



## HEATHER HERD

### Partner

Litigation and Trial

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Orange County

(714) 641-3465

[HHerd@rutan.com](mailto:HHerd@rutan.com)

Heather Herd represents companies and individuals in a wide variety of disputes, including matters involving construction contract disputes, contractors' licensing disputes, creditors' rights, breach of fiduciary duty and breach of trust, misappropriation of trade secrets, business ownership, separation and termination, landlord/tenant relationships and breach of contract. Heather manages, conducts and supervises all facets of litigation from discovery through trial and appeal acting as both lead counsel and "second chair."

She has significant experience representing lenders and borrowers – including banks and other lending institutions, as well as individuals – in disputes related to real estate secured debt, including in the context of personal guarantees of real estate secured loans involving the California anti-deficiency and "one form of action" rules and in the receivership process. In connection with this practice, Heather prepares and argues applications for pre-trial relief related to real estate secured loans, including writs of attachment, receivership and preliminary injunctions. She is also closely involved in the appellate process following litigation.

Heather is a longstanding member of the Board of Directors of OneOC, formerly the Volunteer Center Orange County, a non-profit organization focused on facilitating volunteer opportunities for individuals, groups, organizations and corporations to benefit Orange County's non-profit and charitable community and providing business consulting and fiscal sponsorship services for non-profit entities and charitable organizations/foundations. She participates in board governance, and provides pro bono legal assistance on various matters and is the Chairperson of the Board's Business and Finance Committee.

### Representative Matters/Cases

- Key member of litigation team defending project owner in multi-million dollar action by contractor over 14 contracts for construction of 1300

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### Related Services

- [Commercial Finance](#)
- [Litigation and Trial](#)
- [Construction](#)
- [Corporate Restructuring and Creditors' Rights](#)
- [Infrastructure, Public-Private Partnerships \(P3\)](#)
- [Intellectual Property Litigation](#)

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### Related Industries

- [Construction](#)
- [Infrastructure/Public-Private Partnerships \(P3\)](#)

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### Bar & Court Admissions

- State Bar of California
- U.S. District Court for the Central, Southern and Eastern Districts of California

mile Central Valley broadband infrastructure project. Lead counsel on all issues related to contractor's license classification, including in opposing contractor's Motion for Summary Adjudication. United States District Court for the Eastern District of California denied summary adjudication, ruling that contractor was not adequately licensed to perform construction, thereby eliminating contractor's claim on nine of fourteen contracts. Thereafter devised strategy for bifurcation of trial on the propriety of the contractor's license for the remaining five contracts. Matter settled after District Court granted Motion to Bifurcate and set requested early trial on remaining licensing question.

- Lead counsel at multi-day trial representing lender, resulting in \$3.2 million deficiency judgment against guarantor of real estate secured loan.
- Second chair at 12-day trial representing lender in action related to \$69,000,000 construction loan and breach of purchase agreement resulting in judgment of over \$81,000,000 for lender and co-plaintiff.
- Second chair at 10-day trial representing beneficiary of multi-million dollar trust in action against trustee for breach of fiduciary duty and breach of contract resulting in removal of trustee and return of over \$1 million to trust.
- Co-Second Chair at four week trial representing eight defendants accused of, inter alia, misappropriation of trade secrets, conversion and breach of fiduciary duty resulting in jury verdict in favor of defendants on all causes of action and imposition of punitive damages on cross-defendant for defamation of defendants.
- Lead counsel at two day unlawful detainer trial representing lessee of premises seeking to evict ostensible purchaser of restaurant, based on little used and tested clause of unlawful detainer statute resulting in eviction of defendant from premises.
- Lead counsel for corporate officer in action brought by former employer alleging breach of contract, conversion and fraud. Negotiated favorable pre-trial settlement for officer significantly limiting personal liability.
- Lead counsel in action by lender against defaulting borrowers, obtained pre-judgment writ of attachment and levy against assets of defendants, effectively negated defendants' sole defense through diligent fact investigation and discovery and forced global pre-trial settlement of not only the loan at issue in the litigation, but numerous other loans in default.

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## Education

- University of California Los Angeles, School of Law (J.D., 2001)
- University of California, Irvine (B.A., 1996), Drama and Criminology, Law and Society; magna cum laude

## Recent Publications

"Lenders, Debtors & Guarantors: Who Gets Their Way in the Foreclosure Fray?"  
Western Real Estate Business, May 2011

## Awards & Honors

Southern California Super Lawyers – Rising Stars, 2014

## Memberships & Associations

- Orange County Bar Association
- Banking and Lending Section; Litigation Section

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