

## CONSUMER FINANCE LITIGATION

### Our Clients

Katten litigates in courts and regulatory bodies around the country and provides corporate, regulatory and transaction counseling for all sectors of the consumer finance industry. Our clients include all types of consumer lenders and their related servicers, including installment lenders, collection agencies, payday lenders, check cashers, credit services organizations (CSOs), state- and federally chartered banks, mortgage servicers, credit card issuers, auto lenders, lead providers, risk assessment and identity verification providers, and credit reporting agencies. We also represent members of the health care industry, including service providers, in consumer finance-related litigation.

### Our Services

Katten has extensive experience litigating consumer finance class actions in courts around the country. We are deeply involved in the development of new defenses to class claims in light of recent changes in both the law and in industry practices relating to consumer finance documentation, including the proper and effective use of arbitration and class action waiver clauses. Katten is also at the forefront in assisting clients in the development of consumer financial products and in bringing multiple innovative services to market. With extensive experience in corporate, banking, regulatory and tax law and a thorough, real-time understanding of the regulations and consumer protection laws that affect consumer lenders, our Consumer Finance Litigation team guides clients through the state and federal regulatory framework that surrounds them.

### RECOGNIZED BY

- *The Legal 500 United States*
  - Financial Services: Litigation 2018, 2017
- *BTI Litigation Outlook 2018*
  - Securities and Finance Litigation Honor Roll



We also regularly defend clients in both state and federal regulatory actions, including matters before the Federal Trade Commission (FTC), the Office of the Comptroller of the Currency (OCC), the Federal Deposit Insurance Corporation (FDIC), the Office of Thrift Supervision (OTS) and the Consumer Financial Protection Bureau (CFPB). Our Consumer Finance Litigation team includes a former member of the CFPB's general counsel's office. We have successfully represented clients in matters involving unfair and deceptive trade practices, the Fair Debt Collection Practices Act (FDCPA), the Equal Credit Opportunity Act (ECOA), the Truth in Lending Act (TILA), the Telephone Consumer Protection Act (TCPA), exportation of interest rates and questions of jurisdiction over Internet loans.

Whether advising on business formation or handling complex trial work, Katten's Consumer Finance Litigation team collaborates with clients to chart a strategic course that best suits their needs.

## Our Experience

- Successful defense of a business funding company in Maryland state court against allegations that the client's financing of a small business that had an outstanding loan from a competitor constituted "tortious interference." The suit was dismissed on jurisdictional grounds.
- Defense of two international financial institutions against allegations of RICO violations, fraud, and aiding and abetting fraud in regard to a Ponzi scheme in the US District Court for the Central District of California. Plaintiff investors claim that defendants—despite merely facilitating wire transfers, a normal banking activity—should have been aware of the perpetrated fraud through their internal systems, and therefore should be liable for the investors' losses. Katten successfully moved for dismissal of one defendant on the grounds that it is not subject to jurisdiction in California.
- Counsel to an SEC-registered alternative investment firm on identifying regulatory and litigation risks in the consumer finance companies and vendors to which it provides financing.
- Successful representation of a payment solutions provider before a state attorney general in avoiding that state's attempt to apply its laws to Katten's client in its role as a processor of payments. Katten also represents the client in response to confidential subpoenas.
- Representation of more than 30 credit unions and several banks in a series of class action lawsuits filed in various courts around the country, including federal and state courts in Alaska; California; Arizona; New York; Florida; Washington, DC; Maryland; Georgia; Pennsylvania; Illinois; and Louisiana. Plaintiffs allege our clients improperly charge overdraft fees in violation of Regulation E of the Electronic Fund Transfer Act. Katten has successfully obtained involuntary dismissals of some cases, has resolved others and is actively litigating others.
- Representation of an entity before the CFPB, including responding to multiple CIDs, as well as information meetings with the CFPB and the filing of a Petition to Set Aside the original CID and a challenge to the original appointment of Richard Cordray as Director of the CFPB.
- Representation of multiple entities in response to CIDs from the CFPB. In some instances, the CFPB has chosen not to pursue enforcement actions against Katten clients. Katten also works with clients to prepare for CFPB supervisory exams.
- Representation of a client before the FTC in an effort to prevent filing of an action against the client for alleged violations of federal consumer protections laws and the Federal Trade Commission Act.
- Representation of a title lending company in a putative class action in the Circuit Court for the City of St. Louis, Missouri. Plaintiff alleged that although the company was licensed by the State of Missouri to make small, short-term "payday loans," its practices were nonetheless unconscionable and in violation of the Missouri Merchandising Practices Act. Katten was hired mid-case to try the question of whether the class action waiver contained in the client's arbitration clause was enforceable. The trial court found that the class waiver itself was inherently unconscionable. On direct appeal, the Supreme Court of Missouri reversed the trial court, and remanded with specific instructions to examine unconscionability again (on grounds that had already been addressed by the trial court).
- Representation of individuals in a case of first impression. The Florida Supreme Court sided with Katten's clients, reversing the court below and rejecting the plaintiffs' argument that an arbitration agreement including a class waiver is unenforceable under Florida law.