

# Class Action/Consumer Finance Litigation

## Overview

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As consumer-facing financial products continue to be attractive targets for litigation — including class actions that may involve thousands, if not millions, of plaintiffs — the defense of these cases has grown in legal and logistical complexity. Katten's Class Action/Consumer Finance Litigation group has extensive experience representing consumer financial services companies in large, high-stakes class actions and individual plaintiff cases in federal and state courts around the country. Our attorneys formulate and execute innovative defense strategies that meet our clients' legal needs and limit the negative impact of litigation on their business operations.

### A record of success

The group has a strong track record of successfully resolving cases, either by prevailing on motions to dismiss or, in class actions, by defeating class certification. Depending on our clients' business objectives, we are also adept at leveraging favorable settlements. Underlying this track record is a deep understanding of our clients' businesses, coupled with a comprehensive knowledge of the regulatory framework and consumer protection laws that affect consumer lending.

### Preventive measures

We counsel our clients on ways to avoid becoming targets, and, to that end, we closely monitor new case filings and the evolving tactics of the plaintiffs' bar. We are experienced in the use of arbitration agreements and class action waiver clauses, and we regularly advise our clients on using them to prevent future actions.

We have successfully represented clients in matters involving:

- Unfair and deceptive trade practices
- Fair Debt Collection Practices Act

**"Katten is aggressive, proactive and strategic in representation."**

*- U.S. News – Best Lawyers® 2018 "Best Law Firms"*

*(Mass Tort Litigation / Class Actions - Defendants) survey response*

- Equal Credit Opportunity Act
- Truth in Lending Act
- Telephone Consumer Protection Act
- Fair Credit Reporting Act
- Electronic Fund Transfer Act.

## Our Experience

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- Defended 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.
- Defend 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. We successfully moved for dismissal of one defendant on the grounds that it is not subject to jurisdiction in California.
- Counsel SEC-registered alternative investment firm on identifying regulatory and litigation risks in the consumer finance companies and vendors to which it provides financing.
- Successfully represented a payment solutions provider before a state attorney general avoiding that state's attempt to apply its laws to our client as a processor of payments. We also represent the client in response to confidential subpoenas.
- Represent 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. We have obtained involuntary dismissals of some cases, resolved others and are actively litigating the remainder.

- Represent entity before the CFPB. Includes 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.
- Represent multiple entities in response to CIDs from the CFPB. In some instances, the CFPB has chosen not to pursue enforcement actions against our clients. We also work with clients to prepare for CFPB supervisory exams.
- Represent client before the FTC in an effort to prevent filing of an action against it for alleged violations of federal consumer protections laws and the Federal Trade Commission Act.
- Represented title lending company in putative class action in Circuit Court for City of St. Louis, Missouri. Plaintiff alleged that although company was licensed by State of Missouri to make small, short-term "payday loans," its practices were unconscionable and violate the Missouri Merchandising Practices Act. We were hired mid-case to try question of whether class action waiver contained in client's arbitration clause was enforceable. Trial court found that class waiver itself was inherently unconscionable. On direct appeal, Supreme Court of Missouri reversed trial court, and remanded with specific instructions to examine unconscionability again (on grounds that had already been addressed by the trial court).
- Represent individuals in case of first impression. Florida Supreme Court sided with our clients, reversing court below and rejecting plaintiffs' argument that arbitration agreement including class waiver is unenforceable under Florida law.

## Key Contacts

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### **Gregory S. Korman**

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## Recognitions

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- The Legal 500 United States
  - Financial Services Litigation, 2016–2020
- *BTI Litigation Outlook*
  - Class Actions Honor Roll, 2018
  - Securities and Finance Litigation Honor Roll, 2018
- *U.S. News Best Lawyers – “Best Law Firms”*
  - Mass Tort Litigation/Class Actions – Defendants
    - National, 2016–2019
    - Los Angeles, 2014–2019