



American Conference Institute's 18th National Forum on

CONSUMER FINANCE CLASS ACTIONS & LITIGATION

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Expert strategies for in-house and outside counsel on navigating class actions, litigation, and government enforcement actions in the consumer finance industry

April 8–9, 2014 | The Westin Bonaventure Hotel & Suites | Los Angeles, CA

High-level insights by speakers from key federal and state agencies on emerging regulatory and enforcement initiatives. Hear from:

Bryan Greene
U.S. Department of Housing and Urban Development

Ken Markison
Mortgage Bankers Association

Christopher K. Barry-Smith
Massachusetts Office of the Attorney General


Susan Ellis
Office of the Illinois Attorney General


Thomas P. James
Office of the Illinois Attorney General


James A. Daross
Office of the Attorney General of Texas


and more to follow

Featuring an exceptional faculty of federal and state judges, including:

 *The Honorable Fernando J. Gaitan, Jr.*
Chief Judge
U.S. Dist. Ct., W.D. Missouri

 *The Honorable Anthony J. Mohr*
Superior Court Judge
California Superior Court,
Los Angeles County

 *The Honorable Annette M. Rizzo*
First Judicial District of Pennsylvania
Philadelphia Court of Common Pleas

 *The Honorable Juan Ramirez, Jr. (ret.)*
Chief Judge
Fla. Third District Court of Appeal

In-House insights from industry experts, including:

Michael B. Goldberg
Wells Fargo

Jonathan Chiu
Capital One

David M. Chernek
Prospect Mortgage

Luke Umstetter
Resurgent Capital

Michael J. Galeano
Comenity

Christopher D. Lagow
Portfolio Recovery Associates

Kevin Willen
U.S. Bancorp

Jennifer L. Gray
OneWest Bank

Gary A. Deutsch
PNC

Janna Lewis
Fay Investments

Katie Zugsay
Southwest Credit Systems

Denise Brennan
Wells Fargo

Mallory J. Garner
PennyMac

Michael L. Frost
The CBE Group, Inc.

and many others

Sessions include:

- ✦ **CFPB oversight of the industry:** new and emerging regulatory priorities, lessons learned from recent enforcement actions, **broad UDAAP standards being applied**, and the latest scrutiny of student loan payments, auto lenders, debt collectors, and payday lenders
- ✦ **Class Actions:** new and emerging cases and theories; the continuing impact of *Dukes* and progeny on certification; new settlement considerations; and using CAFA and other developments in your favor with regard to “predominance,” discovery practices as courts look to the merits, standards for removal (including removal of AG actions), remand fights, misjoinder, and stipulations limiting damages
- ✦ CFPB involvement on the use of **arbitration agreements/clauses**, and class action waiver enforceability
- ✦ Evolving theories of recovery for **residential mortgage litigation & regulatory enforcement:** defending against claims arising from loan servicing, loss mitigation, loan modification/HAMP, foreclosures, MERS, and lender-placed insurance
- ✦ The **CA Homeowner Bill of Rights:** assessing its current impact on the industry
- ✦ The evolving focus on **consumer debt, debt collection (creditors that originate and collect debt and third-party debt collectors) and the credit reporting markets:** effective defense strategies for new and emerging claims and enforcement actions arising from TCPA, FDCPA, and FCRA
- ✦ **Fair lending:** “disparate impact” claims as litigation and enforcement game changers and defending and managing the latest claims of discriminatory lending

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Here's just some of the agencies, companies and firms already participating

U.S. Department of Housing and Urban Development	Fay Investments	McDonald Hopkins
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Massachusetts Office of the Attorney General	Hunton & Williams LLP	McGuireWoods LLP
Office of the Illinois Attorney General	Akerman LLP	Varga Berger Ledsky Hayes & Casey
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Wells Fargo	Troutman Sanders	Foley & Lardner LLP
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The CBE Group, Inc.	Alston & Bird LLP	Burr Forman LLP
PNC	Greenberg Traurig, LLP	Parker Ibrahim & Berg
PennyMac	McGlinchey Stafford PLLC	Goodwin Procter
	K&L Gates LLP	

ACI is pleased to introduce the Los Angeles installment of the Consumer Finance Class Actions and Litigation conference that goes the extra mile and brings you the highest-level government and judicial insights and maximum networking opportunities with in-house industry experts.

In addition to unparalleled networking opportunities, ACI's 18th **Consumer Finance Class Actions & Litigation** will provide attendees with the latest insights and expert advice from our exceptional faculty on new class action trends, emerging theories of liability, the latest enforcement actions and regulatory initiatives, and the most effective defense and settlement strategies. Sessions include:

- ✦ **Federal and state emerging regulatory initiatives, enforcement actions, and investigations**
- ✦ **CFPB oversight of the industry:** new and emerging regulatory priorities, lessons learned from recent enforcement actions, broad UDAAP standards being applied, and the latest scrutiny of student loan payments, auto lenders, debt collectors, and payday lenders
- ✦ **Class Actions:** new and emerging cases and theories; the continuing impact of *Dukes* and progeny on certification; new settlement considerations; and using CAFA and other developments in your favor with regard to “predominance,” discovery practices as courts look to the merits, standards for removal (including removal of AG actions), remand fights, stipulations limiting damages
- ✦ Consumer **arbitration agreements** and class action waiver enforceability
- ✦ Evolving theories of recovery for **residential mortgage litigation & regulatory enforcement:** defending against claims arising from loan servicing, loss mitigation, loan modification/HAMP, foreclosures (including standing and foreclosure attacks), MERS, lender-placed insurance
- ✦ The **CA Homeowner Bill of Rights:** assessing its current impact on the industry
- ✦ The evolving focus on **consumer debt, debt collection (creditors that originate and collect debt and third-party debt collectors) and the credit reporting markets:** effective defense strategies for new and emerging claims and enforcement actions arising from TCPA, FDCPA, and FCRA
- ✦ Implications of “**big data**”: what financial services companies and their outside counsel now need to know given the progress that the CFPB and OFR have made
- ✦ **Fair lending: “disparate impact” claims** as litigation and enforcement game changers and defending and managing the latest claims of discriminatory lending
- ✦ **Student Lending:** enforcement action and ensuing private litigation
- ✦ The latest targets in the **auto financing industry**, including dealer “participation”/ “markup” claims under indirect auto lending
- ✦ Defending against new and emerging claims relating to **credit, debit, and prepaid cards and bank add-on services and products**

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7:15 **Registration and Continental Breakfast**8:00 **Co-Chairs' Opening Remarks**

Jennifer L. Gray
SVP, Head of Litigation
OneWest Bank



Hunter R. Eley
Managing Partner
Doll Amir & Eley LLP

8:05 **In-House Insights on How CFPB's New Rules Are Affecting Litigation Management and Relationships with Outside Counsel; Responding to Enhanced Regulation and Enforcement; Compliance Strategies; Selecting and Retaining Law Firms and Distribution of Legal Spend in Today's Reduced Budget and Smaller Staff Environment; and More**

Gary A. Deutsch
Senior Counsel
PNC Legal Department

Michael B. Goldberg
Senior Counsel
Wells Fargo Bank, N.A.

Christopher D. Lagow
Deputy General Counsel
Portfolio Recovery Associates

Katie Zugsay
Corporate Counsel
Southwest Credit Systems, L.P.

Jonathan Chiu
Director, Assistant General Counsel
Capital One

Kevin Willen
VP & Managing Director, Regulatory Services DC and CA
U.S. Bancorp

Denise Brennan
Senior Counsel
Wells Fargo Bank

Janna Lewis
EVP and General Counsel
Fay Investments

David M. Chernek
General Counsel
Prospect Mortgage, LLC

Michael L. Frost
Senior Vice President & General Counsel
The CBE Group, Inc.

Moderator:

Hunter Eley
Managing Partner
Doll Amir & Eley LLP

9:35 **Networking and Refreshment Break**

9:40 **CFPB Oversight of the Consumer Finance Industry: New and Emerging Regulatory Priorities, Lessons Learned from Recent Enforcement Actions, Broad UDAAP Standards Being Applied by the Bureau, and the Latest on Scrutiny of Student Loan Payments, Auto Lenders, Debt Collectors, and Payday Lenders**

Luke Umstetter
Managing Counsel
Resurgent Capital Services



Ronald L. Rubin
Partner
Hunton & Williams LLP



William P. Heller
Chair, National Consumer Finance Litigation & Compliance Practice Group
Akerman LLP



Robb C. Adkins
Partner
Winston & Strawn LLP



Ken Markison
VP and Regulatory Counsel
Mortgage Bankers Association

Mallory J. Garner
Executive VP & General Counsel, Mortgage Operations
PennyMac

- Assessing recent enforcement actions and investigations undertaken by the CFPB
- Preparing for and responding to CFPB investigations and examinations
- Pitfalls to avoid when working with the CFPB
- Where the CFPB is likely headed in the coming months: Trends in examinations and investigations; What to expect; How to prepare
- Assessing coordination efforts between the CFPB and other federal and state agencies, including state AGs
- Rulemaking updates
- Assessing the CFPB's enhanced scrutiny of nonbank 'larger participants', including debt collection agencies, student loan lenders, payday lenders, and auto lenders
- Evaluating the CFPB's enhanced scrutiny of fair lending issues in the area of auto lending
- CFPB's consumer complaints database on consumer finance litigation and how financial institutions can use the database to anticipate and prepare for the next wave of litigation and develop proactive compliance strategies to minimize risk
- The CFPB and 'Unfair, Deceptive, or Abusive Acts and Practices' (UDAAP): What practices has the CFPB targeted?; Assessing the definition of 'abusive' practices; Addressing potential UDAAP concerns
- Lender-placed insurance
- Assessing the CFPB's adjudication procedures
- Attorney-client privilege and the CFPB

10:55 **CLASS ACTIONS: New and Emerging Cases and Theories; The Continuing Impact of *Dukes* and Progeny on Certification; New Settlement Considerations; and Using CAFA and Other Developments in Your Favor with Regard to “Predominance,” Discovery Practices as Courts Look to the Merits, Standards for Removal (including Removal of AG Actions), Remand Fights, Misjoinder & Stipulations Limiting Damages**



Jennifer L. Gray
SVP, Head of Litigation
OneWest Bank



Jeffrey D. Pilgrim
Partner
Pilgrim Christakis LLP



Irene C. Freidel
Partner
K&L Gates LLP



John Thomas Rosch
Of Counsel
Latham & Watkins LLP
(former Commissioner, Federal Trade Commission)



David N. Anthony
Partner
Troutman Sanders LLP

- Assessing the evolving landscape of class litigation
- Recent developments in class action law and their impact on consumer finance litigation
- What is required in order to obtain or defeat class certification? Who has the burden of proof regarding class certification?
- How have defense counsel used *Wal-Mart* and *Comcast*?
- Assessing the evolving implications of *Wal-Mart* for class certifications
- Using expert testimony and data to make a direct challenge to a class certification
- Class actions arising from federal and state activities, especially those of the CFPB and state attorneys general
- Lender-placed insurance class actions
- CAFA remand and misjoinder issues
- New developments relating to jurisdiction and removal under CAFA: CAFA's applicability to state attorney general suits: Assessing *Standard Fire Insurance Co. v. Knowles*
- Assessing other recent U.S. Supreme Court decisions regarding class actions
- Assessing the latest settlement trends
- Strategic benefits of settling with a class representative
- Offers of judgment and the ability to moot a class action by extending a class representative an offer of full relief
- Strategies for defending consumer finance class actions in unfavorable jurisdictions
- Defending and managing actions brought by states in the consumer finance space that could potentially impact thousands of investors/consumers
- Considerations for corporate counsel when facing a class action – Preparing company executives and employees who are facing depositions
- Managing and defending multiple cases simultaneously

12:15 **The Use of Arbitration Agreements in Consumer Financial Products, and Class Action Waiver Enforceability in California and Elsewhere**

Michael J. Galeano, Esq.
Sr. Director and Sr. Counsel, Law Department
Comenity LLC, an Alliance Data company



Stephen A. Walsh
Partner
Adams and Reese LLP



Joy Harmon Sperling
Partner
Day Pitney LLP

- CFPB involvement on the use of arbitration agreements and clauses
- Implications of *AT&T Mobility v. Concepcion* and *American Express v. Italian Colors* for consumer arbitration agreements
- Where are we on Arbitration Clauses?
- The status of class action waivers and arbitration in the wake of *Concepcion*
- The treatment of *AT&T v. Concepcion* by lower courts and emerging legal issues
- Defeating plaintiffs' theories as to why *Concepcion* and its progeny should not apply to a particular case

1:10 **Networking Luncheon for Speakers and Attendees**

2:10 **Evolving Theories of Recovery for Residential Mortgage Litigation & Regulatory Enforcement: Defending Against Claims Arising From Loan Servicing, Loss Mitigation, Loan Modification/HAMP, Foreclosures (Including Standing and Foreclosure Attacks), MERS, Lender-Placed Insurance, and More**



Bryan Greene
General Deputy Assistant Secretary
Office of Fair Housing and Equal Opportunity
U.S. Department of Housing and Urban Development



Terry C. Frank
Member
Kaufman & Canoles, P.C.



Simon Fleischmann
Partner
Locke Lord LLP



S. Elizabeth Hall
Attorney
Stites & Harbison, PLLC

Peter Obstler
Partner
Arnold & Porter LLP

- Preparing for the coming wave of litigation arising from the new mortgage rules
- Defending against claims arising from loan servicing
- New developments relating to loss mitigation

- Loan modifications and foreclosure: Defending against counterclaims arising from loan modifications and HAMP
- Trends in mortgage servicing and related litigation, while factoring in implementation issues surrounding ATR/QM Final Rule, HOEPA Rule, Loan Officer Rule, Servicing Rule, Escrow Final Rule, ECOA Appraisal Disclosure Rule, and Appraisals for Higher Priced Mortgages, Risk Retention - QRM rule, HMDA Rules RESPA-TILA Integration
- New loan modification risk presented by the CFPB's mortgage servicing rules
- Disparate Impact Litigation
- Claims involving post-Ch. 7 discharge borrower communications
- RESPA Section 8 Claims
- TILA LO Compensation Claim
- Overcoming commonly raised defenses including TILA, SCRA, fraud, and rescission claims
- TILA 1641(f)(2) cases
- Factoring in Fannie Mae and Freddie Mac changes; FHA Changes CFPB Anti-Steering Rule
- Managing and defending against class actions arising from lender-placed insurance
- MERS litigation developments
- Foreclosure:
 - Best practices and lessons learned from prior foreclosure documentation errors
 - Auditing completed foreclosures and conducting foreclosure look-backs
 - New and emerging claims relating to standing in contested foreclosure cases
 - Handling borrower counterclaims in contested foreclosures
 - Preventing bankruptcy from becoming a tool used by borrowers to stall foreclosures
 - Responding to challenges to foreclosures in non-judicial foreclosure states

3:20 The CA Homeowner Bill of Rights – Assessing Its Current Impact on the Industry



Deborah Yoon Jones
Partner
Alston & Bird LLP



Michele Stocker
Chair, Financial Services Litigation Practice
Greenberg Traurig, LLP



John Calvagna
Of Counsel
McGlinchey Stafford LLP

- Are class actions authorized?
- Whether statutes are preempted by federal laws regulating national banks and S&L associations
- Combatting the increased litigation costs to lenders (which in turn increases burden on consumers)
- Further delays in non-judicial foreclosure process
- More judicial foreclosures?
- Erosion of incentive for short sales

4:15 Networking and Refreshment Break

4:20 The Evolving Focus on Consumer Debt, Debt Collection (Creditors that Originate and Collect Debt and Third-Party Debt Collectors) and the Credit Reporting Markets: Effective Defense Strategies for New and Emerging Claims and Government Enforcement Actions Arising From TCPA, FDCPA, and FCRA



Richik Sarkar
Member
McDonald Hopkins LLC



Carlos A. Ortiz
Partner
Hinshaw & Culbertson LLP



Bryan A. Fratkin
Partner
McGuireWoods LLP



Jonathan N. Ledsky
Partner
Varga Berger Ledsky Hayes & Casey



Roland P. Reynolds
Partner
Palmer, Lombardi & Donohue LLP

- CFPB focus on debt collection practices
- Preparing for and managing actions taken by state attorneys general and federal and state regulatory agencies relating to debt collection practices
- Restrictions on originating creditors
- Accuracy of documents shared between all collection parties, such as buyers and settlement firms
- How collectors communicate to consumers, including through text messages; updated disclosures re the lack of data and wrong account information that creditors are passing on to debt collection firms and debt buyers
- **FDCPA** requirements and litigation and enforcement around how collectors contact a borrower, particularly through mobile phones, advanced technologies, and electronic collection activity; Defending against the new wave of FDCPA claims; Trends in FDCPA litigation; Minimizing the risk of exposure to FDCPA claims; Preparing for the FTC's increased focus on potential FDCPA violations
- **TCPA**: consent issues; TCPA telephone solicitation claims regarding use of mobile numbers; Determining what constitutes a 'predictive dialer' for purposes of the TCPA; Trends in TCPA litigation; Defending against the new wave of TCPA claims; Federal jurisdiction for TCPA claims; Certification issues relating to TCPA class actions
- **FCRA**: Impact of recent actions taken by the CFPB and the FTC relating to the FCRA; Trends in FCRA litigation; Best practices for defending against FCRA claims; Managing and defending against FCRA class actions arising from employee background screenings; Minimizing the risk of exposure to FCRA claims; State claims and FCRA preemption

5:30 **Implications of “Big Data” for the Consumer Finance Litigation Sector: What Financial Services Companies and Their Outside Counsel Now Need to Know Given the Progress that the CFPB and OFR Have Made**



Donna L. Wilson
Partner
Manatt, Phelps & Phillips, LLP



Christi A. Lawson
Partner
Foley & Lardner LLP

6:20 **Conference Adjourns**

DAY TWO: WEDNESDAY, APRIL 9, 2014

7:30 **Continental Breakfast**

8:00 **Views from the Bench**



The Honorable Fernando J. Gaitan, Jr.
Chief Judge
U.S. Dist. Ct., W.D. Missouri



The Honorable Anthony J. Mohr
Superior Court Judge
California Superior Court, Los Angeles County



The Honorable Annette M. Rizzo
First Judicial District of Pennsylvania
Philadelphia Court of Common Pleas



The Honorable Juan Ramirez, Jr. (Retired)
Chief Judge
Fla. Third District Court of Appeal

Moderator:



Gregory S. Korman
Partner
Katten Muchin Rosenman LLP

9:30 **Networking and Refreshment Break**

9:40 **The View from the State Agencies and State AG Offices on Emerging Regulatory Initiatives, Enforcement Actions, and Investigations**

Christopher K. Barry-Smith
Deputy Attorney General
Massachusetts Office of the Attorney General

Susan Ellis
Assistant Attorney General
Office of the Illinois Attorney General

Thomas P. James
Senior Assistant Attorney General, Consumer Counsel –
Consumer Fraud Bureau
Office of the Illinois Attorney General

James A. Daross
Regional Managing Attorney
Consumer Protection Division
Office of the Attorney General of Texas

Moderator:



Benjamin G. Diehl
Special Counsel
Stroock & Stroock & Lavan LLP
(former Supervising Deputy Attorney General, Consumer Law Section at the California Attorney General's Office)

11:15 **Fair Lending: “Disparate Impact” Claims as Litigation and Enforcement Game Changers and Defending and Managing the Latest Claims of Discriminatory Lending**



Philip R. Stein
Partner
Bilzin Sumberg Baena Price & Axelrod LLP



Paul H. Schieber
Partner
Stevens & Lee



Fred Rivera
Partner
Perkins Coie LLP

- Assessing the status of ‘disparate impact’ in lending litigation and enforcement
- What the *Mount Holly* case could mean for ‘disparate impact’
- Fair Housing Act as the basis for disparate impact claims
- DI claims in cases where lenders choose only QM safe harbor or QRM loans because of liability and financing imperatives (reputational, PR and monetary risk)
- Assessing recent discrimination cases and actions, and defending against the latest claims alleging fair lending violations
- How state and federal agencies are approaching fair lending issues
- Preparing for enhanced scrutiny of fair lending issues by the CFPB
- Evaluating and assessing recent and emerging CFPB enforcement actions
- Negotiating successful resolutions
- Settlement considerations and strategies

12:15 **Networking Luncheon for Speakers and Attendees**

1:15 **Student Lending: Enforcement Action and Ensuing Private Litigation**



Nicholas P. Mooney II

Member

Spilman Thomas & Battle, PLLC

- CFPB enforcement and UDAAP authority
- Private Litigation Claims
 - student loan servicing
 - collection activities of student loan servicers
 - advertising and marketing practices
 - fair lending claims – disparate impact theory and facially-neutral school-based underwriting and pricing criteria

1:45 **The Latest Targets in the Auto Financing Industry, Including Dealer “Participation”/ “Markup” Claims Under Indirect Auto Lending**



Therese G. Franzén

Partner

Franzén and Salzano, P.C.



James M. Milano

Partner

Weiner Brodsky Kider PC

2:35 **Defending Against New and Emerging Claims Relating to Credit, Debit, and Prepaid Cards and Bank Add-On Services and Products**



Christine A. Scheuneman

Partner

Pillsbury Winthrop Shaw Pittman LLP



Rik Tozzi

Partner

Burr & Forman LLP



Sanjay Ibrahim

Partner

Parker Ibrahim & Berg LLC



David L. Permut

Partner

Goodwin Procter LLP

- Credit Card and Debit Card Litigation Strategies
- Credit CARD Act Litigation
- Overdraft Fees and Potential CFPB Initiatives
- Durbin Amendment Litigation and Interchange Fees
- ATM Fee Sticker Cases
- Prepaid Card Claims relating to Disclosures; fees; expiration dates add-on services and products and the associated rise in class actions involving add-on services and products
- Claims Arising from Payment Protection and Identity Theft

4:00 **Conference Ends**

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- In-house counsel from:
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 - Mortgage lenders and brokers
 - Loan servicers and purchasers
 - Credit card issuers
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 - Collection agencies
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 - Consumer credit and finance
 - Financial services
 - Banking
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 - Complex litigation and class actions

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American Conference Institute's 18th National Forum on

CONSUMER FINANCE CLASS ACTIONS & LITIGATION



Expert strategies for in-house and outside counsel on navigating class actions, litigation, and government enforcement actions in the consumer finance industry

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and enforcement officials,
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