

## Related Services

- Financial Services Litigation, Regulation and Enforcement

# Consumer Financial Services Defense

Our nationwide team is widely respected, and has achieved industry prominence, for defending high-profile, business-critical disputes, in both individual and class actions against consumer financial services companies. In addition to having deep litigation experience, we are highly innovative when it comes to developing unique and complex settlement structures.

We have extensive and noteworthy experience in both litigating and resolving complex class action cases. Whether it's successfully negotiating confidential settlements arising out of allegedly improper mortgage servicing and foreclosure practices, settling countless nationwide class actions for major financial institutions concerning the Telephone Consumer Protection Act (TCPA), securing a successful settlement for a leading online retailer's data breach, or defeating cases for a major bank alleging violations of California's call recording statute, clients turn to us for their most sensitive cases, including those that are likely to have industrywide impact.

Clients also regularly rely on our team for our strategic counsel in both federal and state regulatory investigations and enforcement actions. We have played a central role in representing financial institutions, and their officers, directors and employees, in numerous multistate regulatory investigations, in high-stakes concurrent investigations and examinations by Congress and multiple regulatory authorities, and in administrative and judicial enforcement actions brought by various state, local and federal agencies.

When it comes to defending litigation or counseling clients on high-stakes or complex matters, our team is at the forefront.

## Recent Experience

- Successfully resolved a multistate attorney general investigation and multidistrict federal litigation arising out of the Zappos.com data security breach, including negotiating and obtaining court approval for a unique settlement structure.
- Successfully represented two major banks in multiple putative class actions and individual cases, all pending in Hawaii state and federal courts and arising out of mortgage foreclosures between 2008 and 2011 as a result of the financial crisis. Successfully negotiated confidential settlements for all individual cases, as well as all the putative class claims, in a hostile jurisdiction.
- Navigated and resolved scores of individual and putative claim actions against a wide range of clients alleging improper collection practices, including under the TCPA, California's Rosenthal Act and other state

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and federal claims.

- Obtained favorable Eleventh Circuit rulings for clients JPMorgan Chase and American Express in cases alleging violations of the Fair Credit Reporting Act (FCRA). The decisions confirmed that FCRA claims against furnishers of credit information must be based on alleged factual inaccuracies rather than disputed legal questions.
- Prevailed on motion to dismiss of a nationwide putative class action against Capital One alleging it violated the FCRA. The court dismissed the action in its entirety, holding that the alleged privacy invasion of a soft pull, without more, is only a bare procedural violation of the FCRA that does not satisfy Article III of the U.S. Constitution.
- Represented and counseled a large financial institution in responding to a series of supervisory exams and investigations by the Office of the Comptroller of the Currency, Department of Housing and Urban Development, Consumer Financial Protection Bureau and other authorities alleging fair lending violations in its mortgage lending and servicing programs.
- In important rulings involving California's law on mandatory arbitration in putative consumer class actions, successfully compelled arbitration of all claims asserted in putative class actions against Chase, Citibank and American Express, defeating arguments that the claims sought "public injunctive relief" under California law. The Chase and Citibank actions challenged the banks' practices with respect to disclosures in connection with deposit accounts. The American Express action related to reward points forfeiture.
- On an issue of first impression and of importance to retail banks, secured a favorable ruling before the Ninth Circuit on behalf of Chase holding that the Identity Theft Act does not apply to claims involving a deposit account because the defendant bank was not a "claimant" under the Act.
- As an issue of first impression in the Eleventh Circuit, successfully invoked the Merrill Doctrine, as established in *Fed. Crop. Ins. v. Merrill*, 332 U.S. 380 (1947), and obtained dismissal of an action brought against Federal National Mortgage Association, Corp. in federal district court, asserting a unique vicarious liability theory under the TCPA.
- Successfully obtained judgment on behalf of a fund in a complex real estate dispute following a one-month trial. The court earlier granted summary judgment for our client on plaintiff's fraud and negligent misrepresentation claims. The judgment was affirmed on appeal.
- Successfully resolved a series of nationwide class actions pending in New York state and federal courts challenging retail bank overdraft fees, including negotiating a nationwide class action settlement involving multiple plaintiffs' counsel with divergent positions.
- Obtained dismissal of a putative class action against BMW Financial Services alleging over \$40 million in potential damages under the TCPA. The order provides valuable support to defendants' efforts to defeat claims based on the unauthorized conduct of third-party vendors.