

# CONSUMER FINANCIAL SERVICES: SUPERVISION, ENFORCEMENT & LITIGATION

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Davis Wright Tremaine LLP (DWT) is a firm of approximately 550 lawyers in nine offices in the U.S. and China. DWT's consumer financial services (CFS) team is a market leader in transactional work for card and payment businesses; regulatory compliance advice for financial institutions; counseling emerging payments and FinTech businesses; and defending supervision, enforcement, and litigation matters. The team includes approximately 25 full-time lawyers, each of whom focuses exclusively on CFS in one or more of those four areas. This core team is supported by approximately 90 other lawyers throughout the firm, who provide expertise in antitrust, trademark and IP, data privacy and security, and other areas. More information is available on our CFS team website, [www.paymentlawadvisor.com](http://www.paymentlawadvisor.com).

DWT's CFS supervision, enforcement, and litigation practice represents depository institutions, credit card issuers, merchant acquirers, payment processors, FinTech and technology companies, auto lenders and servicers, mortgage lenders and servicers, retailers, and other CFS companies and service providers in all aspects of their government examinations, investigations, enforcement actions, and class action litigation. We advise clients on responding to government inquiries concerning compliance with the Dodd-Frank Act and other federal and state consumer financial laws, and with respect to all aspects of their consumer financial products and services. These include cards and other traditional payment products as well as all forms of prepaid and emerging payments, including FinTech.

Our team includes former regulators—including partners who worked at the Consumer Financial Protection Bureau (CFPB), Federal Reserve Board, and the offices of state attorneys general—as well as in-house counsel from major financial institutions. The makeup of our team informs our approach to assisting clients with challenging matters: a combination of practical advice focused on minimizing business impact and insight into how to most effectively work toward resolution with regulators.

## Litigation

We regularly represent financial institutions and service providers in federal and state enforcement litigation, consumer class action litigation, and in third-party subpoena matters. We have defended clients in numerous class actions involving claims under the Fair Housing Act, the Equal Credit Opportunity Act, the Civil Rights Acts, federal securities laws, unfair and deceptive business practice statutes, and numerous state consumer protection, sales practices, privacy and anti-discrimination statutes. Our team also has experience in connection with the investigation and litigation of allegations of unfair or deceptive conduct in connection with debt collection, auto financing, and student lending at the state level.

## *Representative Experience*

### **Credit Cards and Other Payment Instruments**

- Representation of payment processors and related entities in responding to subpoenas and complaints from various state financial regulators regarding potential money transmission licensing requirements
- Representation of a consumer payments FinTech company in responding to a civil investigative demand (CID) from the CFPB
- Representation of a provider of gift cards in a consumer arbitration alleging failure to activate cards upon purchase, resulting in complete defense award
- Representation of a private-label credit card issuer in connection with the bankruptcy of multiple retailers
- Representation of a national retailer in putative class action alleging violation of a state's gift card act by failure to redeem gift cards with balance less than \$5 on demand
- Representation of a financial institution in connection with an investigation and subsequent litigation in which regulators, including the CFPB and FDIC, alleged credit card issuer engaged in deceptive marketing and sales practices related to its "add-on" products\*
- Investigation and litigation concerning payment processors' alleged unfair conduct and substantial assistance of collection agency's alleged illegal conduct \*

### **Mortgage**

- Representation of a national bank in numerous lawsuits relating to foreclosures and lender liability claims, including defense of class action lawsuit relating to recording fees
- Representation as lead counsel for Freddie Mac in consumer class action against all major lenders and loan services alleging improper foreclosures based on the theory that loan-servicer advances in securitized mortgage backed securities cured any default by the borrower; responsible for drafting and filing the lead joint brief for multiple lenders
- Representation of a financial services company in a state's Supreme Court against allegations of violations of the state's mortgage statute and the state's consumer protection act in connection with issues related to foreclosure procedures and foreclosure sales
- Representation of a financial institution in obtaining dismissal of TILA, RESPA, quiet title, and wrongful foreclosure claims
- Representation of a bank in a lawsuit involving fraud and consumer protection act claims arising out of residential loan transactions
- Representation of a bank in obtaining dismissal of TILA and RESPA claims stemming from loan origination based on FDIC Purchase and Assumption Agreement and federal holder-in-due course status; and dismissal of 14 separate post-foreclosure claims allegedly stemming from the state's mortgage statute

- Representation of a bank in a successful defense against claims that its deed of trust on property was unenforceable under state law
- Litigation of alleged violations of RESPA, Regulation X\*
- Litigation of subprime lender's alleged unfair and deceptive mortgage loan origination and sales practices\*

#### **Fair Credit Reporting Act (FCRA)**

- Representation of multiple clients in connection with litigation exposure and compliance issues regarding the Fair Credit Reporting Act and the Fair and Accurate Credit Transactions Act (such as the "truncation" requirement)
- Representation of an international coffee chain in a Fair Credit Reporting Act putative class action regarding a pre-adverse action notice
- Representation of a financial institution in a putative class action asserting Fair Credit Reporting Act claims regarding background check disclosure forms

#### **Telephone Consumer Protection Act (TCPA) and Similar State Laws**

- Representation of a financial institution in a putative nationwide class action, alleging the company placed calls in violation of the TCPA, and putative statewide class action alleging violation of the state's telephone consumer protection laws and consumer protection act
- Representation of a business lender in a putative nationwide class action alleging company placed calls in violation of the TCPA
- Representation of a financial services company in putative statewide class action alleging violation of the state's telephone consumer protection laws and consumer protection act

#### **Bank Secrecy Act/Anti-Money Laundering (BSA/AML)**

- Representation of a commercial bank in connection with the DOJ's "Operation Chokepoint" investigation regarding alleged BSA/AML violations; we obtained a favorable settlement with the DOJ as the result of our creative strategy to obtain a court order transferring control of a customer reserve account to the bank
- Representation of a financial services company in defense of claims alleging violations of TILA and RICO as well as claims for mail fraud, wire fraud, money laundering, criminal profiteering, promissory estoppel, and emotional distress, stemming from the refusal to modify plaintiff's loan
- Investigation and litigation of payment processors' Know Your Customer policies and practices for compliance with Dodd-Frank Act

### **Fair Debt Collection Practices Act (FDCPA)**

- Representation of creditors, law firms, and collection agencies in defending against claims under the FDCPA and state collection agency acts, including securing dismissal of dozens of claims on motion practice
- Investigation and litigation of student lender's alleged unfair and deceptive practices and violations of the FDCPA\*
- Investigation and litigation concerning collection agencies' alleged violations of FDCPA and unfair and deceptive acts and practices\*
- Investigation and litigation concerning collection agency's alleged failure to comply with state licensing requirements \*

### **Supervision**

We counsel clients—including banks and non-bank lenders, credit card and consumer finance lenders, and loan originators and servicers—on a broad range of examination, compliance, and risk management issues. We routinely assist depository institutions and non-depository larger participants in a wide range of regulatory examinations and related inquiries. Our familiarity with regulators and their current issues of concern enables us to help institutions mitigate problem areas in the examination process.

### *Representative Experience*

- Representation of many financial institutions in connection with responding to Proposed Action and Request for Response (PARR) and Notice and Opportunity to Respond and Advise (NORA) letters
- Representation of a bank in connection with possible TILA violations related to its internet portal for billing error resolution
- Representation of a top-five payment processor in connection with its response to a civil investigative demand
- Representation of a regional bank in connection with a DOJ investigation
- Representation of a mortgage lender to determine readiness for the new Home Mortgage Disclosure Act (HMDA) rules\*
- Advising on an FHA investigation of a mortgage company\*
- Providing exam support concerning a student loan servicer, mortgage originator, mortgage servicer, and small-dollar lender\*
- Providing guidance on compliance with Equal Credit Opportunity (ECOA) and Truth in Lending Act (TILA) requirements during regulatory examinations\*

## Enforcement

We represent financial services companies and service providers in investigations and other matters involving the CFPB, the DOJ, the Federal Trade Commission, the Securities and Exchange Commission, the Office of Foreign Assets Control within the U.S. Department of the Treasury, the Federal Reserve Board, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, state attorneys general, congressional committees, and other federal and state enforcement and regulatory agencies. We help financial services firms respond to investigations, including civil investigative demands and investigative hearings, focused on all aspects of consumer lending and financial institution practices.

## *Representative Experience*

- Representation of a financial institution in CFPB supervisory and enforcement process leading to a stipulated consent order
- Representation of a national bank on a CFPB mortgage origination examination PARR Letter alleging violations of ECOA, HMDA, RESPA, TILA, and UDAP; the matter was resolved confidentially
- Representation of a federal savings bank against which the CFPB had launched an enforcement action relating to HMDA; achieved favorable resolution for the bank
- Representation of large financial services companies in investigations and enforcement actions conducted by the CFPB
- Representation of a major loan servicer in monitoring compliance by its foreclosure and bankruptcy counsel with the recent settlement with the OCC, FDIC, and Federal Reserve Board
- Representation of a major bank to address alleged discriminatory card terms against consumers in Puerto Rico, the U.S. Virgin Islands, and other U.S. territories\*
- Representation of a major bank in connection with alleged illegal credit card practices including unfair billing tactics and deceptive marketing with respect to credit card “add-on products”\*
- Representation of a bank to address deficiencies in anti-money laundering compliance that were connected to a former check-cashing business\*
- Representation of a bank in an enforcement action related to the bank’s AML/BSA practices\*
- Investigation and resolution by multi-state group of attorneys general of massive data security breach\*
- Investigation of merchant acquiring bank’s Know Your Customer policies and practices\*
- Investigation and resolution by consent order concerning lead generator’s alleged substantial assistance of unfair and deceptive acts and practices\*

\* Denotes experience completed at a prior firm

## The DWT Team

DWT's CFS Supervision, Enforcement, and Litigation practice is led by partners Jonathan Engel, a former enforcement attorney at the CFPB, and Robin Nunn, formerly in-house counsel at two major financial institutions. Our broader team includes attorneys on both the east and west coasts who have extensive experience in a range of matters, from mortgage to collections and bankruptcy to internal investigations.



**Jonathan B. Engel** // PARTNER // WASHINGTON, D.C.

Admitted in Massachusetts only. Supervised by Partners in the Washington, D.C. office.

Jonathan Engel is the co-leader of the Supervision, Enforcement, and Litigation practice within Davis Wright Tremaine's Consumer Financial Services group. He focuses his practice on consumer financial services litigation, enforcement, and counseling. As a former enforcement attorney at the Consumer Financial Protection Bureau (CFPB) and Assistant Attorney General in Massachusetts, Jonathan has experience leading large, complex, precedent-setting litigation and enforcement proceedings involving consumer financial protection laws at both the federal and state levels. He has investigated, litigated and settled matters related to payment processing, debt collection, mortgage origination and servicing, real estate settlement, student lending, and a massive data security breach.

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**Robin Nunn** // PARTNER // NEW YORK & WASHINGTON, D.C.

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Robin Nunn is the co-leader of the Supervision, Enforcement, and Litigation practice within Davis Wright Tremaine's Consumer Financial Services group. She represents corporate and individual clients in matters initiated by federal and state government regulators, as well as in class action litigation and internal investigations. As a former in-house legal executive, she advised multiple lines of business – including mortgages, credit cards, auto, investing, and commercial and personal deposit products---in connection with compliance with consumer protection laws and pre-enforcement matters relating to a broad array of consumer financial products and services, including responding to a Notice and Opportunity to Respond and Advise (NORA) or Proposed Action and Request for Response (PARR) letters. Ms. Nunn is active in the American Bar Association's Business Law Section, where she is Vice Chair of the Consumer Financial Services Committee and Banking Law Committee's Task Force on Diversity and Inclusion.

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**Joseph E. Addiego III** // PARTNER // SAN FRANCISCO

Partner-in-Charge, San Francisco

Joe Addiego is a seasoned first-chair trial lawyer who focuses on class action defense and mortgage litigation. Joe has represented financial institutions, technology companies, large corporations, wireless carriers, insurers, and emerging companies in a multitude of commercial disputes in both state and federal courts. Joe also has guided many of his clients through binding arbitration. Joe is the Co-Chair of the firm's class action subgroup of the litigation practice group.

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**Fred B. Burnside** // PARTNER // SEATTLE

Co-chair, Class Action Defense Group

Fred Burnside concentrates his practice in complex civil litigation, with particular emphasis on consumer class action defense, and he assists clients with issues related to the Truth in Lending Act (TILA) and Real Estate Settlement Procedures Act (RESPA). He is co-chair of Davis Wright Tremain's class action defense group, and Co-Chair of the ABA's Consumer Class Action section of litigation.

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**Jeffrey B. Coopersmith** // PARTNER // SEATTLE & LOS ANGELES

Jeffrey B. Coopersmith is a veteran trial lawyer with an extensive practice focusing on civil and criminal matters, internal investigations for private and public entities, and complex commercial litigation. A former federal prosecutor, Jeff has substantial experience as lead counsel representing companies and individuals, both in the U.S. and abroad, in connection with investigations and criminal and civil enforcement proceedings in the banking and financial services sector and many other areas. Jeff's internal investigation work has involved representation of Board committees, companies, municipalities, and corporate officers. Among other things, Jeff is currently representing a bank in connection with the Department of Justice's "Operation Chokepoint" investigation concerning alleged failures to follow BSA and AML requirements, and he defended the former CFO of the largest mortgage lender in the country in connection with claims brought by the SEC and other federal agencies.

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**James Howard** // PARTNER // SEATTLE

Jim Howard has an extensive background in complex commercial litigation with a focus on class actions, government litigation, and securities. He has counseled and represented clients in the defense of class actions under the Fair Credit Reporting Act related to mandatory disclosures imposed on employers when obtaining or retaining consumer reports on potential or current employees. Jim also advises clients on Fair Credit Reporting Act and Fair and Accurate Transaction Act liability and compliance issues.

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**Jonathan M. Lloyd** // PARTNER // WASHINGTON, D.C. & SEATTLE

Admitted to practice in Washington State and New York.

Jonathan Lloyd focuses his practice on complex civil litigation, financial services regulatory and litigation matters, and international arbitration. Jonathan has extensive experience representing financial institutions in individual and class action litigation, including defending claims under the Truth in Lending Act, the Real Estate Settlement Procedures Act, various state consumer protection acts, and Regulation Z. He has also counseled and represented financial institutions in connection with supervisory audits and enforcement actions by the Consumer Financial Protection Bureau and New York Stock Exchange, and has advised payment processors and money transmitters regarding various states' money transmitter laws and interactions with state regulators.

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**Hugh McCullough** // PARTNER // SEATTLE

Deputy Chair, Litigation Practice

Hugh McCullough advises clients in complex commercial litigation, bankruptcies, state court receiverships, in-court and out-of-court restructurings, and secured financing transactions. He has handled cases in a variety of courts including arguments in the Washington Supreme Court, Washington Court of Appeals, and the 9th Circuit Court of Appeals.

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**Ken Payson** // PARTNER // SEATTLE

Co-chair, Class Action Defense Group; Chair, Hiring Committee

Ken Payson co-chairs the firm's Class Action Defense Group. His practice focuses on class action defense, other complex commercial litigation and appellate work, particularly with respect to claims under state and federal statutes and regulations regarding privacy, consumer protection, employment, and product liability. He has repeatedly been selected as one of the "Best Lawyers in America" in commercial litigation by Best lawyers and as a "Washington Super Lawyer" by Thomson Reuters. Ken represents clients from a variety of industries, including financial services, telecommunications, software, and digital and print media companies. He has obtained numerous orders dismissing putative class actions or denying class certification and has successfully defended them on appeal. He serves as lead counsel in class actions across the nation. He has a particular practice focus defending so-called "blast text," "blast fax," and robocall class actions involving claims under the federal Telephone Consumer Protection Act (TCPA) and similar state laws restricting unsolicited faxes and the use of autodialer, prerecorded, or artificial voice to place texts or calls.

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**Sanjay M. Nangia** // COUNSEL // SAN FRANCISCO

Sanjay Nangia focuses on business litigation. Sanjay has represented technology companies, financial institutions, and many other businesses in a multitude of commercial disputes in both state and federal courts. He assists clients with a range of consumer protection issues and regulatory law in retail financial services, including money transmission laws, Regulation E, and the Electronic Fund Transfer Act.

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