

Class Action Update

Client Update – New Wave of Class Action Lawsuits

February 12, 2024

We are monitoring a new wave of class action lawsuits being filed against banks in California, including cases recently filed against Bank of American and US Bank. [A copy of one of the Complaints is attached](#). The Plaintiffs in these cases allege the banks violated California Civil Code Section 1670.8 and the California Unfair Competition Law by including provisions in their consumer contracts and websites that prohibit customers from making negative statements regarding the bank's products or services. (Note: Civil Code Section 1670.8 applies to all businesses, not just banks and credit unions.)

Although the claims are being asserted in California based on what we believe is a law that is (at least currently) unique to California, the CFPB issued a guidance in 2022 warning financial services providers that they might be violating federal law by using non-disparagement provisions in consumer contracts. According to the CFPB, restrictions on negative consumer reviews are unenforceable under the Consumer Review Fairness Act and therefore efforts to enforce non-disparagement clauses may be deceptive acts or practices.

You should review your online terms and conditions and other agreements and ensure they do not prohibit customer reviews and you should not engage in practices that deny services to existing or potential customers based on negative reviews.

Katten

Katten Muchin Rosenman LLP

2029 Century Park East, Suite 2600 | Los Angeles, CA 90067-3012

direct +1.310.788.4582 Mobile +1.310.486.2967

stuart.richter@katten.com | katten.com