Benjamin Wagner

Partner

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Palo Alto



Benjamin B. Wagner is a partner in Gibson Dunn's Palo Alto office, and is a member of the firm's White Collar Defense and Investigations, False Claims Act, FCPA, Cybersecurity, FDA and Health Care, Securities Enforcement, Litigation, and Anti-Money Laundering Practice Groups. Ben's practice focuses on the representation of clients in government investigations, internal investigations including workplace misconduct issues, compliance reviews, and litigation involving federal, state and local agencies including the U.S. Department of Justice, SEC, FTC, and State Attorneys General. An experienced trial and appellate attorney, he has tried 18 felony criminal cases in federal court, and argued multiple appeals in the Ninth Circuit and the Fifth Circuit.

Ben is a *Chambers*-ranked attorney in White Collar Crime and Investigations (2018-2025). A client described him to *Chambers* as "the person to turn to when high-level help is needed." In 2018, Ben received a Champion of Educational Justice Award from California Rural Legal Assistance, Inc. for his pro bono work on a civil rights case involving disciplinary practices in Modesto City schools. He received a California Lawyer Attorney of the Year "CLAY" award from *California Lawyer Magazine*, and the *Daily Journal* named him as one of the Top 100 Lawyers in California. As an Assistant U.S. Attorney, he received the Executive Office of U.S. Attorneys Director's Award for Superior Performance three times, for cases involving health care fraud, money laundering, and domestic terrorism, and a Meritorious Honor Award from the U.S. Department of State.

Prior to joining Gibson Dunn, Ben served as United States Attorney for the Eastern District of California from November 2009 through April 2016. Appointed by President Obama, he oversaw the district's three offices and 175 employees, covering over half the area of California. During his tenure, he was appointed by Attorney General Eric Holder to the Attorney General's Advisory Committee, where he served for three years, working with Department leadership on national law enforcement policy. He was also appointed by Attorney General Loretta Lynch to serve as Co-Chair of the White Collar Crime Subcommittee. As U.S. Attorney, Ben oversaw investigations leading to multi-billion dollar settlements with two national financial institutions, and numerous investigations under the False Claims Act in the health care, defense and education industries that led to record FCA recoveries in the district. Ben served as an Assistant U.S. Attorney and as Chief of the Special Prosecutions Unit in the Eastern District between 1992 and 2009, handling investigations, trials and appeals in cases involving financial fraud, tax evasion, health care fraud, money laundering, domestic terrorism, public corruption, and other offenses. He also served as a national security prosecutor, held a security clearance and supervised investigations and prosecutions involving cyber intrusions, hacking and cyber espionage.

Ben earned his Juris Doctor in 1986 from New York University School of Law, where he was Managing Editor of the Journal of International Law and Politics. He received his undergraduate degree in 1982 from Dartmouth College. He is a member of the Board of Trustees of Robert College of Istanbul, Turkey. He is admitted to practice in California and New York.

Capabilities

White Collar Defense and Investigations
Anti-Corruption & FCPA
Anti-Money Laundering
Consumer Protection
FDA and Health Care
Fintech and Digital Assets
Litigation
Privacy, Cybersecurity, and Data Innovation
Securities Enforcement
Trials

Credentials

Education

New York University - 1986 Juris Doctor
Dartmouth College - 1982 B.A. Bachelor of Arts

Admissions

California Bar
New York Bar

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A sample of Ben's representative matters include the following:

- Defended a public technology company in the course of a two-year federal grand jury investigation, successfully obtaining a full declination.
- Defended another public technology company in connection with an SEC investigation of alleged misrepresentations related to product performance, successfully obtaining a no-action letter.
- Represented a major energy company in negotiating a national agreement with the U.S. Department of Justice, resolving a three-year grand jury investigation into alleged environmental crimes.
- Defended a pharmaceutical company in a nationwide False Claims Act investigation by the U.S. Department of Justice relating to claimed off-label marketing and violations of the Anti-Kickback Statute, successfully obtaining a declination and dismissal of the complaint.
- Represented a witness who testified at two trials on behalf of a major investor victim in the prosecution of Elizabeth Holmes and Sunny Balwani, former Theranos Executives.
- Successfully negotiated a civil settlement on behalf of a technology company following a three year investigation by the California Attorney General's Office into compliance with state regulations.
- Served as principal author in joint appellate briefs to the Ninth Circuit leading to the reversal of mail fraud convictions for six defendants.
- Represented a national environmental services company in connection with a U.S. Department of Justice investigation into compliance issues at an acquired business.
- Represented civil RICO plaintiffs in the Northern District of California, securing a $14.6 million judgment.
- Represented a large public technology company in litigation with the U.S. Department of Justice over the scope of the Wiretap Act, and on appeal.
- Represented the CEO of a public company in connection with an insider trading investigation by the U.S. Department of Justice and the SEC.
- Conducted an internal investigation for the Audit Committee of a technology company into allegations of workplace misconduct by a co-founder.
- Defended a real estate company in a civil case in California state court seeking $200 million in damages arising out of a shareholder dispute, successfully winning a full dismissal of the case.
- Conducted an internal investigation for the Audit Committee of a manufacturer of sophisticated testing equipment into alleged violations of export controls laws.
- Conducted an internal investigation for the Audit Committee of a multinational technology company into whistleblower allegations of financial improprieties by corporate officers.
- Retained by the California Legislative Counsel Bureau to conduct multiple independent investigations of allegations of sexual harassment and other workplace misconduct by Members and senior staff of the State Senate and Assembly.
- Conducted an FCPA review of transactions in Latin America for a global hardware distribution company.
- Defended an industrial services company in a False Claims Act and civil RICO case in the Northern District of California, secured a full dismissal with prejudice.
- Represented a business executive charged with wire fraud in a federal prosecution and in an appeal to the Fifth Circuit Court of Appeals.

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Recent Publications and Speaking Engagements Include:

- Panelist, “Truth, Lies and Consequences: Trial Lessons Learned from the Theranos and Elizabeth Holmes cases,” Association of Business Trial Lawyers webcast, San Francisco, January 25, 2022
- Co-Author, “The Evolution of Privacy Enforcement in California – CPRA and the CA Attorney General’s Office,” The Recorder, January 22, 2021

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