


Kimberly Pallen


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Kimberly is a partner in the litigation and arbitration team.

She concentrates on general and complex civil litigation, art law, employment litigation, and trade secret matters. Kimberly handles actions filed in state and federal courts throughout the State of California.

Her commercial litigation experience covers a broad assortment of business disputes, including breach of contract, misappropriation of trade secrets, conversion, and fraud. She has also managed a large number of cases involving breaches of fiduciary duty matters, arising out of various relationships such as trustee/beneficiary, employer/employee, and real estate agent/purchaser.

Kimberly represents numerous clients in new areas of emerging disputes in the DeFi, digital asset and fintech space. She has experience navigating significant disputes facing individuals and entities operating in blockchain, cryptocurrency and the decentralized finance ecosystem. She represents a number of high-profile clients, including some of the major cryptocurrency exchanges in ongoing litigations in the US in a variety of commercial contexts.

Kimberly's art law practice includes the representation of collectors, artists, dealers, appraisers and auction houses in litigation and contractual negotiations. Kimberly has extensive experience with authenticity issues, copyright infringement, as well as transactions in which works of art are pledged as collateral for loans. She was lead counsel in a group of lawsuits to recover collateral for a client that had a perfected security interest in a California gallery's works of art; she successfully recovered damages for valuable works of art by, among others, Marc Chagall, Georgia O'Keeffe, and Jeff Koons, that had been fraudulently conveyed after the gallery owner defaulted. Kimberly is also a contributor to the San Francisco art community, serving as the Chair of the San Francisco Bar Association's Art Law Section, and the Membership Chair and an Executive Committee member of ArtTable's Northern California chapter.

Kimberly also handles litigations in the employment sector for both employers and employees, with a focus on claims involving employment discrimination, harassment and retaliation, disability, and FMLA. She has also

litigated numerous matters involving California non-compete, non-disparagement and non-solicitation clauses, and regularly comments on the particularities surrounding California's employment laws as compared to other states in the country.

Track record

Complete defense victory after month long jury trial

Secured defense verdict for digital asset exchange Kraken after a month-long jury trial, defeating plaintiff's whistleblower claims against the company and securing verdicts that plaintiff misappropriated trade secrets from the company and breached his confidentiality obligations and duty of good faith and fair dealing to the company. Kraken stated "We're pleased with the outcome and thankful to testimony from happy Kraken employees and advocacy from our counsel at Withers." For more information on the trial, the verdict, and Withers' and the client's reaction, please read more here.

Crypto fraud dispute

Secured jurisdiction in the US over a long-running cross border commodities fraud dispute involving a top digital asset exchange and secured a ruling that a former customer breached the arbitration agreement in the exchange's binding terms of service by threatening to and actually suing the exchange in the UK.

Financial fraud claims

Defeated financial fraud claims asserted by a former employee against a top digital asset exchange related to the exchange's allocation of company shares, and secured a judgment against the plaintiff for the costs of litigation.

Hotly-contested cryptocurrency lawsuit

Secured a precedent-setting decision that the physical address associated with our client's business – one of the top digital asset exchanges in the world – may qualify as a trade secret and a former employee may be liable under the Defend Trade Secrets Act for their public disclosure of the company's address.

Motion to compel

Won motion to compel against Glassdoor, Inc., forcing Glassdoor to turn over identification information regarding anonymous individuals that posted reviews in violation of non-disparagement and confidentiality provisions in severance agreement.

Talks

- '*Legal Framework for the Artist-Gallery Relationship and Art Walk*,' The Bar Association of San Francisco - October 17, 2024, speaker

- 'Adapting to a New Art World in a Period of Accelerated Change,' Frieze LA - February 17, 2023, moderator
- '2022 In Review - Art Law Cases of the Past Year,' The Bar Association of San Francisco - January 30, 2023, speaker
- 'Legal Issues Confronting Artists,' Monterey County Woman Lawyers Association - October 28, 2021, speaker
- 'Art planning for the collector,' Deutsche Bank/ Withers event (Frieze London) - October 14, 2021, moderator
- 'Legal Issues Confronting Artists,' I Am An Artist - July 28, 2021, speaker
- 'Art and AB5,' The Bar Association of San Francisco (Webinar) - April 21, 2021, moderator
- 'Legal Careers Everything You Always Wanted to Know - Careers in Art Law,' The Bar Association of San Francisco (Webinar) - January 26, 2021, speaker
- 'Protecting your art: What you need to know about copyright, restitution, money laundering and other art transactions,' American Society of Appraisers (Webinar) - October 20, 2020, speaker
- 'Effective Witness Preparation Techniques: A Comprehensive Guide,' Knowledge Group (Webinar) - April 8, 2020, speaker
- 'Life Cycle of a Work of Art,' StartUp Art Fair (Los Angeles) - February 15, 2020, moderator
- 'How art can (not only) be an investment,' Withers/ Deutsche Bank event (Los Angeles) - February 12, 2020, moderator
- 'Fresh Perspectives on Collecting: What New Collectors Need to Know,' UNTITLED Art Fair, January 18th 2020, speaker
- 'When Art & Law Come Together,' BGSU School of Art, October 28, 2019
- 'From Kanders to Contracts: Four Experts Discuss the Legal, Policy and Ethical Issues Confronting Museums, Dealers, Donors and Collectors,' ArtTable (San Francisco), October 3, 2019
- 'The Life Cycle of an Art Collector,' Villa Taverna San Francisco - September 26, 2019, panelist
- 'California Employment Law and Its Impact on Art World Employment Agreements,' New York Bar Association's Art Committee Meeting - September 2019, speaker
- 'Trending Issues in Art Law,' San Francisco Bar Association - June 6, 2019, speaker
- 'Legal Issues Confronting Artists,' Startup Art Fair (San Francisco) - April 27, 2019, speaker
- 'Art transactions: Hidden risks,' Withers event (New York) - January 24, 2019, speaker

External publications

- 'Employment Update: Recent Decisions and Agency Actions,' New York Law Journal - November 4, 2024, co-author
- 'Kraken v. Former Employee,' Global Legal Chronicle - May 28, 2024, featured
- 'Withersworldwide Secures Victory in Kraken's Gender Pay Bias Lawsuit,' Daily Journal - April 4, 2024, featured
- 'Oscar statuette row highlights issues around resale rights,' The Art Newspaper - November 1, 2023, co-author
- 'Silicon Valley Bank collapse: What you need to know,' Withers Insight - March 12, 2022, co-author
- 'Art Law Year in Review,' Daily Journal - February 28, 2022, co-author
- 'Unpaid art internships still rife,' The Art Newspaper - September 1, 2021, quoted
- 'You're Fired! Arts Workers Face Legal Woes,' The Art Newspaper - March 3, 2021, quoted
- 'Social Media Eyes Embeds as Courts Mull Copyright Limits,' Bloomberg Law - July 2, 2020, quoted
- 'Instagram: copyright free-for-all?,' World IP Review - June 17, 2020, co-author
- 'Instagram: non potete usare le foto altrui senza permesso,' la Repubblica - June 5, 2020, quoted
- 'Instagram Just Threw Users of Its Embedding API Under the Bus,' Ars Technica - June 4, 2020, quoted
- 'New York court divided on Instagram sub-licence,' World IP Review - June 3, 2020, quoted
- 'The Art Market Adjusts: Protecting consigned artworks from creditors,' Withers article - March 30, 2020, co-author
- 'The Art Market Adjusts: How the art world is quickly adopting the use of virtual viewing rooms,' Withers article - March 26, 2020, co-author
- '3 Things To Know About 2nd Circ.'s Big Graffiti Ruling,' Law360 - February 21, 2020, quoted

'Rethinking artists' moral rights in the age of social media,' Daily Journal - February 5, 2020, co-author

'Art Money: A conversation about empowering people to engage with and buy art,' Withers article - January 17, 2020, co-author

'Why Art World Employment Agreements Are under Increasing Scrutiny,' Artsy - August 22, 2019, co-author

'Artists vs. Influencers: Why That Street Art Selfie Could Get You Sued,' Hollywood Reporter - August 6, 2019, quoted

'Even Grande-Sized Stars Are Not Immune to Copyright Infringement Claims,' The Recorder - March 4, 2019

'Companies Must Beware Street Artists' IP Suits,' Law360 - December 17, 2018

'9th Circuit Clarifies Statute of Limitations for Stolen Artwork,' Daily Journal - October 11, 2018

Museum Deaccessioning: 'Will the Proposed Bill Have a Significant Impact?,' The New York County Lawyer - March 2010

Admissions

State of New York, 2008

State of California, 2013

Education

Bowling Green State University, BA History of Art

Fordham University School of Law, JD

St. Catherine's College, Oxford University, Visiting Student

Languages

English

Memberships

Chair of the San Francisco Bar Association's Art Law Section

Membership Chair and an Executive Committee member of ArtTable's Northern California chapter

Key dates

Year joined: 2018

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