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Katten Wins Significant Decision on Behalf of Clients Best Buy and HSBC, Preserving Federal Court Access for National Businesses Operating in California

Ninth Circuit rules that Best Buy Stores L.P. is not a citizen of California

LOS ANGELES – For the first time, the Ninth Circuit has issued a published decision applying its principal place of business test to businesses that operate nationwide. The court held that Best Buy Stores L.P., the entity that owns and operates the national chain of Best Buy stores, is not a citizen of California for purposes of diversity merely because it has more stores, more employees and more sales in California than in any other U.S. state. The court noted that Best Buy's retail activities roughly reflect California's larger population, and if "a corporation may be deemed a citizen of California on this basis, nearly every national retailer—no matter how far flung its operations—will be deemed a citizen of California for diversity purposes. Such a result is untenable."

The case, Davis v. HSBC Bank Nevada, N.A., et al., is a putative class action alleging that the defendants, HSBC Bank Nevada N.A., HSBC Finance Corporation, Best Buy Co. Inc., and Best Buy Stores L.P., did not adequately disclose the annual fee that would be charged to California consumers in their online credit card offer. The defendants, represented by Los Angeles-based **Katten Muchin Rosenman LLP** partner **Stuart M. Richter** and associate **Gregory S. Korman**, removed the case to federal district court. The district court issued an order to show cause why the case should not be remanded, and sought evidence of the defendants' activities in the top five states in which they conduct business. After receiving this information, the district court held that Best Buy Stores L.P. was a citizen of California because it had more stores, more employees and more sales in California. The district court declined to consider California's disproportionately larger population and economic market, and remanded the case back to state court. The defendants then filed a petition for a discretionary appeal, which was granted, and after oral argument, the Ninth Circuit issued its decision in favor of the defendants.

A national business's principal place of business is a key question because it governs the removability of lawsuits to federal court under general diversity jurisdiction and the Class Action Fairness Act of 2005. Prior to this decision, the citizenship—and therefore the ability to litigate in federal court in California—of any national business was uncertain. District courts had issued conflicting opinions on the question, and one recent unpublished Ninth Circuit decision held expressly that consideration of California's population was not relevant. Under that analysis, virtually every national business with greater operations in California would be deemed to be a citizen of California, and have its access to federal court severely circumscribed, if not eliminated altogether. The Ninth Circuit has now definitively held that a national business will not be deemed to have its principal place of business in California "merely because its operations in California cater to California's larger population."

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"This is an important decision for all national businesses operating in California, particularly those businesses that find themselves to be the targets of class actions," said Mr. Richter, a member of Katten's Financial Services Litigation Practice and chair of the firm's national Consumer Class Action Practice. "The Class Action Fairness Act was enacted to expand federal court access to national businesses, and the Ninth Circuit's decision in *Davis* will go a long way toward ensuring that national businesses' rights to federal court access under CAFA are preserved."

Katten's Financial Services Litigation Practice serves clients ranging from the largest global financial services firms to local, mid-sized broker-dealers and private hedge fund managers. These clients benefit from the industry knowledge and trial skills of the firm's litigators in Chicago, New York, Los Angeles, Charlotte and Washington, D.C., who have aggressively and successfully litigated numerous complex, high-stakes matters. Katten's financial services litigators understand the full range of financial services and products—from exchange-traded securities, options, futures and commodities, to the most complex over-the-counter swaps and derivatives—and are familiar with the compliance and supervisory regimes, capital structures and real-world business interests of the industry. Building on the regulatory, transactional and compliance experience of the firm's Financial Services Practice, the Financial Services Litigation Practice is uniquely suited to craft and execute a litigation strategy that effectively manages all of the financial and legal implications of any dispute.

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