

## **Daniel J. Foster**

Associate

“As a litigator, my role is to find constructive, creative solutions that achieve my clients’ goals in the most efficient and cost-effective manner possible.”

### **About Daniel J. Foster**

Daniel Foster’s litigation practice is composed of matters involving complex construction defect litigation, mechanics liens claims, stop notice actions and Miller Act claims. He also represents clients before the Contractors State License Board and handles matters involving breach of warranty, the Song-Beverly Consumer Warranty Act, indemnity agreements and liability insurance coverage. Daniel advises multi-residential property owners and management companies in matters related to habitability, tenant relations, mold claims, insurance coverage, discrimination, indemnity rights and compliance with various state and federal statutes pertaining to accessibility, including the Fair Employment and Housing Act and the Americans with Disabilities Act.

Daniel’s practice includes representation of clients in all phases of litigation, including discovery, law and motion, trial and alternative dispute resolution methods such as mediations and arbitrations.

### **Practice Areas**

- ADA Compliance
- Business Litigation
- Construction Defect
- Insurance Coverage Disputes
- Property Management
- Real Estate, Construction & Land Use

### **Education**

- University of Oregon School of Law: J.D. (2005)
- Cornell University: B.A. (1999)

### **Professional Experience**

- Murphy, Campbell, Guthrie and Alliston: Associate attorney (2009 – 2013)
- Chernay Peterson: Associate attorney (2006 – 2009)
- Porter Scott: Law clerk and associate attorney (2004 – 2006)
- Yuba Gardens Intermediate School: Teacher, Language Arts and Corrective Reading (Yuba is an underprivileged middle school in Northern California) (2001 – 2002)

### **Representative Matters**

#### *Federal Miller Act Payment Bond Claim*

- Represented a general engineering subcontractor that performed grading, paving and concrete work at a new fire station on a United States Naval Base. After performing extra work on a time and material basis at the request of the general contractor, the general contractor failed to make payment sufficient to compensate subcontractor. Following a four day arbitration, the arbitrator ruled in favor of the subcontractor awarding recovery against the general contractor in quantum meruit and under the Miller Act payment bond claim. Taking into account the fees and costs expended fighting the claim, along with the award itself, the general contractor expended more than double the subcontractor’s pre-arbitration settlement offer.

### *Construction Defect Lawsuit*

- Represented a window subcontractor in a complex, construction defect action in Sonoma County involving a large senior living complex. Plaintiffs' Complaint alleged that numerous units suffered from window defects, including water intrusion. Ultimately, the window installer filed a Cross-Complaint for indemnity against the window subcontractor. After completing numerous witness and expert depositions, our office began preparation of a motion for summary judgment on the grounds that the claims against the window subcontractor were barred by the statute of limitations. Acknowledging the merits of the window subcontractor's defense, the Cross-Complainant agreed to a settlement for waiver of costs.

### *Insurance Coverage Dispute*

- Represented a general contractor in a dispute concerning the construction of a single-family residence. The general contractor's insurer denied coverage for the homeowner's claims and refused to furnish a defense for several months. After a lengthy coverage dispute, the insurer ultimately agreed that Plaintiffs' claims raised the potential for coverage under the policy and agreed to provide independent counsel. We then negotiated a favorable settlement with Plaintiffs and obtained reimbursement from the insurer for all costs and attorney's fees incurred.
- Represented a fireplace subcontractor in a complex, construction defect action involving multiple Squaw Valley condominium communities. After the subcontractor's insurer initially denied coverage for the claim, we argued that the insurer misinterpreted a critical policy exclusion under California law and improperly denied coverage. The insurer then altered its coverage position and ultimately agreed to furnish a defense, allowing our office to represent the subcontractor as independent counsel. We then negotiated a favorable settlement on behalf of the subcontractor.

### *ADA Litigation*

- Defended property management company and owners of apartment complexes against multiple lawsuits by serial litigant asserting that properties contained architectural barriers in violation of the Americans with Disabilities Act and similar California statutes. Wilke Fleury negotiated settlements of these matters for less than one-third the original demand without having to incur significant expenses associated with filing responsive pleadings or conduct extensive discovery.

### **Licenses and Admissions**

Daniel is admitted to practice before the following courts:

- The State of California
- The United States District Courts for the Eastern, Central, Northern, and Southern Districts of California

### **Professional Involvement and Memberships**

- Rental Housing Association of Sacramento Valley
- Sacramento County Bar Association

### **Personal**

Daniel lives in Davis with his wife, Melissa, and daughter, Hadley. In his spare time, Daniel enjoys cycling, running, hiking, and traveling.