



## Caroline McIntyre

### Managing Partner

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#### PRACTICE AREAS

Business Litigation

Securities Litigation

Investigations & White Collar Defense

Intellectual Property Litigation

Employment Law

#### EDUCATION

University of Notre Dame Law School (J.D., 1991);

Vassar College (B.A., *cum laude*, 1988);

Wellesley College (select exchange student, 1986-1987)

#### PROFESSIONAL INVOLVEMENT

The Honorable William A. Ingram American Inn of Court – Executive Committee Member; Co-Leader, Service/Outreach Pupillage Group, 2020-present; Service Committee Co-Chair, 2019-20; Past President, President-Elect, Treasurer, Programming Chair and Pupillage Group Leader.

U.S. District Court, Northern District of California Standing Committee on Professional Conduct – Member.

Association of Business Trial Lawyers, Northern California Chapter – Columnist for ABTL Report;

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Member.

Litigation Counsel of America Trial Lawyer Honor Society – Fellow.

American Bar Foundation – Life Fellow.

National Institute for Trial Advocacy – Faculty Member.

American Bar Association – Law Practice Division, ABA Women Rainmakers Committee, Member.

Federal Bar Association, State Bar of California and Santa Clara County Bar Association – Member.

## **BAR ADMISSIONS**

California;

United States District Court, Northern, Central, Eastern, and Southern Districts of California;

United States Court of Appeal, Ninth Circuit;

United States Supreme Court

## **RECOGNITION AND LEADERSHIP**

Benchmark Litigation Star, 2024

Best Lawyers® Lawyer of the Year for Litigation – Securities, 2021

Best Lawyers® Commercial Litigation and Litigation – Securities, 2021-24

Silicon Valley "Women of Influence 2020," Silicon Valley Business Journal

America's Top 100 High Stakes Litigators®, 2020

Burton Awards for Legal Achievement – Recipient, 2006.

Northern California Super Lawyers® – 2005, 2006, 2008-23.

Boss of the Year – Santa Clara County Legal Professionals Association, Recipient, 2014.

San Jose Wind Symphony – President, Board of Directors.

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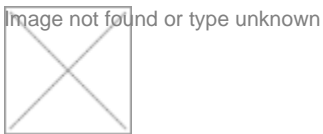


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SILICON VALLEY **BUSINESS JOURNAL**  
CAROLINE MCINTYRE



## SUMMARY

Known for delivering favorable outcomes in complex securities, venture capital, and business litigation, Caroline McIntyre leverages her trial skills to protect clients' interests and resolve disputes efficiently. Her recent trial achievements include securing a jury verdict for damages and attorney's fees for the purchaser of a high-tech company in a sharply contested retrial involving breach of contract claims.

Caroline represents numerous Silicon Valley and Bay Area technology and financial industry clients—directors, officers, and companies—in high-stakes individual, derivative, and class action

litigation and trials. She has led Bergeson, LLP as Managing Partner since 2003.

In securities litigation, Caroline's effective defense and strategies address the upfront battles and unique issues in these cases. She acts to resolve disputes early when possible, from knocking out claims of breach of fiduciary duty and other allegations to lowering damage claims, targeting discovery, and defending depositions.

### **Trial Power in Complex Business Litigation and Investigations**

Experienced in state and federal court in civil bench and jury trials and appeals, Caroline manages a range of complex commercial disputes, as well as internal and external investigations, for publicly traded and private clients, including:

- Contract claims
- Fraud
- Stockholder claims
- Unfair business practices
- Audit committee investigations
- SEC investigations
- Intellectual property
- Misappropriation of trade secrets
- Wrongful termination
- Insurance coverage

### **Bay Area Legal Leader**

An alumna of Vassar College and University of Notre Dame Law School, Caroline is a recognized leader in prominent professional organizations. She is a Fellow in the Litigation Counsel of America Trial Lawyer Honor Society and a past President and current Executive Committee Member of The Honorable William A. Ingram American Inn of Court.

Caroline serves on the Standing Committee on Professional Conduct of the U.S. District Court for the Northern District of California. She has been recognized by “Northern California Super Lawyers®” for more than a decade.

A recipient of the prestigious Burton Award for Legal Achievement for writing, Caroline writes a column for the *Northern California Association of Business Trial Lawyers (ABTL) Report* on trial and litigation skills. Her out-of-the office activity reflects a lifelong interest in music. Caroline plays French horn with the San Jose Wind Symphony, where she also serves as President of its Board of Directors.

### **REPRESENTATIVE MATTERS**

## Breach of Fiduciary Duty and Securities Litigation

- *Logan Hessefort v. Super Micro Computer, Inc.*, USDC, NDCA Case No. 4:18-CV-00838-JST  
Represented the President, CEO, and Chairman of the Board of Directors of Super Micro Computer, Inc. in a class action lawsuit alleging violations of Section 10(b) and 20(a) of the Exchange Act.
- *Stein v. Liang et al.*, USDC NDCA Case No. 4:21-CV-03357-JST and *Barry v. Liang et al.*, Santa Clara County Superior Court Case No. 20CV372190  
Represented the President, CEO and Chairman of the Board of Directors of Super Micro, Inc. in derivative lawsuits in the Northern District of California and Santa Clara County Superior Court.
- *Zurvan Mahamedi v. Lex Kosowsky*, Case No. 1-15-CV-278496, Santa Clara County Superior Court  
Represented a publicly traded company, Littelfuse, Inc. and its President and CEO, David Heinzmann, in an action filed against them alleging claims of breach of fiduciary duty, unfair competition, negligence, concealment, conspiracy, and aiding and abetting. The trial court sustained our clients' demurrers to the Complaint without leave to amend. The Court of Appeal for the State of California, Sixth Appellate District, affirmed the trial court's order sustaining the demurrers without leave to amend.
- *Atinar Capital II, LLC, et al. v. Aida Alvarez, et al.*, No. CGC-17-559515, San Francisco County Superior Court  
Representing two venture funds in a case alleging breach of fiduciary duty and aiding and abetting breach of fiduciary duty arising out of a company's financing rounds.
- *Kerrigan Capital, LLC, et al v. David Strohm, et al.*, CIV 534431, San Mateo County Superior Court  
Represented several venture funds in a case filed on behalf of a proposed class of common shareholders of a company, alleging claims of breach of fiduciary duty and aiding and abetting breaches of fiduciary duty arising out of the company's financing rounds.
- *Kohli v. Neocarta Ventures, L.P.*, No. 107CV092847, Santa Clara County Superior Court  
Represented seven venture funds in a lawsuit alleging causes of action for breach of fiduciary duty, fraud, and negligent misrepresentation.
- Represented an asset management company and two of its principals in an action filed against it in federal District Court alleging claims of fraud, negligent misrepresentation, aiding and abetting fraud, and tortious interference.
- *Baker v. Arkansas Blue Cross and Blue Shield, et al.*, No. CV 08-3974 SBA, United States District Court for the Northern District of California, Oakland Division



Represented four entities in an action alleging breach of fiduciary duty, minority shareholder oppression and violation of California's Unfair Competition Law. The Court granted our clients' motion to dismiss on the grounds that Plaintiffs lacked standing to bring direct claims.

- *Barnes v. Daley*, No. 1-09-CV158534, Santa Clara County Superior Court  
Represented Defendant, a former outside director, in an action alleging negligence, breach of fiduciary duty, fraud, and unfair business practices.
- *Tyler v. Solaicx, et al.*, No. 11CV194167, Santa Clara County Superior Court  
Represented several Defendants, including companies and individual director Defendants, in a lawsuit arising from a preferred stock financing. Plaintiff claimed that Defendants unfairly diluted minority shareholder interests in the company in anticipation of a merger.
- *In re Trident Microsystems, Inc. Derivative Litigation*, No. C-06-03440, United States District Court, Northern District of California; *Limke v. Lin, et al.*, No. 1-CV-07-080390, Santa Clara County Superior Court  
Represented an officer and former director of Trident Microsystems, Inc. in derivative shareholder suits concerning stock option practices.
- *Bucephalus Alternative Energy Group, LLC v. KCR Development*, No. 08 Civ. 7343, United States District Court for the Southern District of New York  
Represented Defendants in an action regarding a proposed investment in a company. The Court granted the Defendants' motion to dismiss, finding there was no personal jurisdiction.
- *Scognamillo, et al. v. Credit Suisse First Boston LLC, et al.*, Case No. C03-02061 (TEH), 2005 WL645466, United States District Court for the Northern District of California  
Represented the former Chief Financial Officer of Netcentives, Inc. in a case involving allegations of stock price manipulation by investment bankers in connection with an Initial Public Offering. Netcentives' stock was alleged to have been manipulated. The Court granted our client's motion to dismiss, dismissing the action with prejudice against the former CFO. The U.S. Court of Appeals for the Ninth Circuit affirmed the decision of the District Court.
- *In re Peregrine Systems, Inc. Securities Litigation*, United States District Court for the Southern District of California, Case No. 02-CV-0870 BEN (RBB)  
Represented the former CEO of Peregrine Systems, Inc. in a shareholder class action in federal District Court and related securities actions in state court.
- *Mudgett v. Chemoil Corp., et al.*, San Francisco County Superior Court Case No. 321977  
Represented four companies and three individual directors in a case alleging promissory fraud, breach of fiduciary duty regarding sale of company assets, and rescission against them. The Court granted Defendants' motion for summary judgment. The Court of Appeal for the State of California, First Appellate District, affirmed the trial court's order.

## Breach of Contract and Fraud Complex Litigation and Trials

- Represent distributor of petroleum products in a variety of disputes with station operators, including:
  - Represent distributor of petroleum products in action filed against it in Orange County Superior Court alleging breach of contract and various tort claims relating to a Consulting Agreement and two tax sharing agreements with the City of Santa Ana.
  - Represent the distributor in an action pending in the United States District Court for the Southern District of California, where Plaintiffs allege that the Treaty of 1855 between the Yakama Nation and the United States shields Plaintiffs from having to pay or reimburse to the distributor any money for California fuel excise or sales taxes incurred by the distributor.
  - Purported class action filed in Los Angeles County Superior Court alleging claims of price discrepancies, shortages, and failure to pass on a tax credit. The Court denied with prejudice Plaintiffs' Motion for Class Certification finding that Plaintiffs: (1) failed to establish that questions of law or fact common to the class predominate over the questions affecting the individual members; (2) failed to establish that their claims are typical of the class; (3) failed to establish that they and their counsel can adequately represent the class, or that Plaintiffs are willing to act as fiduciaries and protect the interests of the class members; and (4) failed to establish that proceeding as a class action is superior to the alternatives.
  - Secured a favorable jury verdict for the distributor in an action alleging price discrepancies, shortages, and late deliveries. Plaintiff sought more than \$1.5 million in damages from the distributor, including loss of its business.
- *Phan v. Tony Tolani, et al.*, 16CV291491, Santa Clara County Superior Court  
Represented the Plaintiff—a purchaser of a high-tech manufacturing company in San Jose—in trying her claims of breach of contract against the sellers, Defendants Tony Tolani and Shalini Tolani, and concealment against Mr. Tolani, in a sharply contested retrial in Santa Clara County Superior Court. Plaintiff claimed that the Tolanis failed to disclose accurate and complete information to her during due diligence before they sold the manufacturing company to her to inflate the purchase price for their own gain. This jury trial win was particularly challenging because Plaintiff, represented by different counsel, had already lost four of her seven claims at a first jury trial that resulted in a mistrial on the remaining claims of concealment and breach of contract. In the retrial, after eight days of trial and several days of deliberations, we secured a unanimous jury verdict of concealment and breach of contract against Tony Tolani, and a jury verdict of breach of contract against Mrs. Tolani. The jury awarded Plaintiff damages in the amount of \$577,600 against the Tolanis. Based on the attorney's fees clause in the underlying contract, the Tolanis also agreed to pay an additional \$775,000 to Plaintiff for attorney's fees and costs.



- Represented a prominent technology company in declaratory relief action and cross-claims for breach of contract and declaratory relief involving a dispute over the cancellation provisions of an agreement to provide IT services to a large financial institution.
- *Nguyen v. Huang, et al.*, Sonoma County Superior Court, Case No. SCV240886  
Represented the CEO and President of Unicond defending an action filed by Plaintiff. The action included a contract relating to sound electronic assemblies consisting of audio amplifiers and switched-mode power supplies. Plaintiff contended Defendant wrongfully failed to pay him \$3 million, which he claimed was owed under the contract. On the eve of trial, Plaintiff dismissed his action with prejudice without any payment by Defendant.
- *Maplebrook Townhomes LLC v. Greenbank*, No. 10-CV-63688 LHK, United States District Court, Northern District of California  
Represented Greenbank in this action alleging violations of the Fair Debt Collections Practices Act, the Real Estate Settlement Procedures Act, and the Truth in Lending Act. The Court granted our client's motion to dismiss for lack of personal jurisdiction.

### Other Representative Cases

- *Lifelink Foundation, Inc. v. Lifelink.com, Inc.*, United States District Court for the District of Colorado Case No. 1:20-cv-02274-RPM-SKC  
Represented Defendant in action alleging federal and common law trademark infringement, false designation of origin, passing off, false advertising, and unfair competition. Defeated Plaintiff's motion for preliminary injunction against Defendant. Plaintiff argued that Defendant's use of the marks (1) creates a high probability of confusion, causing harm to Plaintiff's goodwill; and (2) causes a loss of control over its business reputation. The Court found that "Plaintiff's speculative and conclusory arguments do not show irreparable injury" and that Plaintiff has not shown "that confusion is likely to occur despite the vast differences between the parties' businesses." The Court noted in its Order that "Plaintiff has fallen well short of showing it has a clear and unequivocal right to relief."
- *Katarzyna Kudlacz and Natalia Bien v. Cultural Care, Inc. et al.*, San Francisco County Superior Court Case No. CGC-20-584567  
Representation of defendant International Care Limited ("International Care") in action filed by Katarzyna Kudlacz and Natalia Bien, individually and on behalf of all other au pairs similarly situated, pursuant to the California Labor Code Private Attorneys General Act, Labor Code § 2698 ("PAGA") against defendants Cultural Care, Inc. ("Cultural Care") and International Care seeking civil penalties for alleged violations of Labor Code and Wage Orders.

### Investigations

Caroline's representative counsel in investigations includes:

- Seven current and former employees of a publicly traded company in an SEC investigation of

earnings management at the company.

- Audit Committee investigation for publicly traded company regarding stock option granting practices.
- Audit Committee investigation regarding revenue recognition/government contract billing practices.
- Special Litigation Committee investigation concerning stockholder derivative claims regarding venture financing.
- Audit Committee investigation for publicly traded company regarding revenue recognition and stock option granting practices.
- Audit Committee investigation for publicly traded company regarding allegations by founder/director regarding management.
- Audit Committee investigation regarding allegations by an employee regarding attempts by certain members of senior management to manage financial results.

## PUBLICATIONS

Author: "On Litigation Column," Addressing Professionalism In Litigation, *Northern California Association of Business Trial Lawyers (ABTL) Report*, Vol. 28, No. 3, Winter 2021/2022.

Author: "Cause of Action Checklist: Intentional Interference with Contractual Relations," *Practitioner*, Continuing Education of the Bar (CEB), November 5, 2020.

Author: "On Litigation Column," Addressing Best Practices For Remote Civil Litigation, *Northern California Association of Business Trial Lawyers (ABTL) Report*, Vol.27, No.3, Fall 2020.

Author: "If At First You Don't Succeed, Trial, Trial Again," On Litigation Skills Column, *Northern California Association of Business Trial Lawyers (ABTL) Report*, Vol. 26, No. 3, Summer 2019.

Author: "On Litigation Skills Column," Addressing Litigation Planning, *Northern California Association of Business Trial Lawyers (ABTL) Report*, Vol. 25, No. 3, Winter 2017.

Author: "Using Experts Effectively In Litigation," *Northern California Association of Business Trial Lawyers (ABTL) Report*, Vol. 24, No. 3, Spring 2016.

Author: "On Litigation Skills Column" Addressing Use of Interpreters, *Northern California Association of Business Trial Lawyers (ABTL) Report*, Vol. 24, No. 1, Summer 2015.

Author: "Navigating Post-Trial Motions in State and Federal Court," *Northern California Association of Business Trial Lawyers (ABTL) Report*, Vol. 19, No. 3, Summer 2010.

Author: "Motions To Stay: Fifth Amendment Rights v. Civil Discovery," *Northern California Association of Business Trial Lawyers (ABTL) Report*, Vol. 15, No. 1, Fall 2005.

Ms. McIntyre is a recipient of the prestigious 2006 Burton Awards for Legal Achievement for her article, "Motions to Stay: Fifth Amendment Rights v. Civil Discovery." The awards honor 30 of the nation's best legal writers who use plain, clear, and concise language.

Co-Author: "Parate v. Isidor: Resolving the Conflict Between the Academic Freedom of the University and the Academic Freedom of the Professor," *Journal of College and University Law*, 1990.

Ms. McIntyre was a Staff Member, 1989-1990, and Assistant Lead Articles Editor, 1990-1991, *Journal of College and University Law*.