BIRD MARELLA LLP

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Class Actions

Bird Marella has litigated class actions on behalf of domestic and multinational corporations in a broad range of consumer products and practices claims.

Overview

The elimination or mitigation of a class action's massive risk is at the center of our strategy. We have obtained numerous denials of certifications and/or dismissal of claims in complex cases involving, among other things, alleged product defects, employment practices, and financial services. We have successfully enforced arbitration clauses and class action waivers. Of note is our role in one of the first published decisions affirming the dismissal of claims under California's Consumer Legal Remedies Act in a case involving allegedly deceptive manufacturer rebate practices, *Clausen v. Nokia*, 125 Cal. App. 4th 214 (2004). Where a class is certified, we seek to handle discovery in an effective and economical manner with an eye toward summary judgment. We also pursue cost-effective and, where appropriate, creative settlement options.

High-profile class actions involving consumer products commonly prompt state attorneys general and regulatory enforcement agencies to launch parallel government investigations. Bird Marella's white collar criminal and civil fraud practices provide clients with comprehensive and coordinated representation before state and federal judiciaries and enforcement authorities.

Our representative matters illustrate numerous class action defense victories, from trial triumphs and appellate reversals to favorable global settlements.

Experience

PRODUCT LIABILITY AND ADVERTISING

Won Denial of Class Certification for Samsung: Successfully secured an order denying the plaintiff's motion for class certification. The plaintiff filed her complaint in the federal district court in Santa Ana, alleging six causes of action relating to an alleged defect in one of the manufacture's smartphones models, and sought to certify a class of California purchasers of such phones from 2010 to present.

Won Dismissal of Product Defect Class Action Against Hyundai: Won a key motion to dismiss, ending a nationwide class action on behalf of Hyundai, alleging product defect. The class action argued that side airbag sensors in certain car models were improperly placed. The plaintiffs unsuccessfully sought damages alleging fraud and violation of California consumer protection statutes.

Defending Mobile Phone Makers and Wireless Providers in Class Actions: The firm defends global manufacturers and wireless service providers in consumer class actions related to cellular phone hardware and services.

Dismissal of Class Claims for Lack of Standing Under §17200: We defended a multinational cell-phone manufacturer in a putative class action involving product liability allegations. We obtained a decision from the California Court of Appeal that the plaintiff lacked standing to pursue the claim under California's Unfair Competition Law.

La v. Nokia Inc., 2010 Westlaw 4245533 (Cal. App. 2010).

Precedent-Setting Limitation of Nationwide Consumer Class: In our defense of a technology company in a consumer class action, we successfully prosecuted a petition for writ of mandate before the California Court of Appeal. The writ compelled the trial court to consider defendant's pre-discovery motion to strike the plaintiffs' allegations of a nationwide class, rather than deferring consideration of the issue until after the completion of costly nationwide class discovery.
Canon U.S.A. v. Superior Court, 68 Cal. App. 4th 1 (1998).

Denial of California Class, Leading to Settlement: We successfully opposed the certification of a California-only class, where plaintiffs alleged that our client, a publicly traded multinational digital technology company, misrepresented the capabilities of its product. The claims settled on terms favorable to our client after denial of class certification.

Representation of Food Manufacturers in Class Advertising Claims: We are defending several globally known food manufacturers in class actions concerning misrepresentations about their products.

SHAREHOLDER ACTIONS AND FINANCIAL SERVICES

Defense of Going-Private Class Action: The firm is defending a securities class action for a hospital chain. The matter is filed in Delaware courts and relates to a $300 million going-private transaction.

Counseling Law Firm in Class Claims: We represent a law firm in a class action relating to loan modifications.

Class Action Victory in a FINRA Arbitration: We represented a publicly traded on-line brokerage firm in a series of related class action cases alleging improper IPO allocations. The opposing parties did not recover any damages on their class action-related claims and recovered less than $25,000 on their individual claims.

Early Dismissal of Brokerage Class Action: We obtained an early dismissal of all claims against our client, a national brokerage firm, in connection with multi-defendant, multi-action class claims by holders of annuities.

Reduced Risks in Brokerage Ponzi Scheme Mass Claims: The firm succeeded in forcing class / mass action claims into arbitration, which ultimately resulted in modest settlements or favorable awards in our representation of a regional brokerage firm. The matter arose out of the sale of limited partnership investments that allegedly were part of Ponzi schemes.

BUSINESS PRACTICES, EMPLOYMENT, AND ADVERTISING

Won Dismissal of Consumer Class Action on behalf of Newegg: Prevailed on a demurrer to plaintiff's amended complaint, resulting in a dismissal of the action with prejudice. Plaintiff's lawsuit sought to certify a class action alleging Newegg's pricing system violated California's consumer protection laws for false advertising and unfair competition. The Court agreed with the defense's argument that the plaintiff lacked standing because he had suffered no economic injury.

Won Summary Judgment of Consumer Class Action on behalf of Hyundai: Prevailed on a motion for summary judgment ending a putative nationwide consumer class action against Hyundai. The complaint alleged that the defendant unlawfully implemented a policy in early 2015 to disable a feature for vehicle owners who had not renewed their subscriptions to the service. Plaintiffs asserted claims for breach of warranty, fraud, and violation of various state consumer protection statutes.

Won Dismissal of Consumer Class Action Against Forever 21: Obtained dismissal ending a putative class action lawsuit on behalf of fashion retailer, Forever 21, against allegations that the retailer failed to credit customers with tax paid on items returned for exchanges or store credit.

Won Denial of Class Certification for Xerox: After briefing and oral argument in the defense of Xerox, successfully secured an order from the Federal District Court in Los Angeles, denying the plaintiffs' motion for class certification. The plaintiffs attempted to certify a class of over 13 million individuals who received parking tickets in the City of Los Angeles, alleging that the process for contesting citations violated their statutory and constitutional rights. The plaintiffs sought millions of dollars of compensation, in addition to injunctive and declaratory relief.

Resolution of Class Action Claims Prior to Filing: We defended a health care center in a potential consumer class action relating to the Consumer Legal Remedies Act in connection with the advertising of medical services. The matter was resolved with no action being filed.

Defense of Family-Owned Retailer in Class Actions: We counseled a privately held, high-profile fashion retailer in the earliest stages of several class actions and succeeded in persuading plaintiffs not to file or to dismiss claims before an answer was filed.

Affirmance of Consumer Rebate Class Action Dismissal on Appeal: We represented a consumer electronics corporation in a class action before both the trial court and the California Court of Appeal. We prevailed on a motion to dismiss all claims relating to allegations that our client's rebate program violated Section 17200 and the Consumer Legal Remedies Act. The appellate court affirmed the dismissal of rebate-related claims under CLRA.
Pollard v. Ericsson/Clausen v. Nokia, 125 Cal. App. 4th 214 (2004).

Representation Before CA Supreme Court: We represented an energy company in a class action before the California Supreme Court where the court addressed the scope of the trial court's authority to consider the merits of the plaintiff's claims when denying class certification.
Linder v. Thrifty Oil Co., 23 Cal. 4th 429 (2000).

Successful Prosecution of Writ of Mandate Compelling Class Summary Judgment: The firm succeeded in a writ of mandate proceeding in the California Court of Appeal. The appellate court compelled the trial court to grant our client's summary adjudication motion attacking plaintiff's class action claim concerning credit card surcharges.
Thrifty Oil Co. v. Superior Court, 91 Cal. App. 4th 1070 (2001).

$8M Award After Trial in Class Employment Claims: We successfully represented through trial class members who had forfeited vacation under an illegal “use-it-or-lose-it” vacation policy. We obtained a judgment of almost $8 million for a class of fewer than 200 employees.

Defense of Wage and Hour Class Action for Consulting Firm: We settled a class action on favorable terms prior to class certification for a major tax consulting firm. The lawsuit alleged violations of the statutory wage and hour and overtime laws.

Limitation and Early Settlement of Misclassifications Class Claims: We successfully excluded certain groups of employees in a class action alleging misclassification. Using limited discovery, we were able to negotiate an early, favorable settlement for our financial services client.

Settlement of Advertising Practices / PAGA Claims for School: Our client, a distance learning school, was faced with private attorney general claims arising out of allegedly illegal advertising practices. We obtained an early confidential settlement.