

## FINANCIAL SERVICES CLASS ACTIONS

### OVERVIEW

BCLP's Financial Services Class Action Team represents the world's leading financial institutions in high-stakes class actions in state and federal courts throughout the country and world. Our clients include 30 of the top 50 banks in the world, as well as numerous mortgage servicers, regional banks, trust companies and other financial institutions. We are deeply invested in understanding the ever-evolving litigation and regulatory risks and trends our clients face. We have a knowledgeable national team that leverages experienced trial lawyers, class action defense lawyers, and appellate and regulatory specialists, and we regularly handle on a nationwide basis litigation ranging from class actions to jury trials, high-stakes appeals and regulatory investigations.

Our team has defended our financial services clients against hundreds of putative class actions brought under a broad spectrum of federal laws, including TILA, HOEPA, RESPA, FCRA, FACTA, EFTA, FDCPA, ECOA, FHA, BSA and RICO, as well as privacy laws, unfair and deceptive practices statutes, and state common law. Some of our current representations include:

- Claims under RESPA alleging sham fees, illegal kickbacks or marked up third-party fees in connection with mortgage origination;
- Claims against mortgage servicers under the FDCPA for alleged failure to provide debt validation and other practices;
- Claims alleging state law claims for breach of contract or improper servicing activity in connection with servicing and REO sales;
- Suits under state unfair competition laws relating to mortgage origination and servicing practices including force-placed insurance and servicing fees;
- Suits alleging claims for failure to provide loan modifications; and
- Suits seeking rescission and other TILA remedies, as well as suits alleging unfair competition in the financial services industry.

Our team understands the variety of risk considerations involved in consumer litigation and regulatory enforcement. We work to achieve matter resolutions that meet both our clients' short-term needs and broader strategic goals. Up front, our class action lawyers focus on assessing our clients' risk and putative class scoping, and the best ways to mitigate that risk, including

appropriate corrective measures. We develop effective early exit strategies, such as pleading, standing and venue challenges, grounds for defeating, or limiting, the claims on their merits and class certification, and ways to limit the burden that class litigation can impose on our clients' limited resources. We understand the complexity of the financial services industry, including that our clients transact high volumes of business on a daily basis within a tightly regulated environment. We leverage our knowledge of our clients' internal system to create streamlined systems to mitigate discovery costs and burdens that may impact client teams and distract from conducting other business.

Our practice involves much more than litigation. We also assist clients in pre-suit mitigation measures, such as internal investigations and root cause analyses to identify potential class claim triggers, development of internal company procedures, analysis of emerging trends/risks, and advice about avoidance of class claims. We additionally have experience with government investigations that can trigger class action risk, and how to mitigate such risk. Because we handle large volumes of individual claims against many of our financial institution clients, we are adept at identifying and mitigating class action risk often before such claims are asserted.

## **EXPERIENCE**

### **Truth in Lending Act Claims**

- Represented lender in putative class action alleging "confusing" disclosures provided at loan closing, and violations of TILA, the Illinois Consumer Fraud Act and RESPA. Case settled on individual basis after motion to dismiss filed.
- Represented financial institution in putative class action alleging claims of TILA violation related to credit balances from certain cardholders' accounts. Summary judgment granted.
- Obtained summary judgment on individual basis for leading national bank in putative statewide class action in Ohio alleging violations of TILA, RESPA, FCRA, FDCPA and other common law claims in connection with mortgage origination.

### **Real Estate Settlement Procedures Act & Unearned Fee Claims**

- Obtained dismissal for national financial services company in putative class action in California involving alleged violations of RESPA concerning pricing/disclosure of flood services products.
- Obtained partial dismissal for real estate services firm in putative class action in Arizona alleging RESPA and other fraud-related claims. Matter then settled.

- Represent title company in putative class action alleging Connecticut residents were charged “unearned fees” in connection with real estate financing transactions and that the charges violated RESPA.
- Represented title insurance company in putative class action in Michigan alleging RESPA violations.
- Represented national lender in putative class action in Missouri alleging RESPA violations.
- Obtained partial dismissal for national financial services companies in class action in Arizona alleging violations of RESPA and RICO in connection with mortgage origination and appraisal services.
- Defeated class certification for mortgage lending company in putative class action in California alleging violations of California Residential Mortgage Lending Act and RESPA relative to plaintiff's residential loan. Plaintiffs brought three separate motions for class certification before three separate judges, each of which was defeated.
- Represent financial services companies in putative class action in California alleging RESPA sham entity theories.
- Obtained dismissal for mortgage lending company in putative class action in California asserting claims, including false advertising and violation of RESPA, arising out of real estate auctions.

### **Electronic Funds Transfer Act & Value Card Claims**

- Represent financial institution with respect to claims in New York arising under the EFTA alleging failure to properly disclose ATM fees.
- Represented in California financial institution as issuer of open loop cards with respect to alleged inaccurate and incomplete disclosures.

### **Fair Credit Reporting Act & FACTA Claims**

- Obtained summary judgment in the Eighth Circuit affirmed on appeal for financial services company in putative class actions alleging violations of FACTA seeking \$4 billion in statutory damages.
- Represented financial services company in class action in New York alleging violation of the FCRA and New York laws relative to defendant's tenant screening reports. Negotiated settlement.

- After multiple amended complaints, obtained dismissal with prejudice of a novel FRCA and California consumer fraud class action alleging it was inaccurate for the servicer to report the plaintiff's loan delinquencies based on California's deficiency judgment statute.

### **Property Valuation Issues**

- Represented financial services companies in putative statewide class action in Florida alleging violations of RESPA and RICO in connection with mortgage origination and appraisal services.
- Represented mortgage lending company in putative class action in California alleging conspiracy between multiple parties to inflate the value of plaintiffs' new homes through allegedly fraudulent appraisals.
- Represent financial services companies in class action in California alleging violations of RESPA and RICO in connection with mortgage origination and appraisal services.

### **Fair Debt Collection Practices Act Claims**

- Represented financial services company in case in Virginia involving claims of FDCPA violation and common law conversion.
- Obtained dismissal for national mortgage servicer in putative statewide class action in Georgia alleging violations of FDCPA.
- Obtained dismissal for national mortgage servicer in putative statewide class action in Indiana alleging violations of FDCPA in connection with consumers in bankruptcy.

### **Lender-Placed Insurance & Debt Cancellation Product Claims**

- Obtained dismissal for national mortgage servicer in putative class action in Guam alleging wrongful servicing and improper imposition of lender-placed insurance.
- Defeated class certification for mortgage backed securities trust trustee and national mortgage servicer in a putative nationwide class action in Ohio alleging claims for breach of contract and unfair practices in connection with lender-placed insurance placement and loan payment application.
- Represent regional national bank and national bank cards services company in putative statewide class action in Georgia alleging deceptive practices in connection with debt cancellation products.

### **Mortgage Servicing Claims**

- Represented one of the largest US banks in a class action in Missouri involving the alleged failure to modify mortgage loans and the securitization of asset-backed securities. Obtained

summary judgment victory in February 2013.

- Obtained dismissal, upheld on appeal, for lender in putative class action involving claims of violation of the Illinois Mortgage Act based on defendants' alleged failure to timely send borrowers a release of mortgage.
- Represent mortgage lender in class action in New York alleging defendant failed to comply with certain mortgage servicing guidelines published by the Federal National Mortgage Association relative to plaintiff's private mortgage insurance.
- Obtained dismissal of class claims in Ohio and stay action pending individual arbitration for lender in putative class action alleging failure to timely record a satisfaction of mortgage.
- Represented national bank mortgage trustee in putative statewide class action in Illinois alleging breach of contract in connection with REO sales.
- Represent mortgage servicer in putative nationwide class action in California alleging claims for unfair competition and other common law claims for relating ACH payments.
- Represent lender in putative class action in California alleging that assessment of certain charges and late fees breached terms of plaintiff's note and mortgage.
- Represent leading national bank in putative multistate class actions in Illinois alleging failure to adequately apply mortgage payments and improperly imposing late charges.
- Represent leading national bank and mortgage securitization trust trustee in putative statewide class action in Illinois alleging failure to modify mortgage loans and improper property preservation practices.

### **Unfair & Deceptive Acts & Practices Claims**

- Represented lender in successful Eighth Circuit appeal dismissing borrower's fraud and promissory estoppel claims relating to servicing of mortgage.
- Represented multiple lenders in class actions involving Missouri's Second Mortgage Loan Act.
- Defeated class certification and obtained individual summary judgment for national lender in putative class action in California involving alleged fraud in connection with mortgage origination practices.
- Represent title insurance company in putative class action in Maryland alleging plaintiff should have received a discount on a purchase of a title insurance loan policy issued by defendant.

- Obtained dismissal for lender in putative class action in Indiana involving dispute over insurance proceeds payable after flood damage.
- Represent financial services company in putative class action in Maryland asserting claims on behalf of Maryland residents for violation of the consumer protection act, fraudulent concealment, negligent misrepresentation, breach of fiduciary duty, and breach of good faith and fair dealing.
- Represent financial services company in putative class action in Illinois alleging violations of consumer protection laws related to defendant's collateralized loan program.
- Defeated class certification and obtained individual dismissal for financial services company in action in Illinois alleging consumer fraud and violation of federal Fair Credit Reporting Act.
- Represent title insurance company in putative class action filed by Texas consumers alleging overcharges for title insurance when mortgages were refinanced.
- Represented national mortgage lending company in putative class action in California alleging fraud and violations of state law unfair business practices.

#### **CARES Act SBA Paycheck Protection Program Claims**

- Defended a national association banking institution in putative class action claims in Georgia asserting violations of the Small Business Administration regulations in connection with CARES Act Paycheck Protection Program loans and loan applications.
- Advised Top 200 community bank in connection with class action litigation claims in Michigan concerning discrimination against SBA under PPP and interpretation of loan application requirements and impact of BSA and CDD policies.

#### **Telephone Consumer Protection Act Claims**

- Represented numerous CFS institution clients in TCPA claims in various federal jurisdictions including putative class and individual claims.
- Represented U.S. national bank entity in claims asserted under the TCPA and California Rosenthal FDCPA arising from allegedly unauthorized calls to a plaintiff's mobile phone in connection with three credit card accounts where plaintiff alleges consent had been withdrawn.
- Defended U.S. national bank entity in claims in California asserted under the TCPA arising from 100+ allegedly unauthorized consumer calls regarding debt collection.

- Defended U.S. national bank entity in claims in California asserting TCPA violations and seeking emotional distress damages arising from 160+ allegedly unauthorized consumer calls regarding consumer accounts.

## RELATED INSIGHTS

News

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News

Apr 04, 2024

### **Sam Bankman-Fried sentencing insight: Partner Andrey Spektor comments on legal landmark**

Events

Jan 25, 2024

### **Katherine Cooper presents at ABA's Derivatives and Futures Law 2024 Winter Committee Meeting**

News

Oct 19, 2023

### **Chambers UK Ranks BCLP in 41 practice areas and recognizes 74 lawyers**

Insights

Oct 16, 2023

### **Applying the FCA's proposed new guidance on non-financial misconduct**

Non-financial misconduct in financial services firms is back at the top of the agenda following the concurrent publication of the FCA's Consultation Paper 20/23 (Diversity and inclusion in the financial sector – working together to drive change) and the PRA's Consultation Paper 18/23 (Diversity and inclusion in PRA-regulated firms). The PRA and FCA appear to be agreed that (a) non-financial misconduct incidents are relevant when considering whether an individual has acted with integrity and that (b) for senior managers and certification staff, sometimes behaviour in their personal lives that is unconnected to their job will be relevant to their fitness and propriety to work in financial services. How are HR and Compliance professionals to respond to the new role of moral arbiter that these proposed guidelines point towards, and where will the practical and legal challenges arise?

News

Oct 04, 2023

### **New partner boosts BCLP's Financial Services & Disputes practice**

Awards

Oct 04, 2023

## **The Legal 500 UK ranks BCLP in 54 practice areas and recognizes 74 lawyers as “leading individuals”**

Awards

Jun 08, 2023

### **Legal 500 US 2023**

Blog Post

Nov 10, 2022

### **Banking Bites – November 10 2022**

Welcome to Banking Bites! This is our short summary flagging some key developments in your sector that we hope will inform your activities in your market. This edition covers: Future regulatory framework for cryptoasset activities NY DFS Fines Bank for third party loan pricing discretion, disparate impact New UK rules proposed to tackle greenwashing Regulator scrutinises the competition impacts of Big Tech in retail financial services sectors Revised Wolfsberg Financial Crime Principles for correspondent banking UK Parliamentary Committee calls for new failure to prevent fraud offence Further changes to sanctions landscape UK’s Commercial Court hands down judgments in COVID-19 business interruption cases