

Kathleen Herkenhoff

Senior Counsel

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Overview

Kathleen Herkenhoff is a veteran complex litigation attorney with more than 30 years of experience representing government entities, institutional investors, pension funds, and individuals in securities, consumer, antitrust, and shareholder derivative litigation, as well as representing both individuals and classes in employment and data privacy matters. She has appeared in courts nationwide, at both the state and federal level, and has frequently litigated before the Judicial Panel on Multidistrict Litigation and the Ninth Circuit Court of Appeals. As senior counsel at DiCello Levitt, she brings a proven record of success of more than $1.5 billion recovered for clients and advancing corporate governance reforms.

Kathleen has secured leadership appointments in a number of high-stakes securities and consumer class actions, achieving appellate victories and delivering meaningful results for investors and consumers harmed by corporate misconduct. Known for her meticulous preparation, strategic insight, and keen ability to frame complex cases, she ensures that cases advance efficiently from complaint through discovery, briefing, and resolution.

Among her recent achievements, Kathleen co-chaired the Law and Briefing Committee in *In re Apple Device Performance Litigation*, successfully defending the $310 million settlement on appeal, and represented the CalSTRS public pension fund in *In re Facebook Derivative Litigation*, in which she successfully defeated defendants' attempt to obtain dismissal of the case on demand futility grounds. She also played a central role in securing her former firm's leadership position in *In re FTX Cryptocurrency Litigation* with a focus on the claims against the auditors that historically provided services to the various FTX entities.

At the outset of her legal career, Kathleen served as a staff attorney at the U.S. Securities and Exchange Commission, where she prosecuted securities fraud and insider trading cases, securing a $22 million judgment in a complex offering fraud. She then joined a large class action

litigation firm, where she served as a partner and helped to obtain recoveries exceeding $1 billion in litigation involving HealthSouth ($671 million), AOL Time Warner ($618 million), Mattel ($122 million), Honeywell International ($100 million) and many other corporate entities, including large value recoveries and enhanced corporate governance improvements in shareholder derivative actions.

In 2010, Kathleen spearheaded the launch of a boutique firm's California office, managing its securities class and shareholder derivative actions through early 2017. In that role, she secured leadership positions and obtained multimillion-dollar settlements in cases such as *In re Diamond Foods Inc. Shareholder Derivative Litigation* and drafted innovative Foreign Corrupt Practices Act-related reforms in *In re SciClone Pharmaceuticals Inc. Shareholder Derivative Litigation*, which a judge described as "the most detailed and extensive corporate governance changes" she had seen in a derivative settlement.

Kathleen's background also includes serving as a partner at a law firm focused on employment litigation—including individual, class, and PAGA actions—while continuing her securities and consumer work. Prior to joining DiCello Levitt, Kathleen worked on behalf of a local government, allowing for additional insight into the effective defense of public entities. Her passion, however, has always been in practicing in the field of securities class and shareholder derivative actions. One of her fondest memories in litigation to date was successfully arguing before the Ninth Circuit Court of Appeals to defeat a writ by a competing movant to the appointment of her former firm's client as Lead Plaintiff in a securities class action.

Practice Areas

SECURITIES AND FINANCIAL PRODUCTS LITIGATION

WHISTLEBLOWER LITIGATION

Education

Pepperdine University School of Law, J.D. University of California, Berkeley, B.A.

Representative Matters

AOL Time Warner Opt-Out Litigation. Successfully litigated a series of cases on behalf of large institutional clients, collectively resolving various of the actions for $618 million. The AOL opt-out cases were some of the first to seek to litigate claims for large pension funds outside of the class action context. These clients included the Regents of the University of California, several large Ohio public pension funds (including the State Teachers Retirement System of Ohio and the Ohio Public Employees Retirement System), and several others. Kathleen played a key role in all aspects of these cases, including drafting of pleadings, opposing dismissal motions/demurrers, defending against discovery to the public pension funds, and engaging in settlement negotiations and resolution of the actions.

In re Google Play Consumer Antitrust Litigation. Served on the court-appointed lead counsel team in this complex antitrust action, which is the subject of a proposed $700 million settlement. Focused primarily on defending against the written discovery issued to, and depositions of, the proposed class representatives during the discovery phase of the action.

In re FTX Cryptocurrency Litigation. Litigated key aspects of claims in multidistrict litigation against the auditors' providing services to the FTX entities.

In re Facebook Inc. Derivative Litigation. Represented the California State Teachers' Retirement System (CalSTRS) and other institutional and individual clients in a Delaware shareholder derivative action, including successful defeat of dismissal motion on demand futility grounds.

In re Apple Inc. Device Performance Litigation. Served on Executive Committee of multidistrict litigation, including investigation and drafting of claims in action and defeating dismissal motions. Also prepared briefing to the U.S. Court of Appeals for the Ninth Circuit and to the Northern District of California (on remand) to defeat objector challenges to the $310 million settlement.

Rosenbloom v. Pyott, *et al.* Active litigation of key aspects of this shareholder derivative action against various Allergan Inc. insiders for the alleged illegal marketing of Botox.

Dennis v. Hart, et al. Successfully argued before the Ninth Circuit Court of Appeals that the removal by defendants of this shareholder derivative action was improper.

In re Art Technology Group Inc. Shareholders Litigation. Involved in discovery phase of this Delaware action, including securing deposition testimony used to obtain an initial preliminary injunction against defendants pursuing a $1 billion merger transaction.

Raynaldo, et al. v. American Honda Motor Co. Inc. Defeated motions to dismiss, allowing initial consumer claims against Honda to proceed.

In re Intuitive Surgical Inc. Shareholder Derivative Litigation. Secured her former firm's position as Lead Counsel and engaged in substantial motion and discovery practice in related state court action.

In re SciClone Pharmaceuticals Inc. Shareholder Derivative Litigation. Drafted cutting edge corporate governance reforms based upon conduct alleged to have violated the Foreign Corrupt Practices Act of 1977. These corporate governance measures were praised by the Honorable Marie S. Weiner as "the most detailed and extensive corporate governance changes I've seen in a derivative settlement."

In re Velti plc Securities Litigation. Secured her former firm's position as Lead Counsel and engaged in discovery leading toward the entry of a $9.5 million partial settlement. Presented and obtained final approval of the $750,000 settlement of remaining claims in the action.

In re Diamond Foods Inc. Shareholder Derivative Litigation. Secured her former firm's role asCo-Lead Counsel and served as part of the daily litigation and management of this shareholder derivative action. Obtained more than $10 million in consideration as part of the settlement ofthe action and drafted novel corporate governance measures central to the settlement.

In re Vesta Insurance Group Inc. Securities Litigation. Extensively litigated this securities class action, including during the discovery phase. The action settled for over $61 million.

In re KB Home Shareholder Derivative Litigation. Worked to secure a $30 million recovery in this shareholder derivative litigation, including substantial governance reforms.

Awards & Honors

Recognized in Consumer Law, ***The Best Lawyers in America®*** (2027)

Recognized in Consumer Protection Law, ***The Best Lawyers in America®*** (2027)

Recognized in Mass Tort Litigation / Class Actions – Plaintiffs, ***The Best Lawyers in America®*** (2027)

Admissions & Memberships

Bar Admissions

California

Court Admissions

U.S. Court of Appeals, Ninth Circuit

U.S. District Court, Central District of California

U.S. District Court, Eastern District of California

U.S. District Court, Northern District of California

U.S. District Court, Southern District of California