FINANCIAL SERVICES REPORT

Award Winning Newsletter

Quarterly News, Summer 2017

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MOFO METRICS

650	Number of long-distance summer vacations in the U.S., in millions
5	Average number of gallons of ice cream eaten by Americans per year
15	Average pounds of watermelon eaten by Americans per year
6	Expansion of the Eiffel Tower during the summer months in inches
30	Number of years mosquitos have been on earth, in millions
85.4	Passengers boarding a plane within, to, or from the U.S. in July 2015, in millions

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EDITOR'S NOTE

Summer blockbuster season is officially upon us. Have you seen *Wonder Woman* yet? What about *Guardians of the Galaxy Part 2*? It's déjà vu all over again with *Baywatch*, *Pirates of the Caribbean*, *Alien*, *Planet of the Apes*, *Transformers*, *Cars*, *Spider Man*, and more *Inconvenient Truths* from Al Gore all coming to a theatre near you.

It's been a blockbuster few months for financial services as well: not one, but two Supreme Court rulings, with the Supreme Court finding in one case that state credit card surcharge laws regulate speech and in the other case that the Fair Debt Collection Practices Act means what is says and doesn't apply to firms that purchase debt and then collect on it. In the financial services version of *Hamilton*, there were long lines and a packed audience for the D.C. Circuit *en banc* oral argument in the *PHH* case. No one left singing a catchy tune, but we have heard lively debate on whether the court will reach the constitutional question, the RESPA issues, or both. No movie yet, but you can listen to the oral argument.

The House of Representatives has been busy as well, passing the Financial CHOICE Act on a strict party-line vote. Neither the CFPB nor Director Cordray are going anywhere yet, as you'll see in our Report below.

We also introduce a new Report discussing BSA/AML issues. Continued regulatory scrutiny and enforcement activity have our attention. We know they have your attention too.

Read on for all the highlights in Beltway, Operations, Mortgage, Arbitration, Privacy, and FinTech.

BELTWAY

Surcharge Speaks

In *Expressions Hair Design v. Schneiderman*, 137 S. Ct. 1144 (2017), the Supreme Court unanimously held that a New York law prohibiting merchants from displaying a price for payment in cash and a higher price for payment by credit card regulates speech. The Court found unpersuasive the state's claim that the statute regulated *prices*—a permissible regulation of conduct—and concluded that it restricted the manner in which prices were communicated to customers, which according to the Court, amounted to a regulation of speech. The Court remanded the case to the Second Circuit to determine whether the regulation of speech violated the First Amendment.

For more information, see our Client Alert or contact Natalie Fleming Nolen at nflemingnolen@mofo.com.

Bankruptcy Spotlight

The OCC announced a consent order with a national bank related to alleged bankruptcy filing violations. The OCC alleged numerous errors in bankruptcy filings, including inaccurate or untimely proofs of claims, inaccurate application of payments, and exposure of confidential customer information in court-filed documents. Notably, the OCC found that the violations occurred during the period in which the bank was subject to a separate consent order related to its mortgage-servicing practices. Under the terms of the consent order, the bank is required to pay $29 million in remediation to borrowers in addition to paying civil money penalties.

For more information, contact Nancy Thomas at nthomas@mofo.com.

OCC's New Retail Lending Booklet

The OCC released a new booklet on Retail Lending (OCC 2017-15), which will be part of the Comptroller's Handbook. The new Retail Lending booklet highlights the risks inherent in retail lending (e.g., credit risk, interest rate risk, and reputational risk) and provides a framework for evaluating retail risk management activities. The booklet also provides comprehensive guidance for supervised entities with respect to risk management of retail lending and discusses the heightened standards for certain large banks subject to the guidelines established by the OCC in 12 CFR Part 30, Appendix D: Guidelines Establishing Heightened Standards for Certain Large Insured National Banks, Insured Federal Savings Associations, and Insured Federal Branches.

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BUREAU

Trump Administration and CFPB Clash in Constitutionality Fight

On May 24, 2017, the D.C. Circuit heard *en banc* oral argument in *PHH Corporation v. Consumer Financial Protection Bureau*, No. 15-1177 (D.C. Cir. 2017). The CFPB, PHH, and the Trump administration all filed briefs in the action challenging the constitutionality of the structure of the CFPB and the CFPB's interpretation of RESPA. The CFPB petitioned for rehearing *en banc* of the ruling by a three-judge panel that the agency's leadership model violated the Constitution's separation of powers because the Bureau's director can only be terminated by the president for cause. The Bureau defended the for-cause termination provision, arguing that Congress deemed the provision necessary to preserve its independence. The Trump administration filed its own brief, arguing that the initial decision was correct and that the termination provision should be severed from the rest of Dodd-Frank. PHH argued, in turn, that the agency should be eliminated altogether.

For more information, contact Joe Palmore at jpalmore@mofo.com.

Lawmakers and AGs Stand Behind CFPB

Not content to sit by the sidelines, a group of former and current members of Congress and state attorneys general filed *amicus* briefs in support of the Bureau's constitutionality. The group argues in the briefs that Congress intended to insulate the agency from "shifting political winds" by requiring cause to terminate the director. Like everyone else, we'll be watching this one (and waiting for President Trump to tweet about it).

For more information, contact Joe Palmore at jpalmore@mofo.com.

"Model" Behavior Gets a CRA a Consent Order

The CFPB fined a credit reporting agency $3 million for allegedly misrepresenting that credit scores it marketed and provided to consumers were the same scores lenders use to make credit decisions. Credit reporting agencies (CRA) have developed proprietary scoring models for

consumer information, known as "educational credit scores," that may differ from the scores lenders review. The Consent Order alleged that the CRA had "implicitly" misrepresented that its educational score was the same as that reviewed by lenders when it advertised that customers would, among other things, "[s]ee the same type of information lenders see when assessing your credit," even though the CRA also expressly disclosed that the score given indicated "relative credit risk for educational purposes and is not the same score used by lenders."

For more information, contact Michael Miller at mbmiller@mofo.com.

Win Some, Lose Some

In one of the few litigated cases testing the limits of the CFPB's statutory authority, a federal court found in March that a payment processor alleged to have failed to monitor its merchant customers for fraudulent activity was a "covered person" and a "service provider" under Dodd-Frank because it initiates ACH transactions to consumer accounts. The federal court nonetheless dismissed the CFPB's claims for failure to sufficiently allege facts to show a violation of the CFPA or show that the defendants engaged in "unfair, deceptive, or abusive acts or practices," as defined by the Act. Instead, the court found that the CFPB impermissibly relied on conclusory allegations regarding Intercept's allegedly unlawful acts or omissions.

For more information, read our Client Alert or contact Steven Kaufmann at skaufmann@mofo.com.

More Push Back

In April, the D.C. Circuit upheld a district court finding that a for-profit college accreditation group could not be forced to comply with an investigative demand to determine the group's accreditation practices where the demand inadequately described the scope and purpose of the investigation. *CFPB v. Accrediting Council for Indep. Colls. & Sch.*, 854 F.3d 683, 690 (D.C. Cir. Apr. 21, 2017). Although the Bureau has authority over lending by for-profit colleges, the lower court described the demand as "a bridge too far" because "the accreditation process simply has no connection to a school's private student lending practices." The D.C. Circuit panel did not reach this issue, instead finding that the demand's notification of purpose "fail[ed] to state adequately the unlawful conduct under investigation or the applicable law." *Id.* at 690.

For more information, contact Don Lampe at dlampe@mofo.com.

Small Steps into Small Business Lending

The CFPB took its first steps toward drafting a rule for the collection and reporting of small business lending data by requesting information on the availability of credit, financing needs, and application process for small businesses. In its April 2017 Fair Lending Report, the Bureau highlighted its supervision and enforcement work in conducting ECOA reviews of small business lending, focusing in particular on the quality of fair lending compliance management systems and on fair lending risks in underwriting, pricing, and redlining. In May, the Bureau also issued a Request for Information to learn more about the small business lending market, including understanding more about the products that are offered to small businesses, including women-owned and minority-owned small businesses, as well as the financial institutions that offer such credit. Comments are due on or before July 14, 2017.

For more information, contact Sean Ruff at sruff@mofo.com.

MOBILE & EMERGING PAYMENTS

FinTech Frenzy

What the OCC views as a step toward safer and simpler innovation for FinTech companies, state regulators see as an unlawful attempt to usurp their authority. The Conference of State Bank Supervisors sued the OCC in April, alleging that the OCC lacks the statutory authority to create a special bank charter for nonbank companies and that the plan would preempt state consumer protection laws, diminish consumer protections, and stifle innovation. The New York Department of Financial Services (NYDFS) also sued the OCC, emphasizing similar themes. Meanwhile, senior OCC officials have clarified that the national charter would preempt state licensing requirements, but would not preempt state consumer protection laws.

For more information, contact Sean Ruff at sruff@mofo.com.

Futures and FinTech

With FinTech dominating the discussion of the future of the financial services industry, the Commodity Futures Trading Commission (CFTC) wants to maximize FinTech's potential in the futures and swaps market. In May, the CFTC approved the launch of its own FinTech innovation office, LabCFTC. The office's mission is to promote innovation and fair competition in the futures and swaps market. To facilitate industry outreach and provide critical

feedback to innovators, the CFTC is establishing GuidePoint as the point of contact for the FinTech community to engage with the CFTC. In addition, the CFTC is launching CFTC 2.0 to initiate the adoption of new technology within the futures and swaps market and to enhance collaboration between the CFTC, the FinTech industry, and the wider financial services community.

For more information, contact Julian Hammar at jhammar@mofo.com.

Prepaid Delay May Bring Relief for Digital Wallets

When the CFPB released its final rule on prepaid accounts in October 2016, providers of digital wallets found that the CFPB had decided to include their products under the definition of prepaid accounts. Relief may be coming. When the CFPB announced the delay of the effective date of the prepaid rule on April 20, 2017, the CFPB also agreed to revisit its decision to include digital wallets that are capable of storing funds as being within the scope of the rule. The CFPB announced it will conduct a separate notice and request for comments on the issue of digital wallets under the prepaid rule.

For more information, contact Obrea Poindexter at opoindexter@mofo.com.

Clear as Mud

The GAO published a report entitled "Financial Technology: Information on Subsectors and Regulatory Oversight," the first in a series of planned reports on FinTech. The report reinforces a concern expressed by many in the industry, which is that FinTech companies are currently subject to the oversight of a variety of federal and state regulators and licensing requirements, making compliance and due diligence a complicated affair. Although it does not offer any recommendations for the industry, the report does provide a clear picture of the current FinTech industry and details the somewhat muddled regulatory landscape overseeing the industry.

For more information, contact Sean Ruff at sruff@mofo.com.

Blockchain and the States

Although the future of federal regulation of FinTech remains in flux, states are actively attempting to clarify and shape the use of blockchain technology within their jurisdictions. Eight state legislatures have worked on some form of blockchain legislation already in 2017. Most noteworthy are efforts in Maine and Illinois to study the potential applications and benefits of blockchain technology.

For more information, contact Joshua Ashley Klayman at jklayman@mofo.com.

MORTGAGE & FAIR LENDING

Mo' Rules, Fewer Problems?

The CFPB announced a new proposed rule amending the ECOA ethnicity and race information collection requirements. The new proposed rule would remove certain model forms and add others to give creditors additional flexibility in complying with Regulations B and C. The new rule is intended to facilitate the collection and retention of information about the ethnicity, sex, and race of certain mortgage applicants. If implemented, the rule would go in effect on January 1, 2018.

For more information, contact Don Lampe at dlampe@mofo.com.

The Report Is In

The CFPB issued its fifth Fair Lending Report, in which it identified three areas of CFPB interest: (1) *Redlining*—the CFPB will be pulling out its magnifying glass to determine if lenders have intentionally discouraged prospective applicants in minority neighborhoods; (2) *Mortgage and student loan servicing*—the CFPB will be taking a hard look at accounts for which the borrowers were behind on their payments to determine if they were experiencing increased difficulty in working out a solution based on their race, ethnicity, age, or gender; and (3) *Small business lending*—the CFPB has stated an intention to make sure small business owners, including women-owned and minority-owned businesses, can better access credit.

For more information, contact Angela Kleine at akleine@mofo.com.

Alleged Servicing Failures Focus of Enforcement Action

CFPB filed an enforcement action against one of the largest nonbank mortgage servicers for allegedly pervasive servicing errors, including inaccurate and incomplete information in the servicer's proprietary servicing system, loss mitigation errors, errors in managing escrow accounts, signing borrowers up for add-on products without consent, and failing to provide accurate information in servicing transfers. The Florida Attorney General filed a similar action in a separate lawsuit. The mortgage servicer

responded with a strongly worded press release and a motion arguing the CFPB is unconstitutional.

For more information, contact Don Lampe at dlampe@mofo.com.

OPERATIONS

Room to Improve

The Basel Committee on Banking Supervision released its fourth progress report on bank adoption and implementation of principles for effective risk data aggregation and risk reporting. The report reviewed the 2016 progress of global systemically important banks (G-SIBs) in implementing the principles, based on results of a self-assessment survey completed by authorities with supervisory responsibility for G-SIBs. (The survey differs from earlier surveys, which were self-assessments completed by G-SIBs themselves.) The progress report concludes that, while some progress has been made, most G-SIBs have not fully implemented the principles for effective risk data aggregation and risk reporting and the level of compliance with these principles is unsatisfactory. For example, half of G-SIBs were materially non-compliant with the principle related to data architecture and IT infrastructure.

For more information, contact Oliver Ireland at oireland@mofo.com.

A Change in Direction

The FSOC agreed to a 60-day delay in its appeal of the D.C. District Court's decision vacating its designation of MetLife as a SIFI. MetLife had sought a 180-day delay to allow FSOC to complete its review of the process for designating nonbanks as SIFIs, pursuant to presidential directive. SIFI designation subjects the nonbank to heightened prudential regulation and Federal Reserve Board supervision. FSOC agreed to the shorter period of abeyance to allow FSOC and the Department of Justice to determine their strategy on the appeal.

For more information, contact Oliver Ireland at oireland@mofo.com.

PREEMPTION

Holy HERA

A Washington federal court held that the Housing and Economic Recovery Act (HERA) does not preempt a state law barring lenders from entering property upon the mortgagor's default. *Jordan v. Nationstar Mortgage, LLC*, No. 2:14-cv-0175-TOR, 2017 WL 937970 (E.D. Wash. March 9, 2017). The court rejected the Federal Housing Finance Agency's (FHFA) argument that HERA expressly preempts state law, finding the provision at issue meant only that no state agency could direct or supervise the FHFA, but that HERA did not occupy the field in light of the traditional role of states in regulating foreclosure laws, and lack of evidence of congressional intent to displace those laws. The court also found conflict preemption did not apply because the state law did not make it impossible to comply with HERA. The court recognized that its decision conflicted with a decision by a Chicago federal court holding HERA preempted a local building ordinance.

For more information, contact Nancy Thomas at nthomas@mofo.com.

Madden Ruling Spreading West?

In *Eul v. Transworld Systems*, No. 15 C 7755, 2017 WL 1178537 (N.D. Ill. March 30, 2017), the court considered whether the NBA preempts state usury law when applied to an assignee of a national bank. Despite recognizing that the state law would be preempted as to the national bank that originated the loan, the court was "not persuaded" that NBA preemption applies to assignees of national banks, citing *Madden v. Midland Funding LLC*, 786 F.3d 246 (2d Cir. 2015). The court also rejected the argument based on allegations that the national bank was not the true originator of the loan and instead that the actual originator was a nonbank entity "renting" the national bank's charter.

For more information, contact James McGuire at jmcguire@mofo.com.

Charter Confusion Continues

Courts in California continue to issue conflicting rulings on which charter governs the preemption analysis where the originator lender was a federal thrift, but the challenged conduct occurred after loan ownership transferred to a national bank. In *Heagler v. Wells Fargo Bank, N.A.*, No. 2:16-cv-01963-MC-KJN, 2017 WL 1213370 (E.D. Cal. March 31, 2017), the court found that the charter at the time of origination attaches to the loan and applied HOLA and OTS regulations to find state and common law claims preempted as applied to the current owner of the loan. In *Beltz v. Wells Fargo Home Mortgage*, No. 2:15-cv-01731-TLN-CKD, 2017 WL 784910, at *14 (E.D. Cal. March 1, 2017), a different judge in the same judicial district found the charter at the time of the alleged wrongful act applied, noting the ruling was consistent with a "growing trend" among district courts in California.

For more information, contact Nancy Thomas at nthomas@mofo.com.

PRIVACY

A Little Help

The NYDFS released frequently asked questions (FAQs) and a summary of key compliance dates for its cybersecurity rule that took effect March 1, 2017. The first of the phased compliance deadlines is at the end of August. The FAQs confirm that covered financial institutions are generally required to comply only with the parts of the regulation that have taken effect. The FAQs also provide information about how a covered financial institution can utilize the cybersecurity program of an affiliate, and some insight into the NYDFS expectations relating to penetration testing and system monitoring. NYDFS did not address some of the Rule's challenging interpretive issues, such as multi-factor authentication and encryption requirements.

For more information, read our Client Alert or contact Nathan Taylor at ndtaylor@mofo.com.

New Leader, New Direction?

With the change of leadership at the FTC comes the prospect of a different approach to enforcement in the privacy and data security space. On multiple occasions since taking the helm, Acting Chair Maureen Ohlhausen has indicated that the agency will focus on actual harm (e.g., "I will make sure our enforcement actions address concrete consumer injury"). Along these same lines, the FTC announced in April a number of "process reforms," including "working to streamline demands for information in investigations to eliminate unnecessary costs." Despite these statements, the type of privacy and data security cases the FTC will bring under its new leadership is not entirely clear.

For more information, contact Julie O'Neill at joneill@mofo.com.

Into the Breaches

Although the FTC may begin focusing on concrete harms, plaintiffs appear to have cracked the code for establishing standing in payment card breach class actions based on harms that are not, well, concrete. For example, plaintiffs

recently survived a motion to dismiss for lack of standing in the Kimpton hotels breach, with the court reasoning that the plaintiff "plausibly alleged that his data has already been stolen and that it was taken in a manner that suggests it will be misused." *Walters v. Kimpton Hotel & Rest. Grp., LLC*, No. 16-cv-05387-VC, 2017 U.S. Dist. LEXIS 57014, at *2 (N.D. Cal. Apr. 13, 2017). In related news, after the Seventh Circuit held that standing could be based on the potential harms arising from payment card theft, Neiman Marcus reached a settlement requiring it to pay $1.6 million in connection with claims relating to its payment card breach from late 2013.

For more information, contact Nathan Taylor at ndtaylor@mofo.com.

Privilege Prevails

A California District Court has ruled that a cybersecurity firm's investigation and resulting report regarding a security breach was protected from discovery by the work product doctrine because the report's purpose was to enable the company's law firm to provide legal advice to the company. Order Denying Motion to Compel Production of Documents, *In re Experian Data Breach Litigation*, No. 15-cv-01592 (C.D. Cal. May 18, 2017). The court noted that the cybersecurity firm completed the report and delivered it to the law firm hired by the company, and the law firm then provided it to the company's in-house legal counsel. It was *not* provided, in full, to the company's incident response team. The court reasoned that if the report were more relevant to "internal investigation or remediation efforts"—as opposed to defending litigation—then "the full report would have been given to that team."

For more information, contact Nathan Taylor at ndtaylor@mofo.com.

Sad!

The WannaCry ransomware attack hit thousands of targets around the world, including global businesses, governments, and national health care systems, with striking speed. The attack exploited an identified vulnerability for which a patch had been released (more than a month before the attack) but not yet installed by those impacted companies. WannaCry serves as a stark reminder of looming cybersecurity risk and of the importance of taking proactive steps to reduce the risk of being hit in the next—inevitable—attack. These include patch management, up-to-date malware and antivirus tools, backups of critical data, and more.

For more information, read our Client Alert or contact Nathan Taylor at ndtaylor@mofo.com.

The Water's Edge

The DOJ continues to rely on the Stored Communication Act (SCA) to seek overseas account data, even after its defeat in the Second Circuit. This time, the DOJ obtained a search warrant under the SCA, but Google withheld some requested information on the grounds it was stored overseas, beyond the SCA's reach. The court reasoned that the warrant at issue should be viewed as "a domestic application of the SCA," concluding that where Google chooses to store the data does not matter as long as Google "is in the district and is subject to the court's jurisdiction; [and] the warrant is directed to it in the only place where it can access and deliver the information that the government seeks." *In re Search of Content That Is Stored at Premises Controlled by Google*, No. 16-mc-80263 2017 WL 148762, at *1, 4 (N.D. Cal. April 25, 2017).

For more information, read our Client Alert or contact John Carlin at jcarlin@mofo.com.

ARBITRATION

Supreme Court Confirms *Concepcion* Holding

In a 7-1 decision, the U.S. Supreme Court struck down Kentucky's "clear statement" law. The law would have invalidated arbitration provisions signed by individuals with power of attorney unless the power of attorney clearly stated that it included waiver of constitutional rights (such as trial by jury). *Kindred Nursing Centers v. Clark*, 137 S. Ct. 1421 (2017). Although the state law did not explicitly single out arbitration clauses, the Court noted that the law had never been used to limit a power of attorney in any other context, and so the only constitutional right being protected, the trial by jury, was in direct contradiction with the FAA prohibition on treating agreements to arbitrate any different from any other contract. The Court thus reaffirmed the central holding in *Concepcion* that a state may not unfairly discriminate against arbitration clauses.

For more information, contact Joe Palmore at jpalmore@mofo.com.

California High Court Says You Can't Waive That!

The California Supreme Court held that a provision in an arbitration clause that forbids seeking public injunctive relief in any forum is unenforceable as against California public policy. *McGill v. Citibank, N.A.*, 2 Cal. 5th 945 (2017). The court relied on the FAA savings clause in reading a California Civil Code provision to bar use of private agreements to circumvent laws established for a public reason. The court further found that a public injunction is a state substantive right as opposed to a procedural device and so cannot be waived in an arbitration clause. The court rejected arguments that the state law was preempted by the FAA.

For more information, contact Nancy Thomas at nthomas@mofo.com.

Can't Waive That Either: No Waiver of State and Federal Claims

The Fourth Circuit refused a bank's request to enforce an arbitration clause in an underlying loan document that had a choice of law provision in a tribal court. *Dillon v. BMO Harris Bank, N.A.*, 856 F.3d 330 (4th Cir. 2017). The plaintiff sued the bank, arguing that the bank was involved in a conspiracy with the tribal lender because the lender took allegedly inflated interest payments out of the plaintiff's account via ACH. The court declined the bank's request to sever the choice of law provision and enforce the arbitration provision, finding that the waiver of all state and federal laws was essential to the purpose of the arbitration agreement. Therefore, the choice of law provision defeated the entire arbitration clause, and the bank could not compel arbitration.

For more information, contact James McGuire at jmcguire@mofo.com.

New Jersey Agrees

In yet another case challenging the interest rates charged by payday lenders affiliated with tribes, a New Jersey federal court refused to compel arbitration to a tribal arbitral forum or to apply tribal law to the dispute rather than state or federal law. *MacDonald v. CashCall, Inc.*, No-2:16-cv-02781, 2017 U.S. Dist. LEXIS 64761 (D.N.J. April 28, 2017). The court found that the entire arbitration clause was invalid because of the "wholesale waiver of the application of federal and state law," especially because of the extremely tenuous link to tribal law. *Id.* at *9. The court acknowledged that many cases had found the arbitration clause enforceable but noted that recent cases had been trending against enforceability.

For more information, contact Natalie Fleming Nolen at nflemingnolen@mofo.com.

TCPA

D.C. Circuit Curbs FCC's Overreaching

On March 31, 2017, the D.C. Circuit vacated an FCC rule interpreting the TCPA requiring that solicited fax advertisements (i.e., faxes that someone asked for) contain an opt-out notice. *Bais Yaakov of Spring Valley v. FCC*, 852 F.3d 1078 (D.C. Cir. 2017). The court held that the FCC does not have authority to regulate solicited fax advertising under the TCPA; its authority is limited to

regulation of unsolicited fax advertisements. This decision is likely to slow a recent flood of lawsuits challenging opt-out notices on solicited fax advertisements under the FCC rule.

For more information, contact David Fioccola at dfioccola@mofo.com.

Consent Kills a Putative TCPA Class Action

The Seventh Circuit recently rejected a plaintiff's attempt to draw a distinction between consent to different types of promotional messages. *Blow v. Bijora, Inc.*, 855 F.3d 793 (7th Cir. 2017). The plaintiff had provided her phone number in order to receive discounts from the defendant retailer. Plaintiff argued that, although she had consented to receive text messages about discounts by providing her phone number, she did not provide consent to receive "mass marketing" texts. The court rejected this argument, holding that consent is effective where it relates to the same subject matter as the challenged communication. The court concluded that the 60 texts plaintiff received, two-thirds of which contained promotional offers and one-third of which announced special events, were reasonably related to the purpose for which plaintiff had provided her number.

For more information, contact David Fioccola at dfioccola@mofo.com.

And Another One

The Eighth Circuit joined the consent party by affirming that a nonprofit hospital operator had not violated the TCPA by calling a patient. *Zean v. Fairview Health Servs.*, No. 16-1747, 2017 WL 2295778 (8th Cir. May 26, 2017). The plaintiff alleged that he received telemarketing calls and prerecorded messages on his cell phone without express consent. However, plaintiff had signed a contract giving defendant permission to contact him by phone. The circuit court affirmed the lower court's ruling that the contract showed that plaintiff gave prior express consent for the calls.

For more information, contact Tiffany Cheung at tcheung@mofo.com.

BSA/AML

Risky Business

FinCEN and the U.S. Attorney's Office for the Southern District of New York announced the settlement of BSA-related claims against the former Chief Compliance Officer of a major international money transmitter. The settlement resolved claims that the former officer had failed to ensure that the money transmitter implemented and maintained an effective anti-money laundering program and filed SARs in a timely fashion. The settlement comes at a time of increased attention on individual accountability from both prosecutors and regulators, exemplified by such events as the issuance of the Yates memorandum requiring U.S. attorneys to focus on individual accountability in cases of corporate misconduct.

For more information, contact Marc-Alain Galeazzi at mgaleazzi@mofo.com.

U.S. Attorney's Office Settles Russian Money Laundering Suit

In May, the Acting United States Attorney for the Southern District of New York announced a settlement concerning corporations allegedly tied to a "$230 million Russian tax refund fraud scheme." The alleged tax fraud had been discovered by Russian attorney Sergei Magnitsky, who later died, according to the DOJ, "in pretrial detention in Moscow under suspicious circumstances." The case contributes to increased media and law enforcement attention on alleged illicit Russian activity in the United States, particularly money laundering.

For more information, contact Marc-Alain Galeazzi at mgaleazzi@mofo.com.

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