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**FIRST CLASS RELIEF:
HOW CLASS ACTIONS
BENEFIT THOSE WHO ARE
INJURED, DEFRAUDED AND VIOLATED**

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INTRODUCTION

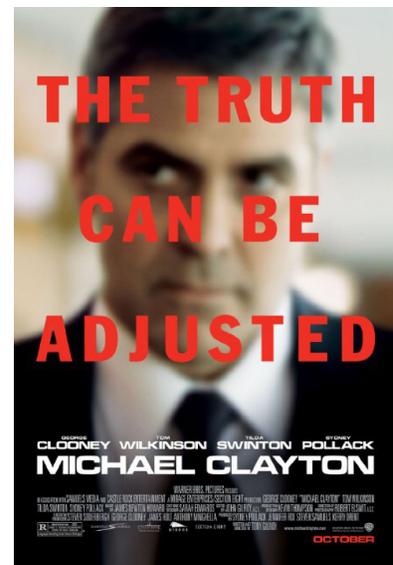
In January 2006, production started on the Oscar-nominated George Clooney movie, *Michael Clayton*, a film about a corporation's violent reaction to a class action lawsuit filed by sick people suffering health effects from lethal pesticides. Reflecting back on all the social issues raised by that film, probably the last thing anyone would imagine is that the central plot device used by the filmmakers to tell this story – a class action lawsuit – might soon be extinct in America.

Just months before production started, Congress passed legislation that began the march towards class action destruction. The 2005 “Class Action Fairness Act” (CAFA) lets defendants “remove” or transfer state class actions into the smaller, already clogged federal court system¹ – a system struggling with severe budget cuts.² Since CAFA passed, federal court judges have been unable to deal with the flood of new state cases, and as a result, have begun throwing out meritorious class action cases.³

The business community wants Congress to limit class actions even further⁴ – although the U.S. Supreme Court has already been doing this job for them. In 2011, in the case *Wal-Mart v. Dukes*,⁵ the Supreme Court threw out a civil rights sex discrimination class action brought on behalf of over one million women who worked at Wal-Mart stores around the country, saying that the plaintiffs did not have enough in common to proceed as a class.⁶ The decision has already been cited by hundreds of lower court rulings,⁷ dismissing claims before class certification is even addressed.⁸

That same year, the Court struck perhaps its most lethal blow to class actions. In *AT&T v. Concepcion*,⁹ the Court allowed culpable companies unilaterally to ban class actions against them via forced arbitration clauses, which are found in many contracts today. The Court said the class action ban was legal even though California law (where the case was brought) dictated that class action bans were “unconscionable” and could not be imposed.¹⁰

American Express v. Italian Colors Restaurant followed in 2013.¹¹ This case involved a class action brought by Alan Carlson, longtime owner of Italian Colors restaurant in Oakland California. Italian Colors is a successful restaurant, but like most local restaurants, its profit margins are “razor thin.”¹² A significant portion of the restaurant's earnings come from customers who use American Express cards and Mr. Carlson's restaurant would not survive if he refused to accept those cards.¹³ But American Express demanded that, if Italian Colors accepted *any* American Express cards, it had to accept *all* types of American Express cards, even ones that carry extremely high fees. In addition, Mr. Carlson was not permitted to offer discounts to customers to encourage them to use other forms of payment beside American Express cards.¹⁴ Mr. Carlson believed this violated antitrust laws and he began a class action lawsuit against AmEx on behalf of other small businesses like his.



However, American Express merchant contracts contained forced arbitration clauses and class action bans. According to those terms, Mr. Carlson was not allowed to join with others in a class action lawsuit but rather had to bring his antitrust case in a private arbitration system all by himself – an impossibility because the cost to one person of bringing an antitrust action against a huge company like American Express is prohibitive.¹⁵ The U.S. Supreme Court did not care. It upheld AmEx’s forced arbitration clause and class action waiver. It found such clauses valid even where they prevented an injured party from vindicating important rights guaranteed to them by other federal laws.

... class actions have not only helped victims of corporate law-breaking but have also resulted in injunctive relief that protects us all from a wide array of corporate wrongdoing, from employment and civil rights violations to price-fixing and consumer fraud to automotive defects to health care abuses.

When a company practices a pattern of discrimination¹⁶ or receives a large windfall through small injuries to large numbers of people, a class action lawsuit is the only realistic way harmed individuals can afford to challenge this wrongdoing in court. As

Justice Stephen Breyer, writing for four dissenting Justices in *Concepcion*, said, “The realistic alternative to a class action is not 17 million individual suits, but zero individual suits, as only a lunatic or a fanatic sues for \$30.”¹⁷

Even if it were possible to bring an individual case in arbitration, such a lawsuit can do little to change illegal corporate behavior. In other words, class actions are critically important not only for the victims of corporate law-breaking, but also for the deterrence function of the tort system to work. Without the class action tool, corporations and businesses can ignore the law far more easily and operate with impunity. Class actions are also important for regulatory agencies, which often rely on information uncovered in class action lawsuits to pursue public enforcement actions against corporate law-breakers.

We have examined a random selection of class actions that have settled over the last decade. The cases we found illustrate clearly that class actions have not only helped victims of corporate law-breaking, but have also resulted in injunctive relief that protects us all from a wide array of corporate wrongdoing, from employment and civil rights violations to price-fixing and consumer fraud to automotive defects to health care abuses.

This report covers primarily consumer, employment and anti-trust class actions, which impact everyday consumers or small businesses. (Securities class actions are not included in this particular compilation.) The study is divided into two main sections. First are detailed examinations of several class action settlements since 2005 involving a variety of corporate abuses. Some case descriptions include procedural histories illustrating the amount and type of work required of class attorneys to obtain fair settlements. Many cases involve years of difficult litigation before defendants agree to settle. In some cases, we mention the enormous financial costs to plaintiffs and their attorneys just to litigate the case. It should also be noted that in almost all cases where defendants agree to settle, they insist on settlement agreements with clauses denying liability even though settlements are often for substantial sums. The second section contains short descriptions of additional settlements reached since 2005 involving

many other categories of cases. (Note that all cases are identified by the year of settlement with the exception of anti-trust cases, where no year is listed because these cases involve multiple settlements over the course of several years.)

The cases included are by no means an exhaustive list. No doubt, there are many more important class actions than those listed here. In addition, where there are instances of national wrongdoing resulting in many class actions brought around the nation, cases are often consolidated into one action. In that situation, only the consolidated case is listed. While this may suggest only one class action was brought per instance of wrongdoing, in fact there may have been many. In other words, this study is a conservative listing of class actions over the last decade. Yet even this limited list clearly shows how class actions benefit us all whether or not we have been part of the class, and whether or not we ever go to court.

AUTO FINANCE DISCRIMINATION

For many years, African-American and Hispanic customers were systematically charged a “higher markup on auto loans than White borrowers. It is this fact – coupled with federal laws outlawing discrimination in credit markets – that led to a series of lawsuits against auto lending institutions.”¹⁸

In the 1990s and early 2000s, class action lawsuits were filed against several auto lenders and financial institutions. The lawsuits alleged that these mark-up policies had a disparate impact on African-American and Hispanic borrowers, which violated the Equal Credit Opportunity Act and other laws. By 2006, settlements were reached in lawsuits involving six captive and five financial institutions, including Toyota Motor Credit Corp. (TMCC). The details of the TMCC case are below. And while this problem has not yet been eradicated¹⁹ with some lenders still violating the law,²⁰ one commentator observed, “Stepping back, there is a strong likelihood that this litigation has reshaped loan pricing throughout the industry.... Before the class action suit was filed, many of the lenders (including Ford Motor Credit and GMAC) placed no limits on the amount by which dealerships could mark up some of their loans.”²¹

Baltimore v. Toyota Motor Credit Corporation, (2006), Case No. 2:01-cv-05564-FMC-(Mcx) (C.D. Cal.)

When consumers applied to TMCC to get approved for credit financing, TMCC used a credit analysis based on “objective risk-related variables” that included “credit bureau histories, payment amounts, payment to income ratio, debt ratio”²² and so on. Race and national origin were not factors. However, when this analysis was complete, TMCC developed a financing rate, otherwise known as a “buy rate.”

To arrive at the buy rate, TMCC used a completely “subjective component in its credit pricing system – the ‘mark-up policy’ – to impose additional non-risk charges.”²³ Customers did not know that a portion of their total finance charge contract was a non-risk-related charge.



Statistical analysis uncovered that if credit risk was considered the same for African-American, Hispanic and White customers, African-American and Hispanic customers were “substantially more likely than similarly situated whites to be marked up, and to pay hundreds of dollars more in mark-up charges than similarly situated whites.”²⁴ Additionally, TMCC had “various industry recognized mechanisms”²⁵ available in order to monitor its credit pricing policy and evaluate if their policy had a discriminatory impact on African-American and Hispanic credit customers. But it “continued use of a credit pricing policy that is known to result in significant and pervasive racial disparities” and this “indicates that Toyota Credit has either chosen not to evaluate its credit pricing policy or has evaluated it and chosen to maintain a discriminatory pricing policy.”²⁶

In 2006, 10 African-American and Hispanic customers filed a class action lawsuit in California federal court against TMCC on behalf of all African-American and Hispanic customers who had entered into a Toyota retail installment contract between January 1, 1990 and June 28, 2006. They alleged that TMCC violated the Equal Credit Opportunity Act by “collect[ing] more in finance charges from African Americans and Hispanics than from similarly situated white persons, for reasons totally unrelated to credit risk.”²⁷ The class also alleged that TMCC’s “unlawful, unfair, and fraudulent business practices”²⁸ violated the California Business and Professional Code, the Unruh Civil Rights Act and California Civil Code §51 and 52. Toyota denied all allegations of discrimination and unfair business practices. The class sought damages as well as a permanent injunction against TMCC and all its affiliates to stop them from discriminating against the class.

Settlement. On June 28, 2006, TMCC entered into a settlement agreement, which provided relief for the class as well as substantive changes to Toyota’s business practices. More specifically, the settlement required Toyota to offer 850,000 pre-approved auto loans with no mark-up to African-American and Hispanic consumers. The agreement also provided the class with a choice of a certificate of credit towards their next financing with Toyota or cash payment, depending on the amount of the initial mark-up on their contract. The cash payment to customers was substantial, “estimated to be valued at \$63.6 million.”²⁹

Moreover, under the terms of the settlement, mark-ups were strictly capped for three years at the following levels: a 2.5 percent cap on contracts with a term of 60 months or less; a 2 percent cap on contracts with a term between 60 and 71 months; and a 1.75 percent cap on contracts with a term of 72 months or more. In addition, TMCC is now required to include a disclosure statement in dealers’ retail installment contracts ensuring that customers are aware of their rights to negotiate any loan rate,³⁰

Similar litigation has been brought to stop companies from discriminating against African-American and Hispanic customers through the use of higher markups. Some settlements are described below.³¹

Borlay v. Primus Automotive Financial Services, Inc. and Ford Motor Credit Company, (2007), Case No. 3-02-0490 (M.D. Tenn.)

Primus and Ford agreed to: 1) limit the amount of mark-ups for certain car loans over the three years following the agreement; 2) inform consumers that loan rates are negotiable with their dealers; 3) offer 200,000 pre-approved, no-markup offers of credit to African-Americans and Hispanics over the next three years; and 4) fund consumer education and assistance programs aimed at helping African-American and Hispanic communities with credit financing.³²

Jones v. Ford Motor Credit Company, (2005), Case No. 00-CIV-8330 (PAC)(KNF) (S.D.N.Y.)

FMCC agreed to: 1) limit the amount of markups for certain car loans for three years after the agreement; 2) inform consumers that loan rates are negotiable with their dealers; 3) offer two million pre-approved, no markup offers of credit to African-Americans and Hispanics over the

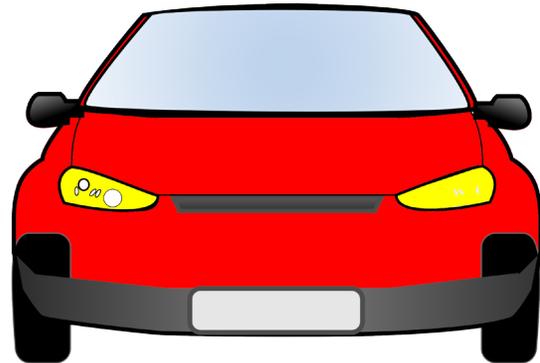
next three years; and 4) fund consumer education and assistance programs aimed at helping African-American and Hispanic communities with credit financing.³³

Willis v. American Honda Finance Corporation, (2005), Case No. 3-02-0490 (M.D. Tenn.)

Honda agreed to: 1) cap mark-ups to make loans more affordable; 2) change contract terms; 3) contribute towards improving customers' credit financing education; 4) start a loan refinance program for class members to obtain lower interest rates; 5) reduce interest rates on minority borrowers; 6) offer no mark-up loans to 625,000 minority borrowers for five years – priority being given to class members who paid off their loans prior to the settlement; and 7) provide cash payments up to \$400 per class member.³⁴

Smith v. Daimler Chrysler Services North America, LLC, (2005), Case No. 00-CV-6003 (D.N.J.)

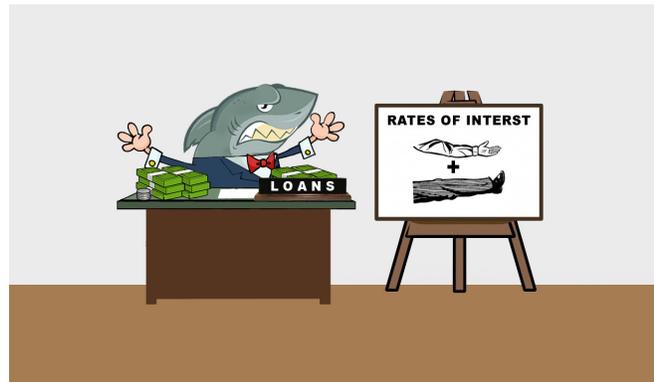
DaimlerChrysler agreed to: 1) limit markups for certain car loans for three years after the agreement; 2) inform consumers that loan rates are negotiable with their dealers; 3) provide 875,000 pre-approved credit to African-Americans and Hispanics with no mark up for three years after the agreement; and 4) provide \$1.8 million to consumer education and assistance programs to help African-American and Hispanic communities with credit financing.³⁵



PAYDAY LOANS

Class actions have been particularly helpful stopping abusive payday lending. This predatory practice began over a century ago when people known as “salary lenders” would loan money to consumers to meet their financial obligations until their work paycheck arrived. However, “[t]o induce repayment, these illegal lenders used wage garnishment, public embarrassment or ‘bawling out,’ extortion and, especially, the threat of job loss.”³⁶ Today, the practice is still abusive but in different ways.

Typically a consumer obtains a payday loan by providing the lender with a personal check for the amount of the loan plus fees. Interest is often disguised as fees. The personal check is post-dated and held by the lender until the consumer’s paycheck arrives. Because the added fees and interest are often excessive, consumers who take payday loans often do not have funds to cover their obligation when their paycheck arrives. Payday lenders then require the consumer to take out additional payday loans. Fees and interest obligations begin to accumulate. So while a consumer may take a loan to help with immediate emergencies, payday loans often lead to years of debt and obligations to abusive lenders.



In the 1970s and 1980s, as banking deregulation grew,

[S]ome state legislatures sought to act in kind for state-based lenders by authorizing deferred presentment transactions (loans made against a post-dated check) and triple-digit APRs. These developments set the stage for state-licensed payday lending stores to flourish. From the early 1990s through the first part of the 21st century, the payday lending industry grew exponentially. ... Further, a growing number of companies are providing loans online. These lenders pose challenges for state regulators, as national banks are typically exempt from state lending laws and online providers, who tend to incorporate offshore, on tribal land, or in states without usury caps, often evade state authority.³⁷

Low-income communities are particularly at risk for payday lending abuse:

Payday lending is especially harmful because it disproportionately takes place in vulnerable communities. Seventy-five percent of payday-loan borrowers had incomes that were less than \$50,000 per year in 2001, and payday lenders are concentrated in low-income areas. In Texas, for example, more than 75 percent of stores are located in neighborhoods where the median household income is less than \$50,000. Moreover, many recipients of payday loans are desperate; 37 percent of borrowers stated “they have been in such a difficult financial situation that they would take a payday loan on any terms offered.”³⁸

Some states have passed consumer protection laws to shield individuals from the devastating effects of payday loans:

Fifteen states and the District of Columbia ban the practice entirely, and nine states allow it in limited form. These nine states use varying combinations of restrictions, such as limits on loan amounts, interest rates, loan terms, and the number of loans. . . . Still, among the 50 states, expensive lending persists due to loopholes and out-of-state lenders' ability to occasionally evade restrictions. . . . Even with these efforts, the reality is that the majority of already vulnerable individuals and their families live in states and localities in which there are minimal or no checks on payday lending.³⁹

That is where class actions can step in. Take the case of **Edwards v. Geneva-Roth Capital Inc., (2013), Case No. 49C01-1003-PL-013084 (Cir. Ct. Ind.)**. Payday lender Geneva-Roth was accused of violating Indiana usury and lending laws by charging up to 1,000 percent APR on payday loans to people in serious financial distress. The company also allegedly renewed loans automatically, which resulted in thousands of dollars in loan repayment amounts due in a few months for consumer loans originally taken out for \$200 to \$300. Geneva-Roth repeatedly tried to force this class action lawsuit into individual arbitration. After losing this attempt (pre-2011) and exhausting all further avenues of appeal, it agreed to settle for \$1.35 million in cash, \$5 million in cancellations of money owed from outstanding loans and pledging future compliance with Indiana's Small Loans Act.⁴⁰

Recent U.S. Supreme Court decisions upholding forced arbitration clauses with class action waivers have made defeating forced arbitration clauses much more difficult. As the following two examples show, without the class action tool, payday lenders will continue taking advantage of consumers.

Reuter v. Davis, (2008), Case No. 502001CA001164XXXXMB, (Fla. Cir. Ct.)

Check 'N Go was a payday loan business with many store locations in Florida. The company portrayed itself as a check cashing service, while simultaneously providing loans "to thousands of consumers throughout Florida at usurious and exorbitant rates, over fifteen (15) times greater than permitted by law."⁴¹ Check 'N Go, along with its affiliate companies, offered to loan money to consumers, and in exchange consumers would provide personal checks payable to Check 'N Go for the value of the loan repayment. This payment would be larger than the money the consumer received, and would have to be paid back very quickly, usually within two weeks.⁴² Check 'N Go would present these payday loan interest payments as "fees," and anticipated that consumers would not be able to afford paying the amount of the check by its due date, thus lending them money again and rolling consumers in continuous debt with additional payday loans.⁴³ Furthermore, Check 'N Go would insist to their customers that delinquent repayment was in violation of Florida law, further compelling consumers to continue receiving payday loans to pay off their debt.⁴⁴

In March 2000, Donna Reuter needed money to pay some personal bills, so she turned to Check 'N Go to borrow about \$100. Check 'N Go allegedly required Reuter to negotiate a personal check to pay back 15 percent more than what she initially borrowed.⁴⁵ After Reuter increased her

loan to \$250,⁴⁶ Check ‘N Go required her to either pay her entire debt or to extend her loan every two weeks by paying the loan’s “fee.” Reuter chose to extend her loan every two weeks, from May through September of 2000, at an annual interest rate of 338 percent to 615 percent.⁴⁷

Approximately 66,700 other customers were similarly affected by Check ‘N Go’s business activities. They were charged annual interest rates as high as 615 percent. These customers entered into about one million payday loan transactions with Check ‘N Go on or prior to September 30, 2001 and paid nearly \$37.5 million in fees for those transactions.⁴⁸

In February 2001, Reuter filed a class action against Check ‘N Go, its parent company and several officers and managers,⁴⁹ arguing that these transactions were consumer loans under Florida Law and in violation of these laws. Specifically, they argued, these practices violated Florida’s Lending Practices Statutes (Chapter, 687), the Florida Consumer Finance Act, the Florida Deceptive and Unfair Trade Practices Act, and the Criminal Practices Act.⁵⁰ Notably, Check ‘N Go’s contracts contained forced arbitration clauses with class action bans and immediately moved to dismiss the complaint or compel arbitration.



Ms. Reuter fought back in court, contending the agreements were illegal and hence void, so that the arbitration clauses were unenforceable.⁵¹ The case was then stayed until February 2006 pending resolution of another case, *Cardegna v. Buckeye Check Cashing Inc.* Once the case resumed, the Court upheld the arbitration clause but invalidated the class action waiver, finding it to be unconscionable.⁵²

Reuter’s attorneys then filed a demand for arbitration with the American Arbitration Association on December 18, 2006, pursuant to the forced arbitration clause. Meanwhile, the company appealed the decision.⁵³ Over the course of the next several months, the appeal was dropped, the arbitration was stopped and a settlement was reached.⁵⁴

Settlement. On November 1, 2007, Check ‘N Go agreed to settle for \$10,275,000, with the net settlement fund of \$6,828,065.09 after fees.⁵⁵ A total of 21,972 claims were ultimately paid, reimbursing claimants, on average, for 40 percent of their losses.⁵⁶

Murdock v. Thomas, (2011), Case No. 06-cvs-01865 (Super. Ct. N.C.)

This case deals with the deceptive practices that businesses undertake to circumvent laws designed to protect consumers from payday loans. A chain store called Rebate Cash Advance (“RCA”) tried to provide payday loans without actually calling them payday loans. From 2003 to 2007, RCA provided “rebates” for so-called “office services” to North Carolina consumers, which were nothing more than loans. In return for these loans or “rebates,” RCA charged consumers “rent,” which in reality were high monthly interest payments. One requirement for the loans was that consumers have a monthly income verified by a paystub or bank statement.

RCA was authorized to make withdrawals directly from consumers' checking accounts and "the practical effect of [the] business model was... essentially the same as 'payday lending' or 'deferred deposit lending.'"⁵⁷

Peggy Murdock was a resident of Statesville, North Carolina with a limited income.⁵⁸ She visited an RCA store in Statesville in September 2004.⁵⁹ RCA gave her a \$600 loan (RCA called this a "lease rebate"⁶⁰) and told her to pay RCA \$200 per month for 12 months.⁶¹ The agreement stipulated that Murdock would be charged a \$600 termination fee if she missed any payments or terminated her "lease" early.⁶² Ultimately, Ms. Murdock was forced to pay RCA \$2,400 on a \$600 loan from September 2004 through January 2005.

Similarly, RCA solicited Sylvia Rudinson (a disabled person), Marjorie English (a teaching assistant who worked a second job until she had a work-related injury) and Mary Ruffin for these "lease rebates" and subsequently required them to make heavy payments above the initial cost of the loan.⁶³

On July 10, 2006, they filed a class action in North Carolina courts challenging RCA's business practices as violations of the North Carolina's Consumer Finance Act, Unfair Trade Practices and evading usury,⁶⁴ while also eventually filing before the American Arbitration Association.⁶⁵ The attorneys for the class were forced into several legal disputes including whether the case should be brought in arbitration, whether a class action could be brought at all and whether certain defendants should be dismissed from either the court case or arbitration.⁶⁶ In fact, on September 5, 2007,⁶⁷ some of the defendants filed a federal court action *against* Murdock, Rudinson and English in a case called *Chequesoft, LLC et al. v. Murdock et al.*⁶⁸ (The *Chequesoft* case was ultimately dismissed without prejudice on October 8, 2007.⁶⁹)

Settlement. Finally on September 2, 2011, the class was certified. Shortly thereafter, the defendants agreed to settle.⁷⁰ The class numbered 21,601 members,⁷¹ and the defendants agreed to pay \$11,400,000.⁷² After fees, approximately \$7.5 million was distributed to class members.⁷³

OVERDRAFT FEES

The charging of excessive overdraft fees has been one of the banking industry's most pernicious practices. It has been the subject of numerous class action lawsuits, which have helped consumers and led to better regulation of this practice. As explained by the National Consumer Law Center, which has been involved in many of these class actions over the years:

When a consumer has insufficient funds to pay a check, electronic Automated Clearing House (ACH), debit card, ATM, or other account transaction, the bank can either deny payment or cover the amount. In both of these situations, the bank generally assesses a fee. When the bank pays the transaction, it is called an overdraft, and the fee is an overdraft fee.⁷⁴

To increase profits, banks have “embarked on a series of escalating measures to cause their customers to engage in more overdrawn transactions and pay more fees.”⁷⁵ One of the most common practices has been the reordering of a customer's debit transactions, regardless of the actual chronological order of the transactions, for the purpose of draining customers' funds as quickly as possible.



A few steps have been taken to stop this practice:

[F]ederal regulators took limited measures to protect consumers. They imposed additional disclosure requirements for overdraft fees under the Truth in Savings Act and prohibited the inclusion of permissible overdraft amounts in the available balance amounts provided by automated systems. They required banks to obtain the consumer's opt-in consent to permit overdrafts on ATM and one-time debit card transactions. Unfortunately, these measures proved inadequate to protect consumers.⁷⁶

As the Consumer Financial Protection Bureau (CFPB) recently found, bank overdraft fee abuse remains extremely problematic.⁷⁷ In addition to the CFPB's regulatory efforts, class action lawsuits will continue to be critical to help keep these practices in check, just as they have over the past few years. Descriptions of some major overdraft fee settlements follow.

In Re: Checking Account Overdraft Litigation, (2011), Case No. 1:09-MD-02036-JLK (Bank Of America Settlement)

Bank of America (“BoA”) agreed to a \$410 million settlement with current and former BoA customers over the bank's overdraft fee policies, specifically arranging its customers' debit card transactions from highest to lowest dollar amount instead of declining transactions where customers had insufficient funds for a transaction. BoA authorized the transactions, leading to multiple overdraft fees to the customers' account.

Several class action lawsuits filed against BoA were consolidated in the Southern District of Florida⁷⁸ under the caption *In Re: Checking Account Overdraft Litigation*. On May 6, 2011,

BoA agreed to settle with 32 BoA customers acting as class representatives. BoA agreed to make settlement payments based on the number of total eligible class members and the amount of additional overdraft fees that each class member had to pay as a result of BoA's business practices.⁷⁹ The settlement also provided for service awards of \$5,000 per plaintiff, or \$2,500 for married couples who were both plaintiffs.⁸⁰

In Re: Checking Account Overdraft Litigation, (2013), Case No. 1:09-MD-02036-JLK (U.S. Bank Settlement)

U.S. Bank National Association ("U.S. Bank") agreed to a \$55 million settlement.⁸¹

In Re: Checking Account Overdraft Litigation, (2013), Case No. 1:09-MD-02036-JLK (PNC Bank Settlement)

PNC Bank, N.A. agreed to a \$90 million settlement.⁸²

In Re: Checking Account Overdraft Litigation, (2013), Case No. 1:09-MD-02036-JLK (Susquehanna Bank)

Susquehanna Bank agreed to a \$3.68 million settlement.⁸³

In Re: Checking Account Overdraft Litigation, (2013), Case No. 1:09-MD-02036-JLK (Compass Bank Settlement)

Compass Bank agreed to an \$11.5 million settlement.⁸⁴

In Re: Checking Account Overdraft Litigation, (2012), Case No. 1:09-MD-02036-JLK (Chase Settlement)

JPMorgan Chase Bank, N.A. agreed to a \$110 million settlement.⁸⁵

In Re: Checking Account Overdraft Litigation, (2012), Case No. 1:09-MD-02036-JLK (RBS Citizens Bank, N.A. and Citizens Bank of Pennsylvania Settlement)

RBS Citizens Bank, N.A. and Citizens Bank of Pennsylvania agreed to a \$137.5 million settlement.⁸⁶

In Re: Checking Account Overdraft Litigation, (2012), Case No. 1:09-MD-02036-JLK (Commerce Bank Settlement)

Commerce Bank agreed to an \$18.3 million settlement.⁸⁷

In Re: Checking Account Overdraft Litigation, (2012), Case No. 1:09-MD-02036-JLK (Associated Bank Settlement)

Associated Bank, N.A. agreed to a \$13 million settlement.⁸⁸

In Re: Checking Account Overdraft Litigation, (2012), Case No. 1:09-MD-02036-JLK (Union Bank Settlement)

Union Bank, N.A. agreed to a \$35 million settlement.⁸⁹

In Re: Checking Account Overdraft Litigation, (2012), Case No. 1:09-MD-02036-JLK (TD Bank Settlement)

T.D. Bank, N.A., T.D. Banknorth, National Association and Banknorth, and National Association agreed to a \$62 million settlement.⁹⁰

In Re: Checking Account Overdraft Litigation, (2012), Case No. 1:09-MD-02036-JLK (Bank of the West Settlement)

Bank of the West agreed to an \$18 million settlement.⁹¹

In Re: Checking Account Overdraft Litigation, (2012), Case No. 1:09-MD-02036-JLK (BOKF)

BOKF, N.A., otherwise known as the Bank of Oklahoma (“BOKF”), agreed to a \$19 million settlement.⁹²

In Re: Checking Account Overdraft Litigation, (2012), Case No. 1:09-MD-02036-JLK (Marshall & Ilsley Bank)

Marshall & Ilsley Bank agreed to a \$4 million settlement.⁹³

In Re: Checking Account Overdraft Litigation, (2012), Case No. 1:09-MD-02036-JLK (Harris, N.A.)

Harris, N.A., otherwise known as “Harris Bank,” agreed to a \$9.4 million settlement.⁹⁴

Allen and Lande v. UMB Bank, (2011), Case No. 1016-CV34791 (Jackson Cty. Cir. Ct., Mo.)

UMB Bank agreed a \$7.8 million settlement, including changing the way it does business by placing limits on overdraft fees affecting all customers.⁹⁵

MORTGAGE LENDING AND SERVICE ABUSE

The Center for Responsible Lending (CRL) has a publication listing the “Top Ten Mortgage Servicing Abuses.”⁹⁶ Number One on CRL’s list: “Misapplied payments.” As CRL explains,

Even when payments are made on time, the company mistakenly rejects the check or applies it to the wrong account. The result is unjustified late fees and often other penalties as well. For homeowners, misapplied payments are a huge headache; for loan servicers, misapplied payments mean a chance for more income.⁹⁷



In addition, CRL has a list of “Seven Signs of Predatory Mortgages.”⁹⁸ Number One on this list is “Abusive Fees & Excessive Fees,” which are costs not directly reflected in interest rates. Sometimes, fees can be not only excessive but also downright fraudulent.

Also on this CRL list is the selling of “Single Premium Insurance Products,” which are “financed into the loan up-front in a lump-sum payment” but are “of questionable benefit to

the borrower....”⁹⁹ An example of this type of insurance product is “credit life or disability insurance.” As explained in a recent *Forbes* column,¹⁰⁰

[C]redit life insurance is a type of insurance policy that banks will try to sell — and they will try hard to sell thanks to big commissions for these products — when a customer takes out a loan or opens a home equity loan. ... Credit life insurance *pays the lender* if the borrower dies before having a chance to repay the loan in full. ... Credit disability insurance pays the lender if disability makes it difficult for the borrower to live up to the obligations of the debt, and you might find products like credit unemployment insurance.

... Credit life insurance is not required for taking out a loan, and if a salesman tries to imply that it is, go somewhere else or report him or her to the authorities.

The Federal Trade Commission has issued a consumer alert about credit insurance, including credit life insurance, credit disability insurance, and other variations of insurance that protect the lender....

Unfortunately, FTC warnings do not stop many unscrupulous lenders from offering these products or abusing potential borrowers with improper hidden or late fees. The following examples show how important class actions are to help consumers in these situations.

Vought v. Bank of America, (2012), Case No. 10-CV-2052 (C.D. Ill.)

Taylor, Bean, & Whitaker (“TBW”) was a mortgage lending firm that serviced home mortgage loans to customers, which meant that TBW had the right to collect those customers’ loan payments. The Government National Mortgage Association (“Ginnie Mae”) securitized nearly 180,000 customers’ mortgage accounts that were later serviced by TBW. A large number of the accounts serviced were in Illinois.

In 2009, TBW customers received a “Welcome letter” from Bank of America, notifying them that beginning September 1, 2009, the servicing of their loans would be transferred from TBW to Bank of America Home Loaning Service (“BAC”) and that BAC could begin accepting loan payments beginning August 6, 2009.¹⁰¹ In August, many customers still sent their loan payments to TBW. However, BAC failed to credit these payments to customers’ accounts and then charged customers late fees even though BAC knew these loan payments were made to TBW.¹⁰²

Jeanette and Wayne Vought, like thousands of other people, had a home mortgage that was serviced by TBW. In August 2009, the Voughts mailed a check for \$1,200 to TBW to cover that month’s loan payment, and the check cleared their account in the same month. They received several letters and phone calls alerting them that their accounts were delinquent and demanding payment. The Voughts weren’t alone: Mark and Daneen Skutack, Roger Frock and thousands of others had similar experiences with the transition from TBW to BAC. The Skutacks and Mr. Frock each claimed that “their mortgage payments to TBW were electronically deducted from their checking accounts in August 2009.”¹⁰³ The Skutacks and Mr. Frock also received letters and phone calls demanding payment and claiming that they had delinquent accounts.

The Voughts, Mr. Frock and the Skutacks each individually sued Bank of America and BAC on March 5, April 2 and May 18, 2010, respectively. On July 8, 2010, these separate suits were consolidated into a class action. They alleged, among other things, that BAC's behavior constituted breach of contract, unjust enrichment, violation of the Illinois Consumer Fraud and Deceptive Business Practices Act ("ICFA") and violation of the Real Estate Settlement Procedures Act ("RESPA").¹⁰⁴ (RESPA is a consumer protection statute that generally "covers loans secured with a mortgage placed on a one-to-four family residential property."¹⁰⁵)

The next month, the defendants filed a motion to dismiss, which was denied on September 24, 2010.¹⁰⁶ After the defendants again filed a motion to dismiss on January 24, 2011, the Court granted the dismissal of a third-party beneficiary breach of contract claim on April 7, 2011.¹⁰⁷ On April 29, 2011, the parties requested that the Court grant them an order so they could begin to conduct settlement negotiations; the Court granted the motion on May 3, 2011. After participating in mediation sessions together, the parties entered into a written agreement on January 5, 2012. The Court ultimately denied the motion for final approval on October 4, 2012, specifically because of issues surrounding attorneys' fees. As a result, the parties conducted further mediation and entered into another agreement on December 18, 2012, which the Court approved.

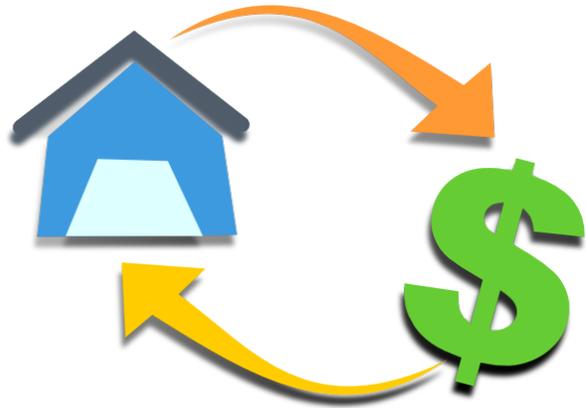
Settlement. Notice of the proposed settlement was received by 99.56 percent of the entire class, and only 0.13 percent of the total class opted out of this settlement. The settlement provided important equitable relief for class members: Any class member who was not properly credited with missing payments would have those missing payments credited, along with any late fees reversed or refunded. Bank of America was also required to provide credit correction services to these class members.¹⁰⁸

There were other forms of monetary relief for class members, which entitled them to recover up to an additional \$150. The settlement also included an extra provision requiring Bank of America and BAC to pay another \$500,000 to class members, equaling the maximum statutory penalty allowed under the RESPA statute. This amount would be distributed evenly among all class members after the three forms of relief described above were paid. This settlement resulted in 100 percent distribution to all eligible class members.¹⁰⁹

Sonoda v. Amerisave Mortgage Corporation, (2012), Case No. C 11-01803 EMC N (N.D. Cal.)

Amerisave Mortgage Corporation ("Amerisave") advertised that it could provide low mortgage interest rates and would lock in these low rates for its customers. It made these claims on its website. However, this operation turned out to be "a classic bait and switch, updated for the Internet era."¹¹⁰ Once applicants applied with Amerisave, the company then charged them property appraisal fees before providing them with a "good faith estimate" of all fees and loan costs, as required by law. It then either failed to lock the advertised low rate, let the rate lock period expire or broke its commitment to applicants to secure mortgage loan approvals.¹¹¹ If applicants then decided to pull out of the application process, Amerisave charged a significant cancellation fee.¹¹²

For example, California resident Junichiro Sonoda was interested in refinancing an existing mortgage he had with Bank of America. On October 8, 2010, after comparing home mortgage rates from Amerisave and www.bankrate.com, Sonoda decided to apply for a home mortgage with Amerisave. Sonoda told the Amerisave agent that “he had a mortgage provided by his employer of about \$50,000, one that the employer would pay off over a period of several years, as a condition of his continued employment.” In an e-mail to Sonoda, the Amerisave agent assured Sonoda that everything would be taken care of. In addition, in order for Sonoda to “lock in his rate of 3.5 percent for a 15 year, fixed mortgage,” the agent told Sonoda that he had to pay “\$35 for a credit check, and \$400 for an appraisal,” which were not refundable.¹¹³



On November 9, 2010, another Amerisave employee informed Sonoda that his loan was “conditionally approved.” Despite e-mailing the initial Amerisave agent again and receiving his assurances that things would be taken care of, on December 7, 2010, the Amerisave agent e-mailed Sonoda to inform him that “the mortgage could not be approved because of the promissory note provided by his employer.”¹¹⁴ He lost the non-refundable fees.

Similarly, Lien Duong, a Maryland resident, received an e-mail solicitation from Amerisave. She called the number in the e-mail and a pre-recorded message informed her that if she applied online, she would get better rates than even Amerisave’s agent could see online. She visited the Amerisave website and completed the requested information, indicating her interest in a 10-year mortgage at the quoted rate of 3.375 percent.¹¹⁵ As with Sonoda, Duong was required to pay \$35 to lock in this rate. After being notified that she was “pre-approved,” Amerisave then told Duong that in order to request a lock, she had to pay an additional, non-refundable \$625 appraisal fee. Ultimately, as a result of an erroneous report regarding an alleged unpaid medical bill, “Amerisave failed to lock in her rate or to process her application.”¹¹⁶

Marvin Kupersmit, a Florida resident, also applied for a home mortgage with Amerisave. On April 23, 2010, Kupersmit applied for a 30-year, fixed rate mortgage but was required to pay \$750 for an appraisal, plus \$35 for a credit check in order to do so.¹¹⁷ Although Kupersmit’s loan was “preapproved” on May 7, 2010, Amerisave later denied Kupersmit’s loan on June 21, claiming that his income was insufficient.¹¹⁸ It has been estimated that Amerisave collected a total of \$16,392,088 in overpaid fees from its customers.¹¹⁹

On March 2, 2011, customers filed a class action lawsuit against Amerisave in San Francisco County Court, which was then removed to federal court.¹²⁰ The class included “all individuals who applied for a home loan mortgage with Amerisave, and were required to and did pay a property appraisal fee and/or other fees (other than a fee for a credit check) before receiving a good faith estimate.”¹²¹ The complaint also included three subclasses for customers from California, Maryland and Florida.

The class alleged nine causes of action against Amerisave including: violation of the Truth in Lending Act¹²²; breach of contract “by changing the terms..., failing to lock in mortgage rates, and failing to process mortgage applications”¹²³ as agreed to; and violation of the covenant of good faith and fair dealing, which “prevents one contracting party from unfairly frustrating the other party’s right to receive the benefits of the contract.”¹²⁴ Also alleged were specific violations on behalf of the California, Maryland and Florida sub-classes, respectively.¹²⁵

The plaintiffs first had to fight Amerisave’s motion to transfer venue, which the plaintiffs won. Then they had to fight Amerisave’s motion to dismiss, which was denied in part and granted in part. After about seven months of discovery, the parties began settlement negotiations.

Settlement. On September 4, 2012, Amerisave agreed to settle for \$3.1 million. Each class member would receive a refund of 13.573 percent of their alleged overpayment to Amerisave. In addition, Amerisave made significant changes to its business practices. For example, instead of telling customers that they must “pay for an appraisal,” Amerisave now tells customers that they must “authorize payment” for an appraisal, while informing the customer that s/he will be charged only after Amerisave receives a “good faith estimate” of fees and costs of the loan.¹²⁶ Amerisave also no longer charges a combined fee for underwriting and credit checks but instead charges the amount paid to third parties who provide this information to Amerisave.¹²⁷

Tillman v. Commercial Credit Loans, Inc., (2009), 362 N.C. 93 (2008); (2009), Case No. 5:08-CV-246 (E.D.N.C.)

Commercial Credit Loans, Inc. (now doing business as “CitiFinancial Services, Inc.”¹²⁸) was a loan provider that also offered consumers various kinds of insurance. However, its business practice involved pressuring consumers into buying insurance coverage that consumers – often low income – “did not want or need... and [the company] did not tell them that the insurance was optional.”¹²⁹ It also charged fees that were deceptive and unfair.¹³⁰



Fannie Lee Tillman and Shirley Richardson, both residents of North Carolina, had “limited financial resources.”¹³¹ Both “obtained loans from defendant Commercial Credit Loans, Inc.”¹³² In September 1998, Ms. Tillman obtained a loan from Commercial Credit Loans “for a term of 120 months with a principal amount of \$18,253.68.”¹³³ In addition, Tillman was sold single premium credit life insurance and disability insurance, with premiums of \$1,058.80 and \$1,005.98, respectively. Ms. Richardson obtained her loan in June 1999 “for a term of 180 months with a principal amount of \$20,935.57.”¹³⁴ She too was sold additional insurance in connection with her loan: single premium credit life insurance, disability insurance and involuntary unemployment insurance, with premiums costing \$1,871.54, \$1,109.49 and \$1,227.22, respectively.

In June 2002, Fannie Lee Tillman and Shirley Richardson filed a class action lawsuit against Commercial Credit Loans, Inc., Commercial Credit Corporation, Citigroup, Inc., CitiFinancial Services, Inc. and Citicorp, Inc. (“the Defendants”) for the respective companies’ insurance

practices. Both Ms. Tillman and Ms. Richardson's loan agreements contained arbitration clauses. The Defendants responded beginning in May 2003 by filing "a series of motions to compel arbitration pursuant to the arbitration clause contained in plaintiffs' loan agreements."¹³⁵ The Supreme Court of North Carolina ultimately concluded that the arbitration clause was procedurally and substantively unconscionable and "[did] not allow for meaningful redress of grievances and therefore...must be held unenforceable."¹³⁶

Settlement. On March 31, 2009, Commercial Credit Loans, Inc. settled for \$42,500,000.¹³⁷ The settlement class included "all persons who between June 24, 1998 and June 30, 2000, purchased in North Carolina single-premium credit insurance in connection with a real estate-secured mortgage loan made by [Commercial Credit Loans]."¹³⁸ Settlement money was distributed to 100 percent of the approximately 11,000 class members in this case.¹³⁹

The settlement class was divided into two sub-classes: Sub-Class 1 contained those whose loan was 15 years long or less, and Sub-Class 2 contained those whose loan was greater than 15 years long. There were 900 members in Sub-Class 1, who were paid \$31,500 on average per person.¹⁴⁰ Sub-Class 2 was composed of 9,000 members, who were paid \$544 on average per person.¹⁴¹ While the settlement agreement allowed for attorneys' fees and costs up to 33 1/3 percent of the total Settlement Fund, the attorneys opted for 28.5 percent¹⁴² of the Settlement Fund, maximizing the distribution of money to class members in this action.

ELDER FINANCIAL AND PENSION ABUSE

Financial abuse against seniors, also known as elder financial abuse, is a growing problem that puts the life-savings of America's senior citizens at risk.¹⁴³ In 2012, the General Accountability Office (GAO) released a study called *Elder Justice: National Strategy Needed to Effectively Combat Elder Financial Exploitation*.¹⁴⁴ Writes the GAO,

Elder financial exploitation is the illegal or improper use of an older adult's funds, property, or assets. Experts have described it as an epidemic with society wide repercussions. Perpetrators may be family members; paid home care workers; those with fiduciary responsibilities, such as financial advisors or legal guardians; or strangers who inundate older adults with mail, telephone, or Internet scams.¹⁴⁵

Kay E. Brown, Director of Education, Workforce, and Income Security for the GAO, testified that older adults can also be exploited by the financial services industry, noting that "[o]fficials in each of the four states we contacted cited the need for more safeguards to prevent exploitation by financial services providers," among others.¹⁴⁶

Clearly, federal and state regulatory enforcement is not enough to protect seniors. Nor is it enough to protect those dependent on pensions for retirement, whose savings may be at risk due to certain fraudulent employer practices. This is where private class actions can step in. The following are two examples.

Rand v. American National Insurance Company (2011), Case No. CV 09-0639-SI (N.D. Cal.)

Deferred annuities are designed to pay customers in the distant future. Consumers who try to withdraw their funds early are severely penalized with so-called "surrender charges." Senior citizens can be prime targets of unscrupulous companies selling deferred annuities, especially if the terms are not properly explained. American National Insurance Company ("American National") was one such company.

American National sold Daphne Rand, an 86-year-old woman, two deferred annuity policies for \$404,669, both of which were set to mature in 2025 when she would be 106-years-old. If she tried to withdraw early, she would be forced to pay surrender charges as high as 12 percent for the first year. This meant that Ms. Rand handed over funds that she would never see again in her lifetime unless she suffered significant financial pain. American National never effectively disclosed these surrender charges, never made it clear when the maturity date of her deferred annuity policy was and did not mention any other disadvantages of deferred annuities for senior citizens.¹⁴⁷

On February 12, 2009, Ms. Rand filed a class action against American National and its agents on behalf of other customers 65 years and older, alleging that American National violated the



California Business & Professions Code, as well as financial elder abuse under California's Welfare and Institutions Code.

Settlement. In 2011, the company agreed to settle for \$9,059,500. This amount was divided among the different class members based on the status of their own personal annuity. In addition, American National agreed to change many of its business practices, including complying with disclosure requirements under California Law and implementing changes to the training of agents and product marketing.¹⁴⁸

Buus v. WaMu Pension et al., (2010), Case No. 2:07-cv-00903, (W.D. Wash.)

Employees of Washington Mutual Bank had pensions through the WaMu Pension Plan. In the 1990s, Washington Mutual took over other banks like Great Western Financial Corporation, Dime Bancorp, Inc., H.F. Ahmanson & Company and Pacific First Federal Savings Bank¹⁴⁹; Washington Mutual became responsible for the pension plans of these companies as well. In 1987, WaMu Pension Plan changed its plans from traditional/final average pay pension plans to cash balance plans (CBP) without notice or explanation to the company's employees. After merging with Washington Mutual in 1997, Great Western Bank also changed its pension plan from a traditional pension plan to a CBP. As they merged with WaMu, other pension plans were changed as well. The change reduced rates of pension benefit accrual as participants aged,¹⁵⁰ which employees believed was discriminatory.

Gary Buus worked at Great Western Bank beginning in 1991 and stayed through the merger with Washington Mutual until 2001. On June 12, 2007,¹⁵¹ he and several others filed a class action against the WaMu Pension Plan "on behalf of long-term WaMu employees and employees of companies that later merged with the bank,"¹⁵² alleging that the CBP formula discriminated based on age and violated ERISA's notice and disclosure provisions "which call for timely notifications and plan summaries."¹⁵³ While WaMu tried to get the case dismissed on all counts, in December 2007, the U.S. District Court ruled that though the pension plan was not discriminatory, the ERISA notice violation claims could proceed.¹⁵⁴

In September 2008, the parties filed cross-motions for summary judgment.¹⁵⁵ However, 10 days later, WaMu filed a petition for relief pursuant to Chapter 11 of the Bankruptcy Code¹⁵⁶ and the litigation then switched to the bankruptcy court. JPMorgan Chase & Co., which acquired the banking assets, fought to assume sponsorship of the WaMu Pension Plan without assuming responsibility for the class action.¹⁵⁷ The WaMu Pension Plan debtors and JPMorgan Chase continued to fight in bankruptcy court through 2009. Finally in July 2010, after years of continuous litigation, the bank settled.¹⁵⁸

Settlement. The settlement provided "\$20 million to five classes of plaintiffs belonging to five different WaMu pension plans, as well as to members of two subclasses consisting of employees of banks WaMu acquired in 1998 and 1999." According to the final plan of allocation, 18,648 class members were identified for purposes of settlement distribution.¹⁵⁹ As far as fees, \$4.2 million was allocated to the lead counsel's attorneys' fees and costs, or 21 percent of the total settlement fund,¹⁶⁰ for what was generally recognized as extremely "hard-fought litigation."¹⁶¹

CREDIT CARD ABUSES

A widespread deceptive credit card business practice has been enrolling cardholders into payment protection programs without their knowledge or permission and charging a certain percent of customers' balances every month to enroll.¹⁶² For example,

Researchers at the Government Accountability Office found that consumers paid \$2.4 billion in fees for payment-protection products in 2009. They looked at nine credit card issuers, including Capital One and Discover, and determined that consumers received little “tangible financial benefit” from debt-protection services.¹⁶³

There are other deceptive practices as well. In 2010, the new Credit Card Accountability Responsibility and Disclosure (CARD) Act went into effect, the goal of which is to protect consumers from credit card abuses. For example, writes Consumer Action, according to the law, “Credit card issuers generally cannot raise interest rates, or any fees, during the first year an account is open,” although they may still “increase your interest rate on new charges” with proper notice.¹⁶⁴



Unfortunately, the law is not strong enough to avoid many bank and credit card violations. The Center for Responsible Lending writes, “In the months leading up to the changes that took effect February 22, 2010, credit card issuers adopted tricks and traps intended to evade the law.”¹⁶⁵

The Consumer Financial Protection Bureau is stepping in to stop some of these practices. However, it is clear that class actions, which have worked to stop many credit card abuses in the past, will continue to be a critical supplementary enforcement mechanism. Indeed, in the payment protection area, a class action lawsuit provided the basis for the subsequent CFPB enforcement action.

APR FRAUD

In Re: Chase Bank USA, N.A., (2012), MLD Number 2032; Case No. 3:09-md-2032(MMC) (JSC) (N.D. Cal.)

For years, Chase Bank offered customers the opportunity to transfer loan balances held by other lenders to Chase customers' credit card accounts and then consolidate this debt into a fixed loan. This opportunity had been offered to hundreds of thousands of customers, with typically two options available: (1) accept a fixed APR of 0 percent for a designated period of time, and after that time expires, the APR would increase, or (2) accept a long-term loan with a fixed, higher APR that is fixed until the balance is fully paid. Customers who chose the long-term plans were under the impression that the APR was fixed unless the customers defaulted.

However, Chase did not honor its commitment to customers of long-term APR agreements. Beginning in November 2008, Chase sent notices to customers alerting them that their minimum

payments would be increased by as much as 250 percent along with the monthly minimum charge.¹⁶⁶ Customers who complained about these changes were usually given two options: immediately pay their account balance in full or accept a new, higher fixed APR to keep their original minimum monthly payments in place – the intent of both options being to coerce these customers into a more profitable interest rate for Chase.¹⁶⁷ Over one million Chase customers were affected by these changes.¹⁶⁸



In August 2008, Chase customer Michael Moore accepted a fixed long-term loan agreement with Chase with a fixed APR of 2.99 percent. Moore had a total principal amount of about \$22,500 on his account and paid a \$199 transaction fee. At no point did Moore break the terms of his agreement, making sure to pay the minimum monthly payments each month. In November 2008, Moore was informed that his minimum monthly payments increased from 2 percent of his balance to 5 percent. This led to a jump from \$450 in minimum payments each month to \$1,040.¹⁶⁹ In addition to this percentage increase, Chase added a \$10 monthly finance fee to Moore’s account.

After informing Chase that he would not be able to afford these increases, Chase told him that he had two options: (1) pay off your entire balance, or (2) transfer your loan balance and accept a new, higher fixed APR. Chase offered an increased APR of 7.99 percent for a limited time to keep Moore’s original minimum monthly payment of 2 percent in place, with the option to change the APR at the end of the time period.¹⁷⁰ Moore reluctantly paid the increased minimum monthly payments.

On July 26, 2009, Michael Moore, joined by 14 additional Chase customers¹⁷¹ who had similar experiences,¹⁷² filed a class action against Chase and related companies.¹⁷³ Ultimately, the plaintiffs spent over three years¹⁷⁴ litigating this case against Chase before the bank decided to settle on July 20, 2012.

Settlement. Under the terms of the Settlement Agreement, Chase was required to pay \$100 million.¹⁷⁵ Each class member would receive a “Base Payment” of \$25.00 plus additional compensation for those most harmed by the changes Chase made to their accounts. In addition, Chase was forced to change its business practices. For those who chose an alternative offer after the minimum monthly increases (for example, a higher APR), Chase agreed not to increase their APR. It also agreed to maintain the previous 2 percent minimum monthly payment requirement for class members with alternative offer accounts, as long as the customer does not default.

There have been other APR abuse cases. For example:

Lopez et al. v. American Express Bank FSB et al., (2014), Case No. 2:09-cv-07335 (C.D. Cal.)

American Express Bank FSB recently agreed to settle with a class of customers over “accusations it improperly increased consumers’ fixed interest rates to a higher, variable rate

without permission or notification.”¹⁷⁶ AmEx will pay up to \$6 million and, according to the plaintiffs, “Class members will receive either \$32.50 or a proportionate share of the fund.”¹⁷⁷ As to why the class decided to accept this settlement, *Law360* writes,¹⁷⁸

U.S. District Judge S. James Otero ruled in 2010 that the class action waiver in the plaintiffs’ credit card agreements with American Express was unconscionable under California law and that the plaintiffs could not be compelled to arbitrate. But he later stayed his decision pending the U.S. Supreme Court’s ruling in *AT&T Mobility LLC v. Concepcion*, which would eventually severely limit states’ ability to invalidate arbitration agreements.

The plaintiffs ... admitted that the *Concepcion* ruling bolsters American Express’ argument and created a serious risk in continuing the suit.

PAYMENT PROTECTION

As noted above, a common credit card company abuse is the selling of payment protection plans, registering consumers in programs to which they never consented or were enrolled through deceptive marketing, and for which they are automatically charged. In 2012, Capital One, one of the nation’s biggest banks, was forced,

[to] reimburse \$150 million to more than two million customers for selling them credit card products they could not use or did not want, as the nation’s new consumer watchdog leveled its first enforcement action against the financial industry. The Consumer Financial Protection Bureau ... hit Capital One with findings that a vendor working for the bank had pressured and deceived card holders into buying products presented as a way to protect them from identity theft and hardships like unemployment or disability.¹⁷⁹

Preceding this action was a smaller private class action lawsuit, **Spinelli v. Capital One Bank, (USA), N.A., (2010), Case No. 8:08-CV-132-T-33EAJ (M.D. Fla.)**, which resulted in a \$60 million settlement for customers.¹⁸⁰ According to attorneys involved in the case, “Lawyers for CFPB interviewed attorneys for the class in *Spinelli* multiple times and used their pleadings to file their action against Capitol One.”¹⁸¹ *Spinelli* also provided the basis for subsequent public enforcement actions brought by the Attorneys General on the same theory, including cases brought by the Attorneys General of Hawaii, Mississippi and New Mexico.¹⁸²

Indeed, a number of private class actions have supplemented public enforcement actions for this abuse, which have also resulted in large sums of compensation for defrauded cardholders. For example, in 2012, the *Washington Post* reported that,

Discover has been battling accusations it misled customers about its payment-protection product since 2010, when the first of eight separate class-action lawsuits was filed against the firm.

A U.S. District Court judge in Illinois in May [2012] approved an \$11 million global settlement addressing all of the class-action cases.¹⁸³

The Discover class action, which consolidated the eight separate class actions, is known as **In re: Discover Payment Protection Plan Marketing and Sales Practice Litigation**.¹⁸⁴

Other private “payment protection” class actions have been brought and settled as well. These include:

In re: Bank of America Credit Protection Marketing and Sales Practice Litigation, (2012), Case No. 11-md-2269 (N.D. Cal.)

Bank of America settled for \$20 million.¹⁸⁵

Kardonick v. JPMorgan Chase & Co. et al., (2010), Case No 1:10-cv-23235-WMH (S.D. Fl.); David v. JPMorgan Chase & Co. et al., Case No 4-10-cv-1415 (E.D. Ark.) and Clemins v. JPMorgan Chase & Co. et al., No 2:10-cv-00949-PJG (E.D. Wis.)

JPMorgan Chase settled for \$20 million.¹⁸⁶

Esslinger v. HSBC Bank Nevada, N.A., et al., (2012), Case No. 2:10-cv-03213-BMS (E.D. Pa.)

HSBC settled for \$23.5 million.¹⁸⁷

SERVICEMEMBER FINANCIAL ABUSE

The kinds of financial abuses to which unscrupulous lenders subject active duty servicemembers is truly shocking. Congress and the Obama Administration have tried to help. For example, the Servicemembers Civil Relief Act of 2003 (SCRA),¹⁸⁸ which replaced the Soldiers' and Sailors' Civil Relief Act of 1940,



[i]s a federal law that provides protections for military members as they enter active duty. It covers issues such as rental agreements, security deposits, prepaid rent, eviction, installment contracts, credit card interest rates, mortgage interest rates, mortgage foreclosure, civil judicial proceedings, automobile leases, life insurance, health insurance and income tax payments.¹⁸⁹

Yet this law contains significant loopholes. *ProPublica* recently published an investigative piece called, “Thank You for Your Service: How One Company Sues Soldiers Worldwide.”¹⁹⁰ They found that a company called USA Discounters targets military families for predatory loans, writing,

[The company’s] easy lending has a flip side. Should customers fall behind, the company transforms into an efficient collection operation. And this part of its business takes place not where customers bought their appliances, but in two local courthouses just a short drive from the company’s Virginia Beach headquarters. ...

From there, USA Discounters files lawsuits against service members based anywhere in the world, no matter how much inconvenience or expense they would incur to attend a Virginia court date. Since 2006, the company has filed more than 13,470 suits and almost always wins, records show.

“They’re basically ruthless,” said Army Staff Sgt. David Ray, who was sued in Virginia while based in Germany over purchases he made at a store in Georgia....

The federal Servicemembers Civil Relief Act, or SCRA, was designed to give active-duty members of the armed forces every opportunity to defend themselves against lawsuits. But the law has a loophole; it doesn’t address where plaintiffs can sue. That’s allowed USA Discounters to sue out-of-state borrowers in Virginia, where companies can file suit as long as some aspect of the business was transacted in the state.

In 2006, Congress also passed the Military Lending Act (MLA),

[t]o provide specific protections for active duty service members and their dependents in consumer credit transactions. The MLA caps the interest rate on covered loans to active

duty service members at 36 percent; requires disclosures to alert service members to their rights; and, it prohibits creditors from requiring a service member to submit to arbitration in the event of a dispute, among many other protections. ...

The MLA also gave DoD the authority to define the scope of credit covered by the law's protections. In 2007, DoD defined credit narrowly to cover three products: (1) closed-end payday loans for no more than \$2,000 and with a term of 91 days or fewer; (2) closed-end auto title loans with a term of 181 days or fewer; and (3) closed-end tax refund anticipation loans. Some lenders responded by changing their products to fall outside the regulations narrow scope, thus allowing many predatory lending practices to continue and defeating diminishing the full impact of the legislation to protect our Military families. Today, some lenders continue to market loans at triple-digit interest rates targeting service members, including storefronts clustered outside military installations and on websites geared toward service members.¹⁹¹

The Department of Defense has issued proposed new rules to close these predatory lending loopholes.¹⁹² However, it is clear that unscrupulous lenders are still abusing servicemembers – often in violation of these laws – and that private class actions can be an effective way to stop such practices. The following two examples illustrate how.

Olson, et al. v. Citibank (New York State), et al., (2012), Case No. 0:10-cv-02992 (D. Minn.)

One of the key provisions of the Servicemembers Civil Relief Act (SCRA) is a 6 percent per year cap on interest on most interest-bearing debts incurred before the start of active duty. The cap applies throughout a servicemember's period of active service. A servicemember must send a notice to the creditor to obtain the 6 percent interest rate, but he or she can provide that notice at any point up to 180 days after release from military service.¹⁹³

In 1997, Lyndsey M.D. Olson received an \$8,000 student loan through Citibank's CitiAssist program to finance her last year in college. The loan had a variable interest rate that fluctuated between 4.25 percent and 9.25 percent.

Ms. Olson was called to active duty in 2005, and in 2006, she notified Citibank of her active duty status. Approximately five months later, Citibank notified her that it would limit her interest to 6 percent per year as required by SCRA, but that her loan was being placed into forbearance and that any accrued interest during this time would be capitalized when her forbearance ended – that is, the interest would be added to her principal balance. When Ms. Olson told Citibank that she did not want her loan placed in forbearance, she was told that it was Citibank's policy to place servicemembers' accounts in forbearance for them to receive the SCRA interest rate reduction and that Citibank would not give her the SCRA rate without that status change.¹⁹⁴

Citibank removed Ms. Olson's loan forbearance status in 2010. After taking her loan off forbearance, they capitalized the accrued interest and began charging Ms. Olson monthly interest on the inflated principal balance.

In July 2010, Ms. Olson filed a complaint against CitiBank (New York State), CitiBank N.A.,

and the Student Loan Corporation on behalf of herself and all servicemembers whose loans were put into mandatory forbearance during their qualifying military service under SCRA. The defendants moved to dismiss the complaint. The district court denied the motion in part and granted it in part, allowing Ms. Olson to replead the count of the complaint that was dismissed. Over many months, the parties engaged in discovery. They also retained experts to prepare reports addressing damages, interest calculation methodology, the effect of forbearances and the capitalization of interest on the loans going into the future.

In April 2011, the parties began discussing settlement. After months of negotiations, including a day-long settlement conference and many telephone conferences and later a settlement conference with the aid of a magistrate judge, they reached a settlement, which the district court preliminarily approved. The defendants mailed notice of this to the class (only four people opted out), and the court granted final approval.

Settlement. The defendants agreed to pay \$2.357 million to the class members, which consisted of 6,493 people. Each received at least \$50 for each loan, with an additional pro rata amount for loans on which interest was capitalized, distributed according to an algorithm developed by plaintiff's expert. This algorithm would result in class members receiving between \$50 and \$656.42 per loan, with some class members who had multiple loans receiving several thousand dollars. Overall, according to the magistrate judge's report and recommendation on preliminary approval, class members would receive approximately 94.5 percent of the improper interest on their loans.

The defendants also agreed to stop placing loans into forbearance as a condition of administering the SCRA interest cap. In addition, class members were given the options of terminating the forbearance on their loans and reinstating automatic payments where applicable.¹⁹⁵

Briggs v. AAFES, (2010), Case No. CV-07-5760-WHA (N.D. Cal.)

The Army and Air Force Exchange Service (AAFES) issues credit cards that are used by military personnel to buy uniforms and make other purchases at stores that AAFES operates on military bases. AAFES is a non-appropriated fund instrumentality of the United States, meaning that it is a quasi-governmental entity that does not receive appropriations from Congress.

When a veteran's debt incurred while on active duty is still due after leaving active duty, the United States has the right to offset the delinquent debt against monies it owes the debtor for benefits and tax refunds. AAFES refers delinquent debt to the Department of the Treasury, which administers a centralized collection effort, using administrative offsets, known as the Treasury Offset Program. Until Congress eliminated the limitation period in 2008, the offset procedure could only be used for 10 years after the debt became delinquent.

In 1977, during his 21 years of active duty, Julius Briggs suffered a back injury, which progressively worsened and limited his employment opportunities. In 2000, Mr. Briggs began receiving military disability payments based on a partial service-connected disability rating for his back injury. In spite of the disability payments and his efforts to find work, Mr. Briggs had periods of financial difficulty, especially when his disability payments were delayed. His

financial difficulties left him homeless for several periods. In 1993, when Briggs left active duty, he had a debt of about \$1,500 in retail purchases on which the credit card imposed a 12 percent finance charge and about \$350 in uniform clothing debt.¹⁹⁶

In 1997, AAFES referred Briggs's account to the Treasury Department for the purpose of deducting, through the offset program, the outstanding balance from any payments that might be due to him from the government. Between 2004 and 2007, more than \$2,300 in federal payments due to Mr. Briggs were withheld through the administrative offset program to pay AAFES credit-card debt that had been outstanding more than 10 years (contrary to the law at the time). In addition, AAFES made errors in the way that it calculated Briggs's outstanding credit card account balance after the referral in 1997. Mr. Briggs's credit card agreement precluded AAFES from assessing any finance charge on the debt he owed for uniform purchases. In other words, AAFES started charging a finance charge of 6 percent per annum on the principal (in addition to a 6 percent penalty), without any legal authority for doing so and in direct violation of the contract requirement that no finance charge be imposed on the uniform purchases.

In 2007, Mr. Briggs, on behalf of himself and a class of veterans who left active duty with credit card debt, sued AAFES and the United States, alleging that class members had been subjected to unlawful collection practices arising out of AAFES's use of the Treasury Department offsets.¹⁹⁷

Settlement. After two years of motion practice on legal issues – during which time the district court granted class certification, granted summary judgment to the plaintiff and denied the defendant's motion for summary judgment – the parties entered into settlement discussions and an agreement, which the court approved. The settlement provided for the defendant to pay \$7.4 million – the full amount of liability alleged by the plaintiff Briggs – together with attorney fees, litigation costs and class administration costs. Class counsel's total award was \$1.12 million (based on the number of hours worked and counsel's hourly rates), \$500,000 paid by the defendant and the balance from the class fund. Class counsel received no additional compensation for the hundreds of hours required to complete the class administration and ensure that as many class members as possible could be located.

Under the settlement, each class member could receive a refund of about 90 percent of the amount illegally seized from him or her. Recoveries averaged approximately \$1,000 each. Of the 6,740 individuals on the list of class members, 6,592 were determined to be eligible for payment and 90 percent received and cashed their check, for a total of \$6,531,986.53. Approximately \$250,000 remained in the fund from uncashed checks or class members who could not be located. That amount was used to pay an investigator hired to locate class members, cover additional class administration costs and as *cy pres* to the Morale, Welfare and Recreation programs of the Army and Air Force. The fund was fully distributed by the Fall of 2011.¹⁹⁸

GENDER DISCRIMINATION IN HIRING

Title VII of the Civil Rights Act of 1964 protects individuals against employment discrimination on the basis of sex. The Equal Employment Opportunity Commission (EEOC) explains:

The law forbids discrimination when it comes to any aspect of employment, including hiring, firing, pay, job assignments, promotions, layoff, training, fringe benefits, and any other term or condition of employment.¹⁹⁹

If only this law were enough to end gender discrimination in employment. In 2014, the EEOC reported that of the 93,727 workplace discrimination charges it received in 2013, 27,687 or 29.5 percent involved sex discrimination.²⁰⁰ Notably, the increasing use of forced arbitration clauses with class action bans in employment contracts threatens not only the ability of the private class action tool to vindicate the rights of those who have been violated under Title VII²⁰¹ but also – and incredibly – the EEOC’s ability to do its job.²⁰²

However, some Title VII gender discrimination cases, including those involving hiring bias, have been able to proceed in court with great results for the class, illustrating how important class actions are in this area of law. The following is one recent example, which also demonstrates how much is often required of attorneys fighting on behalf of the victims in these cases and how relatively low their fees can be compared to the amount of work they do.

Easterling v. Conn. Dep’t of Correction, (2013), Case No. 08-826 (D. Conn.)

As part of its selection process for correction officers, the Connecticut Department of Correction (DOC) used a timed 1.5 mile run to assess the aerobic capacity of applicants. Applicants were required to pass the 1.5 mile run test to continue in the selection process. The cut scores used by DOC resulted in female applicants failing the test at a much higher rate than male applicants.²⁰³

Cherie Easterling applied for a correction officer position with the Connecticut DOC in 2004. She passed a written exam and three out of four parts of the physical fitness test but failed the 1.5 mile run test. As a result, Ms. Easterling was precluded from moving forward in the selection process and was unable to obtain a correction officer position.



In May 2008, Ms. Easterling, on behalf of herself and a class of female applicants for the correction officer job who only failed the 1.5 mile run portion of the physical fitness test from 2004 forward, sued the Connecticut DOC alleging that DOC’s use of the test resulted in a disparate impact on female applicants in violation of Title VII of the Civil Rights Act.

DOC filed a motion to dismiss, which the district court denied. In July 2009, Ms. Easterling filed a motion to certify the class, which the district court granted in January 2010. The next discovery phase involved substantial work with experts in the fields of statistics, labor economics, industrial and organizational psychology and exercise physiology. In May 2011, the court granted Ms. Easterling’s motion for summary judgment, finding that undisputed statistical

evidence showed the 1.5 mile run test caused a disparate impact on female applicants and that DOC had failed to prove, as a defense, that passing the test was predictive of success as a correction officer.²⁰⁴

Two months later, DOC filed a motion to decertify the class, which the court denied in November 2011. Instead, the court modified the earlier certification order to account for intervening changes in the law, as requested by Ms. Easterling.

In early 2012, the court entered a scheduling order for the remedial phase of the case and ordered notice to the class. In response to the notice, only one class member opted out of the case. The parties then engaged in discovery on relief issues, again with substantial work by expert witnesses.

Settlement. The parties engaged in extensive settlement negotiations, often with the assistance of a magistrate judge assigned to act as a mediator. In furtherance of the negotiations, the parties submitted two critical issues concerning calculation of gross back pay to the district court for resolution. The court resolved those issues in June 2012. In 2013, the parties agreed to and the court approved a settlement after notice to the class outlining the terms of the settlement and describing the procedure to object or opt out.

The settlement provided a back pay fund of \$1,851,892 to be divided among participating class members on a pro rata basis depending on the date of the class member's application for a correction officer position and the class member's earnings from other employment. This methodology was used because the class consisted of 124 women, but only 28 additional women would have been hired absent discrimination and it was impossible to identify which class members would have obtained the available positions. In addition to the back pay relief, each class member was given the opportunity to participate in a priority hiring process to obtain one of 28 correction officer positions reserved for class members, with retroactive seniority and pension credits. Of the 124 class members, 108 filed a claim and 94 were determined eligible for back pay relief. The average back pay award was \$19,595.

The agreement also provided for DOC to pay class counsel a negotiated amount of \$1,232,463 (\$1,053,782 in fees and \$178,681 in costs), representing a reduction of about 30 percent from the number of hours actually expended on the case multiplied by the class counsel's regular hourly rates. It should also be noted that class counsel was not guaranteed to receive any compensation in pursuing the case and worked without compensation for eight years.

ANTITRUST CONSPIRACIES AGAINST CONSUMERS AND SMALL BUSINESSES

Antitrust conspiracies steal billions of dollars from American consumers and businesses every year.²⁰⁵ These conspiracies often come in the form of international price-fixing cartels, in which business competitors illegally agree to set an artificially high price for the goods they produce. U.S. companies and consumers that need to purchase the products are forced to pay these overcharges because the conspirators have foreclosed any competition. Small businesses, which often operate with slim profit margins, are particularly hard hit when they are forced to pay price-fixed overcharges.

The U.S. Department of Justice aggressively prosecutes the members of these illegal cartels, exacting billions of dollars in criminal fines and jail terms for corporate executives.²⁰⁶ However, as the Justice Department itself has noted, *private* enforcement provides virtually the only way to compensate businesses and consumers that are victims of antitrust violations.²⁰⁷ Simply put, without class actions, businesses cannot recover their stolen money.²⁰⁸

The following nine antitrust class action settlements distributed over \$1.4 billion to tens of thousands of consumers and small and medium-sized businesses from companies who participated in criminal price-fixing cartels. The cost of hiring experts and paying expenses to litigate these cases, not including attorneys' fees, ranges from hundreds of thousands to millions of dollars. Without access to class actions, only a small handful of victims would have been able to recover any of the money that was stolen from them due to the increased prices brought about by illegal price-fixing. The criminals would have been able to keep their ill-gotten gains and their victims would have been left with nothing.

In re Air Cargo Shipping Services Antitrust Litigation (2012), Case No. 06-md-1775 (EDNY)

In recent years, the Department of Justice uncovered a number of criminal conspiracies involving air cargo services affecting over \$20 billion in commerce. In the conspiracies, major airfreight carriers imposed various surcharges on customers for shipments of goods to and from the United States, including agreements on the amount and timing of surcharges.²⁰⁹ Twenty-one defendants, including companies and individuals, pled guilty to participation in the conspiracy and agreed to criminal fines in excess of \$1.9 billion.²¹⁰ The defendants were not ordered to pay restitution to victims in connection with their criminal fines.²¹¹



Individuals and businesses that purchased airfreight shipping services brought class action lawsuits against more than two dozen of the major airfreight carriers in the world.²¹² They include Lufthansa, All Nippon Airways, Qantas Airways, Air France/KLM, Japan Airways, British Airways, Saudi Arabian Airlines and Air Canada.²¹³ The plaintiffs alleged that the defendant carriers conspired to unlawfully fix prices of airfreight shipping services worldwide, including on cargo shipments to, from and within the United States by, among other things, charging agreed-upon artificially inflated surcharges.²¹⁴

Settlements. At least 21 settlements with the defendant airlines have been reached in the class action suits.²¹⁵ Under three separate programs, over \$320 million has been distributed to class members who are mostly “freight forwarder” companies that purchased airfreight shipping services directly from the defendants.²¹⁶ These freight forwarder companies range from large to small businesses, and even include individuals who purchased airfreight shipping services directly from any of the defendants.²¹⁷ Class members received awards ranging from hundreds of dollars to hundreds of thousands of dollars, and some claimants collected over \$1 million.²¹⁸ The cost to the plaintiffs to litigate these cases to date is over \$11 million, not including attorneys’ fees.²¹⁹

There have been other antitrust class action cases, as well. They include the following:

In re Bulk [Extruded] Graphite Products Antitrust Litigation, Case No.02-CV-06030 (D. N.J.)

Companies and individuals who sold bulk extruded graphite products settled with a class of companies that purchased extruded graphite products to use in casting molds and furnace linings and components, powder metallurgy, boats and trays for sintering applications, and crucibles for melting and alloying.²²⁰ The plaintiffs reached settlements with the defendants in which over \$5 million was distributed to 112 claimants, or an average of \$50,000 to each claimant.²²¹ The litigation expenses, not including attorneys’ fees, were about \$300,000.²²²

In re Dynamic Random Access Memory (DRAM) Antitrust Litigation, MDL No. 1486 (N.D. Cal.)

A number of large manufacturers of Dynamic Random Access Memory (DRAM) chips, which are used in desktop, laptop and workstation computers and in some video game consoles, settled with a class of companies that purchased DRAM chips or modules.²²³ The plaintiffs alleged illegal price-fixing.²²⁴ The defendant companies paid more than \$242,000,000 to over 19,000 claimants.²²⁵ Recoveries to the class members ranged from under \$1,000 to over \$1 million.²²⁶ Litigation expenses for this case totaled over \$4 million.²²⁷

In re Graphite Electrodes Antitrust Litigation, MDL No. 1244 (E.D. Pa.)

Graphite electrodes are used to conduct electricity in steel mill furnaces.²²⁸ Several companies that manufacture graphite electrodes settled with a class of steel manufacturers, alleging the defendants conspired through a pattern of meetings and communications to fix the prices and allocate the markets for graphite electrodes sold in the United States.²²⁹ The settlement totaled over \$111 million, which was distributed to 166 claimants.²³⁰ Payments ranged from under \$50,000 to over \$1 million.²³¹ It cost about \$1.5 million in expenses to litigate the case.²³²

In re TFT-LCD (Flat Panel) Antitrust Litigation, MDL No. 1827 (N.D. Cal.)

Manufacturers of Thin Film Transistor Liquid Crystal Display (TFT-LCD) flat panels settled with a class of companies that purchased TFT-LCD flat panels and products that contain the panels, such as notebook computers, computer monitors and LCD televisions.²³³ The plaintiffs alleged price-fixing that raised the prices of the panels and the finished products.²³⁴ Defendants distributed close to \$320,000,000 to almost 3,000 claimants.²³⁵ Recoveries ranged from under \$10,000 to millions of dollars.²³⁶ Eight claimants recovered over \$10 million.²³⁷ Litigation expenses for the cases exceeded \$6 million.²³⁸

In re: Insurance Brokerage Antitrust Litigation [Zurich Settlement], Case No. 04-5184 (D. N.J.)

Insurance brokers and insurance companies, including the Zurich insurance company, settled²³⁹ with a class of commercial insurance policyholders for allocating insurance policies or customers among the defendant insurance companies. In return, they alleged that insurers paid commissions to the defendant insurance brokers, and engaged in other improper conduct with respect to the solicitation of bids for the policies.²⁴⁰ The Zurich defendants paid about \$121,800,000 to over 2,000,000 claimants.²⁴¹ Thousands of class members received between \$1,000 and \$10,000 and dozens received over \$100,000.²⁴² The total cost to litigate the insurance brokerage antitrust litigation was almost \$10 million.²⁴³

In re Linerboard Antitrust Litigation, MDL No. 1261 (E.D. Pa.)

Several U.S. manufacturers of linerboard settled with a class of businesses that purchased corrugated boxes and sheets over allegations that the manufacturers engaged in a conspiracy to reduce linerboard inventories and invite competitors to join in a coordinated price increase.²⁴⁴ The settlement distributed over \$140,000,000 to more than 7,000 claimants, for an average payout of \$20,000 per claimant. It cost over \$1 million to litigate this case.²⁴⁵

Sullivan v. DB Investments, Inc., Case No. 04-cv-2819 (SRC) (D. N.J.)

DeBeers, which mines and trades diamonds, settled with a class of purchasers of diamonds who intended to resell them.²⁴⁶ They alleged that DeBeers exploited its market dominance to artificially inflate the prices of rough diamonds; this, in turn, caused reseller and consumer purchasers of diamonds and diamond-infused products to pay an artificial overcharge for the products.²⁴⁷ The settlement from DeBeers distributed over \$110,000,000 to thousands of claimants.²⁴⁸ The cost to litigate the case was over \$2.8 million.²⁴⁹



In re: Puerto Rican Cabotage Antitrust Litigation, Case No. 08-md-1960 (D. P.R.)

Several shipping companies that provide cabotage services settled with a class of direct purchasers of ocean shipping services between Puerto Rico and the continental United States, who alleged that the shipping companies conspired to fix the prices of shipping services.²⁵⁰ The defendants created a settlement fund totaling over \$35.38 million.²⁵¹ The first round of distributions yielded over 1,370 payments to eligible class members, accounting for over \$29.5 million of the settlement fund. Additionally, over \$4.6 million was electronically distributed to class members.²⁵² The remaining settlement fund was sought to be redistributed to the class, with over 300 class members requesting to receive an additional payment of over \$1,300.²⁵³ The cost of litigating the case totaled over \$1 million.²⁵⁴

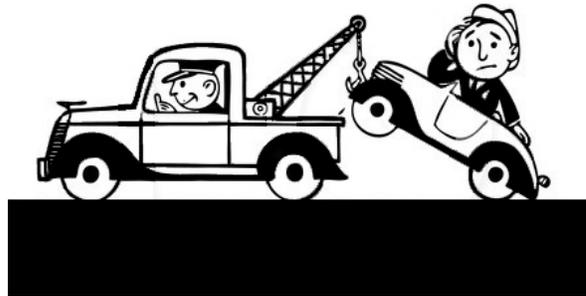
ADDITIONAL CASES

FINANCIAL ABUSE AND CONSUMER FRAUD

AUTOMOBILE ADD-ONS

Mills v. Hendrick Automotive Group, et al., (2009) Case No. 04 CVS 2301 (Super. Ct. N.C. 2004-2009)

A North Carolina car dealership, Hendrick Automotive Group, settled with a class of about 20,000 customers who were deceptively sold an add-on car coating called “Car Care.” According to one report, “One plaintiff in the lawsuit says he paid \$740 for the treatment on a new Acura when the actual cost to the dealer was only \$35.” The plaintiffs were able to obtain a settlement of \$5 million on behalf of the class, which represented a payout to class members of about \$195 per car bought.²⁵⁵



AUTOMOBILE LOANS AND REPOSSESSION

Ford Motor Credit Company Rees-Levering Act Cases, (2013), JCCP No. 4660 (Super. Ct. Cal.)

Ford Motor Credit Company (“FMCC”), a provider of car financing for consumers, settled with a class of consumers for failing to provide them with notices informing them of their rights when cars were repossessed. Class members with arbitration clauses in their financing contracts were refunded only 40 percent of their deficiency payments, whereas those without an arbitration clause in their car contracts were refunded 80 percent.²⁵⁶ FMCC ultimately waived over \$38 million in remaining class member deficiency claims.²⁵⁷

De La Cruz v. Wachovia Dealer Services, Inc., (2012), Case No. 37-2009-00088963-CU-BT-CTL (Super. Ct. Cal.)

Wachovia Dealer Services settled with a class of Californians for deficiency payments that were allegedly collected illegally and without appropriate post-repossession notices. Wachovia agreed to refund 58 percent of the deficiency payments for class members without an arbitration clause in their dealer contracts, and 30 percent of the deficiency payments for class members with arbitration clauses in their car contracts. As a result, \$4,412, 238 in cash payments were provided in this settlement.²⁵⁸

Cosgrove v. Citizens Auto Finance, (2011), Case No. 09-1095, 2011 WL 3740809 (E.D. Pa.)

Citizens Auto Finance (“CAF”) settled with a class of about 1,800 consumers²⁵⁹ who were victims of a car financing scheme. If consumers fell behind on their car payments and cars were

repossessed, the company sent notices stating that the consumer was required to pay back the entire amount left on their financing contract, instead of just paying their past due payments and fees; in many instances, no notice was sent at all after repossession.²⁶⁰ CAF was required to pay \$2.9 million in cash, to be distributed to class members, and relieve class members of outstanding debt balances in the amount of \$7.75 million.²⁶¹

Juarez v. Arcadia Financial, (2009), Case No. GIS 16196 (Super. Ct. Cal.)

Arcadia Financial settled with a class of Californians for deficiency payments that were allegedly collected illegally by Arcadia Financial and without appropriate post-repossession notice. The settlement provided refunds to eligible class members of 107 percent of the original deficiency payment.²⁶²



BANK MONEY LAUDERING AND FRAUD

Arreola et al v. Bank of America National Association et al, (2014), 2:11-cv-06237-FMO-PLA (C.D. Cal.)

Bank of America National Association (“BANA”) settled with a class of plaintiffs who lost some or all of their investments in Financial Plus, an entity conducted through two Bank of America branches managed by Dony Gonzalez, who allegedly accepted bribes from Juan Rangel who operated Financial Plus. Rangel targeted and encouraged working class, Spanish-speaking families to refinance their homes through Financial Plus, fraudulently promising unrealistically high rates of return and offering to save their homes from default. Unbeknownst to them, straw buyers purchased the homes, and then deposited loan proceeds into Financial Plus accounts. This raised several internal “red flags” for BANA related to money laundering and fraudulent activities but the company “turned a blind eye.”²⁶³ In April, 2014, writes *Law360*, BANA won approval “of its \$8.2 million settlement of a class action alleging it facilitated a \$20 million real estate investment Ponzi scheme, when a California judge said the concerns about incentive awards that led him to delay approval were resolved.”²⁶⁴

CREDIT COUNSELING

Abat v. JPMorgan Chase (2010), Case No. 8:07-cv-01476-CJC-AN (C.D. Cal.)

Money Management International, Inc., (“MMI”) and related companies settled with a class of consumers for providing credit counseling services and debt management plans, but failing to disclose their close relationships with large financial institutions and misrepresenting themselves as a non-profit organization. MMI agreed to create a \$6.5 million settlement fund for eligible class members that paid initial or monthly fees to MMI.²⁶⁵

DEBT COLLECTION

Seifert v. Commonwealth Financial Systems, Inc., (2012), Case No. CV-09-711588 (Cir. Ct. W.V.)

Commonwealth Financial Services (“CFS”) settled with a class who were victims of the company’s practices of collecting or attempting to collect usurious interest upon consumer debts. “Soon after this case was filed, the defendants moved to stay the case pending arbitration ... [but] after extensive litigation, the trial court ruled that the arbitration clause did not apply.”²⁶⁶ The settlement agreement provided money to a number of individuals and equitable relief to a much larger number of individuals.²⁶⁷



Chase Bank USA v. Bryant, (2010), Case No. 07-c-1675 (Cir. Ct. W.V.)

Chase Bank settled with credit card customers who were forced into arbitration with the now defunct National Arbitration Forum, which was owned and controlled by one of the debt collection law firms used by Chase and other banks. The debt collection awards “were declared null, void, and unenforceable,” equaling about \$259 million in value. While Chase kept its right to sue these customers in court for the debt, Chase agreed to forgo the collection of attorneys’ fees and costs added to their customers’ debt.²⁶⁸

Gregory v. NCO Financial Systems (2009), Case No. 07-CV-5254 (RB) (E.D. Pa.)

Debt collection companies NCO Financial Systems and NCO Portfolio Management settled with a class of over 2,300 consumers who were sent bogus letters suggesting that a binding arbitration award would be obtained against them, without these consumers’ consent or participation, for consumers’ disputed debts.²⁶⁹ NCO then initiated arbitration proceedings with the now defunct National Arbitration Forum in violation of Pennsylvania law. “After two years of litigation, the parties settled on a class basis for substantial cash relief [including “\$125,0000 in pro-rata cash distribution”], \$6 million in credits to outstanding balances, and vacatur of nearly a half million dollars in ill gotten judgments.”²⁷⁰

DISCRIMINATORY INSURANCE PRACTICES

Norflet v. John Hancock Life Ins. Co., (2009) 658 F. Supp. 2d 350 (D. Conn.)

John Hancock settled with a class of African-American customers who had purchased, owned, or were beneficiaries of industrial weekly life insurance policies or monthly debit policies from John Hancock Life Insurance before or during 1958. The class charged John Hancock with selling inferior life insurance products in the early to mid 20th century to African-American customers - when it wasn’t completely denying them insurance. After “several years of intensive litigation,” the company settled for \$24.4 million.²⁷¹

DeHoyos v. Allstate Corp., (2007), 240 F.R.D. 269, (W.D. Tex.)

Allstate Insurance Company settled with a class of nearly five million African-American and Hispanic customers in Texas and Florida for using credit scoring to unfairly charge minorities

higher automobile and homeowner insurance rates than similarly situated Whites. Allstate agreed to pay monetary relief of \$50 to \$150 to all African-American or Hispanic customers who did not receive the lowest available premium or who were denied lower rates because of credit information. They also agreed to change their business practices.²⁷²

Williams v. Nat'l Sec. Ins. Co., (2006) 237 F.R.D. 685 (M.D. Ala.)

National Security Insurance settled with a class of African-American policyholders, who alleged that from 1947 through 1980, National Security Insurance racially-discriminated in their pricing structure by charging African Americans, on average, 27 percent more than others. NSIC agreed to pay over \$3 million to the class members.²⁷³

Moore, et al. v. Liberty National Life Insurance Company, (2006), Case No. 2:99cv3262 (N.D. Ala.)

Liberty National Life Insurance Company settled with a class of African-Americans who were charged higher premiums than similarly situated whites for burial or industrial life insurance policies in Alabama. Liberty National settled for \$6 million.²⁷⁴

DISCRIMINATORY LENDING

Ramirez v. Greenpoint Mortgage Funding, Inc., (2011), Case No. 3:08-cv-369 (N.D. Cal.)

GreenPoint Mortgage Funding settled with a class of minority consumers in California who obtained mortgage loans in 2005 and 2006 and were allegedly charged disproportionately high rates compared to non-minority borrowers with the same credit risks. GreenPoint settled for \$14,750,000.²⁷⁵

Jones, et. al v. Wells Fargo Bank, N.A., Wells Fargo Home Mortgage, et., (2011), Case No. BC337821 (Super. Ct. Cal.)

Borrowers in minority neighborhoods in Los Angeles brought a class action against Wells Fargo for discriminating against minority borrowers, charging them more for their loans than borrowers in non-minority areas. A computer program, "Loan Economics," introduced in 2002, allowed loan officers to offer discounts to loan applicants in primarily White communities but Wells Fargo management allegedly prevented its use in minority communities. After a three-month trial, the jury returned a \$3,520,000 verdict.²⁷⁶

In re First Franklin Financial Corp. Litigation (2010), Case No 5:08-cv-01515-JW; 08-02735 RS (N.D. Cal.)

First Financial settled with a class of minority borrowers for discretionary pricing policies whereby minority borrowers were paying higher rates of subjective fees than other similarly situated non-minority borrowers. The company settled for \$3,900,000.²⁷⁷

Allen, et al. v. Decision One Mortgage, et al, (2010), Case No 1:07-CV-11669-GAO (Dist. Ct. Mass.)

Decision One Mortgage Company and related HSBC companies settled with a class of African-American and Hispanic homeowners in Massachusetts for discrimination in their home financing policies and practices. They alleged that HSBC authorized discretionary financing charges

and interest mark-ups that had a discriminatory impact on black and Hispanic mortgage loan applicants. The company agreed to a multi-million dollar settlement on May 13, 2010.²⁷⁸

FILM AND TELEVISION

Osmond v. Screen Actors Guild, Inc. (SAG), (2010), Case No. BC377780 (Super. Ct. Cal.)

The Screen Actors Guild, Inc. (“SAG”) settled with a class of U.S. performers who were entitled to residual payments from foreign levy funds for their performances. They alleged that SAG collected significant amounts of foreign levy funds without proper authorization, and failed to properly distribute these funds to the class. Under the settlement, SAG agreed to pay 90 percent of the value of these foreign royalty funds and to make other changes in its practices.²⁷⁹

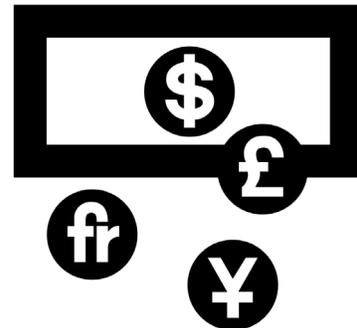
Webb v. Directors Guild of America (DGA), (2007), Case No. BC352621 (Super. Ct. Cal.)

The Directors Guild of America (“DGA”) settled with a class of directors who were not DGA members concerning foreign levies of which DGA received a portion. The class alleged that DGA failed properly to distribute foreign levies to non-DGA members. DGA agreed to provide an independent accounting firm to conduct a review of its foreign levies program. In addition DGA would provide a registration function for directors in its website, and would make information regarding unpaid levies publicly available.²⁸⁰

FOREIGN TRANSACTIONS

In Re: Currency Conversion Fee Antitrust Litigation,

(2007), MDL No. 1409 (S.D. N.Y.) Bank of America, Bank One/First USA, Chase, Citibank, Diners Club, HSBC/Household, MBNA and Washington Mutual/Provident settled with a class of Visa, MasterCard and Diners Club credit/charge card members. The companies allegedly set and concealed fees on foreign transactions, as well as inflated Visa and MasterCard’s base exchange rates before applying these foreign transaction fees. The companies paid \$336 million and made changes relating to disclosures on billing statements and other documents regarding the pricing of foreign transactions and fees.²⁸¹



FOR-PROFIT SCHOOLS

Morgan et al., v. Richmond School of Health and Technology, Inc., (2013) Case No 3:12-cv-00373-JAG, Dkt #78-1 (D.D.C.)

The for-profit vocational college, Richmond School of Health and Technology (RSHT) (now known as Chester Career College) settled with a class of over 4,000 students who were victims of a “reverse redlining” scheme. RSHT would obtain “several million dollars a year in federal financial aid on behalf of its students to keep the school operating, chiefly in the form of federal student loans.”²⁸² RSHT targeted African-American and low-income students to obtain these loans, using deceptive practices to enroll them for what they knew was an inadequate education, saddling students with large debts but without improved employment opportunities. For example,

some students were told they would become eligible for a community home health license, only to learn that no such license exists in Virginia. The for-profit college agreed to a \$5 million settlement, which also included significant injunctive relief for the benefit of future students.

Amador v. California Culinary Academy, Inc., (2012), Case No. CGC-07-467710 (Superior Ct. Cal.)

California Culinary Academy settled with a class of students who were enticed to enroll with inducements like a job placement rate of 97 percent, which was fabricated. The school “urged students to take on tens of thousands of dollars in government loans to pay for what many graduates considered substandard training.”²⁸³ The case resulted in distribution of \$40 million in cash (plus \$1.8 million of loan forgiveness).²⁸⁴

HOME AND MORTGAGE LOANS

Yarger v. ING Bank, FSB, (2014) No. 11-154-LPS (D. Del.).

ING Direct settled with a class of about 115,000 customers for failing to honor its “Rate Renew Guarantee” for Easy Orange Loan and Orange Loan home mortgages. Instead of the promised flat fee interest rate renewal, ING “added qualification requirements to the Rate Renew Guarantee not described in its advertising and increased the amount of the ‘flat fee’ it would charge.”²⁸⁵ ING agreed to pay \$20.35 million in cash, as direct, monetary relief in the form of an automatic cash payment to *every* member of the class, and every class member who does not opt out will receive a check in the mail.²⁸⁶



Ralston v. Mortgage Investors Group,

Countrywide Home Loans (2013), Case No. 5:08-cv-00536-JF (PSG) (Cir. Ct. W.V.)

Countrywide Home Loans and several other companies settled with homeowners for \$100 million (\$74.8 to be distributed to class members)²⁸⁷ “alleging that the Bank of America Corp.-owned lender deceptively lured consumers into buying loans with higher interest rates than originally promised....”²⁸⁸ This practice increased the volume of mortgage loans available to Countrywide to sell to investors, earning the corporations huge profits (over \$1 billion in pre-tax profits in 2005 and 2006, for example).²⁸⁹

Plascencia v. Lending 1st Mortgage, EMC Mortgage, et al (2013), Case No. 4:07-CV-04485-CW (N.D. Cal.)

EMC Mortgage Corporation, (“EMC”), settled with the class for approving misleading residential mortgage loans. These documents failed to disclose that making low payment amounts ensured that a consumer’s loan’s principal balance would increase.²⁹⁰ EMC provided \$1.7 million in settlement funds, and payments to class members ranged from \$505 to \$5,469.²⁹¹

Monaco v. Bear Stearns Residential Mortgage Corp., (2013), Case No. 2:09-CV-05438 (C.D. Cal.)

Bear Stearns settled with the class of homeowners for making material nondisclosures in Adjustable Rate Mortgage loan documents. Class members were to receive payments ranging from \$505 to \$5,469, depending on the original principal amount of the class member's loan, as well as the time period that the class member made payments for their loan.²⁹²

In Re: Wachovia Corp. "Pick-A-Payment" Mortgage Marketing And Sales Practices Litigation, (2011) Case No. 5:09-md-02015-JF (N.D. Cal.)

Wachovia Mortgage Corp settled with over 500,000 homeowners for failing to clearly disclose important information and for omitting information regarding their home loans. The homeowners were sold loans based on a low-fixed interest rate, but were ultimately charged a much greater interest rate. They were also not informed that negative amortization was guaranteed if they paid the rate quoted to them or that extricating themselves from the loan was incredibly difficult.²⁹³ The defendants agreed to a \$50 million settlement. They also implemented a loan modification program available to certain eligible class members.²⁹⁴

Richardson v. NationsCredit Financial Services Corporation (2008), Case No. 02-CVS-2398 (Super. Ct. N.C.); Williams v. EquiCredit, et al., Case No. 02-CVS-4972 (Super. Ct. N.C.)

NationsCredit Financial Services Corporation and EquiCredit Corporation of N.C, both subsidiaries of Bank of America, settled with two classes including 800 subprime mortgage borrowers in North Carolina after the companies engaged in deceptive and predatory lending. The companies settled for a total of \$38.75 million combined, or on average over \$31,500 for each class member, a portion of which was to be applied to deficiency balances.²⁹⁵

Farley v. Saxon Mortgage Co., Residential Funding Corp., Homeowners Loan Corp., Laredo National Bank (2007), Case No. 7:06-cv-01864 (N.D. Ala.)

A number of companies engaged in the business of buying and/or making federally-related mortgage loans settled with consumers for various illegal practices, including inflating closing fees, which were actually finance charges and subject to regulation.²⁹⁶ The companies settled with the class of consumers for \$10 million with \$7 million going directly to the class.²⁹⁷

Anderson v. National City Bank, (2007), Case No. Case No. 04-c-199-F (Cir. Ct. W.V)

National City Bank ("NCB") settled with a class of low-income residents of West Virginia who were issued secured home loans based on inflated appraisals to low-income residents. As part of the settlement, NCB completely paid off 59 mortgage loans, with an additional \$4,000 included. To each of the 40 class members who lost their homes as a result of foreclosure or bankruptcy, the company paid \$34,000, as well as \$27,250 to each of the 32 class members who remained in their homes but refinanced through another lender, and \$19,000 to each of 10 class members whose homes were sold or destroyed.²⁹⁸

INVASION OF PRIVACY

Countrywide Financial Corp. Customer Security Breach Litigation, (2010), Case No. 3:08-MD-01998-TBR, MDL 1998 (W.D. Ky.) Countrywide Financial, Countrywide Home Loans, and Bank of America settled with a class of customers for stealing thousands, perhaps millions of customer's private financial information to sell to third parties. After learning of the breach, Countrywide waited months to inform customers – exposing them to a high risk of identity theft and ruined credit histories – which made it impossible for plaintiffs to secure legitimate loans and lines of credit. Class members were eligible to receive up to \$50,000 per incident up to a total of \$5 million.²⁹⁹



Utility Consumers' Action Network, et al. v. Bank of America N.A., et al, (2007), 2007 Mealey's Jury Verdicts & Settlements 2869.

Bank of America settled with a class of customers for disclosing personal information to third party marketers without consent or notice, in exchange for money. Bank of America agreed to settle for \$10.75 million in benefits including an option of 12 months of free card registry service or 90 days of free privacy assist identity theft program services for eligible class members, as well as a privacy tool kit.

Kehoe v. Fidelity Federal Bank and Trust, (2006); 2006 Mealey's Jury Verdicts & Settlements 419.

Fidelity Federal Bank settled with a class of 565,000 customers for obtaining driver registration information, which it used for marketing, in violation of the Driver Privacy Protection Act. Fidelity settled for \$50 million, and agreed to destroy any personal information of class members allegedly obtained in violation of the Driver Privacy Protection Act.

LOAN BILLING PRACTICES

Connectivity Systems, Inc. v. National City Bank, (2010), Case No. 2:08-CV-01119 (S.D. Ohio)

National City Bank ("NCB") settled with a class of thousands for abusive commercial loan billing practices, like premature billing, failing to account properly for payments made by loan borrowers. Sometimes, NCB applied payments to interest that should have gone to reduce principal.³⁰⁰ As part of the settlement, NCB agreed to pay \$10 million to approximately 16,000 class members; about 98 percent of the checks sent were cashed.³⁰¹

SALES TAXES

Howard v. Sage Software Inc. (2013), Case No. BC-487140 (Super. Ct. Cal.)

Sage Software settled with customers in 15 states³⁰² who purchased its software via electronic

download and were wrongly charged sales taxes.³⁰³ According to the settlement, each class member received 115 percent of the sales tax that Sage Software collected.³⁰⁴

SPORTS TICKETS

Brotherson v. Professional Basketball Club, (2010), Case No. C07-1787 (RAJ) (W.D. Wash.)

The Professional Basketball Club (“PBC”), which owns the Supersonics – an NBA team that relocated from Seattle to Oklahoma City in 2008 - settled with a class of nearly 1,000 Seattle season ticket holders whom the team had coaxed into buying Seattle season tickets. The class said they should have been at least offered the chance to buy Oklahoma tickets first at the price set for the 2007-2008 season, as well as maintain their seating priority. PBC settled for \$1,600,000 with \$1,026,966.69 distributed to class members. As of September 15, 2011, checks were distributed to 858 of the 894 class members, totaling \$994,640.73.³⁰⁵

TAX REFUND LOANS

Hood v. Santa Barbara Bank and Trust, (2009), 49 Cal. Rptr. 3d 369 (Cal. Ct. App.). Santa Barbara Bank & Trust and Jackson Hewitt Tax Service, Inc. were involved with a product called a Refund Anticipation Loan (“RAL”), which “is a short-term loan that gets repaid from a consumer’s federal tax refund.”³⁰⁶ While denying the loans, they still used the tax refunds to pay off debts in violation of law. After nearly five years of litigation, the defendants were required to pay \$8.5 million as well as injunctive relief, agreeing to stop cross-collection practices.³⁰⁷

CIVIL RIGHTS AND EMPLOYMENT

DISABILITY/MEDICAL DISCRIMINATION

Cookson v. NUMMI, (2013), C10-02931 CRB (N.D. Cal.)

When New United Motors & Manufacturing, Inc. (“NUMMI”), California’s last auto plant, closed in 2011, those on “medical leave were denied severance benefits and transitional services that other employees received.” While “EEOC charges were pending,” a class action was filed and “the EEOC, NUMMI and the workers all agreed to resolve the matter” with a settlement totaling \$6 million, providing relief to over 500 workers.³⁰⁸



Vallabhapurapu v. Burger King Corporation, (2012), Case No. 11-0667 (N.D. Cal.)

Burger King settled with a class of disabled persons who alleged that 86 Burger King restaurants failed to be wheelchair accessible. The settlement totaled \$19 million and included injunctive relief to provide access to the 86 restaurants.³⁰⁹

National Federation of the Blind v. Target Corp. (2008); 452 F.Supp.2d 946 (2006)

The National Federation of the Blind (NFB) brought a class action against Target for denying the blind access to its website Target.com.³¹⁰ Target agreed to settle after the Court ruled that Target could be sued for inaccessibility to the blind. Target then settled for \$6 million - up to \$3,500 to each class member.³¹¹ The agreement also provided injunctive relief, including improvements to blind accessibility. The Court approved substantial attorneys fees for breaking “new ground in an important area of law.”

Access Now, Inc., et al. v. Crestwood Healthcare, L.P. (2007), Case No. 3:01-CV-00869 (N.D. Texas)

Sixty healthcare companies that own and operate hospitals and healthcare centers in the U.S. settled with a class of people with disabilities who alleged physical, structural, communication, and program barriers in these facilities.³¹² Settlements were reached from 2004 through 2007, which included facility modifications to improve access and usability to disabled people.³¹³ Settlements were also reached on January 29, 2007, and April 4, 2007, with 11 and 17 defendants, respectively.³¹⁴

Lucas v. Kmart, (2006), WL 722166 (D. Colo.)

Kmart settled with a nationwide class of disabled persons over inaccessibility of stores in violation of the Americans with Disabilities Act³¹⁵ agreeing to pay \$13,060,000 and make changes to increase accessibility to its stores, both inside and outside the building.

GENDER DISCRIMINATION³¹⁶

Ellis v. Costco Wholesale Corp., (2013), Case No. 3:04-cv-03341 (N.D. Cal.)

Costco agreed to settle a class action alleging that female warehouse workers were discriminated against in pay, promotion and working conditions. The case required nearly a decade of litigation to resolve class issues raised by the Supreme Court's *Wal-Mart* case.³¹⁷ Eventually, Costco settled for \$8 million³¹⁸ and agreed to revise its procedures to prevent future discrimination.³¹⁹



Carter v. Wells Fargo Advisors, LLC, (2011), Case No. 09-cv- 01752 (D.D.C.)

Wells Fargo agreed to settle a gender discrimination class action by about 1,200 female financial advisors who alleged discrimination in pay, promotion and other aspects of employment.³²⁰ The settlement totaled \$32 million, or about \$18,000 for each class member.³²¹ The settlement also provided injunctive relief to prevent future discrimination.

Velez v. Novartis Corp., (2010), Case No. 04-cv-09194 (S.D. N.Y.)

After losing a \$250 million punitive damage jury verdict for discriminating against female employees over promotion, pay, and pregnancy issues, Novartis agreed to settle for \$175 million, with \$22 million going towards injunctive relief to remedy discrimination. Nearly 6,200 women would be compensated under this agreement.³²²

Hubley v. Dell, (2009), Case No. 08-804 (W.D. Tex.)

Dell settled a class action brought by a class of female employees who alleged pay and promotion discrimination. The settlement totaled \$9.1 million including \$4.5 million for individual class members and \$3.5 million for base pay adjustments.³²³ Dell was also required to implement policy changes to prevent future discrimination.

Amochaev v. Citigroup Global Markets, Inc., d/b/a Smith Barney, (2008), Case No. C051-298 (PJH) (N.D. Cal.)

Smith Barney settled with a class of female financial advisors who charged that that Smith Barney engaged in a pattern and practice of gender discrimination with regard to pay, professional support and other terms of employment.³²⁴ The settlement totaled \$33 million³²⁵ for the 2,411 class members and included injunctive relief to end future discrimination.

Augst-Johnson v. Morgan Stanley DW Inc., (2007), Case No. 1-06-CV-01142 (RWR) (D.D.C)

Morgan Stanley settled with a class of female financial advisor trainees in the company's Global Wealth Management Group for gender discrimination in pay and promotion. The settlement of \$46 million included injunctive relief, requiring the company to fix its discriminatory practices.³²⁶

Carlson et al. v. C.H. Robinson Worldwide, Inc., (2005) U.S. Dist. LEXIS 5674 (D. Minn.)
CH Robinson settled with approximately 230 women who sued the freight service provider over pay and promotion gender discrimination. The settlement of \$15 million, or about \$31,500 per class member on average, also included injunctive relief, requiring the company to fix its discriminatory practices.³²⁷

RACIAL DISCRIMINATION

Cogdell et al. v. The Wet Seal, Inc., (2013), Case No. 8:12-cv-01138 (C.D. Cal.)

Clothing retailer Wet Seal agreed to settle a nationwide class action filed by a class of African-Americans alleging discrimination in pay, promotions and terminations. Wet Seal agreed to \$7.5 million, with \$5.58 million going to class members, as well as injunctive relief to end future discrimination.³²⁸

Davis v Eastman Kodak Co., (2010), Case Nos. 6:04-cv-6098, 6:07-cv-6512 (W.D.N.Y.)

Eastman Kodak agreed to settle a class action filed by a class of about 3,000 current and former African-Americans employees who alleged discrimination in “compensation, promotions, wage classifications and job assignments” as well as “harassment and creat[ing] a hostile work environment” including retaliation “against certain employees.”³²⁹ Kodak agreed to a settlement of \$21.4 million, including \$9.7 million in fees and costs. Notably, the Court said, “the Court would be remiss if it did not commend class counsel and all those who worked for firms representing the thousands of current and former employees of Kodak for the outstanding job they did in representing the interests of responsibilities were shared by Shanon Carson and Bruce Gerstein. Their legal work in an extraordinarily complex case was exemplary, their tireless commitment to seeking justice for their clients was unparalleled and their conduct as officers of the court was beyond reproach.”³³⁰

Tucker v. Walgreen Company, (2008), Case No. 3:05-cv-00440-GPM-CJP (S.D. Ill.)

In 2005, a nationwide class action was brought against Walgreens for racial discrimination in the hiring, promotion and store assignment practices of African-American employees. In 2007, the EEOC filed a similar lawsuit. The cases were consolidated and Walgreens settled both for \$25 million,³³¹ approximately \$20 million of which was allocated among roughly 10,000 class members.³³² The consent decree also provided injunctive relief to end the company’s discriminatory practices.

Wynne v. McCormick & Schmick’s Seafood Restaurants, Inc., (2008), No. 06-3153 (N.D. Cal.)

The upscale seafood restaurant chain, McCormick & Schmick’s Seafood Restaurants Inc., settled with a class of African American employees who charged discrimination in their hiring and pay.³³³ The settlement required McCormick & Schmick’s to pay \$1.1 million to the class and to change company practices to prevent future discrimination.

Warren et al. v. Xerox Corp., (2008), Case No. 1:01-cv-02909, (E.D.N.Y.)

Xerox settled with about 1,300 African American sales representatives who charged that the company discriminated regarding assigned sales territory and by denying sales commissions

as well as having an unfair promotion policy³³⁴ The settlement totaled \$12 million with each class member to receive between \$2,000 and \$4,000, and also equitable relief requiring Xerox to evaluate sales disparities.

Satchell v. FedEx Express, (2007), WL 2343904 (N.D. Cal.)

Fed Ex settled with African-American and Latino workers for the western region (hourly employees and operations managers) over discrimination in pay, promotions and employment conditions for \$54.85 million.³³⁵ FedEx was also required to implement several policy changes to prevent future discrimination.

Smith, Keith et al. v. Nike Retail Services, Inc., (2007), Case No. 03-C-09110 (N.D. Ill.)

Nike settled with about 400 African American employees working in Niketown Chicago over allegations of race discrimination in pay and working conditions. In addition to a settlement totaling \$7.6 million, the class obtained company changes to prevent future discrimination.³³⁶

McReynolds v. Sodexo Marriott Servs., Inc., (2005), Case No. 1:01-cv-0510 (D.D.C.)

Sodexo Marriott Servs agreed to settle a class action filed by a class of African-Americans alleging discrimination in managerial, salaried positions. Sodexo Marriott agreed to pay up to \$80 million and take steps to prevent future discrimination.³³⁷

Gonzalez v. Abercrombie & Fitch Stores, Inc., (2005), Nos. 3:04-cv-2817, 3:04-cv-4730, #:04-cv-4731 (N.D. Cal.)

In 2003, a nationwide class action was brought against Abercrombie & Fitch for racial discrimination with respect to hiring, job assignment, firing, compensation and other employment matters. In 2004, the EEOC filed a similar lawsuit. Then in 2004, a private class action was filed against Abercrombie alleging gender discrimination. The cases were consolidated and Abercrombie settled for \$40 million as well as injunctive relief to end future race and gender discrimination.³³⁸

WAGE AND HOUR EMPLOYMENT

Given the number of such cases that have been brought over the years, only very recent settlements are listed here.

Carrillo v. Schneider Logistics et al., (2014), Case No. 2:2011-CV-08557 (C.D. Cal.)

Schneider Logistics Transloading and Distribution Inc. (“Schneider”), a Wal-Mart contractor whose workers load and unload trucks at Wal-Mart warehouses, settled with a class of over 1,000 employees at a California Wal-Mart warehouse facility for wage and hour violations. The class alleged that in many instances, the company failed to pay even minimum wage and committed overtime and other violations. The company Schneider agreed to settle the case for \$21 million in unpaid wages and other penalties.³³⁹

Bozak v. FedEx Ground Package System Inc., (2014), Case No. 3:11-CV-00738 (D. Conn.)

FedEx Ground Package System, Inc. (“FedEx”) settled with a class of employees for failing to pay its salaried service managers overtime compensation because it mislabeled these employees

as exempt from overtime. FedEx agreed to pay \$2 million in settlement funds, with payouts being determined by a formula based on the number of weeks eligible class members worked during the class period.³⁴⁰

Tacker, et al. v. Compass Health Inc., et al., (2014), Case No. 2:13-CV-02261 (C.D. Cal.)
Compass Health Inc. (“Compass”), “an operator of skilled nursing facilities [and] one of the largest health care providers in the California Central Coast,”³⁴¹ settled with a class of employees for failing to pay overtime, failing to provide required breaks and overworking them, leading to unsafe conditions for Compass’ patients.³⁴² Compass agreed to pay \$1.1 million in damages to the class of workers.³⁴³

Myszka v. National Collegiate Scouting Association, Inc., (2014), Case No. 1:13-CV-01259 (N.D. Ill.)
National Collegiate Scouting Association Inc. (“NCSA”), an organization that markets software for matching athletics with collegiate programs and coaches, set up meetings between possible customers and “scouts” who sell NCSA software access. NCSA settled with a class of about 300 “scout coordinators” for failing to pay overtime wages when they worked over 40 hours a week. NCSA agreed to settle for \$1.6 million, with over \$1 million delegated to class members, with an average payment of \$3,949.55 to each class member.³⁴⁴

Jones, et al. v. Canon Business Solutions, Inc., (2014), Case No. 2:12-CV-07195 (C.D. Cal.)
Canon settled with a national class of service technicians over a faulty unfair time-keeping system that calculated breaks for employee service technicians automatically, even docking pay if employees took no meal breaks at all. Canon agreed to settle for \$4.4 million.³⁴⁵

Kidd v. Rally’s and Checkers, (2014), Case No. 1:12-CV-00157 (S.D. Ohio)
Checkers and Rally’s restaurant chain businesses, which merged in 1999,³⁴⁶ settled with a class of about 500 managers at Michigan, Ohio, Kentucky, and Arkansas restaurants for working employees off the clock, changing employee time records and putting them on extended off-the-clock breaks during which they were not allowed to leave the premises. Under the terms of the settlement, the restaurants would provide \$500,000 in settlement funds, to be divided among class members, with individual awards ranging between \$900 and \$2,000.³⁴⁷

Wilson, et al. v. Walgreen Co., (2014), Case No. 2:11-cv-07664 (E.D. Cal.)
Walgreen Corporation settled with “non-exempt employees” (assistant managers and pharmacy technicians) for denial of meal and rest breaks, as well as for not providing accurate wage statements and other practices. Walgreen settled nine consolidated cases. The settlement of \$23 million will cover approximately 40,000 employees.³⁴⁸



Hegab et al. v. Family Dollar Stores Inc., (2014), Case No. 2:11-cv-01206 (D.N.J.)

Family Dollar Stores Inc. settled with current and former store managers in New Jersey for misclassifying them as exempt from overtime wages, in violation of state and federal law. The settlement provides for \$1.15 million and will cover claims of approximately 517 class members.³⁴⁹

Wilkie v. Gentiva Health Services, (2013), Civ. No. 10-1451 FCD/GGH (E.D. Cal.)

Gentiva Health Services, a home health services corporation, settled with employees, mostly registered nurses, physical therapists, and occupational therapists, who were not paid overtime, were not paid for all the hours they worked and were not given proper break times required by law.³⁵⁰ Gentiva settled for \$5 million, with a 99 percent class payout.³⁵¹

PRODUCTS

AUTOMOBILE AND VEHICLE DEFECTS

Soto, et al. v. American Honda Motor Co., Inc., (2013), Case No. 3:12-cv-01377 (N.D. Cal.)
Honda settled with a class of more than 1.87 million owners or lessees of Honda vehicles over defective Accords and other models that could experience engine misfires, excessive oil burning and spark plug fouling. Honda agreed to extend the warranty of each eligible vehicle up to eight years and to reimburse for any paid repairs.³⁵² Honda failed in its attempt to force the case into arbitration, since those clauses were found in the plaintiffs' contracts with the finance company not in any manufacturer agreement.³⁵³

Aarons v. BMW of North America LLC, (2013), Case No. 2:11-cv-07667-PSG-CW (C.D. Cal.)

BMW of North America, LLC ("BMW") settled with a class of hundreds of customers who purchased first generation Mini Cooper Coupes whose transmissions were "prone to sudden premature failure,"³⁵⁴ thus creating both a financial loss to customers and the risk of car crash. The class was provided reimbursements for transmission repairs and to customers who sold their MINI due to this defect.³⁵⁵ The class attorney reported that about 1,200 cars had transmissions replaced at a BMW dealership and that the total number of claimants "could number in the tens of thousands."³⁵⁶



In Re: Toyota Motor Corp. Unintended Acceleration Marketing, Sales Practices, And Products Liability Litigation, (2013), Case No. 8:10-ML-2151, (C.D. Cal.)

Toyota agreed to a \$1.6 billion settlement for financial losses to vehicle owners due to "unintended acceleration."³⁵⁷ About 3.25 million vehicles were involved, and this settlement includes installation of a brake-override system, reimbursements and at least 3 years of coverage for repairs and adjustments required to correct specified defects.³⁵⁸

Klee et al. v. Nissan North America Inc. et al, (2013), Case No. 2:12-cv-08238-DDP-PJW (C.D. Cal.)

Nissan settled with the nationwide class of about 18,588 purchasers of the all-electric Nissan Leaf, which had a defective lithium-ion battery. Nissan agreed to expand battery warranties for the batteries, valued at about \$10 million dollars.³⁵⁹

In Re: Navistar Diesel Engine Products Liability Litigation, (2012), MDL No. 2223 (N.D. Ill.)

Ford's 6.0-liter PowerStroke diesel engine had defects, which led to poor engine performance, difficulty starting the vehicle's engine and engine stalling.³⁶⁰ Ford's settlement provided the

approximately 1.1 million class members³⁶¹ with repair reimbursements, which should equal about 50 percent of the average amounts paid by class members.³⁶²

Milligan, et al. v. Toyota Motor North America, Inc. and Toyota Motor Corporation, (2011), Case No. 3:09-CV-05418-RS (N.D. Cal.)

Toyota settled with a class of certain Toyota RAV4 customers for an engine control module (“ECM”) defect that caused a condition potentially resulting in transmission failure. Toyota agreed to notify all class members of the defect, provide warranty enhancement, provide repairs at no cost to the class member or provide reimbursements for repairs already made.³⁶³

Bauer v. Toyota Motor Sales U.S.A., Inc., Case No. BC375017, (2010), (Super. Ct. Cal.)

Toyota settled with a class of owners/lessees of certain model ScionxB vehicles for concealing a defect in the windshields that made them more likely to crack. Under the settlement agreement, Toyota agreed to replace the windshields or reimburse for expenses related to the defect, as well as to extend the windshield warranty for the class.³⁶⁴

David v. American Suzuki Motor Corporation and Suzuki Motor Corporation, (2010), Case No. 1:08-cv-22278-ASG (S.D. Fla.)

Suzuki settled with a class of certain Suzuki GSX-R1000 motorcycle owners over a defect that created a weakness in the motorcycle frame. The company provided a \$5 million settlement fund, including a \$500 credit to eligible class members for the purchase of a new Suzuki motorcycle or a \$40 credit for the purchase of Suzuki parts or service. In addition, Suzuki extended the frame warranty to 10 years from the date the class members’ frame was repaired or replaced under the safety recall.³⁶⁵

Vizzi v. Mitsubishi Motors North America Inc., (2009), Case No. 8:08-cv-00650 (C.D. Cal.)

Mitsubishi settled with a class of Mitsubishi owners whose cars experienced paint fading and peeling in violation of industry standards. Mitsubishi agreed to provide partial reimbursement to eligible class members for the costs of repainting their cars, or to pay a direct cash payment, depending on the mileage of the car, the number of the years the car has been out of warranty and the length of the initial warranty.³⁶⁶

McGee v. Continental Tire North America Inc., (2009), Case No. 2:06-cv-06234 (D. N.J.)

Continental Tire North America settled with a class of customers for failing to warn them about a brand of tires that suffered abnormal and early tread wear and needed to be replaced within 20,000 miles of use. Continental agreed to pay “no less than \$5 million and no more than \$8 million” for valid class member claims, with eligible members receiving up to \$90 per tire.³⁶⁷

Olson v. Volkswagen of America, Inc., (2008), Case No. 2:07-CV-05334-R-JTL (C.D. Cal.)

Volkswagen settled with a class of past and present owners/lessees of certain Audis and Volkswagens with defective timing belt systems. Volkswagen and Audi agreed to pay 100 percent of the expenses for covered engine damage as well as revise the cars’ maintenance schedule for the timing belt system and provide an extended warranty of up to 105,000 miles covering repair damage to the timing belt system and related engine damage.³⁶⁸

Meckstroth v. Toyota Motor Sales USA Inc. et al., (2007), Case No. 583-318 (24th Judicial District, Jefferson Parish, La.)

Toyota settled a class action lawsuit brought on behalf of millions of people whose cars may have been damaged and even made inoperable by oil gel or sludge. After extensive litigation and mediation, Toyota settled, agreeing to repair damages to cars and/or full payment or reimbursement of reasonable damages or expenses related to oil gel issues.³⁶⁹

Lubitz, et al. v. DaimlerChrysler Corp., (2006), Case No. L-4883-04 (Super. Ct. N.J.)

DaimlerChrysler settled with a class of people in the U.S. who bought or leased certain model year Jeep Grand Cherokees with defective brakes. DaimlerChrysler agreed to a \$14.5 million settlement fund, with \$12 million going to class members for the cost of repairs and replacements of their brakes within their warranty period. In addition, \$2.5 million would be dedicated to brake inspection for additional model years.³⁷⁰

OTHER PRODUCT/EQUIPMENT PROBLEMS

Reid, et al. v. Unilever United States, Inc., et al., (2014), Case No. 12-CV-6058 (N.D. Ill.)

Unilever settled with a class of customers over Suave Professionals Keratin Infusion 30-Day Smoothing Kit for causing hair or scalp injury and for failing to disclose the products' risks. Unilever settled for \$10.25 million, including reimbursement for product purchase and to treat customers who suffered bodily injury to their hair or scalp.³⁷¹

Mahan et al. v. Trex Company, Inc., (2013), Case No. CV 09-00670-JSW (N.D. Cal.)

Trex, a "manufacturer of 'wood-alternative' decking, railing and fencing products,"³⁷² settled with a class of Trex customers who were sold defective decks with mold spotting and fungal growth. The settlement required Trex to pay up to a total of \$8.25 million to the class, "provide qualified claimants a one-time cash payment or the opportunity to receive other relief, including a rebate certificate on its newer-generation shelled products"³⁷³ and change their business practices.³⁷⁴

Price, et al. v. BP Products North America Inc., (2013), Case No. 12-cv-06799 (N.D. Ill.)

BP settled with a class of customers for selling tainted "bad" gasoline to up to 10,000 people³⁷⁵ at approximately 585 gas stations or outlets in Wisconsin, Ohio, Illinois and Indiana, damaging cars,³⁷⁶ with many "crippled and in need of significant repairs."³⁷⁷ The settlement required BP to pay up to \$5 million, reimbursing customers for their gas purchases or the cost of repairs resulting from the tainted gasoline, as well as towing and alternate transportation costs. Over 7,900 people filed claims for repairs to their vehicles.³⁷⁸

In re Apple iPhone/iPod Warranty Litigation, (2013), Case Number 10-01610, (N.D. Cal.)

Apple's iPhone and iPod touch devices had a defective moisture detection indicator that could be triggered by moisture or humidity falsely indicating liquid damage, which in turn wrongly voided the customer's warranty. Apple provided \$53 million to settle with the class of about 153,000 customers who had been denied warranty coverage because of this defect. Individual payouts ranged between \$105 and \$300 each.³⁷⁹

Wolph v. Acer America Corporation Source, (2013), Case Number 3:09-cv-01314 (N.D. Cal.)

Acer settled with a class of over one million customers whose notebooks repeatedly froze and crashed, lacking enough RAM to run properly and failing to comply with Microsoft's minimum system requirements.³⁸⁰ Under the terms of this \$22.7 million settlement,³⁸¹ if class members had spent up to \$100 on repairs, that amount would be reimbursed. They were also provided either a 16 GB USB Flash Drive, a \$10.00 check or a 1GB or 2GB laptop memory dual in-line memory module.³⁸²

Grays Harbor Adventist Christian Sch. v. Carrier Corp., (2008), Case No. 05-05437 (W.D. Wash.)

Carrier Corporation ("Carrier") settled with a class of nearly half a million customers who bought high-efficiency condensing furnaces that did not work properly and caused damage and expensive repairs. Carrier agreed to pay \$270 per class member and include a 20-year warranty for their furnaces.³⁸³

Parker, et al. v. Berkeley Premium Nutraceuticals, Inc. f/k/a LifeKey, Inc. and Warner Healthcare, Inc., (2006), Case No. 2004-CV-01903 (Ct. Com. Pl. Ohio)

Berkeley Premium Nutraceuticals settled with a class of individuals after failing to honor a marketing scheme for a male enhancement product ("Enzyte"), which it falsely advertised as increasing erectile function and size or "double your money back." Enzyte failed to perform as advertised and the money back guarantee was not honored. Under the settlement, Berkeley agreed to pay \$4.7 million in settlement funds.³⁸⁴

FOOD AND WATER

FALSE MARKETING/LABELING

Larsen v. Trader Joe’s Co. (2014) Case No. 3:11-cv-05188 (N.D. Cal.)

Traders Joes settled with a nationwide class for falsely advertising that many of its products were “all-natural” even though they contained synthetic ingredients, violating FDA rules and other laws.³⁸⁵ The settlement required the company to pay \$3.375 million, with customers generally reimbursed for their purchases. Trader Joe’s also agreed to stop using the “All Natural” or “100 percent Natural” labels on these products.³⁸⁶

TAINTED PET FOOD

In Re: Pet Food Products Liability Litigation, (2008), 629 F.3d 333, 337 (3d Cir. 2010)

Menu Foods settled with a class of pet owners whose dogs and cats were hurt or killed due to the contamination of over 50 brands of dog food and over 40 brands of cat food across the U.S., leading to “the largest pet food recall in history.”³⁸⁷ The settlement created a \$24 million fund, allowing class members to recover up to 100 percent of their economic damages or \$900 without documentation.³⁸⁸



Bass v. Diamond Pet Food, (2007), Case No. 3:05-CV-586 (E.D. Tenn.)

Dog food manufacturers Schell & Kampeter, Inc. (Diamond Pet Foods) settled with the class of dog owners due to an alleged food contamination, setting up a fund of \$1.86 million and an additional \$1.24 million available to the class if necessary to satisfy all claims.³⁸⁹

UNSANITARY RESTAURANTS

Johnson v. Houlihan’s Rests., (2008), Case No. 07-ARK-91 (Ill. Cir. Ct.)

Houlihan’s Restaurant settled with a class of customers who were potentially exposed to Hepatitis A at Houlihan’s in Geneva, Illinois through an employee and were forced to get an immune-globulin vaccination after alerts by the county health department. Houlihan’s settled for \$300,000, with each eligible class members receiving \$161.55 in compensation.³⁹⁰

WATER SUPPLY CONTAMINATION

City of Greenville, et al., v. Syngenta Crop Protection, Inc., and Syngenta AG, (2012), Case No.:310-sv-0018-JPG-PMF (S.D. Ill.)

Syngenta settled with approximately 1,930 Community Water Systems, which provide water to more than 2.3 million people, for injury to their property rights. Syngenta manufactures atrazine, an herbicide that contaminated all of the plaintiffs’ water systems. The plaintiffs had to test, monitor, filter and remove the herbicide. Syngenta settled for \$105 million, which was distributed to the class based on the levels of contamination they suffered.³⁹¹



Class of Fuller Heights Residents v. CSX Transportation Inc.; KC Industries and Land O' Lakes Purina Feed LLC, (2011), Case No. 2007CA-006859-0000-00 (Fla. Cir. Ct.)

KC Industries, CSX Transportation Inc. and Land O' Lakes Purina settled with a class of residents of the Fuller Heights community in Florida. The companies' chemicals poisoned the community groundwater causing numerous medical issues, including higher rates of cancer. KC Industries filed for bankruptcy and settled separately for \$1.6 million. The remaining parties settled for \$2 million, with each resident expected to receive about \$18,000.³⁹²

HEALTH CARE AND NURSING HOMES

DENIAL OF BENEFITS

Johns v. Blue Cross Blue Shield of Michigan, (2009), Case No. 08-12272 (E.D. Mich.)

Blue Cross Blue Shield settled with a class of Michigan families for failing to cover established Applied Behavioral Therapy for autism, calling it “experimental.” Blue Cross Blue Shield agreed to “reimburse all class members” who paid for this therapy, including the families of at least 100 children.³⁹³



Health Net Class Action Litigation, (2008), Case No. 05-0301 (D. N.J.)

Health Net settled three consolidated class actions for providing inadequate reimbursement to members for in-network and out-of-network services by using Ingenix databases and other similar methods that were out of date and inaccurate, thereby lowering company costs and increasing profits. “After seven years of ‘extraordinarily contentious’ litigation,”³⁹⁴ the Court approved a settlement whereby Health Net would pay \$175 million. In addition, Health Net would provide changes to its business practices, with an estimated value “between \$26 million and \$38 million,”³⁹⁵ including reforming the database system.³⁹⁶

DeVito, et al. v. Aetna Inc., (2008), Case No. 2:07-cv-00418-FSH-PS (D.N.J.)

Aetna settled with a class of persons covered under its health insurance policies and its N.J. affiliates over Aetna’s practice of setting limitations on payments and denial/reduction of coverage for the treatment of patients with eating disorders. The parties settled for \$250,000, and Aetna was required to cover eating disorders as a non-biologically based mental illness.³⁹⁷

Horton, et al. v. Wellpoint Inc., et al., (2010), Case No. BC341823 (Super. Ct. Cal.)

Blue Cross of California settled with two classes of Californians whose plans were rescinded after retroactive review based on a health history questionnaire. Blue Cross agreed to make significant business changes, including discontinuing retroactive cancellations and “review[ing] the claims for the approximately 6,000 [insured individuals] that were rescinded and compensat[ing] those who qualify accordingly.”³⁹⁸

INVASION OF PRIVACY

Bouchard v. Optometrix, (2011), Case No. BC416146 (Super. Ct. Cal.)

Optometrix and related companies and individuals settled with a class of customers and employees who were recorded or monitored in examination rooms, violating their privacy and creating emotional distress, among other things. The defendants paid \$899,565 in settlement funds, divided among eligible class members depending on if they were customers or employees, and whether or not they were recorded in the exam rooms or only monitored.³⁹⁹

MANUFACTURER ANTITRUST

In Re: Hypodermic Products Direct Purchaser Antitrust Litigation, (2009), Case No. 2:05-CV-01602-JLL-MAH (D. N.J.)

Becton, Dickinson and Company (“BD”) settled with a class of about 1,600 members for violating antitrust laws (e.g., bundling goods, exclusionary contracts) while selling BD Hypodermic Products, including needles and syringes, blood collection devices, IV catheters, and insulin delivery devices.⁴⁰⁰ The class alleged they were forced to pay inflated prices for products as a result of these anticompetitive practices. BD settled for \$45 million, to be distributed pro rata to eligible class members.⁴⁰¹

Spartanburg Regional Health Services Inc., et al. v. Hillenbrand Industries Inc., (2006), Case No. 03-2141 (D.S.C.)

Hillenbrand Industries Inc., Hill-Rom Inc. and Hill-Rom Co. Inc. (“Hillenbrand”), “the nation’s largest manufacturer of caskets and hospital beds,”⁴⁰² settled with a class of buyers or renters of hospital beds and in-room products, for antitrust violations (a bundled pricing scheme) in an attempt to monopolize the sales of specialty hospital beds. Hillenbrand charged supracompetitive prices and provided discounts only if the buyers agreed to buy its specialty hospital beds. Hillenbrand agreed to pay \$316 million to be distributed to eligible class members.⁴⁰³

NURSING HOMES

Lavender v. Skilled Healthcare Group, (2010), Case No. DR060264 (Super. Ct. Cal.)

Skilled Healthcare Group settled with a class of approximately 32,000 current and former residents of Skilled Healthcare LLC health and rehabilitation facilities, including family members of residents, who sued Skilled Healthcare Group for understaffing in their facilities in violation of California state law. The settlement of \$50 million also included injunctive relief valued at approximately \$12.8 million, requiring Skilled Healthcare Group to staff their facilities to meet state-mandated minimum requirements.⁴⁰⁴



PROVIDER REIMBURSEMENT

Sutter v. Horizon Blue Cross Blue Shield of New Jersey, (2007), Case No. ESX-L-3585-02 (Super. Ct. N.J.)

Horizon Blue Cross Blue Shield of New Jersey settled with a class of health care providers over Horizon’s alleged “repeated, improper, unfair and deceptive acts and practices designed to delay, deny, impede and reduce compensation to the providers.”⁴⁰⁵ The settlement provided for business changes to Horizon, valued at approximately \$39 million, including changes to its fee schedule availability, disclosure of claim edits that result in reduced or denied compensation and improved provider relations, among others.⁴⁰⁶

CONCLUSION

Class actions are among the most important tools for justice we have in America. Without them, many cheated and violated individuals and small businesses would be unable to recover stolen money, stop discrimination, hold large corporations accountable for wrongdoing or deter future misconduct. Class actions have been used to protect us all from a wide array of abuses, from consumer fraud to civil rights violations to anticompetitive conspiracies to environmental harm to automotive defects to health care abuses.

Corporate lobbyists and litigators continuously try to increase the burdens on those seeking to use the class action tool. In recent years, they have achieved considerable success. Between legislative acts and a series of U.S. Supreme Court decisions, the availability of class actions has been limited to a point where now, in some areas, they are headed for extinction. If this happens, it would cut an irreparable swath through the state of justice in America. It is up to Congress and federal regulatory agencies to prevent this from happening. Let's hope they do.

NOTES

¹ According to the Class Action Fairness Act, defendants in class actions that involve more than \$5 million when any class member resides in a different state than any defendant (unless two thirds of the class and the primary defendants are in the state where the case was originally filed) can remove them to federal court. 28 U.S.C. Sections 1332(d). *See also* Terry Carter, “A Step Up in Class,” *ABA Journal*, May 1, 2008, http://www.abajournal.com/magazine/article/a_step_up_in_class/.

² Todd Ruger, “Sequestration outlook bleak for federal courts,” *National Law Journal*, March 8, 2013.

³ Testimony of Thomas M. Cobol, Partner, Hagens Berman Sobol Shapiro LLP, before the Subcommittee on the Constitution of the Committee on the Judiciary, U.S. House of Representatives, “Class Actions Seven Years After the Class Action Fairness Act,” June 1, 2012, http://judiciary.house.gov/hearings/Hearings_percent202012/Sobol_percent2006012012.pdf.

⁴ Testimony of John H. Beisner On Behalf of the U.S. Chamber Institute for Legal Reform before the Subcommittee on the Constitution of the Committee on the Judiciary United States House of Representatives, “Class Actions Seven Years After the Class Action Fairness Act,” June 1, 2012, http://judiciary.house.gov/_files/hearings/Hearings%202012/Beisner%2006312012.pdf.

⁵ 131 S.Ct. 2541 (2011).

⁶ *Ibid.*

⁷ Seyfarth Shaw, “Ninth Annual Workplace Class Action Litigation Report” (January 2013), http://www.seyfarth.com/dir_docs/publications/CAR2013preview.pdf.

⁸ Andrew Longstreth, “Wal-Mart v Dukes shakes up employment class actions,” *Thomson Reuters News and Insight*, January 9 2012, http://newsandinsight.thomsonreuters.com/Legal/News/2012/01_-_January/Wal-Mart_v_Dukes_shakes_up_employment_class_actions/.

⁹ 131 S. Ct. 1740, 1748 (2011).

¹⁰ *Discover Bank v Superior Court*, 36 Cal. 4th 148, 113 P.3d 1100 (2005).

¹¹ 133 S. Ct. 2304 (June 20, 2013).

¹² Testimony of Alan Carlson before the U.S. Senate Committee on the Judiciary regarding, “The Federal Arbitration Act and Access to Justice: Will Recent Supreme Court Decisions Undermine the Rights of Consumers, Workers and Small Businesses?” at 1, December 17, 2013, <http://www.judiciary.senate.gov/imo/media/doc/12-17-13CarlsonTestimony.pdf>.

¹³ *Ibid.*

¹⁴ *Ibid.*

¹⁵ Respondent’s Brief, *American Express Co. v. Italian Restaurant*, No. 12-133, January 22, 2013, http://www.americanbar.org/content/dam/aba/publications/supreme_court_preview/briefs-v2/12-133_resp.authcheckdam.pdf (argued February 27, 2013).

¹⁶ *See, e.g.*, NAACP Legal Defense & Educational Fund, Inc. in Support of Respondents in the case, *AT&T Mobility LLC v. Concepcion*, 131 S. Ct. 1740 (2011), http://www.americanbar.org/content/dam/aba/publishing/preview/publiced_preview_briefs_pdfs_09_10_09_893_RespondentAmCuNAACPLDEF.authcheckdam.pdf.

¹⁷ Quoting Judge Richard Posner of the U.S. Court of Appeals for the Seventh Circuit in *Carnegie v. Household Int’l, Inc.*, 376 F. 3d 656, 661 (7th Cir. 2004).

¹⁸ Mark A. Cohen, “Imperfect Competition in Auto Lending: Subjective Markup, Racial Disparity, and Class Action Litigation,” Vanderbilt Law and Economics Research Paper No. 07-01 (December 14, 2006) at 1, <http://ssrn.com/abstract=951827>.

¹⁹ The Center for Responsible Lending and civil rights groups continue to make this a priority issue. *See, e.g.*, Center for Responsible Lending, “Civil Rights Leaders, Consumer Advocates to Address Abuses in Auto Lending During Capitol Hill Briefing,” May 15, 2014, <http://www.responsiblelending.org/media-center/press-releases/archives/Capitol-Hill-Briefing-to-Address-Abuses-in-Auto-Lending.html>.

²⁰ Consumer Financial Protection Bureau, “CFPB Proposes New Federal Oversight of Nonbank Auto Finance Companies,” September 17, 2014, <http://www.consumerfinance.gov/newsroom/cfpb-proposes-new-federal-oversight-of-nonbank-auto-finance-companies/>.

²¹ Ian Ayres, “Market Power and Inequality: A Competitive Conduct Standard for Assessing When Disparate Impacts are Justified,” 95 *Cal. L. Rev.* 669, 714-5 (2007), http://digitalcommons.law.yale.edu/fss_papers/1168.

²² *Baltimore v. Toyota Motor Credit Corporation*, No. CV-01-05564-FMC (Mcx) (C.D. Cal.)(Revised Order of Preliminary Approval of Settlement, Exhibit B-1(A)) at 22.

²³ *Id.* at 23.

²⁴ *Id.* at 23-24.

²⁵ *Id.* at 25.

²⁶ *Ibid.*

²⁷ *Id.* at 37.

²⁸ *Id.* at 38.

²⁹ Mark A. Cohen, “Imperfect Competition in Auto Lending: Subjective Markup, Racial Disparity, and Class Action Litigation,” Vanderbilt Law and Economics Research Paper No. 07-01 (December 14, 2006) at 34, <http://ssrn.com/abstract=951827>.

³⁰ *Baltimore v. Toyota Motor Credit Corporation*, No. CV-01-05564-FMC (Mcx) (C.D. Cal.)(Final Judgment and Order of Dismissal With Prejudice, November 6, 2006).

³¹ We should note that at least two other cases settled before 2005 – the cut-off for inclusion in this study. We mention them here only because they had similar results. See *Coleman v. General Motors Acceptance Corporation*, (2004), Case No. 3-98-0211 (M.D. Tenn.), and *Cason v. Nissan Motors Acceptance Corporation*, (2003), Case No. 3:98-0223 (M.D. Tenn.). See also National Consumer Law Center, <http://www.nclc.org/litigation/case-index-closed-cases.html>.

³² National Consumer Law Center, “*Borlay v. Primus Automotive Financial Services, Inc. and Ford Motor Company: Frequently Asked Questions*,” at 5, <http://www.nclc.org/images/pdf/litigation/closed/primus-faq.pdf>.

³³ National Consumer Law Center, “*Jones, et al. v. Ford Motor Credit Company: Frequently Asked Questions*” at 5, <http://www.nclc.org/images/pdf/litigation/closed/fmcc-faq.pdf>; *Jones v. Ford Motor Credit Company*, Case No 00-CIV-8330 (S.D.N.Y.)(Settlement Agreement, November 18, 2005), <http://www.nclc.org/images/pdf/litigation/closed/fmcc-settlement-agreement.pdf>.

³⁴ *Willis v. American Honda Finance Corporation*, Case No. 3-02-0490 (Settlement Agreement, January 21, 2005 at 13-16), http://www.nclc.org/images/pdf/litigation/closed/ahfc_settlement-agreement.pdf.

³⁵ “Notice of Proposed Class Action Settlement: *Smith, et al. v. DaimlerChrysler Services North America*,” July 26, 2005, http://www.nclc.org/images/pdf/litigation/closed/chrysler_notice_settlement.pdf; National Consumer Law Center, “*Smith v. Daimler Chrysler Financial: Frequently Asked Questions*” at 5, <http://www.nclc.org/images/pdf/litigation/closed/chrysler-faqs.pdf>.

³⁶ Pew Charitable Trusts, “A Short History of Payday Lending Law,” July 18, 2012, <http://www.pewtrusts.org/en/research-and-analysis/analysis/2012/07/a-short-history-of-payday-lending-law>.

³⁷ *Ibid.*

³⁸ Alyssa Peterson, “Predatory Payday Lending: Its Effects and How to Stop It,” *Center for American Progress*, August 20, 2013,

<http://www.americanprogress.org/issues/economy/report/2013/08/20/72591/predatory-payday-lending/>.

³⁹ *Ibid.*

⁴⁰ *Edwards v. Geneva-Roth Capital, Inc.*, Cause No. 49C01-1003-PL-013084 (Marion Cty Cir. Ct., Ind.)(Order Granting Final Approval to Class Action Settlement Agreement, December 19, 2013), <http://media.ibj.com/Lawyer/websites/opinions/index.php?pdf=2013/december/Payday.pdf>; *Geneva-Roth Capital, Inc. v. Edwards*, 956 N.E.2d 1195 (Ind. Ct. App. 2011), *trans. denied* 969 N.E.2d87 (Ind. 2012), *cert. denied* 133 S. Ct. 650 (U.S. 2012).

⁴¹ *Reuter v. CNG Financial Corporation*, Case No. CL 01-1164AI (Palm Beach Cty. Cir. Ct., Fla.)(Complaint and Demand For Jury Trial; Injunctive Relief Sought, February 1, 2001 at 4), <http://cdn.trustedpartner.com/docs/library/LeopoldKuin2011/Legal%20Updates%20&%20Complaints/Reuter-v-CNG-Complaint.pdf>.

⁴² *Ibid.*

⁴³ *Id.* at 4-5.

⁴⁴ *Id.* at 6.

⁴⁵ *Id.* at 7.

⁴⁶ *Ibid.*

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- ⁴⁷ *Reuter v. CNG Financial Corporation*, Case No. CL 01-1164AI (Palm Beach Cty. Cir. Ct., Fla.)(Order on Defendant's Motion To Lift Stay, Compel Arbitration, And Stay Proceedings And Order Staying Action And Compelling Arbitration, December 12, 2006 at 2), http://bankrupt.com/misc/ChecknGoOpinion_121206.pdf.
- ⁴⁸ *Reuter v. CNG Financial Corporation*, Case No. CL 01-1164AI (Palm Beach Cty. Cir. Ct., Fla.)(Amended Class Action Settlement Agreement, November 1, 2007 at 5), http://publicjustice.net/sites/default/files/downloads/CNG_SA_filed_11_1_2007_uneceuted.pdf.
- ⁴⁹ *Reuter v. CNG Financial Corporation*, Case No. CL 01-1164AI (Palm Beach Cty. Cir. Ct., Fla.)(Complaint and Demand For Jury Trial; Injunctive Relief Sought, February 1, 2001 at 3-4), <http://cdn.trustedpartner.com/docs/library/LeopoldKuvin2011/Legal%20Updates%20&%20Complaints/Reuter-v-CNG-Complaint.pdf>.
- ⁵⁰ *Id.* at 18.
- ⁵¹ Order on Defendant's Motion To Lift Stay, Compel Arbitration, And Stay Proceedings And Order Staying Action And Compelling Arbitration, *Reuter v. Check 'N Go*, Case No. 502001CA001164XXXXMB (December 12, 2006).
- ⁵² National Arbitration Forum, "Florida Court Rules That Bar on Class-Wide Proceedings is Unenforceable" (viewed October 4, 2014), http://www.adrforum.com/adr_CaseDetails.aspx?caseid=641.
- ⁵³ Amended Class Action Settlement Agreement, *Reuter v. CNG*, Case No. 502001CA001164XXOCAI (November 1, 2007).
- ⁵⁴ *Ibid.*
- ⁵⁵ "Calculation of Net Settlement Funds, *Reuter v. Check 'n Go*," http://publicjustice.net/sites/default/files/downloads/CNG_-_Net_Settlement_Fund_Calc_Revised.pdf (viewed October 9, 2014).
- ⁵⁶ *Ibid.*
- ⁵⁷ Second Amended Class Arbitration Demand, *Murdock v. Thomas*, Case No. 11-148-Y-01805-07 (August 6, 2008).
- ⁵⁸ Class Action Complaint, *Murdock v. Progressive Management Solutions, Inc.*, Case No 06-CVS-6CV-01865 (July 10, 2006).
- ⁵⁹ First Amended Complaint, *Murdock v. Thomas*, Case No. 06-CVS-01865 (October 19, 2007).
- ⁶⁰ *Ibid.*
- ⁶¹ *See* Class Action Complaint, *Murdock v. Progressive Management Solutions, Inc.*, Case No 06-CVS-6CV-01865 (July 10, 2006); *see also* First Amended Complaint, *Murdock v. Thomas*, Case No. 06-CVS-01865 (October 19, 2007).
- ⁶² First Amended Complaint, *Murdock v. Thomas*, Case No. 06-CVS-01865 (October 19, 2007).
- ⁶³ *Ibid.*
- ⁶⁴ First Amended Complaint, *Murdock v. Thomas*, at 33, Case No. 06-CVS-01865 (October 19, 2007).
- ⁶⁵ The defendants in the Class Action Complaint included Progressive Management Solutions, Inc., N.I.S., Inc., Paycheck Advance, Inc., Durham Investment Services, Inc., Internet Money, Inc., Raleigh Investment Services, Inc., Modem Money, Inc., and Statesville Investment Services. *See* Class Action Complaint, *Murdock v. Progressive Management Solutions, Inc.*, Case No 06-CVS-6CV-01865 (July 10, 2006).
- ⁶⁶ *See, e.g.*, Womble Carlyle, "Today at the Court of Appeals: *Murdock v. Thomas*," February 22, 2011, http://womblencappellate.blogspot.com/2011_02_01_archive.html.
- ⁶⁷ First Amended Complaint, *Murdock v. Thomas*, at 2, Case No. 06-CVS-01865 (October 19, 2007).
- ⁶⁸ *Ibid.*
- ⁶⁹ *Ibid.*
- ⁷⁰ First Amended Settlement Agreement, *Murdock v. Thomas*, Case No. 06-CVS-01865 (September 27, 2011).
- ⁷¹ Class Action Administration - Cases, *Murdock v. Thomas*, <http://www.classactionadmin.com/Cases.aspx?caseType=13>.
- ⁷² First Amended Settlement Agreement, *Murdock v. Thomas*, at 12, Case No. 06-CVS-01865 (September 27, 2011).
- ⁷³ *Ibid.*
- ⁷⁴ National Consumer Law Center, *Restoring the Wisdom of the Common Law: Applying the Historical Rule Against Contractual Penalty Damages to Bank Overdraft Fees* (July 2013) at 1, http://www.nclc.org/images/pdf/high_cost_small_loans/common-law-overdraft-fees.pdf.

⁷⁵ *Id.* at 2.

⁷⁶ *Id.* at 4.

⁷⁷ Consumer Financial Protection Bureau, *Data Point: Checking Account Overdraft* (July 2014), http://files.consumerfinance.gov/f/201407_cfpb_report_data-point_overdrafts.pdf.

⁷⁸ *In Re: Checking Account Overdraft Litigation* (Bank of America), Case No. 1:09-md-02036-JLK; *Tornes v. Bank of America, N.A.*, Case No. 1:08-cv-23323-JLK (S.D. Fla.); and *Yourke, et al. v. Bank of America, N.A.*, Case No. 1:09-cv-21963-JLK (S.D. Fla.), Case No. 3:09-2186 (N.D. Cal.).

⁷⁹ Settlement Agreement, *In Re: Checking Account Overdraft Litigation* (Bank of America), Case No. 1:09-md-02036-JLK (May 6, 2011); Notice of Class Action Settlement, *In Re: Checking Account Overdraft Litigation* (Bank of America), Case No. 1:09-md-02036-JLK.

⁸⁰ Settlement Agreement, *In Re: Checking Account Overdraft Litigation* (Bank of America), Case No. 1:09-md-02036-JLK (May 6, 2011).

⁸¹ Settlement Agreement, *In Re: Checking Account Overdraft Litigation* (U.S. Bank), Case No. 1:09-md-02036-JLK (July 24, 2013).

⁸² Settlement Agreement and Release, *In Re: Checking Account Overdraft Litigation* (PNC Bank), 1:09-MD-02036-JLK (January 3, 2013).

⁸³ Settlement Agreement, and Release, *In Re: Checking Account Overdraft Litigation* (Susquehanna Bank), 1:09-MD-02036-JLK (November 7, 2013).

⁸⁴ Settlement Agreement and Release, *In Re: Checking Account Overdraft Litigation* (Compass Bank), 1:09-MD-02036-JLK (March 12, 2013).

⁸⁵ Settlement Agreement and Release, *In Re: Checking Account Overdraft Litigation* (JPMorgan Chase Bank), 1:09-MD-02036-JLK (October 15, 2012).

⁸⁶ Settlement Agreement and Release, *In Re: Checking Account Overdraft Litigation* (Citizens Bank), 1:09-MD-02036-JLK (September 18, 2012).

⁸⁷ Settlement Agreement and Release, *In Re: Checking Account Overdraft Litigation* (Commerce Bank), 1:09-MD-02036-JLK (August 14, 2012).

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