



Recent Class Action Representations

Securities/Financial Litigation

- We represent the lead defendant and former director of **Peregrine Systems, Inc.** in defending against claims by putative classes of federal plaintiffs, two state-court lawsuits by groups of investors, and claims by the Peregrine Litigation Trust, which seeks more than \$2 billion from Peregrine's directors, officers, and others, arising from the company's \$500 million financial restatement. The claims allege improper accounting for reseller channel sales and other revenue recognition issues, including interpretation of SOP 97-2. (A dozen insiders have already either pleaded guilty or been indicted in connection with these claims.) We obtained summary judgment in one state-court action and dismissals with prejudice in two other cases, leading to a favorable settlement of all class claims. The largest action had been pending for more than three years, and we never let plaintiffs progress beyond the pleading stage.
- We represented **Terayon Communications Systems** and its various officers and directors in the defense of several shareholder class and derivative actions. We were retained on the eve of trial and successfully resolved matters after summary judgment argument and expert discovery.
- We represented a major investment bank in the **In re AIG Securities Litigation**, forcing the plaintiffs to withdraw a multi-billion dollar securities class action upon threat of our motion to dismiss.
- We represented **AOL Time Warner** in Homestore.com securities class action (C.D. Cal); all claims dismissed and affirmed on appeal (alleged roundtrip/barter transactions and revenue recognition issues at Homestore)
- We represented **Nu Horizons/Titan Supply** in Vitesse Semiconductor securities class action (C.D. Cal); all claims dismissed (alleged channel stuffing and accounting fraud at Vitesse)
- We represented **GE Capital** in McKesson-HBOC merger securities fraud litigation; all claims dismissed (S.F. Sup) (alleged fraudulent revenue recognition at pre-merger HBOC)
- We represented **Maxim Integrated Products** in securities class action related to alleged stock option backdating (N.D. Cal); representing director defendants in related shareholder derivative action

- We represent director and founder of **Marvell Technology Group Ltd.** in securities class action and related shareholder derivative action involving alleged stock option backdating (N.D. Cal.)
- We represented **Terayon Communications Systems, Inc.** in securities class action, where matter was taken over less than six months before trial (N.D. Cal) (alleged misstatements of prospects of key product line)
- We represented **Bank of America** in Bank of America-NationsBank merger securities fraud litigation (MDL D. Mo.) (alleged failure to disclose hedge fund investment at pre-merger Bank of America).
- We represented chairman and founder of **E-Universe** in securities class actions related to revenue recognition (C.D. Cal.); all claims dismissed and affirmed on appeal (alleged overstatement of revenues and failure to account for product returns)
- We represented **Hughes Electronics** in securities litigation arising out of failed Hughes-Echostar merger (Del. Ch.); all claims dismissed and affirmed on appeal
- We represented two preeminent Silicon Valley venture capital firms in securities fraud litigation arising out of merger of Epinions.com and DealTime.com (S.F. Super./N.D. Cal.); bulk of claims dismissed, case removed, and settled confidentially (alleged misstatement of prospects of merged entity to obtain shareholder agreement)
- We represented chairman and founder of **Ariba, Inc.**, in securities class action related to alleged accounting misstatements and failure to properly report expenses (N.D. Cal.); all claims dismissed.
- We represent various **AIG** entities in connection a putative class action brought by Madoff investment investors. Despite having withdrawn more money from Madoff's ponzi scheme than they invested, plaintiffs claim they (and those similarly situated) should be able to recover under insurance policies that cover certain types of financial fraud losses.
- We represented **PricewaterhouseCoopers** in two federal shareholder class actions in the ICN Pharmaceuticals Securities Litigation, obtaining dismissals with prejudice. PwC was alleged to have prepared and certified false financial statements for its audit client ICN, and was the only defendant dismissed with prejudice. The dismissal was affirmed by the Ninth Circuit.
- We represented **Marsh & McLennan** in a series of California class actions arising from Elliot Spitzer's high-profile investigation against the company.
- We represented **Ernst & Young, Deloitte & Touche**, and the former **Arthur Anderson** in a number national securities fraud class actions. These cases included claims based on changes in complex accounting rules, revenue recognition, earnings restatements, off balance sheet accounting, and corporate fraud.

- We represented **Vivendi S.A.** in multiple class actions filed by the Milberg Weiss firm asserting it had violated the "all holders/best price" rule in connection with a tender offer for U.S. Filter Corporation. We obtained a dismissal on the pleadings in all cases.
- We represented **Kmart Corporation** (before bankruptcy) in multiple 10b-5 class actions asserting damages of more than \$1 billion. Through a very aggressive defense, we obtained a nominal settlement in the amount of defense costs on the eve of trial.

Consumer Fraud/Unfair Practices

- We represented **Sprint Nextel** in numerous consumer class and representative actions. Allegations have run the gamut of consumer claims, including inadequate disclosures, unlawful fees, and unlawful business practices under various federal and/or state laws around the country. We have repeatedly defeated class certification, obtained summary adjudication, and obtained numerous dismissals for nominal consideration after litigation revealed the defects in plaintiffs' class claims. Most recently, we have defended our client against a series of litigations around the country pertaining to early termination fees in term contracts. In one of the very few class actions to actually proceed to a jury trial, in a state court in the San Francisco Bay Area, we obtained a jury verdict in favor of Sprint of more than \$220 million against consumers who were suing Sprint Nextel. We represented Sprint in a California Business & Professions Code section 17200 consumer class action brought by its subscribers challenging the validity of early termination fees charged and collected by Sprint, alleging that the early termination fee constituted an unlawful penalty and that almost 2 million class members were entitled to refunds. After a four week trial, the jury found that although Sprint had collected approximately \$74 million in early termination fees, the class members had breached their contracts with Sprint, resulting in actual damages to Sprint of approximately \$225 million, offsetting the fees paid and, as such, the class was entitled to recover nothing.
- We represent **Toyota Motor Sales USA, Inc.** in putative class action alleging that model year 2004 through 2006 Scion xBs suffer from defects that cause their windshields to have an inordinate and dangerous propensity to crack under circumstances that would not cause non-defective windshields to crack. Plaintiff alleges causes of action for, inter alia, violation of California Business & Professions Code Section 17200 and the California Consumer Legal Remedies Act, breach of express warranty, and violation of the Song-Beverly Consumer Warranty Act.
- We represent **Toyota Motor Sales USA, Inc.** in putative nationwide class action alleging that model year 2007 Toyota FJ Cruisers suffer from defects that cause their windshields to have an inordinate and dangerous propensity to crack, chip, and/or pit. Plaintiffs allege causes of action for declaratory relief, violation of Section 17200, violation of the California's CLRA and breach of express warranty.

- We represent **Electronic Arts** in two consumer class action cases in the Northern District of California, involving claims under CLRA, Section 17200 and the Copyright Act relating to DRM (digital rights management) technology in the video game maker's products.
- We represented **Harley-Davidson** in a putative class action brought by a Harley-Davidson employee arising from the plaintiff's loss of a lap-top computer containing customers' personal information, alleging negligence, breach of warranty, breach of contract, unjust enrichment, fraud and negligent misrepresentation, prima facie tort and violations of New York false-advertising and deceptive-practices statutes. The Southern District of New York granted a defense motion to dismiss all claims.
- We represented **Intuit** in three separate class actions alleging various contract and tort theories, as well as for claims of unfair competition under various California consumer protection statutes (including the CLRA and Bus. & Prof. Code Section 17200) relating to Intuit's decision to impose a discontinuation ("sunsetting") policy on older versions of their best selling Quicken and QuickBooks products lines. Prior to class-certification, we filed motions to dismiss based largely on California common-law defenses and defenses built into Intuit's end-user license agreements. The court dismissed all the claims with prejudice.
- We represented **Toyota Motor Corporation** in a national class action alleging various false advertising, product liability and UCL claims involving Lexus vehicles. By early dispositive motions, we obtained an outright dismissal.
- We represented a national wireless service provider in a nationwide class action alleging violations of consumer credit statutes. Plaintiffs sought more than \$1.5 billion in damages. After we defeated plaintiffs' motion for class certification, the case quickly settled for a nominal sum.
- We represented **DIRECTV**, obtaining a grant of certiorari from the United States Supreme Court on the propriety of classwide arbitration under the Federal Arbitration Act, reversing the California Court of Appeal. On remand from the United States Supreme Court, the California Court of Appeal held for the first time in a published decision that whether or not an arbitration agreement governed by the FAA permits classwide arbitration must be determined by the arbitrator, not the courts, reversing long-standing decisions under California law.
- We represented **DIRECTV** in several different consumer class actions alleging relating to DIRECTV's conditional access smart cards; its anti-piracy campaign; its policies relating to Pay-Per-View programming; and alleged violations of the Electronic Communications Privacy Act ("ECPA"). We obtained defense wins in each of these cases.

RICO Violations

- We represented a **leading mutual fund client** and two of its executives of federal class action claims seeking treble and punitive damages under RICO. The claims maintained that investments by mutual funds in the publicly traded stock of allegedly illegal gambling businesses amounted to RICO violations; we were able to persuade the federal district court to dismiss the action with prejudice on an initial motion to dismiss and recently obtained affirmance of the dismissal by the Second Circuit.
- We are serving on the Plaintiffs' Steering Committee in the federal multidistrict litigation alleging that defendants Merck and Schering-Plough violated the federal RICO statute and state laws by suppressing adverse test results for the blockbuster cholesterol drug Vytorin.
- We represented **DIRECTV** in a notable victory when the Ninth Circuit Court of Appeals affirmed the dismissal of all claims asserted against DIRECTV in a RICO class action lawsuit. The unanimous opinion affirmed the district court's complete dismissal of the claims against DIRECTV, and established that the Noerr-Pennington doctrine protects pre-litigation demand letters, even those that allegedly constitute extortion, mail fraud or other RICO predicate acts. The issue had not been squarely addressed by any federal appeals court except the Tenth Circuit, which had ruled en banc that Noerr-Pennington does not protect pre-litigation demand letters between private parties outside the antitrust context because such letters do not involve any direct petitioning of the government.
- We represented a waste disposal and recycling company in a California class action brought by all customers in a Southern California city. Plaintiffs sought more than \$30 million in damages. Our demurrer to the complaint was sustained without leave to amend.
- We represented, on the plaintiffs' side, class of nearly 3000 restaurants and restaurateurs who charged Reward Network with usury and unfair business practices. After two and a half years of hard-fought litigation, we obtained a settlement of \$64 million for the class members.
- We represented **Washington Mutual Insurance Services** in a purported 23-state consumer class action where we defeated certification.
- We represented software publisher **Intuit** in numerous class actions-- for example, in a California case where the plaintiff asserted the company was charging customers for unordered technical support; against a putative national class action where the plaintiff challenged the company's decision to discontinue tech support and the online features of its award winning QuickBooks product; and in three consolidated national class actions in which the plaintiffs claimed the on-line banking functions of various versions of Intuit's QUICKEN program were not Year 2000 compliant.

- We represented **IBM** in a series of nine separate consumer class actions pending in different states. After we defeated certification in the first three cases to reach that stage, the remaining actions settled on favorable terms.
- We represented **Time, Inc.** in a nationwide class action challenging an allegedly fraudulent magazine promotion, and obtained summary judgment .
- We represented **Mitsubishi Corporation** in nationwide class action involving allegations of unfair competition and fraud arising from sale and marketing of high-definition television sets. We successfully moved for summary judgment, resulting in dismissal of all claims against our client.

Antitrust

- We represented **Samsung** in two price-fixing class actions, brought by direct and indirect purchasers of NAND flash memory, in the Northern District of California; although classes had been certified in similar cases in the same district, we successfully defeated class certification motions in both actions, causing the direct purchaser representative to agree to voluntary dismissal.
- We represent plaintiff **Somerset Industries, Inc.** in an antitrust class action brought by direct purchasers of eggs and egg products, alleging a nationwide price-fixing scheme by major egg producers and processors. Plaintiffs have asserted federal antitrust claims under the Sherman Act.
- We represented **JBL Professional**, a subsidiary of Harman Professional, in a putative class action alleging conspiracy and antitrust violations of the Sherman Act based on allegations that JBL conspired with numerous other defendants to unlawfully exclude the plaintiff, a small music equipment manufacturer, from the market to help a larger supplier. Plaintiff sought damages of upwards of \$15 million, trebled. Following motions to dismiss, plaintiff agreed to settle the case on terms favorable to our client.
- We act as co-lead counsel for plaintiffs in a class action antitrust case against Comdata Corporation, the largest provider of payment cards for truck fleets to purchase fuel and other services in connection with the long-haul transportation of freight. Plaintiffs are independent truck stops that compete with national chains in selling fuel to trucking companies. The lawsuit is brought under Sections 1 and 2 of the Sherman Act and challenges exclusionary conduct by Comdata that enhances and perpetuates its monopoly position.
- We represent **Dust Pro** in an antitrust class action against the nation's largest railroads (BNSF, CSX, Norfolk Southern, Union Pacific, and Kansas City Southern) alleging that they have conspired since 2003 to fix the prices of fuel surcharges applied to rate-unregulated rail freight traffic in the multi-billion market for rail freight transport.

- We defended **IBM** in a series of federal class action antitrust claims related to the market for Static Random Access Memory.
- We represented **DIRECTV** in two separate consumer class actions in which the plaintiffs sued DIRECTV, the NBA, and the NHL, alleging various antitrust violations, including vertical and horizontal price fixing, monopolization, and illegal restraint of trade, arising from the sale and distribution of DIRECTV's NBA League Pass and DIRECTV's NHL Center Ice Programming Packages. The Southern District of California granted DIRECTV's initial motion to dismiss and a later amended complaint with prejudice as to all claims.

Product Liability/Personal Injury

- We represented **San Diego Gas & Electric Company** and defeated certification of two separate classes in expansive litigation arising from the 2007 wildfires in San Diego County. The classes were estimated to include up to 500,000 people, with total damages likely exceeding \$1 billion. Two separate classes sought certification, one including all individuals damaged by the fires but only seeking to certify the questions of cause and origin of the fires; and another class including only evacuees, but seeking to certify the entire action. In order to effectively oppose both motions for certification simultaneously, we propounded discovery on several hundred plaintiffs and conducted the depositions of nearly 20 class representatives and three of plaintiffs' experts. Using the evidence obtained in discovery, we opposed both classes by arguing that common issues did not predominate and class treatment would not be superior. The court's orders, denying certification of both classes, tracked our briefing almost perfectly.
- We represent **Occidental Petroleum Corporation** and **Occidental Peruana, Inc.** in a purported class action, alleging environmental contamination and related personal injuries. This case was filed in state court in California but recently removed by Occidental to federal court.
- We represented **The Home Depot**, in a consumer class action and defeated a request for a preliminary injunction and class certification in a federal court action seeking to enjoin The Home Depot from nationwide sales of an allegedly dangerous consumer product.
- We represented major real estate developers, including **KB Home**, **Dell Webb** and others, in numerous construction defect class actions and actions seeking recovery for personal injuries allegedly caused by such defects, mold, and related injuries.

Wage and Hour

- We successfully defended **Barnes & Noble Booksellers, Inc.** in a wage and overtime class action alleging various violations of the Labor Code, including failure to provide meal breaks and rest breaks and failure to pay overtime. The Court denied certification in its entirety, ruling that plaintiff failed to satisfy his burden to

demonstrate common issues predominated over individual issues, and that a class action was a superior method of adjudicating plaintiff's claims.

- We represented **Computer Sciences Corporation** in a purported nationwide overtime class action on behalf of computer consultants. After providing informal discovery to plaintiff's counsel, we persuaded the plaintiff to drop the class-action allegations. The parties then quickly resolved the remaining individual claim.
- We represented **Home Savings** in an overtime class action concerning nearly 2000 account representatives. The firm negotiated a \$1.5 million settlement, one of the lowest settlements in California history for comparable claims.
- We represented an **ERA Realty** affiliate, and defeated certification in an employee class action alleging fraud and illegal deductions from earnings.
- We recently represented **Computer Science Corporation** in a huge, 27,000-employee nationwide overtime class action. The case settled on terms that resulted in an average payout of less than \$1,000 per class member--a number several times lower than the typical per-class member settlement in such cases.