

# THE MONITOR

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## Assembly Bill 9: Sexual Harassment and Discrimination Litigation in California

Assembly Bill 9 effects another sea change in the landscape of sex harassment and discrimination litigation in California, creating outside pressure for employers to head off #MeToo lawsuits as they spike anew.

The bill, which California Governor Gavin Newsom signed into law in 2019 and became effective January 1, 2020, extends the time an employee has to file a charge with the Department of Fair Employment and Housing (“DFEH”) from one year to three years. The DFEH is the state agency responsible for enforcing California’s civil rights laws and filing a charge with the agency, i.e. an “exhaustion” of a putative plaintiff’s “administrative remedies,” is a prerequisite to filing a civil lawsuit under the Fair Employment and Housing Act (“FEHA”).

FEHA applies to both public and private employers and protects individuals from illegal workplace discrimination based on protected categories, including sex. The law prohibits a litany of sexual misconduct, including visual conduct (leering, making sexual gestures, displaying of sexually suggestive objects or pictures, cartoons or posters), verbal conduct (making or using derogatory comments, epithets, slurs and jokes, verbal abuse of a sexual nature, graphic verbal commentaries about an individual’s body, sexually degrading words used to describe an individual), physical conduct (touching, assault, impeding or blocking movements), offering employment benefits in exchange for sexual favors, and making or threatening retaliatory action

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You are receiving this newsletter because we believe that the information provided will be of interest to you and any persons on whose behalf you make investment decisions. If you would like additional copies, or to opt out of our mailing list, please call [619.230.0063](tel:619.230.0063) or email us at [ContactUs@JohnsonFistel.com](mailto:ContactUs@JohnsonFistel.com).

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after receiving a negative response to sexual advances (including firing or demoting an individual for reporting proscribed sexual conduct).

Under AB 9, employees now have three years to file with the DFEH following the date of harm. Once the agency issues the employee a right-to-sue letter, the employee has one additional year to file a civil lawsuit.

For victims of harassment or discrimination, this means more time to consider the propriety of and damages sustained by alleged misconduct—which may manifest after the initial harm occurs through, for example, later-discovered emotional trauma—and a broader opportunity to consult legal counsel.

For employers, this means an employee may institute a lawsuit as many as four years following the date of the alleged harm, when evidence, witnesses and documents might be long gone. This passage of time, of course, could impinge an employer's ability to mount effective defenses against the allegations and to prophylactically remedy an unlawful practice or work culture. Consequently, employers are under added pressure to institute meaningful anti-harassment policies, reporting mechanisms, and training to forestall and prevent sexual misconduct.

Johnson Fistel has counseled both employers and employees facing or asserting sexual harassment allegations. Please contact us for a free consultation and case evaluation.

## Fraud Doesn't Pay or Does it?



Since 2012, the United States Securities and Exchange Commission (“SEC”) has awarded \$676 million to 108 individuals, known as whistleblowers, who have reported instances of securities fraud at their respective companies to the SEC. Recently, the SEC paid \$114 million to an anonymous whistleblower. According to Jane Norberg, Chief of the SEC’s Office of the Whistleblower, “[a]fter repeatedly reporting concerns internally, and despite personal and professional hardships, the whistleblower alerted the SEC and the other agency of the wrongdoing and provided substantial, ongoing assistance that proved critical to the success of the actions.” Traditionally, SEC whistleblower awards range from 10 percent to 30 percent of the money collected when the monetary sanctions exceed \$1 million.

The concept of whistleblowing is not a new phenomenon. The practice dates back to seventh century England. During that time, King Wihtred of Kent, declared that “if a freeman works during [the Sabbath], he shall forfeit his [profits], and the man who informs against him shall have half the fine, and [the profits] of the labor.” This declaration by the King was one of the very first examples of providing incentives to private citizens to report violations of government legislation,

i.e. whistleblowing.

In America, whistleblowing has been around since our inception. In fact, one of the first whistleblowers in America was one of our founding fathers, Benjamin Franklin. In 1773, Franklin exposed confidential letters showing that the royally appointed governor of Massachusetts had intentionally misled the English Parliament to promote a military buildup in the Thirteen Colonies. Almost a century later, in 1863, the False Claims Act provided the first congressional legislation for whistleblowers. In the midst of the Civil War, defense contractors intentionally sold defective ammunition and rifles, among other things, to both the Union and the Confederate armies, which hindered both sides’ efforts. Thus, on March 2, 1863, Congress passed the False Claims Act, which allowed private individuals to sue these contractors on behalf of the United States if these individuals had personal knowledge of the fraudulent scheme. If an individual was successful in proving the fraud on behalf of the United States, then he or she was entitled to receive half the money recovered by the suit. Congress would amend the False Claims Act again in the 1980’s in response to defense contractors

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again defrauding the government during the Cold War.

Thirty years later, in the aftermath of the Great Recession, Americans demanded reforms on Wall Street, given the financial fraud that occurred had crippled our nation to a point not seen since the depths of the Great Depression. In July 2010, Congress answered and passed the Dodd-Frank Wall Street Reform and Consumer Protection Act, referred to as Dodd-Frank, which represented the biggest overhaul of Wall Street regulations since the Securities Act of 1933 and the Securities and Exchange Act of 1934 were passed in response to the Great Depression.

Within Dodd-Frank, there is a special provision for whistleblowers who report violations of the federal securities laws, which include fraudulent accounting and the filing of false statements with the SEC, among other things. Given that whistleblowers are often reporting on their employers' fraudulent misconduct, Dodd-Frank and the SEC protects the anonymity of these individuals, and whistleblowers are also protected from any retaliatory acts by an employer against a whistleblower.

The SEC whistleblowing process can be a complex and, quite frankly, an uneasy process. However, Johnson Fistel, LLP is well equipped to handle the SEC whistleblowing process, can protect your anonymity, and provide assistance with the drafting and submission of a SEC whistleblower complaint. If you are considering submitting one of these complaints or have any questions about the SEC whistleblowing process, please feel free to contact us.



## Veterans: Your Active Duty Service May Have Preserved Your Rights to Relief

The Servicemembers Civil Relief Act (the "SCRA"), 50 U.S.C. §§ 3901-4043, enacted in 2003, provides a wide range of benefits and protections to those in military service. See 50 U.S.C. §§ 3901-4043.

### Who Qualifies

The SCRA provides benefits and protections to: (i) full-time active duty members of the five military branches (Army, Navy, Air Force, Marine Corps and Coast Guard); (ii) reservists on federal active duty; (iii) members of the National Guard on federal orders for a period of more than 30 days; and (iv) commissioned officers in active service of the Public Health Service (PHS) or the National Oceanic and Atmospheric Administration. *Id.* at § 3911(2). Servicemembers absent from duty for a lawful cause or because of sickness, wounds, or leave are also covered by the SCRA. *Id.* at § 3911(2)(C).

The SCRA also provides certain benefits and protections to service-

member dependents and, in certain cases, to those who co-signed a loan for, or took out a loan with, a servicemember. 50 U.S.C. § 3955; § 3913. The term "dependent" includes a servicemember's spouse, children, and any other person for whom the servicemember has provided more than half of their financial support for the past 180 days. *Id.* at § 3911(4). For most servicemembers, SCRA protections begin on the date they enter active duty military service. See 50 U.S.C. § 3911(3).

### Specific Benefits and Protections

Servicemembers qualify for many benefits and protections under the SCRA, including protections regarding rental agreements, security deposits, prepaid rent, evictions, installment contracts, credit card interest rates, mortgage interest rates, mortgage foreclosures, civil judicial proceedings, automobile leases, life

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insurance, and health insurance and income tax payments. For example, the SCRA provides (i) an interest rate cap on most financial obligations that were incurred prior to military service to no more than six percent per year, including most fees, 50 U.S.C. § 3937(a)(1) & (d)(1); (ii) protections against default judgments in civil court proceedings where a defendant servicemember has not made an appearance and it seems that he or she is in military service, 50 U.S.C. § 3931; (iii) protections against non-judicial foreclosures that may require a creditor must get a court order prior to foreclosing on a mortgage, 50 U.S.C. § 3953; (iv) protections from vehicle repossessions, 50 U.S.C. § 3952; (v) permissive residential lease terminations; and (vi) protections against creditors selling property subject to storage liens.



### Statutes of Limitation

A lesser known but important benefit of the SCRA is the tolling of statutes of limitation. Specifically, “[t]he period of a servicemember’s military service may not be included in computing any period limited by law, regulation, or order for the bringing of any action or proceed-

ing in a court . . . .” 50 U.S.C.A. § 3936(a). In other words, once active duty military service is shown, any applicable period of limitations is automatically tolled for the duration of the service. Notably, the SCRA preempts state law on this issue, and therefore any statutes of limitation under state law must yield to the SCRA’s protections.

If you are a veteran and have any questions regarding your rights under the SCRA, please feel free to contact Johnson Fistel, LLP. We would be happy to assist you in any way that we can.

## Employment and Labor Litigation

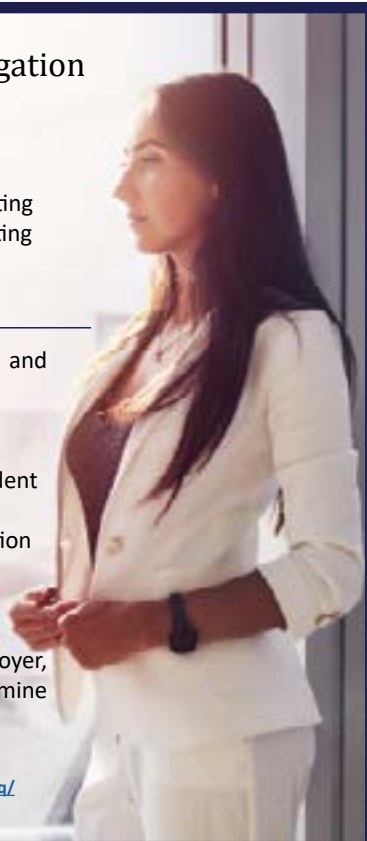
The attorneys at Johnson Fistel have obtained successful and efficient results for both employers and employees in litigating employment disputes, negotiating separations and severances, and evaluating employment policies, practices, and contracts.

Johnson Fistel can help employers and employees with the following issues:

- Minimum Wage & Overtime Pay
- Misclassifications (Employee/Independent Contractor)
- Discrimination, Harassment, & Retaliation
- Employment Contracts, Severance & Separations, & Restrictive Covenants.

Whether you’re an employee or an employer, please contact us today to determine whether we may be able to assist you.

Please visit our website for FAQs about employment law: <https://www.johnsonfistel.com/faq/>



# Johnson Fistel: *A Year In Review*

Johnson Fistel is proud to share this 2020 Year In Review, highlighting several of our cases and the significant role we played in recovering more than \$1 billion this year for investors, consumers and employees.

## Settlements

*In re American Realty Capital Properties, Inc. Litigation*, Civil Action No. 1:15-mc-00040-AKH (S.D.N.Y.). The firm represented one of the named class representatives in this class action alleging a massive securities fraud and played a significant role helping the trial team secure a **\$1.025 billion** settlement for shareholders.

*In Re Flowers Foods, Inc. Securities Litigation*, No. 7:16-CV-00222-WLS (M.D. Ga.). The firm was heavily involved in aggressively litigating, negotiating, and securing approval of a **\$21 million** class settlement for shareholders in a case alleging violations of the Securities Exchange Act of 1934.

*Gerneth v. Chiasma, Inc.*, No. 1:16-cv-11082-DJC (D. Mass.). Johnson Fistel had a significant role in this case alleging violations of the Securities Act of 1933 and negotiated and secured approval of a class settlement of **\$18.75 million** for shareholders.

*Eagle Canyon Owners' Association v. USA Waste of California, Inc.*, Case No. 37-2018-00005897-CU-BC-OTL (Cal. Super. Ct., San Diego Cnty.). The firm secured a **\$7.85 million** settlement on behalf of over

30,000 customers in a class action arising from USA Waste's widespread practice of allegedly inducing customers into multi-year, automatically-renewing contracts, and charging those customers hidden and unauthorized fees.

*Schmidt v. Liberator Medical Holdings, Inc.*, Case No. A-15-728234-B (Nev. Dist. Ct., Clark Cnty.). The firm helped recover **\$7.75 million** for shareholders arising out of an alleged scheme to sell the company at an inadequate price through a fraudulent process.

*In re Everquote, Inc. Securities Litigation*, Case No. 651177/2019 (N.Y. Sup. Ct., New York Cnty.). The firm played a significant role in negotiating and securing a class wide settlement of **\$4.75 million** in a case alleging violations of the Securities Act of 1933.

*Switzer v. W.R. Hambrecht & Co., LLC, et al.*, Lead Case No. CGC-18-564904 (Cal. Super. Ct., San Francisco Cnty.). The firm helped negotiate and obtain approval of a class settlement that included **\$2.45 million** in a class action alleging claims under the Securities Act of 1933 for alleged misstatements and omissions made in connection with the IPO.

*In re RH Shareholder Derivative Litigation*, No. 4:18-cv-02452-YGR (N.D. Cal.). The firm negotiated sweeping innovative corporate governance reforms to benefit the company, including installation of a

new Chief Compliance Officer and adoption of a Disclosure Committee Charter.

*In re 3D Systems Corporation Derivative Litigation*, No. 15-cv-03756-MGL (D. S. C.). The firm led a multi-jurisdictional effort to negotiate and secure a settlement for the benefit of 3D Systems which included comprehensive corporate reforms which directly addressed the alleged deficiencies in internal controls.

## Significant Victories and Upcoming Trials

*City of Roswell v. Bible et al.*, 2017CV294723 (Ga. Super. Ct. Fulton Cnty.). The firm secured key early victories on behalf of part-time City of Roswell firefighters seeking a restoration of benefits owed to them, including successfully obtaining class certification and defeating the City's subsequent attempts to have the that decision overturned before both the Court of Appeals and Supreme Court of Georgia. The case is now back before the trial court with a trial expected in late 2021).

*Costa v. Road Runner Sports, Inc. et al.*, Case No 37-2020-17100, (Cal. Super. Ct., San Diego Cnty.). The firm is leading a class action against a running shoe store for allegedly engaging in a longstanding undisclosed practice of renewing consumers for memberships fees every year without their knowledge and

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then continuing to charge consumers even after they cancelled their memberships.

*In re Alphabet Inc. Stockholder Derivative Litigation*, Case No. 19-cv-06880-RS (N.D. Cal.). The firm successfully intervened in and was appointed Co-Lead Counsel in this derivative action after first obtaining key books and records from the company. The matter seeks a remedy for the benefit of the company and its shareholders and arises out of the alleged collection of personal information from users of child-directed channels on YouTube, without first obtaining verifiable parental consent in violation of federal law resulting in the largest fine ever issued by the FTC.

**Awards & Recognitions**

Johnson Fistel lawyers continue to be recognized as among the nation’s leading lawyers by a number of independent peer-reviewed sources, including the following:

*Martindale-Hubbell:* The following Johnson Fistel attorneys have received AV Ratings from Martindale-Hubbell Peer Review Ratings, the gold standard in attorney ratings for more than a century, for their strong legal ability and high ethical standards: Frank J. Johnson, Michael I. Fistel, and Mary Ellen Conner. The AV Rating is the highest rating bestowed on an attorney by Martindale-Hubbell Peer Review Ratings.

*Super Lawyers:* Thomson Reuters awards this recognition to the top 5% of attorneys who have obtained a high-level of professional achievement and are highly regarded by their peers. In 2020, the following lawyers were named Super

Lawyers: Frank J. Johnson, Brett M. Middleton, Ralph M. Stone, John J. O’Brien, and Kristen O’Connor.

*Rising Stars:* Thomson Reuters recognized John O’Brien and Kristen O’Connor as Rising Stars, a designation awarded to no more than 2.5% of attorneys in each state.

*San Diego Magazine Top Lawyers:* In its March 2020 edition, San Diego Magazine included Frank J. Johnson as one of the top five lawyers in complex litigation in San Diego. This year is the seventh consecutive year that San Diego Magazine has recognized Mr. Johnson in this category.

**Meeting Our Clients’ Needs & More**

During this pandemic we recognize that it is a difficult time for many. As a law firm and employer, we are doing our part to keep everyone healthy and act responsibly to our amazing, dedicated staff. Our attorneys and staff have continued to work remotely when necessary to zealously advocate on behalf of our clients. To meet the needs of our clients, we have added to our team this year. Whether you are a current or potential client of the firm, we want you to know that we are here for you when you need us.

The firm added three new lawyers to the team: Reed F. Baker and John J. O’Brien in our San Diego, California office, and Oliver S. tum Suden in our Marietta, Georgia office.

And following lawyers at the firm added four new precious babies to the world: Chase M. Stern, Kristen O’Connor, William W. Stone, and Oliver S. tum Suden. Congratulations!

**Upcoming Lead Plaintiff Deadlines**

Johnson Fistel is investigating many potential cases arising under the federal securities laws. If you would like more information, or if you wish to participate in an action, please contact us as soon as possible to ensure that your rights are fully protected. Listed below are matters that the firm is investigating and the applicable deadlines for filing a motion with the court to be appointed as a “lead plaintiff” under the Private Securities Litigation Reform Act of 1995.

| Company                             | Deadline   |
|-------------------------------------|------------|
| Peabody Energy Corporation          | 11/27/2020 |
| Pintech Technology Holdings Limited | 11/30/2020 |
| Tactile Systems Technology, Inc.    | 11/30/2020 |
| Credit Acceptance Corporation       | 12/01/2020 |
| Aurora Cannabis Inc.                | 12/01/2020 |
| Precigen, Inc.                      | 12/04/2020 |
| Mesoblast Limited                   | 12/07/2020 |
| Royal Caribbean Cruises Ltd.        | 12/07/2020 |
| Loop Industries, Inc.               | 12/14/2020 |
| Reata Pharmaceuticals, Inc.         | 12/14/2020 |
| Turquoise Hill Resources Ltd.       | 12/14/2020 |
| Evolus, Inc.                        | 12/15/2020 |
| Las Vegas Sands Corp.               | 12/21/2020 |

| Company                           | Deadline   |
|-----------------------------------|------------|
| Innate Pharma S.A.                | 12/22/2020 |
| JPMorgan Chase                    | 12/23/2020 |
| First American                    | 12/24/2020 |
| BMW                               | 12/28/2020 |
| Citigroup Inc.                    | 12/29/2020 |
| Celsion Corporation               | 12/29/2020 |
| Raytheon Technologies Corporation | 12/29/2020 |
| Wells Fargo & Company             | 12/29/2020 |
| HP Inc.                           | 01/04/2021 |
| Intercept Pharmaceuticals Inc.    | 01/04/2021 |
| Neovasc Inc.                      | 01/05/2021 |
| Interface, Inc.                   | 01/11/2021 |
| Biogen Inc.                       | 01/12/2021 |
| Cabot Oil & Gas Corporation       | 01/12/2021 |

# Portfolio Monitor

Johnson Fistel recognizes that there are inherent risks when investing in the stock market. But the risks that an investor assumes do not, and should not, include the risk that the company or its officers and directors will make false and misleading statements to artificially inflate the company's stock price or sell their own stock based on insider information.

Our Portfolio Monitor is designed to alert institutional and individual investors when one of their investments may be affected by securities fraud, corporate waste, or other wrongdoing. Our Portfolio Monitor is available to both U.S. and foreign investors. There are no minimum portfolio requirements or costs to participate.



**In-House Monitoring**

**Confidential Data Protection**

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Click the link to learn more:

<https://www.JohnsonFistel.com/stockmonitor-free-portfolio-monitoring/>

Johnson Fistel was founded on the following five core values: trust, hard work, determination, integrity, and excellence in everything we do. Our interests are aligned with those of our clients — their success determines our own. We embrace and embody those ideals in everything we do. Whether we're pursuing damages for or against a billion-dollar corporation or we're challenging a small transaction, Johnson Fistel devotes the necessary resources to secure the best result possible.

We believe we are only as good as our people, and Johnson Fistel recruits only the best, brightest, and most determined candidates possible. Our lawyers include those who started their training by working for esteemed judges in both state and federal courts, and have also worked at the largest law firms in the world. We pride ourselves on providing the same level of service with a greater level of efficiency. As a result, we have developed the reputation for delivering big-firm results with the efficiency and personal touch of a small firm.

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