



FAZIO | MICHELETTI LLP

Attorneys

THE FIRM'S PRACTICE

Founded in 2003, Fazio | Micheletti LLP ("FM Law") is a boutique law firm that specializes in representing plaintiffs in complex litigation involving fraud, false advertising, breaches of contract and other duties, statutory violations, and unfair business practices, with an emphasis on class actions involving defective products. FM Law has served as lead or co-lead counsel in nearly every matter in which it has participated since its formation, which have been litigated in state and federal courts at the trial and appellate levels in California and other venues throughout the nation. The Firm is selective about the matters it accepts and has an exemplary track record, having successfully resolved the majority of cases it has prosecuted. Due to the nature of the cases FM Law chooses to prosecute, the Firm frequently faces off against many of the most powerful, well-funded corporations in the world, and other defendants with the resources to retain some of the largest and/or most successful law firms in the country, including, *inter alia*, Airborne Health, Apple Inc., BMW, eBay, Ford Motor Company, General Motors, Honda, Pegasus Wireless, Reckitt Benckiser LLC, Register.com, Toyota, Trader Joe's, Volvo, and the Estate of Michael Jackson.

THE FIRM'S PRINCIPALS

The Firm's principals, Jeffrey L. Fazio and Dina E. Micheletti collectively have decades of complex litigation experience, having begun the practice of law representing businesses, government entities, and insurers as defendants in cases involving disputes over securities, antitrust, product liability, civil rights, and intellectual property. Since the mid-1990s, Mr. Fazio and Ms. Micheletti have focused exclusively on the representation of plaintiffs in class actions, shareholder-derivative litigation, *qui tam* litigation, and other forms of mostly complex litigation.

Jeffrey L. Fazio

Mr. Fazio earned his law degree from New York University School of Law in 1989. During law school, he was a member of the editorial staff of NYU's *Annual Survey of American Law*, served as an intern for the New York City Corporation Counsel and as an extern law clerk for the Honorable Miriam Cederbaum in the Southern District of New York and for the Honorable Eugene Lynch in the Northern District of California while he was a visiting student at the University of California, Berkeley (Berkeley Law) during his third year of law school.

After law school, Mr. Fazio spent most of his first five years in practice representing manufacturers, insurance companies, hospitals, property owners, and state and municipal government entities as defendants in products liability, securities fraud, unfair business practice, civil rights, and mass tort cases at Crosby Heafey Roach & May, PC (now Reed Smith LLP) and Buchalter Nemer Fields & Younger PC.

In 1995, Mr. Fazio became Special Counsel to a 120-lawyer litigation firm, Hancock Rothert & Bunshoft (now Duane Morris LLP), at which he initiated, developed the legal strategy for, and served as lead counsel for the plaintiffs in a series of six class actions against Ford Motor Company in California, Washington, Illinois, Tennessee, Alabama, and Maryland. The litigation involved 30 million class members and seven other law firms that were members of a litigation team that represented the proposed plaintiff classes.

The litigation attracted worldwide media attention. Information obtained in discovery resulted in the National Highway Traffic Safety Administration (NHTSA) issuing a Special Order that required Ford to explain why documents had not been produced during the course of five separate defect investigations, followed by findings that Ford concealed material information from NHTSA during those investigations. After a nine-month bifurcated trial in California, the court issued the first (and only) motor-vehicle recall order in U.S. history. Ultimately, the litigation resulted in a settlement valued at \$2.7 billion, a warranty extension (from five years or 50,000 miles to 10 years or 100,000 miles), and \$5 million for safety research conducted by George Washington University's National Crash Analysis Center

Mr. Fazio became a partner with the Hancock firm and served as the Chairman of its Class Actions and Unfair Competition Practice Group for nearly five years before co-founding FM Law in October 2003, where he and Ms. Micheletti have continued the exemplary work they started at the Hancock firm. Mr. Fazio has lectured on a variety of substantive and procedural aspects of class-action and consumer-fraud litigation; testified before the California legislature concerning rules of evidence governing the dissemination of information that could affect public health and safety; briefed members of the United States Senate and their staffs in connection with hearings on highway safety before the Senate Commerce Committee; and was a co-author of a leading product liability treatise, *AUTOMOBILE DESIGN LIABILITY* (West 3d ed. & 4th ed.). Mr. Fazio also authored an article with Michael G. Pecht, Ph.D., who served as a testifying expert in the trial of the California action involving Ford TFI modules. See Pecht, M., A. Ramakrishnan, J. Fazio, and C. E. Nash, "The Role of U.S. National Highway Traffic Safety Administration in Automotive Electronics Reliability and Safety Assessment," *IEEE Transactions on Components and Packaging Technologies*, Vol. 28, No. 3, pp. 571–580, Sept. 2005.

Dina E. Micheletti

Ms. Micheletti earned her law degree from the University of San Francisco School of Law in 1996, where she finished her first year as one of USF's top-ten students and graduated *magna cum laude*. During law school, Ms. Micheletti interned with a San Francisco Bay Area law firm whose practice initially consisted of representing insurance companies in coverage cases, then evolved into representing plaintiffs in personal-injury and fraud cases. She also worked for two years as the legal-research assistant and course-handbook editor for a USF Law Professor of Civil Procedure.

After law school, Ms. Micheletti became an associate with the San Francisco office of Hancock Rothert & Bunshoft LLP, where she worked with Mr. Fazio on a series of class actions against the Ford Motor Company and was an integral member of the trial and appellate teams in *Raimondi v. Ford Motor Co.*, an individual product liability action that resulted in a jury award of more than \$50 million, and one of the largest loss-of-consortium awards in California at that time. Ms. Micheletti was responsible for drafting major portions of the briefs filed with the appellate courts in that case, which resulted in the plaintiff prevailing on each challenge to the jury award.

Since co-founding FM Law, Ms. Micheletti has been primarily responsible for representing plaintiffs as lead or co-lead counsel in virtually all aspects of major consumer class actions, product liability, and securities fraud cases at the trial and appellate levels in state and federal courts.

Ms. Micheletti is a member of the Public Justice Foundation, and the National Association of Consumer Advocates. Her most recent speaking engagement was at Harris Martin Publishing's *MDL Conference: Apple, Intel and Emerging Mass Torts*. Other engagements include *The 20th Annual Golden State Antitrust and Unfair Competition Law Institute Advanced Principles: UCL Remedies and Defenses* (panel discussion including the Honorable Zaven V. Sinanian, Los Angeles County Superior Court), and a conference for the American Bar Association's Section on Antitrust Law (panel discussion of the impact of the Ninth Circuit's ruling in *Mazza v. American Honda Co.*, a case in which Fazio | Micheletti represented Public Citizen as *amicus curiae* before the Ninth Circuit.) Ms. Micheletti was also a co-author of a leading product liability treatise, *AUTOMOBILE DESIGN LIABILITY* (West 3d & 4th ed.).

REPRESENTATIVE CASES

❖ ***In re Apple iPhone/iPod Warranty Litigation*** (N.D. Cal.)

Co-lead counsel for plaintiffs in nationwide class action resulting from Apple's fraudulent use of Liquid Submersion Indicators (small pieces of dye-laden material with properties similar to litmus paper) ("LSIs") as a pretext for denying valid warranty claims by representing to customers that a red or pink LSI established that they had damaged their iPhone or iPod by exposing it to liquid, thereby voiding all applicable warranty coverage. Case was resolved by \$53 million non-reversionary cash settlement, which resulted in class members receiving an average of **117%** of their average losses, with remaining funds distributed by governments of states in which class members resided.

Opposing Counsel: Morrison | Foerster LLP

❖ ***Wilson v. Airborne Health, Inc.*** (C.D. Cal.)

Co-lead counsel (with Center for Science in the Public Interest and Wasserman Comden & Casselman LLP) in nationwide class action involving false-advertising and consumer-deception claims against seller of Airborne Effervescent Health Formula. Defendants marketed the product as a "Miracle Cold Buster" and claimed that the second-grade teacher who "invented" Airborne had discovered a cure for the common cold. Case was resolved by a settlement agreement that created a cash fund of more than \$23 million—then a record-setting amount for a false-advertising case. Evidence obtained in discovery was shared with U.S. Food & Drug Administration and various state Attorneys General, which subsequently led to a settlement in which the FDA and Attorneys General obtained injunctive relief and an additional \$6 million in cash if the \$23 million fund created by the initial settlement was exhausted. Remainder of funds distributed *cy pres* to non-profit organizations.

Opposing Counsel: Weil Gotshal & Manges LLP

❖ ***Howard v. Ford Motor Co.*** (Cal. Super Ct., Alameda Cty.)

Lead counsel for plaintiffs in six related class actions involving 30-million-member class. California case was one of six related actions filed in various jurisdictions throughout the United States, which involved appearances before several federal courts, including the Judicial Panel on Multidistrict Litigation and the Ninth Circuit Court of Appeals, as well as the California Court of Appeal (three times) and the California Supreme Court (twice). After discovery, California action proceeded to trial while other actions were stayed pending outcome of trial. Equity phase of trial resulted in the first judicially-mandated automotive recall in a private lawsuit in U.S. history, and an order requiring Ford to provide restitution to all California class members pursuant to California's Unfair Competition Law and Consumers Legal Remedies Act. Case was ultimately resolved by nationwide settlement valued at \$2.7 billion, warranty extension (from five years or 50,000 miles to 10 years or 100,000 miles), and the establishment of a \$5 million fund for use in conducting safety research by George Washington University's National Crash Analysis Center.

Opposing Counsel: O'Melveny & Myers LLP; Snell & Wilmer LLP; Wheeler Trigg & Kennedy LLP

❖ **McCarthy v. Toyota Motor Corp.** (N.D. Cal.)

Co-lead counsel for plaintiffs, FM successfully litigated a class action prompting Toyota to recall over 1.1 million Prius vehicles due to defective Intelligent Power Modules (IPMs) and negotiated a settlement valued at more than \$200 million—including a \$20 million cash fund for class members, a 20-year warranty extension without mileage limitations, and additional consumer protections, such as free replacement IPMs, towing, and rental cars.

Opposing Counsel: Morgan Lewis & Bockius LLP

❖ **Morris v. Branca** (Cal. Super. Ct., Los Angeles Cty.)

Co-lead counsel for plaintiffs, the former manager and President/Chief Operating Officer of The Michael Jackson Company (“TMJC”) and three advisers to Michael Jackson, in action alleging breach of joint-venture agreement that led to the formation of and distribution of equity interests in TMJC.

Opposing Counsel: Kinsella Weitzman Iser Kump & Aldisert LLP; Hoffman Sabban & Watenmaker, APC

❖ **Chen v. Knabb** (Cal. Super. Ct., Alameda Cty.)

Counsel for Plaintiff in shareholder-derivative action based on board of directors’ approval of sale of \$10 million of stock in Pegasus Wireless Corporation to Pegasus’s CEO and subsequent repurchase of stock for the original sale price after stock price plummeted from \$8 to less than \$1 a share. Case was among several shareholder-derivative suits and shareholder class actions based on alleged director misconduct, but the only one to survive two bankruptcy petitions and multiple dispositive motions that led to dismissal of other actions. Although key Defendants (former Pegasus CEO and CFO) failed to appear and were subsequently found liable for stock fraud in SEC action and jailed for criminally violating federal securities laws, Fazio | Micheletti LLP successfully negotiated the settlement of all claims.

Opposing Counsel: Fenwick & West LLP

❖ **Glover v. Mahrt** (Cal. Super. Ct., Alameda Cty.)

Fazio | Micheletti LLP prosecuted this case with the non-profit Animal Legal Defense Fund (“ALDF”) on behalf of consumers on the ground that the defendant egg producer had engaged in false and deceptive advertising and unfair business practices that harmed consumers as well as competitors by selling packages of eggs depicting hens roaming freely on an expansive green field and stated that the hens were “raised in wide open spaces in Sonoma Valley, where they are free to ‘roam, scratch, and play.’” In actuality, the hens were crammed in covered sheds with no outdoor access, and although the eggs were sold at premium prices, defendant was still able to undercut the prices of competitors by raising the hens in conditions that cost far less than the conditions that were advertised to the public.

Case was resolved by a settlement that required defendant to modify its facilities to conform the conditions depicted in its advertising and to cease such advertising until those changes were in effect. Fazio | Micheletti LLP received ALDF’s Advancement in Animal Law Pro Bono Achievement Award for its work on this case.

Opposing Counsel: Downey Brand LLP

- ❖ ***Trew v. Volvo Cars of North America, LLC*** (E.D. Cal.)
Co-lead counsel (with Lief Cabraser Heimann & Bernstein) for plaintiffs in nationwide class action based on fraudulent concealment of safety defect in Electronic Throttle Module (“ETM”) in nearly half a million Volvo cars and light trucks, in violation of California’s False Advertising Law, Unfair Competition Law, and Consumers Legal Remedies Act. Case was resolved on favorable terms for plaintiffs: Volvo agreed to reimburse all current and former owners of affected vehicles with 100 percent of all costs they incurred in connection with repair or replacement of ETMs (which cost up to \$1,200 each), up to \$50 in towing or car-rental charges, and an extension of the ETM warranty to 10 years or 200,000 miles.
Opposing Counsel: O’Melveny & Myers LLP
- ❖ ***Bauer v. Toyota Motor Sales Corp.*** (Cal. Super. Ct., Los Angeles Cty.)
Sole counsel for plaintiffs in nationwide class action based on violations of Consumers Legal Remedies Act and Unfair Competition Law in connection with sale of vehicles with defective windshields (which crack spontaneously or with slight impact), costing up to \$1,200 to repair. Case was resolved on favorable terms in nationwide settlement: All class members entitled to full reimbursement for windshield repairs and to a warranty extension that virtually doubled class members’ coverage.
Opposing Counsel: Quinn Emanuel Urquhart Oliver & Hedges LLP
- ❖ ***Daniel v. Am Honda Motor Co.*** (Cal. Super. Ct., Los Angeles Cty.)
Lead counsel for plaintiffs in nationwide class action based on violations of Consumers Legal Remedies Act and Unfair Competition Law in connection with sale of vehicles with defective windshields (which crack spontaneously or with slight impact), costing up to \$900 to repair. Case was resolved on favorable terms in nationwide settlement: All class members entitled to full reimbursement for windshield repairs and to a warranty extension that virtually doubled class members’ coverage.
Opposing Counsel: Lewis Brisbois Bisgaard & Smith LLP
- ❖ ***Davis v. Am. Honda Motor Co.*** (Cal. Super Ct., Placer Cty.)
Represented Center for Auto Safety as co-counsel with Trial Lawyers for Public Justice (now Public Justice) in challenge of order sealing record containing sanctions decision. Sanctions were imposed against defense expert in product liability case; expert was found to have destroyed evidence, which led to striking of defendant’s answer. Sanctions decision was sealed as part of global settlement with plaintiff, but sanctioned expert then used sealing order as a basis for refusing to answer questions about destruction of evidence and as a threat against lawyers asking questions about sealed sanctions order. Motion granted, record unsealed, and order issued clarifying that sanctions order cannot be used offensively.
Opposing Counsel: Loeb & Loeb LLP
- ❖ ***Wornow v. Register.com, Inc.*** (New York Sup. Ct.)
Lead counsel for plaintiffs in class action based on defendant’s unlawful and deceptive billing practices. Case was resolved by settlement, which provided reimbursement to class members worldwide and established a cy pres fund that provided \$700,000 to Computers for Youth, a non-profit organization that provides computers and technology education to under-privileged children.
Opposing Counsel: Skadden Arps, Slate, Meagher & Flom LLP

- ❖ **Hernandez v. [Anonymous] Bank** (Milwaukee Cir. Ct.)
Lead counsel for plaintiffs in action alleging financial institution engaged in fraud and breached mortgage agreements by terminating interest payments on tax and insurance impound accounts. Case was resolved by settlement that reinstated interest payments and provided 100 cents on the dollar for all missed interest payments to all affected mortgagees.
Opposing Counsel: Reinnart Boerner Van Deuren, S.C.
- ❖ **Mattison v. eBay, Inc.** (Cal. Super. Ct., Santa Clara Cty.)
Co-lead counsel (with Cuneo Gilbert & LaDuca LLP) for plaintiffs in nationwide class action based on alleged billing fraud and termination of membership without providing proper notice and opportunity to defend against charges that led to termination. Case settled on behalf of individual representatives only, and resolution included changes in certain disclosure statements and satisfaction of named plaintiffs' claims only. Plaintiffs' counsel donated approximately \$250,000 in fees and litigation expenses to non-profit consumer-advocacy organizations.
Opposing Counsel: Cooley LLP
- ❖ **Carden v. General Motors Corp.** (Cal. Super. Ct, Santa Clara Cty.)
Co-lead counsel (with Wilson Sonsini Goodrich & Rosati LLP) for plaintiff class in statewide (240,000-member) class action in which Public Citizen, Inc., also served as named plaintiff. Case was based on defendant's violations of California's Unfair Competition Law and Consumers Legal Remedies Act by fraudulently concealing defective steering columns in Chevrolet Astro and GMC Safari minivans. Case resolved on favorable terms for plaintiffs.
Opposing Counsel: Bingham McCutcheon LLP

REPRESENTATION OF AMICI CURIAE IN REPORTED CASES

- ❖ **Graham v. DaimlerChrysler Corp., 34 Cal. 4th 553 (2004)** (represented Friends of the Earth).
- ❖ **In re Tobacco II Cases, 46 Cal. 4th 298 (2009)** (represented Center for Auto Safety and Public Citizen).
- ❖ **Miller v. Bank of Am., N.T. & S.A., 46 Cal. 4th 630 (2009)** (represented Iowa Attorney General).
- ❖ **Davis v. Ford Motor Credit Co., LLC, 179 Cal. App. 4th 581 (2009)** (represented Consumers for Automotive Safety and Reliability).
- ❖ **Mazza v. Am. Honda Motor Co., Inc., 666 F.3d 581 (9th Cir. 2011)** (represented Public Citizen).