# Consumer News Alert Recent Decisions

Since 2006, the Center for Consumer Law has published the "Consumer News Alert." This short newsletter contains everything from consumer tips and scam alerts, to shopping hints and financial calculators. It also has a section just for attorneys highlighting recent decisions. The alert is delivered by email three times a week. Below is a listing of some of the cases discussed during the past few months. If a link does not work, it may be necessary to cut and paste it to your browser. To subscribe and begin receiving your free copy of the Consumer News Alert in your mailbox, visit http://www.peopleslawyer.net/

**U.S. SUPREME COURT**

*Supreme Court won't review national class action ruling.* The U.S. Supreme Court said it will not consider overturning the Seventh Circuit's decision allowing consumers from other states into an Illinois proposed class action over unwanted faxes.

Justices declined to hear a bid from health information tech company IQVIA to undo a lower court ruling on the putative class in a federal junk-fax suit spearheaded by a doctor. The company had sought review in light of the high court's 2017 decision limiting out-of-state plaintiffs in mass torts, saying the same principle applies to class actions.

But the class action plaintiffs cited Supreme Court case law to argue that for more than a century, "an unbroken line of cases" has recognized that the "rights and liabilities of all" may be resolved by representation in one centralized proceeding.
Plaintiffs argued that "The Seventh Circuit applied these long-standing and uncontroversial principles to an unremarkable context: a class action in federal court alleging federal consumer protection claims," they said. "And, in line with this consensus, it held that where a federal district court concededly has personal jurisdiction over the named plaintiff's claims against the defendant, it need not undertake a separate, individualized jurisdictional inquiry as to each and every unnamed class member."
*IQVIA Inc. V. Florence Mussat*, ___ U.S. ___ (2021). https://www.scotusblog.com/case-files/cases/iqvia-inc-v-mussat/

*Secured creditor keeps repossessed car after bankruptcy filing.* The filing of a bankruptcy petition typically slants the playing field in favor of the debtor. The U.S. Supreme Court, however, recently scored a victory for secured creditors, specifically banks or lenders that finance or lease vehicles to the public. The Court held that the creditor's mere retention of a debtor's property after the filing of a bankruptcy petition does not violate the automatic stay under Section 362(a)(3) of the Bankruptcy Code.

Under the automatic stay, if a creditor wants to take action against a debtor, such as continuing a lawsuit or repossessing collateral, the creditor must first obtain relief from the automatic stay from the bankruptcy court. Creditors can be held in contempt and/or be forced to pay damages if they violate the stay. The Bankruptcy Code clearly prohibits any affirmative action against a debtor while the automatic stay is in place, but until this decision, there was a split in authority on whether a creditor violated the automatic stay by merely retaining collateral repossessed pre-bankruptcy.

The U.S. Supreme Court, in an 8-0 opinion, held that

creditors are permitted to retain possession of the collateral repossessed pre-petition and are not obligated to return the collateral due to the debtor's filing of a bankruptcy petition. The Court interpreted the language of the statute, finding that Section 362(a)(3) prohibits "affirmative acts that would disturb the status quo of the estate property as of the time when the bankruptcy petition was filed."
*City of Chicago v. Fulton* ___ U.S. ___ (2021). https://www.supremecourt.gov/opinions/20pdf/19-357_6k47.pdf.

*Supreme Court makes it easier for people to sue, allowing them to bring their claims in the state where they were injured.* In this case, a state court exercised jurisdiction over Ford in a products-liability suit stemming from a car accident that injured a resident in the State.

Ford moved to dismiss for lack of personal jurisdiction. It argued that each state court had jurisdiction only if the company's conduct in the State had given rise to the plaintiff's claims. And that causal link existed, according to Ford, only if the company had designed, manufactured, or sold in the State the particular vehicle involved in the accident. In neither suit could the plaintiff make that showing. Only later resales and relocations by consumers had brought the vehicles to Montana. The State supreme court rejected Ford's argument, and held that the company's activities in the State had the needed connection to the plaintiff's allegations that a defective Ford caused instate injury

**Supreme Court makes it easier for people to sue, allowing them to bring their claims in the state where they were injured.**

The Supreme Court held the connection between the plaintiffs' claims and Ford's activities in the forum States is close enough to support specific jurisdiction. The Court recognized the Fourteenth Amendment's Due Process Clause limits a state court's power to exercise jurisdiction over a defendant. The canonical decision in this area remains *International Shoe Co. v. Washington*, 326 U. S. 310. There, the Court held that a tribunal's authority depends on the defendant's having such "contacts" with the forum State that "the maintenance of the suit" is "reasonable" and "does not offend traditional notions of fair play and substantial justice." In applying that formulation, the Court has long focused on the nature and extent of "the defendant's relationship to the forum State." That focus has led to the recognition of two types of personal jurisdiction: general and specific jurisdiction. A state court may exercise general jurisdiction only when a defendant is "essentially at home" in the State. Specific jurisdiction covers defendants less intimately connected with a State, but only as to a narrower class of claims. To be subject to that kind of jurisdiction, the defendant must take "some act by which [it] purposefully avails itself of the privilege of conducting activities within the forum State." And the plaintiff's claims "must arise out of or relate to the defendant's contacts" with the forum.

Ford admits that it has "purposefully avail[ed] itself of the privilege of conducting activities" in Montana. The company's claim is instead that those activities are insufficiently connected to the suits. In Ford's view, due process requires a causal link locating jurisdiction only in the State where Ford sold the car in question, or the States where Ford designed and manufactured the vehicle. And because none of these things occurred in Montana, its courts have no power over these cases. Ford's causation-only approach finds no support in this Court's requirement of a "connection" between a plaintiff's suit and a defendant's activities.

The most common formulation of that rule demands that the suit "arise out of or relate to the defendant's contacts with the forum." The Court has stated that specific jurisdiction attaches in cases identical to this one—when a company cultivates a market for a product in the forum State and the product malfunctions there. Here, Ford advertises and markets its vehicles in Montana. Apart from sales, the company works hard to foster ongoing connections to its cars' owners. All this Montana based conduct relates to the claims in these cases, brought by state residents in the States' courts. Put slightly differently, because Ford had systematically served a market in Montana for the very vehicles that the plaintiffs allege malfunctioned and injured them in those States, there is a strong "relationship among the defendant, the forum, and the litigation"—the "essential foundation" of specific jurisdiction. Allowing jurisdiction in these circumstances both treats Ford fairly and serves principles of "interstate federalism."
*Ford Motor Co. v. Montana Eighth Judicial District Court et. al.*, 592 U.S. ___ (2021). https://www.supremecourt.gov/opinions/20pdf/19-368_febh.pdf.

*Supreme Court holds if all a device does is call numbers as directed, it's not an Automatic Telephone Dialing System under the Telephone Consumer Protection Act.* The Telephone Consumer Protection Act of 1991 (TCPA) proscribes abusive telemarketing practices by, among other things, restricting certain communications made with an "automatic telephone dialing system." The TCPA defines such "autodialers" as equipment with the capacity both "to store or produce telephone numbers to be called, using a random or sequential number generator," and to dial those numbers. 47 U. S. C. §227(a)(1).

Petitioner Facebook, Inc., maintains a social media platform that, as a security feature, allows users to elect to receive text messages when someone attempts to log in to the user's account from a new device or browser. Facebook sent such texts to Noah Duguid, alerting him to login activity on a Facebook account linked to his telephone number, but Duguid never created that account (or any account on Facebook). Duguid tried without success to stop the unwanted messages, and eventually brought a putative class action against Facebook. He alleged that Facebook violated the TCPA by maintaining a database that stored phone numbers and programming its equipment to send automated text messages.

Facebook countered that the TCPA does not apply because the technology it used to text Duguid did not use a "random or sequential number generator." The Ninth Circuit disagreed, holding that §227(a)(1) applies to a notification system like Facebook's that has the capacity to dial automatically stored numbers.

The Supreme Court reversed, holding that to qualify as an "automatic telephone dialing system" under the TCPA, a device must have the capacity either to store a telephone number using a random or sequential number generator, or to produce a telephone number using a random or sequential number generator. Congress' chosen definition of an autodialer requires that the equipment in question must use a random or sequential number generator. That definition excludes equipment like Facebook's login notification system. *Facebook v. Duguid, et al.*, 292 U.S, ___ (2021). https://www.supremecourt.gov/opinions/20pdf/19-511_p86b.pdf.

*Supreme Court holds monetary is unavailable to the Federal Trade Commission.* The Court states:

> Section 13(b) of the Federal Trade Commission Act authorizes the Commission to obtain, "in proper cases," a "permanent injunction" in federal court against "any person, partnership, or corporation" that it believes "is

> violating, or is about to violate, any provision of law" that the Commission enforces. 87 Stat. 592, 15 U. S. C. §53(b). The question presented is whether this statutory language authorizes the Commission to seek, and a court to award, equitable monetary relief such as restitution or disgorgement. We conclude that it does not.

*AMG Capital Management v. FTC*, ___ U.S. ___ (2021). https://www.supremecourt.gov/opinions/20pdf/19-508_l6gn.pdf.

## FEDERAL CIRCUIT COURTS OF APPEALS

*Ninth Circuit revives suit over meaning of "Krab Mix."* A split court revived a proposed class action alleging that P.F. Chang's misled and deceived consumers when it used the term "krab mix" on its restaurant menus to describe food that did not contain any real crab meat.

In an unpublished opinion, the panel reversed a district judge's ruling that dismissed the plaintiff's allegations for being "implausible on their face." Kang, however, claimed that the restaurant using "krab mix" to describe its sushi rolls that don't have any authentic crab is "unfair and deceptive."

The ninth Circuit reversed, "Because the term 'krab mix' lacks any commonly understood contrary meaning, we cannot say, in the absence of evidence bearing on the issue, that Kang's allegation is implausible on its face." *Chansue Kang v. P.F. Chang's China Bistro et al.*, ___ F.3d ___ (9th Cir. 2021). https://www.courtlistener.com/opinion/4855188/chansue-kang-v-pf-changs-china-bistro.

*Plaintiffs lacked Article III standing to maintain their action because they described only a general, regulatory violation, not something that was particularized to them and concrete.* Plaintiff filed a class action in state court. Defendant removed the case to federal court, and the question of jurisdiction was appealed to the Seventh Circuit. The court first noted:

> To establish standing under Article III of the Constitution, a plaintiff must demonstrate (1) that he or she suffered an injury in fact that is concrete, particularized, and actual or imminent, (2) that the injury was caused by the defendant, and (3) that the injury would likely be redressed by the requested judicial relief.

Ordinarily, it is the plaintiff who bears the burden of demonstrating that the district court has subject-matter jurisdiction over her case and that it falls within "the Judicial Power" conferred in Article III. But more generally, the party that wants the federal forum, in this case the defendant, is the one that has the burden of establishing the court's authority to hear the case. The court concluded:

> Our job is to decide whether Thornley and her co-plaintiffs have Article III standing to pursue the case they have presented in their complaint. We have concluded that they do not: they have described only a general, regulatory violation, not something that is particularized to them and concrete. It is no secret to anyone that they took care in their allegations, and especially in the scope of the proposed class they would like to represent, to steer clear of federal court. But in general, plaintiffs may do this.

*Thornley v. Clearview AI, Inc.*, 984 F.3d 1241 (7th Cir. 2021). http://media.ca7.uscourts.gov/cgi-bin/rssExec.pl?Submit=Display&Path=Y2021/D01-14/C:20-3249:J:Wood:aut:T:fnOp:N:2644794:S:0.

*Eleventh Circuit clarifies ascertainability standard for class actions.* The court significantly clarified its requirements for certifying class actions, ruling that a Florida federal judge erred when he tossed a suit worth upwards of $2 billion because a group of consumers failed to prove the "administrative feasibility" of identifying class members.

In its opinion, the three-judge panel vacated the dismissal and denial of class certification in the case, which claimed defendant sold potentially millions of consumers defective refrigerators for recreational vehicles. The court sent the case back to the district court for further proceedings.

The panel based its decision on its finding that Federal Rule of Civil Procedure 23, which governs class actions, does not require plaintiffs to prove an administratively feasible method for identifying absent class members to obtain certification. It also said that although jurisdiction was based solely on the Class Action Fairness Act of 2005, jurisdiction in such circumstances does not depend on class certification and a trial court retains jurisdiction even after denying certification.

*Cherry et al. v. Dometic Corp.*, ___ F.3d ___ (11th Cir. 2021). https://casetext.com/case/cherry-v-dometic-corp.

*Language in debt collection letter stating consumer may call to eliminate further collection action, does not violate the Fair Debt Collection Practices Act.* The Third Circuit upheld a summary judgment from a Pennsylvania federal court, rejecting the assertion that the letter violated the FDCPA by misleading a debtor to believe that a phone call is a "legally effective way to stop such collection action" when only a written communication can do so.

**Language in debt collection letter stating consumer may call to eliminate further collection action, does not violate the Fair Debt Collection Practices Act.**

The court found that the sentence inviting her to call the firm "does not suggest that a debtor could exercise any [Section] 1692g rights over the phone." "The order of the paragraphs does not create confusion about what each one conveys."

*Candace Moyer v. Patenaude & Felix APC*, ___ F.2d ___ (3rd Cir. 2021). https://law.justia.com/cases/federal/appellate-courts/ca3/20-1937/20-1937-2021-03-16.html.

*Arbitration clause voids suit against debt collector.* The Third Circuit overturned a New Jersey federal court ruling and declared that an arbitration agreement barred a former client from litigating her claims in court. A three-judge panel reversed the federal court's ruling denying the firm's bid to compel arbitration of plaintiff's claims that collector engaged in unlawful debt adjustment and related activities.

The circuit court found the arbitration clause met the standard set forth bythe New Jersey Supreme Court. The court stated that decision held that arbitration provisions must "clearly and unambiguously" signal that consumers are waiving their right to pursue claims in court. "The agreement's arbitration provision makes 'clear and understandable to the average consumer' that she is waiving her right to bring suit in a judicial forum." The panel noted that the arbitration clause "explains that arbitration 'replaces the right to go to court before a judge or jury' and further states that arbitration 'may limit each party's right to discovery and appeal.'"

Caren Frederick, on Behalf of Herself and All Other Class Mem-

bers Similarly Situated v. Law Office of Fox Kohler & Associates et al., ___ F.2d ___ (3d Cir. 2021). https://law.justia.com/cases/federal/appellate-courts/ca3/20-2539/20-2539-2021-03-24.html.

*Third Circuit finds debt collection letter not false or misleading***.** The Third Circuit shot down a consumer's bid to revive a proposed class action alleging a collector falsely suggested a debt could increase by itemizing the balance to include "$0.00" in interest and fees in a collection letter. The court ruled that such representations are not misleading.

The court upheld a New Jersey federal court ruling nixing plaintiff Randy Hopkins' suit against Collecto, which does business as EOS CCA. The panel found that Hopkins' Fair Debt Collection Practices Act claims fell short under both the "least sophisticated debtor" standard in the circuit and the "unsophisticated debtor" standard in other circuits. The court stated, "Even our case law's hypothetical 'least sophisticated consumer' — gullible though he may be — reads a debt collection letter without speculating about what could happen in the future based on true statements concerning the past."
*Randy Hopkins v. Collecto Inc. et al.*, ___ F.2d ___ (3d Cir. 2021). https://law.justia.com/cases/federal/appellate-courts/ca3/20-1955/20-1955-2021-04-12.html.

**FEDERAL DISTRICT COURTS**

*Judge strikes down D.C.'s ban on filing eviction cases.* A D.C. Superior Court Judge struck down the district's local law moratorium on filing new eviction cases during the COVID-19 pandemic. The court found that the eviction filing ban unconstitutionally infringed on landlords' right of access to the courts. The decision strikes down the District's ban on eviction filings, however, it does *not* overturn the city's moratorium on actual evictions.

**Judge strikes down D.C.'s ban on filing eviction cases.**

*Borger Management v. Hernandez-Cruz*, Superior Court of the District of Columbia (2021). https://www.jdsupra.com/legalnews/is-the-cdc-s-nationwide-covid-19-7768527/.

*U.S. District Court invalidates two provisions of the CFPB's "Prepaid Rule."* The United States District Court for the District of Columbia entered an Order in invalidating two provisions of the Consumer Financial Protection Bureau "Prepaid Rule" ("the Rule"). The court invalidated the mandatory short-form fee disclosure requirement, and the requirement for a thirty-day waiting period before linking prepaid products to credit. In granting plaintiff PayPal's motion for summary judgment, the Court held that the CFPB acted outside of its statutory authority.
*PayPal, Inc. v. Consumer Financial Protection Bureau, et al.*, ___ F. Supp. 3d ___ (D.D.C. 2020). https://www.consumerfinancialserviceslawmonitor.com/wp-content/uploads/sites/501/2021/01/Paypal-v.-CFPB-et-al.-Ct.-Opinion.pdf.

*Non-signatory held to arbitration agreement.* The U.S. District Court for the Eastern District of Pennsylvania granted a national cable provider's motion to compel arbitration in a putative class action alleging the company violated the FCRA by checking consumer credit reports without a permissible purpose.

After the consumer filed the putative class action, the company moved to arbitrate the claims pursuant to a provision contained "in various written materials that were originally provided to [the consumer]'s household in 2006" upon the opening of a company account. In response, the consumer asserted that the arbitration provision is not binding on him, because he was not the signatory on the document that contains the provision.

The court disagreed with the consumer, concluding that, even though he was a non-signatory, he "actively sought and obtained benefits provided pursuant to the Subscriber Agreement. Thus, he is equitably estopped from avoiding the Arbitration Provision contained therein." The court acknowledged the existence of the arbitration agreement was not in dispute, but whether the consumer was bound by it. The court found that, not only did the consumer obtain benefits from the household account, he also "exceris[ed] control over the account," including placing servicing calls regarding the account. Moreover, because the claims filed by the consumer fall within the scope of the arbitration agreement, as they "relate[] to [company] and/or [consumer]'s relationship with [company]," and the court granted the company's motion to compel arbitration.
*Shelton v. Comcast Corporation*, ___ F.Supp.3d ___ (E.D. Pa. 2021). https://scholar.google.com/scholar_case?case=3840387153740959969&hl=en&as_sdt=6&as_vis=1&oi=scholarr.

*Letter collecting service fee authorized by contract does not violate FDCPA.* Debt collector sent a debt collection letter to consumer containing the following language regarding a service fee: "[a] service fee of $9.95 may be charged for payments if paying by Credit/Debit card depending on consumer's location and applicable contractual documents." Consumer filed suit, alleging Defendants violated the FDCPA, in reference to the service fee language, by causing him "informational injury" in using "false representation in collection of a debt" and "unfairly advis[ing] him that he owed more money than the amount of the debit."

The Court held that Plaintiff failed to show a violation of his rights under the FDCPA because the FDCPA allows for collection of debts "permitted by contract or applicable law." It reasoned that the service fee language of the letter ICF sent to Plaintiff simply stated the "same conditions and limitations on the collection of service fees that the FDCPA places on debt collection in general," and that the "least sophisticated debtor" would not see the language as a "threat to impose unlawful fees or a false statement as to ICR's power with respect to debt collections." Accordingly, the Court granted the motion to dismiss. In its ruling, the Court reiterated that a debt collector does not violate the FDCPA by taking collection actions permitted by the underlying contracts. *Martinez v. Integrated Capital Recovery, LLC,* ___ F. Supp. 3d ___ (E.D. Ca. 2021). https://casetext.com/case/martinez-v-integrated-capital-recovery-llc.

*Creditor's action may both violate the Bankruptcy automatic stay and create liability under the FDCPA.* Nothing in the structure of the FDCPA suggests that the same conduct can›t violate specific prohibitions in multiple sections. The Southern District of Texas considered whether a consumer may bring a claim under the Fair Debt Collection Practices Act based on conduct that violated the Bankruptcy Code, and whether specific conduct may be actionable under more than one section of the FRCPA. The court answered both questions in the affirmative. *Houser v. Ltd. Fin. Servs. LP*, ___ F. Supp. 3d ___ (S.D. Tex. 2021). https://casetext.com/case/houser-v-ltd-fin-servs-lp.

*Spouse cannot blame husband's company for her Covid-19 infection.* A California federal judge has thrown out a woman's bid to hold her husband's employer responsible for her COVID-19 infection, finding that her claims that her husband contracted the disease at work and then passed it on to her are barred by the state's workers' compensation law.

U.S. District Judge Maxine M. Chesney dismissed with leave to amend the suit, giving a win to Victory Woodworks Inc. The court found that because Corby Kuciemba's injury is dependent entirely on her husband's work-related infection, the state's workers' compensation law provides the only possible remedy.
*Kuciemba et al. v. Victory Woodworks Inc.*, ___ F. Supp. 3d ___ (N.D. Ca. 2021). https://docs.justia.com/cases/federal/district-courts/california/candce/3:2020cv09355/371175/19.

*FCRA claim regarding reporting of charge off dismissed for lack of Article III standing.* After the plaintiff defaulted on her loan, Toyota Motor Credit Corporation and Experian reported that the balance of her loan had been charged off, but that a lesser amount was past due. Arriaza alleges that Defendants violated various provisions of the Fair Credit Reporting Act ("FCRA") by inaccurately portraying her debt with TMCC.

**FCRA claim regarding reporting of charge off dismissed for lack of Article III standing.**

The court questioned the plaintiff's contention that the reporting of a lesser past due amount than the amount of the charge-off could negatively impact the plaintiff's credit score. In so holding, the court reasoned that, even if such reporting was inconsistent with Metro 2 guidelines, the plaintiff had failed to allege a plausible concrete injury to establish standing. Further, the Court emphasized that, in enacting the FCRA, Congress did not intend to preclude all inaccuracies in credit reporting, but only those inaccuracies that are either "patently incorrect" or "misleading in such a way and to such an extent that [they] can be expected" to adversely affect credit decisions.
*Deysi Arriaza v. Experian Information Solutions, Inc., et al.*, ___ F. Supp. 3d ___ (D. Md. 2021). https://casetext.com/case/arriaza-v-experian-info-sols.

**STATE COURTS**

*DTPA additional damages as well as damages for emotional distress and mental anguish awarded.* A Texas appellate court affirmed a judgment for $500 in actual damages for breach of contract, $45,000 in compensatory damages for emotional distress and mental anguish, and $90,000 additional damages for knowingly and intentionally violating the DTPA. The court also affirmed finding of intentional infliction of emotional distress.
*Psalms Funeral Home LLC v. Hogan-Rogers*, ___ S.W. 3d ___ (Tex. App.—Beaumont 2020). https://casetext.com/case/psalms-funeral-home-llc-v-hogan-rogers.

*Employer may not reserve the right to litigate claims against an employee in court while simultaneously seeking to restrict the employee to arbitrate her employment.* The Missouri Court of Appeals considered the question of whether an arbitration agreement was enforceable.

A former at-will employee sued his former employer (UniFirst) under the Missouri Human Rights Act alleging disability discrimination and retaliation claims. UniFirst moved to compel arbitration based on the arbitration clause in Caldwell's employment contract. The district court denied UniFirst's motion holding the arbitration clause lacked adequate consideration in two aspects: first, Caldwell's at-will employment was insufficient consideration to support the arbitration agreement, and second, the arbitration clause lacked mutuality because UniFirst unilaterally reserved for itself the ability to assert certain claims in court against Caldwell while Caldwell was required to arbitrate all potential claims.

On appeal the question of whether the arbitration agreement was supported by consideration. At the outset, the Missouri Court of Appeals (Eastern District) held that Missouri contract law principles – including consideration – govern whether an arbitration agreement is valid. Under Missouri law, a promise by one party to a contract is sufficient consideration in exchange for a promise by the other party. But when one party retains the unilateral right to sidestep its obligations, that party's promise is considered "illusory" and thus unenforceable.
*Caldwell v. UniFirst Corporation,* ___ S.W. 3d ___ (Mo. Ct. App. 2020). https://casetext.com/case/caldwell-v-unifirst-corp-2.

*Manufacturer not liable for contribution or indemnity to consumer who brought suit against dealer.* The Court of Appeals of Texas, Fourteenth District, Houston held that a manufacturer is not required to provide contribution or indemnity is suit by consumer against dealer under Tex. Civ. Prac. & Rem. 82.002 because suit did not concern bodily injury or tort. The court also found that because manufacturer did not participation in arbitration and was not adjudicated responsible, contribution or indemnity was not available under Tex. Civ. Prac. & Rem. 32.002.
*Charlie Thomas Ford, Ltd. v. Ford Motor Co.*, ___ S.W. 3d ___ (Tex. App.—Houston [14th Dist.] 2021). https://casetext.com/case/charlie-thomas-ford-ltd-v-ford-motor-co.

**FEDERAL NEWS**

*Consumer cases in the Supreme Court.* This year will bring major U.S. Supreme Court decisions focused on consumer protection, including one regarding Federal Trade Commission financial penalties AMG Capital Management LLC et al. v. FTC, case number 19-508, and another concerning standing for damages in class actions, *TransUnion LLC v. Sergio L. Ramirez,* case number 20-297.

Consumer protection attorneys and experts also are anticipating new class actions stemming from COVID-19 products such as masks and hand sanitizer. Cases to watch include *Archer et al. v. Carnival Corp.* and PLC et al., case number 2:20-cv-04203 and *Juishan Hsu et al. v. Princess Cruise Lines Ltd.*, case number 2:20-cv-03488, in the U.S. District Court for the Central District of California.

And New York prepares to implement a new law strictly regulating automatic subscription renewal terms. The state is poised to enact a strict ARL mirroring California's, which took effect in 2010 and is, to date, one of the strictest such laws. The New York and California laws have multiple key things in common, including that they both require companies to receive affirmative consent from a customer before setting up an automatic renewal. The subscription category is expansive, but examples include magazines and newspapers, weight loss programs and recurring shipments of groceries or toiletries.

Finally, in early December, the Supreme Court heard oral arguments over what defines automatic telephone dialing systems, which are prohibited under the Telephone Consumer Protection Act. The justices will rule on Facebook v. Duguid early this year, and experts are watching the case closely because of its potential to limit or expand protections under the law.

*CFPB says discrimination by lenders on the basis of sexual orientation or gender identity is illegal.* The Consumer Financial Protection Bureau today issued an interpretive rule clarifying that the prohibition against sex discrimination under the Equal Credit Opportunity Act and Regulation B includes sexual orientation discrimination and gender identity discrimination. This prohi-

bition also covers discrimination based on actual or perceived nonconformity with traditional sex- or gender-based stereotypes, and discrimination based on an applicant's social or other associations. The rule follows a request for public comment issued by the CFPB last July. The rule is *here*. The CFPB's press release is *here*.

**STATE NEWS**

*Florida Governor signs Covid-19 liability protection law.* Florida became the most populous state to date to enact legislation shielding businesses and health care providers from COVID-19 injury and death lawsuits, with the law drawing mostly praise from the many in the state's legal community as needed to support a post-pandemic economic recovery despite controversy over certain provisions.

**Florida Governor signs Covid-19 liability protection law.**

The legislation had drawn opposition from various groups, including the state's Plaintiffs Bar, unions and the AARP, plus Democratic lawmakers. But it was a top priority for Republicans, who control the Sunshine State's executive and legislative branches, and pushed the proposal through substantially in its original form and largely along party lines. More information and a copy of the law may be found at, https://www.natlawreview.com/article/florida-enacts-covid-19-business-liability-shield.