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Top Labor & Employment Lawyers 2018

Malcolm A. Heinicke

FIRM

Munger, Tolles & Olson

CITY

San Francisco

SPECIALTY

**Class actions, employee
mobility, trade secrets**

Heinicke's list of clients include Fidelity Investments, 99 Cents Only Stores LLC, Square Inc. and Plains All American Energy Services, but one client, Wells Fargo & Co., has consistently turned to the president of The Bar Association of San Francisco to address some of its most sensitive employment litigation.

Heinicke has worked extensively with the banking giant, and there's good reason the two continue their partnership.

"I like to get out in front of the case and understand how it's going to play out and set a plan that meets the clients' goals accordingly," he said.

When Wells Fargo faced a class action alleging its employees who did not engage in sales misconduct were subject to retaliation, Heinicke served as lead counsel. The plaintiff brought the claim under the federal Dodd-Frank Act and a New York state law related to whistleblowing.

A month after the complaint was filed, the veteran attorney defeated the state law claim by demonstrating that the statute did not extend to whistleblowing about financial practices.

"Our position was that all of this was cockamamie from the start," he said.

Heinicke and his team next went to work at the Dodd-Frank claim, eventually getting the whole case dismissed by proving the plaintiff did not engage in the type of whistleblowing protected by the federal statute.

The entire case took less than a year to resolve. *Kirschenbaum v. Wells Fargo Bank, NA*, 17CV02697 (E.D. N.Y., filed May 4, 2017).

Heinicke has also been at the forefront in defeating Private Attorneys General Act claims on procedural grounds in the wake of judicial opinions blessing the enforceability of class action waivers in arbitration agreements. He said he was the first attorney to secure an order



striking a PAGA representative claim on manageability grounds in a case in which a plaintiff alleged that 99 Cents Only Stores implemented security policies for store closings that forced employees into unlawful working conditions. *Barriga v. 99 Cents Only Stores*, RIC1308921 (Riverside Super. Ct., filed Aug. 5, 2013).

— Winston Cho