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HOW CONSUMER FINANCIAL CLASS ACTIONS HELP AND PROTECT AMERICANS

When a company receives a large windfall through small injuries to large numbers of people, a class action lawsuit is the only realistic way that harmed individuals can legally challenge this wrongdoing. As U.S. Supreme Court Justice Stephen Breyer put it, “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.”¹ Class actions have also been called “a market-based solution for addressing widespread breaches of contract, violations of property rights, and infringements of other legal rights,” as the conservative House Liberty Caucus explained earlier this year.² And while the class action device may not have existed at the founding of this nation, it is also true that the Founders wanted everyday Americans to have unobstructed access to the courts as a vital protection against tyranny and injustice, which is why they preserved the right to civil jury trial in the 7th Amendment.

To highlight the recent importance and effectiveness of class actions, the Center for Justice & Democracy at New York Law School (CJ&D) released a 2014 study titled *First Class Relief: How Class Actions Benefit Those Who Are Injured, Defrauded And Violated*.³ This study compiled more than 150 class actions tried and settled since 2005 involving a wide range of cases that have both helped victims of corporate law-breaking and led to changes in corporate behavior that protect us all from many types of illegal conduct.

Three years before *First Class Relief* was published, the U.S. Supreme Court issued a decision allowing culpable companies to unilaterally ban class actions against them via forced arbitration clauses, which are found in many contracts today.⁴ On July 19, 2017, the Consumer Financial Protection Bureau (CFPB) took an important final step to restore some of the constitutional rights stripped away by the Court.⁵ The CFPB established a new public protection to help individuals defrauded or cheated by financial institutions that violate the law. Specifically, the agency banned “class action waivers” in contracts between customers and banks, lenders, credit card companies and other financial institutions.

In an effort to keep the CFPB rule from taking effect, banks and lenders continue to publicly disparage class actions. In response, CJ&D has compiled a short selection of consumer financial class actions that have settled in recent months. The cases again illustrate how class actions not only help victims of predatory lending and other illegal financial practices, but also result in

injunctive relief that holds large corporations and institutions accountable while deterring future misconduct.

BANK OPENED FRAUDULENT BANK ACCOUNTS IN CUSTOMERS' NAMES, CHARGED THEM FEES AND RUINED THEIR CREDIT

Jabbari v. Wells Fargo & Co., (2017), Case No. 15-CV-02159-VC (N.D. Cal.)

Wells Fargo settled with customers whose credit scores were harmed after thousands of bank employees opened as many as 3.5 million fake checking and credit card accounts in customers' names to meet the company's aggressive sales goals.⁶ As reported by the *Los Angeles Times*, the \$142 million class-action agreement "will cover customers who had unauthorized accounts opened beginning May 1, 2002. Customers will be compensated for the fees they were charged based on the number of unauthorized accounts."⁷ Notably, the "settlement marks a reversal from just a few months ago when [Wells Fargo] tried to kill a fake account [class action] lawsuit by forcing victims to resolve their claims quietly in closed-door arbitration instead of open court."⁸ The bank continues to use forced arbitration clauses and class action bans in customer agreements.

BANK ILLEGALLY FROZE BANK ACCOUNT FUNDS

Cruz v. TD Bank, N.A., (2017), Case No. 1:10-cv-08026-PKC (S.D.N.Y.)

TD Bank settled with customers who alleged that the bank had improperly frozen judgment-exempt money in their accounts.⁹ Under the settlement, TD agreed to change its bank practices to make it significantly easier for class members and future judgment debtors to access exempt monies. As *Law360* explained, "Within 90 days of the entry of judgment, TD customers with restrained accounts – currently able only to access unrestrained funds by visiting a branch – will be able to withdraw money using an ATM card after calling a toll-free number. And within six months, the bank will manually review checks and ACH payments from restrained accounts and pay out when there are sufficient exempt funds...."¹⁰ The agreement also included a \$500,000 settlement, where "[e]ach authorized claim will get \$125 'representing any uncredited restraint fee' imposed by TD and refunds of the documented overdrafts related to the restraint or, if no proof is submitted, \$20," *Law360* reported.¹¹ As of May 2017, over 1,300 class members had submitted claims.¹²

BANK ILLEGALLY PULLED CREDIT REPORTS, OR MADE CREDIT INQUIRIES THAT HURT CUSTOMERS' CREDIT SCORES

Pastor v. Bank of America, (2016), Case No. 3:15-cv-03831-MEJ (N.D. Cal.)

BofA settled with more than half a million former customers whose credit reports were pulled by the bank in violation of the Fair Credit Reporting Act.¹³ More specifically, BofA had made credit inquiries without customers' permission after they'd filed for bankruptcy and had debts to

the bank discharged. Under the agreement, BofA pledged to pay a settlement fund totaling \$1.645 million.

Heaton v. Social Finance Inc., (2016), Case No. 3:14-cv-05191-TEH (N.D. Cal.)

Social Finance Inc. settled with customers after the online lender ran “hard pull” credit inquiries on them between November 20, 2013 and August 13, 2014 in violation of federal and state laws.¹⁴ According to the complaint, SoFi had deceived prospective borrowers into thinking that the company would only do soft credit inquiries, which wouldn’t affect their credit scores. Under the settlement, more than 10,700 consumers were eligible to receive \$164 each, with SoFi also agreeing to work with a credit bureau to delete any record of SoFi’s hard credit inquiries from class members’ credit files.

BANK CHARGED FRAUDULENT MORTGAGE FEES

Bias v. Wells Fargo & Co., (2016), Case No 4:12-cv-00664-YGR (N.D. Cal.)

Wells Fargo settled with a class of over 250,000 mortgage holders who were unaware they’d been assessed fraudulent fees between May 6, 2005 and July 1, 2010 after defaulting on their mortgage loans.¹⁵ The agreement provided class members with \$36 million in automatic payouts as compensation.

LENDER CHARGED ILLEGAL INTEREST RATES ON LOANS AND THEN TRIED TO COLLECT THE DEBT

Inetianbor v. CashCall Inc., (2016), Case No. 0:13-cv-60066-JIC (S.D. Fla.)

CashCall settled with borrowers who were charged illegal interest rates in violation of Florida state law.¹⁶ The agreement provided more than \$10 million in relief to over 26,000 customers. In addition, the company agreed to stop all servicing and collection activities on class members’ outstanding loans and was enjoined from conducting any loan activities within Florida.

COMPANIES ILLEGALLY CUT ACCESS TO PREPAID CARDS OR PROFITED FROM UNUSED PAID-FOR GIFT CARDS.

Crook v. Green Dot Corp., (2016), Case No. 2:16-cv-04172-DSF-JPR, and Lewis v. Green Dot Corp., (2016), Case No. 2:16-cv-03557-FMO-AGR (C.D. Cal.)

Green Dot and Mastercard settled with tens of thousands of Walmart MoneyCard holders after transaction processing problems left customers without access to their accounts for several days in May 2016.¹⁷ As a result, many customers were unable to pay for essential goods and services, such as food and rent, since the accounts were their only source of money. The \$6.4 million settlement included a two-month waiver of account maintenance fees and provided class members with a \$50, \$100 or \$750 credit to their account depending on their eligibility.

Fuentes v. UniRush, LLC, (2016), Case No 1:15-cv-08372-JPO (S.D.N.Y.)

UniRush settled with thousands of prepaid debit cardholders who were shut out of their accounts for long stretches of time between October 12 and October 31, 2015.¹⁸ Because of the service disruption, which affected more than 442,000 consumers, many customers couldn't pay for daily living expenses, missed bill payments or experienced problems with their account balances, among other harms. Under the \$19 million settlement, class members were eligible to receive up to \$500 in reimbursement for losses suffered during the service disruption plus reimbursement of fees.

Cody v. SoulCycle Inc., (2017), Case No. 2:15-cv-06457-GHK-JEM (C.D. Cal.)

SoulCycle settled with customers after the company illegally profited from unused, expired gift certificates at consumers' expense.¹⁹ The settlement, valued between \$6.9 million and \$9.2 million, provided each class member with a choice of compensation: 1) payment of up to \$50, the cash equivalent of two classes; or 2) reinstatement of up to two expired classes, potentially totaling up to 230,000 reinstated classes based on how many class members elected the cash option. In addition, SoulCycle agreed to change its business practices by being more transparent about the differences between purchasing a class or series of classes vs. the purchase of a gift certificate or gift card.

NOTES

¹ *AT&T v. Concepcion*, 131 S. Ct. 1740, 1761 (2011) (Breyer, J., dissenting), 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).

² House Liberty Caucus, "HLC statement on #HR985, Fairness in Class Action Litigation Act of 2017," March 9, 2017, <https://twitter.com/libertycaucus/status/839967179495837696>

³ Center for Justice & Democracy, *First Class Relief: How Class Actions Benefit Those Who Are Injured, Defrauded And Violated* (2014), <https://centerjd.org/content/first-class-relief-how-class-actions-benefit-those-who-are-injured-defrauded-and-violated>

⁴ *AT&T v. Concepcion*, 131 S. Ct. 1740 (2011).

⁵ 82 Fed. Reg. 33210 (July 19, 2017), <https://www.federalregister.gov/documents/2017/07/19/2017-14225/arbitration-agreements>

⁶ David Ng, "Judge approves \$142-million class-action settlement in Wells Fargo sham accounts scandal," *Los Angeles Times*, July 9, 2017, <http://www.latimes.com/business/la-fi-wells-fargo-settlement-20170709-story.html>;

Dion Rabouin and Lauren Tara LaCapra, "Wells Fargo says closer to reaching \$142 million phony accounts settlement," *Reuters*, July 9, 2017, <https://www.reuters.com/article/us-wells-fargo-lawsuit-idUSKBN19V01J>

⁷ David Ng, "Judge approves \$142-million class-action settlement in Wells Fargo sham accounts scandal," *Los Angeles Times*, July 9, 2017, <http://www.latimes.com/business/la-fi-wells-fargo-settlement-20170709-story.html>

⁸ Matt Egan, "Wells Fargo customers in \$110 million settlement over fake accounts," *CNN Money*, March 29, 2017, <http://money.cnn.com/2017/03/29/investing/wells-fargo-settles-fake-account-lawsuit-110-million/index.html>

⁹ Stipulation and Agreement of Settlement and Release, *Cruz v. TD Bank, N.A.*, Case No. 1:10-cv-08026-PKC (January 16, 2017), <http://www.bankfeesettlement.com/pdf/Settlement-Agreement.pdf>. See also, William Gorta,

"TD Bank Nears Class Action Settlement Over Account Freezes," *Law360*, May 25, 2017,

<https://www.law360.com/articles/928620/td-bank-nears-class-action-settlement-over-account-freezes>

¹⁰ William Gorta, "TD Bank Nears Class Action Settlement Over Account Freezes," *Law360*, May 25, 2017,

<https://www.law360.com/articles/928620/td-bank-nears-class-action-settlement-over-account-freezes>

¹¹ *Ibid.*

¹² *Ibid.*

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- ¹³ Melissa Daniels, “BofA’s \$1.65M Settlement For FCRA Claims Gets Early OK,” *Law360*, Jul 10, 2017, <https://www.law360.com/articles/942587/bofa-s-1-65m-settlement-for-fcra-claims-gets-early-ok>; Order of Preliminary Approval of Class Action Settlement, *Pastor v. Bank of America*, Case No. 3:15-cv-03831-VC (July 7, 2017), <https://www.courtlistener.com/docket/4495193/55/pastor-v-bank-of-america/>; Class Action Complaint, *Pastor v. Bank of America*, Case No. 3:15-cv-03831-VC (August 21, 2015), <https://www.courtlistener.com/docket/4495193/1/pastor-v-bank-of-america/>
- ¹⁴ Melissa Daniels “SoFi Pays \$2.4M To Settle Action Over Hard Credit Inquiries,” *Law360*, August 10, 2016, <https://www.law360.com/articles/826789/sofi-pays-2-4m-to-settle-action-over-hard-credit-inquiries>; Settlement Agreement, *Heaton v. Social Finance Inc.*, Case No. 3:14-cv-05191-TEH (April 7, 2016), <https://secure.dahladmin.com/SOFI/content/documents/SettlementAgreement.pdf>. *See also*, Legal Notice of Settlement, *Heaton v. Social Finance Inc.*, Case No. 3:14-cv-05191-TEH, <https://secure.dahladmin.com/SOFI/content/documents/Notice.pdf>
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- ¹⁶ Order of Final Approval and Settlement, *Inetianbor v. CashCall Inc.*, Case No. 0:13-cv-60066-JIC (May 15, 2017), <https://secure.dahladmin.com/FLCALL/content/documents/OrderOfFinalApprovalandJudgment.pdf>; Stipulation of Settlement and Agreement, *Inetianbor v. CashCall Inc.*, Case No. 0:13-cv-60066-JIC (December 23, 2016), <https://secure.dahladmin.com/FLCALL/content/documents/ClassSettlementAgreementWithExhibits.pdf>. *See also*, Settlement Notice, *Inetianbor v. CashCall Inc.*, Case No. 0:13-cv-60066-JIC, <https://secure.dahladmin.com/FLCALL/content/documents/LongFormNotice.pdf>
- ¹⁷ Kat Green, “Green Dot, MasterCard Reach Deal Over Debit Disruption,” *Law360*, December 6, 2016, <https://www.law360.com/articles/869384/green-dot-mastercard-reach-deal-over-debit-disruption>. *See also*, Martin O’Sullivan, “Green Dot, MasterCard Get Initial Nod For Debit Glitch Deal,” *Law360*, June 13, 2017, <https://www.law360.com/articles/933962/green-dot-mastercard-get-initial-nod-for-debit-glitch-deal>; First Amended Class Action Complaint, *Lewis v. Green Dot Corporation*, Case No. 2:16-cv-03557-FMO-AGR (February 10, 2017), <https://www.greendotservicedisruption.com/Content/Documents/Complaint.pdf>; Class Action Complaint, *Crook v. Green Dot Corporation*, Case No. 2:16-cv-04172-DSF-JPR (June 10, 2016), <https://www.plainsite.org/dockets/download.html?id=237286420&z=69347518>
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