------------------------|-----------------------------------|---|---|
| <b>Real Estate and Construction</b> |                                   |   |   |
| 16                                  | Defendant                         | Lathrop & Gage                              | Real estate partnership accounting.   |
| 17                                  | Defendant                         | Quinn, Emanuel,<br>Urquhart & Oliver        | Real estate accounting practices. Financial reporting pursuant to a contract. |
| 18                                  | Defendant                         | Morrison & Foerster                         | Lost profits caused by construction defects. Mitigation alternatives.         |
| 19                                  | Defendant                         | Buchalter Nemer                             | Feasibility and advisability of exercising a right of first refusal.          |
| 20                                  | Defendant                         | Gatzke, Dillon &<br>Ballance                | Consequential damages involving environmental construction and clean-up.      |
| 21                                  | Defendant                         | Christensen, Miller, et<br>al.              | Damages in an inverse condemnation proceeding.                                |
| 22                                  | Defendant                         | Allen, Matkins, Leck, et<br>al.             | Lost profits involving breach of a master lease for office space.             |
| 23                                  | Plaintiff                         | Bate & Peterson                             | Construction lending and related accounting of loan proceeds.                 |
| 24                                  | Defendant                         | Folger, Levin & Kahn                        | Construction accounting.  |
| 25                                  | Plaintiff                         | Millbank, Tweed,<br>Hadley & McCoy          | Damages involving commercial leases.  |
| 26                                  | Defendant                         | Pircher, Nichols &<br>Meeks                 | Damages involving claims of delay, disruption, and loss of bonding capacity.  |
| 27                                  | Defendant                         | Wasserman, Comden &<br>Casselman            | Damages in an inverse condemnation proceeding.                                |
| 28                                  | Plaintiff                         | Mancini, Rowland &<br>Welch                 | Consequential damages involving construction defects.                         |
| 29                                  | Defendant                         | Skadden, Arps, Slate,<br>Meagher & Flom     | Reasonableness of construction costs and profits earned by a related party.   |
| 30                                  | Defendant                         | Pillsbury Winthrop                          | Assessment of environmental clean-up costs.                                   |
| 31                                  | Plaintiff                         | Weinberg, Wheeler,<br>Hudgins, Gunn, & Dial | Damages arising from delayed performance of a construction contract.          |

|   | <u>Testimony on<br/>Behalf of</u> | <u>Law Firm Client</u>             | <u>Nature of Testimony</u>  |
|---|-----------------------------------|------------------------------------|---|
| <b>Real Estate and Construction</b>     |                                   |                                    |   |
| 32                                      | Defendant                         | Latham & Watkins                   | Summary witness involving sequence of real estate transactions. Value of a real estate option.                        |
| 33                                      | Defendant                         | Knopfler, Smith & Pazos            | Profit calculations involving real estate development and ownership.  |
| 34                                      | Defendant                         | Loeb & Loeb                        | Fairness buyout of REIT shares.   |
| 35                                      | Defendant & Cross-Complainant     | DLA Piper                          | Assessment of real estate operations and management. Forecast of real estate operations under alternative conditions. |
| <b>Other Breach of Contract Matters</b> |                                   |                                    |   |
| 1                                       | Plaintiff                         | Sidley, Austin, Brown & Woods      | Breach of contract damages involving covenant not-to-compete.   |
| 2                                       | Defendant                         | Howrey & Simon                     | UCC Breach of contract damages..  |
| 3                                       | Plaintiff                         | Grant & Laubscher                  | Lost profits from a terminated contract.  |
| 4                                       | Defendant                         | Gibbs, Giden, Locher & Turner      | Damages involving a breach of a multi-year business contract.   |
| 5                                       | Plaintiff                         | Roger Golden Law Offices           | Damages associated with a cancelled joint venture.  |
| 6                                       | Plaintiff                         | Akin, Gump, Strauss, Hauer, & Feld | Lost profits from a terminated contract.  |
| 7                                       | Defendant and Cross-Complainant   | Horton, Barbaro, & Reilly          | Damages analysis involving breaches of a franchise agreement.   |
| 8                                       | Defendant                         | Susman Godfrey                     | Damages involving breaches of an indemnity agreement.   |
| 9                                       | Defendant                         | Edwards, Angel, Palmer & Dogdge    | Damages involving a breached joint venture agreement.   |
| 10                                      | Defendant and Cross-Complainant   | DLA Piper                          | Whether a general partner and limited partner breached financing obligations.   |
| 11                                      | Plaintiff                         | Dorsey & Whitney                   | Damages from breaches of supply and confidentiality agreements.   |

|   | <u>Testimony on<br/>Behalf of</u> | <u>Law Firm Client</u>                | <u>Nature of Testimony</u>  |
|---|-----------------------------------|---------------------------------------|---|
| <b>Other Breach of Contract Matters</b> |                                   |                                       |   |
| 12                                      | Defendant                         | Akin, Gump, Strauss,<br>Hauer, & Feld | Damages from breach of a supply agreement.  |
| 13                                      | Plaintiff                         | Rutan & Tucker                        | Breach of contract damages involving a marketing joint venture.   |
| 14                                      | Defendant                         | Monteau & Peebles                     | Damages involving a long-term management contract.  |
| 15                                      | Plaintiff                         | Hogan & Hartson                       | Results of an audit of a complicated most favored nations clause  |
| 16                                      | Plaintiff                         | Kirtland & Packard                    | Damages involving a broken merger agreement   |
| 17                                      | Defendant                         | Chapman, Fuller &<br>Bollard          | Performance of a management company and related for-cause termination.  |
| 18                                      | Defendant                         | Barton, Klugman &<br>Oetting          | Damage calculations and causation involving loan portfolio sales.   |
| 19                                      | Defendant                         | Fulbright & Jaworski                  | Damages caused by undisclosed constraints to development and operation of a business facility.  |
| 20                                      | Defendant                         | McKenna Long &<br>Aldridge            | Damages involving a cancelled long-term agreement involving advertising and endorsements  |
| 21                                      | Defendant                         | Greenberg Trauig                      | Damages arising from the loss of a dealership.  |
| <b>Other Commercial Disputes</b>        |                                   |                                       |   |
| 1                                       | Defendant                         | Sonnenschein, Nath &<br>Rosenthal     | Liability analysis and economic damages involving wrongful termination and age discrimination.  |
| 2                                       | Defendant                         | Meyers, Bianchi &<br>McConnell        | Duty of care owed by an accountant to third parties.  |
| 3                                       | Plaintiff                         | Howrey & Simon                        | Amounts owed pursuant to Partnership accounting.  |
| 4                                       | Plaintiff                         | Irell & Manella                       | Lost earnings damages.  |
| 5                                       | Defendant                         | Musick, Peeler &<br>Garrett           | Accounting malpractice liability issues. Valuation of a commercial enterprise.  |
| 6                                       | Defendant                         | Sedgwick, Detert,<br>Moran & Arnold   | Adequacy of a company's capitalization. Normal financial planning and control functions employed by parent companies over their subsidiaries. |

|                                  | <u>Testimony on<br/>Behalf of</u> | <u>Law Firm Client</u>             | <u>Nature of Testimony</u>   |
|----------------------------------|-----------------------------------|------------------------------------|--|
| <b>Other Commercial Disputes</b> |                                   |                                    |  |
| 7                                | Plaintiff                         | Katten, Muchin, Zavis & Weitzman   | Determination of whether a "material adverse change" had occurred.   |
| 8                                | Plaintiff                         | Stern, Neubauer, Greenwald & Pauly | Statistical analyses in support of liability issues and damages.   |
| 9                                | Defendant                         | Sidley & Austin                    | Damages involving interruption to a business caused by (i) distraction of management and (ii) lack of capital. |
| 10                               | Defendant                         | Kolod & Wagner                     | Lost Investment Opportunities  |
| 11                               | Defendant                         | Fox & Spillane                     | Critique of a statistically-based damages analysis   |
| 12                               | Defendant                         | Holland & Knight                   | Validity of a liquidated damages clause. Financial reasonableness of other contract provisions.                |
| 13                               | Plaintiff                         | Sonnenschein, Nath & Rosenthal     | Economic damages caused from interrupting business relationships   |
| 14                               | Plaintiff                         | Susman Godfrey                     | Viable restructuring alternatives for a business, and the likely results achievable from these actions         |
| 15                               | Defendant                         | Booth Mitchel & Strange            | Interruption and business losses caused from an environmental hazard   |

**REPRESENTATIVE FRAUD INVESTIGATIONS** (See above for representative testimony examples on additional engagements)

1. Founded and leads Fulcrum's service line that provides whistleblower reporting solutions to public companies (Sarbanes Oxley Section 301(4)) and non-profit organizations. Based on complaints received, regularly consults with executive management and audit committees regarding (i) the proper methods of investigating complaints, (ii) the results of investigations, and (iii) related corporate governance matters.
2. On several occasions, investigated the financial affairs of an operating enterprise on behalf of minority stockholders or partners. In each instance, inappropriate expenditures by the majority owner were identified. Resulting lawsuits provided substantial recoveries.
3. On several occasions, evaluated and documented "ponzi schemes." This work demonstrated how and why the underlying economics of the business were unsound and could not be indefinitely continued.
4. Analyzed financial statements relied upon by the purchaser of a manufacturing company. Assisted with all aspects of the discovery and deposition plan. Developed theories and helped prove that the



purchaser had been provided misstated financial information. A favorable settlement was obtained.

5. Investigated the business activities of a plaintiff in a lender liability matter. Created a database of transactions, which refuted the plaintiff's claims and demonstrated that the business failure was not due to the lender's actions. The Court found in favor of our client.
6. Analyzed the financial viability of private offerings of limited-partnership interests on behalf of a major investment banker. Demonstrated that the audited financial statements relied on by the broker contained material errors and irregularities.
7. Investigated irregularities in legal billings involving kickbacks to an in-house general counsel. Successful prosecution resulted.
8. Investigated the complex financial affairs of an officer and director of a failed thrift institution on behalf of a regulatory agency. Based on the results, a constructive trust was placed over most of the former director's assets.
9. Performed a fraud investigation in which more than \$20 million was alleged taken. The fraud was discovered and documented, allowing criminal authorities to prosecute successfully.
10. Investigated an alleged fraud by an owner of a bankrupt manufacturing entity. Discovered in excess of \$10 million of defalcations occurring prior to the bankruptcy filing
11. Investigated an alleged fraud by a former owner of a bankrupt steel processing and service company. The defalcation was discovered and quantified. Asset tracing and searches were also performed.
12. Investigated and quantified false claims submitted for processing by an insurance claims officer. (The claims were ultimately funneled to the corrupt employee.) The work resulted in termination of the employee and eventual repayment.
13. Investigated and quantified false invoices submitted and paid through the collusion of two accounting employees. The work resulted in the employees being terminated and the amount that was stolen repaid.

**REPRESENTATIVE LICENSING AUDITS AND CONSULTATION** (See above for representative testimony examples on additional engagements)

1. On several occasions, calculated and assisted with negotiation of reasonable royalty rates.
2. On numerous occasions, performed royalty audits on behalf of owners of intellectual property. In most cases, identified unpaid royalties far exceeding the cost of our work
3. Analyzed sales and costs of competing products where violation of a licensing arrangement was alleged. Our client (plaintiff) obtained a multi-million dollar settlement.

**REPRESENTATIVE BANKRUPTCY AND RESTRUCTURING SERVICES** (See above for representative testimony examples on additional engagements)

1. On several occasions, performed a broad range of services in support of a debtor-in-possession and its preparation of a plan of reorganization. Typical series included:
  - a. Assessment of restructuring opportunities, and steps necessary for such restructuring
  - b. Valuation of businesses and business interests
  - c. Assistance in selling operations or assets
  - d. Reconstruction of accounting records
  - e. Preparation of reports required under Chapter 11
  - f. Investigation of fraudulent conveyances and preferences
  - g. Financial projections
  - h. Liquidation analysis
  - i. Financial analysis demonstrating what is in the best interest of the estate
  - j. Claim objection and administration
2. On several occasions, performed appraisal, financial analysis and negotiations on behalf of unsecured creditors' committees
3. Supported the viability of the debtor's contested reorganization plan. Assisted in negotiations with secured and unsecured creditors, resulting in substantial debt reduction, yet having the existing equity holders retain entire stock ownership. Recommended operational changes that were implemented which allowed the company to reestablish profitable operations.

**SERVICE AS AN ARBITRATOR, SPECIAL MASTER OR OTHER NEUTRAL PARTY**

Prior assignments include several cases in each of the following categories:

1. Court appointed appraiser or accountant regarding the amounts that should be distributed to shareholders/partners in a liquidation. Such matters generally involve analysis and potential restatement of existing accounting records.
2. Court or party appointed appraiser to establish the purchase price of a company (e.g., California Corporations Code Section 2000).
3. Arbitrator involving the amount of a contractual purchase price adjustment relating to the sale of a company.
4. Disputes usually involved the determination of working capital, stockholders equity, profits and/or changes in these items based on generally accepted accounting principles.
5. Court appointed referee to determine the use and distribution of funds in a business.
6. Court appointed expert to assess the reliability and appropriateness of previously issued financial statements or other accounting reports.
7. Court appointed bankruptcy examiner. Each of these engagements investigated allegations of fraud, assessed the opportunities for the debtor to reorganize, and addressed other financial matters specified by the court.