Case Index – Closed Cases

Auto Finance Discrimination

As co-counsel in a series of national class action lawsuits brought under the Equal Credit Opportunity Act, NCLC has successfully attacked racially discriminatory lending practices in the used (and new) car business, with settlements valued at well over $100 million. The cases, which were filed against some of the nation's largest auto finance companies and banks, charged that the defendants maintained policies which permit car dealers to "mark-up" the finance rates on loans based on subjective criteria unrelated to creditworthiness. This mark-up policy has had a disparate impact on African-American and Hispanic customers, who end up paying more for credit than whites with similar credit ratings. The lawsuits, which exposed practices that had operated secretly for over 75 years and had resulted in higher-interest rate car loans for minorities, have transformed car financing practices across the industry.

- Op-ed by NCLC Director of Litigation Stuart Rossman "The data is clear: Auto lenders discriminate," Nov. 17, 2015
- Policy Brief: Racial Disparities in Auto Loan Markups: State-by-State Data , June 2015
- Testimony at the CFPB Auto Finance Forum re: results of NCLC's auto finance discrimination litigation, Nov. 2013
   Video of CFPB Auto Finance Forum (Stuart Rossman testimony begins at 55:25)

- *AHFC (Terry Willis, et al v. American Honda Finance Corporation)*
  Settlement Agreement
  Expert Report on the Racial Impact of AHFC's Finance Charge Markup Policy (Mark A. Cohen, Ph.D.)
  Appendix D: Top Dollar and Percentage Point Markups
  Appendix E: Top 100 Dollar Markups by State
  Appendix F: Top 100 Percentage Point Markups by State
  Expert Report of Ian Ayers
- *Baltimore v. Toyota Motor Credit Corp*
  The Settlement Agreement and Amendment to Settlement Agreement
  Frequently Asked Questions (English and Spanish)
- *Borlay v. Primus Automotive Financial Services, Inc. and Ford Motor Credit Company*
  Frequently Asked Questions
- *FMCC (Joyce Jones, et al. v. Ford Motor Credit Company)*
  Settlement Agreement
  Frequently Asked Questions (English and Spanish)
  Preliminary Report on the Racial Impact of FMCC's Finance Charge Markup Policy
- *GMAC (Coleman v. General Motors Acceptance Corporation)*
  Settlement Agreement
  Frequently Asked Questions
  Executive Summary of the Settlement
  Press Release
  ACUERDO DE RESOLUCIÓN
  PREGUNTAS FRECUENTES
  Resumen del Acuerdo de Resolución
- *NMAC (Cason v. Nissan Motors Acceptance Corporation)*
  Press Release (English and Spanish) of the Settlement Agreement

Outline of the Settlement Agreement (English and Spanish)
Frequently Asked Questions (English and Spanish)

- *Smith v. Daimler Chrysler Financial*
  Settlement Notice (English & Spanish)
  Notice of Motion for Preliminary Approval of Class Settlement
  (Exhibit A, Exhibit B, Exhibit C, Exhibit D, Exhibit E, Exhibit F, Exhibit G, Exhibit H)
  Court Order
  Frequently Asked Questions (English and Spanish)

Bank Overdraft Fees

- *Yourke v. Bank of America*, Complaint
  (Appendix A, Appendix B, Appendix C-1 and C-2, Appendix D, Appendix E, Appendices F-G)

Criminal Justice Debt

- *Egana v Blair's Bail Bonds, Inc*. Case No. 2:17-cv-5899 First Amended Complaint
  Plaintiffs (who are accused criminal defendants) and others who agreed to indemnify the bail bond company in case of loss, filed this action on behalf of themselves and all individuals whose rights under federal and state law were violated when they contracted with Defendants for a bail bond to secure their own or their loved ones' release from jail. The Amended Complaint describes the process through which Defendant bail bond company agreed to allow plaintiffs to finance the premium for the bond, but utilized contracts that violate the Truth in Lending Act, 15 U.S.C. § 1601 et seq. by failing to make necessary disclosures, and state contract, conversion, and usury laws by requiring payment of amounts above what state law allows, including paying daily fees for ankle monitors supplied by another company. The FAC also alleges that Defendants violated the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1962 (RICO) and the Louisiana Racketeering Act, La. Stat. Ann. § 15:1351, by conspiring to employ or contract with bounty hunters to kidnap, detain, and threaten to jail principals unless they or their loved ones paid money that was distributed between Defendants. NCLC's co-counsel are the Southern Poverty Law Center and the firm of Wilmer Hale

Debt Collection

- *James F. Miller v. Carrington Mortgage Services, LLC*, Case No. 2:19-cv-00016 Complaint. U.S. District Court, D. Maine. Plaintiff brought this class action against Carrington, a mortgage servicer, for sending account statements and insurance letters to borrowers whose mortgages had been discharged in bankruptcy. Following denial of Carrington's Motion to Dismiss, see 2019 WL 2871141 (D.Me. July 3, 2019), a settlement was agreed upon and has received Final Approval. The Class members are receiving $550 per loan account.
- *Baker v. Ross* Press Release || Complaint – The innovative class action lawsuit was filed by the Public Interest Law Center, Chimicles & Tikellis LLP, and the National Consumer Law Center, on behalf of a low-income tenant named Cassandra Baker and others like her. The complaint alleges her landlord's collection lawyer, like many landlord lawyers, used misleading debt collection practices while attempting to evict her and force her to pay rent she did not owe, and that those practices violated federal law. A class action settlement was agreed upon in June, 2018, and is subject to Court approval.
- *Blake v. Riddle & Wood*, Second Amended Class Action Complaint for telephone harassment of Massachusetts debtors.
- *Clawson, appellant v. Midland Funding* – Opinion of Court of Appeals Decision, Feb. 26, 2013. The Sixth Circuit Court of Appeals reversed approval of a nationwide settlement affecting 1.44

million victims of a debt buyer's "predatory practices" in using robosigned affidavits to obtain state court collection judgments. The Court found that the original settlement was unfair, unreasonable, and inadequate, that the district court abused its discretion in certifying the nationwide settlement class, and that the notice to prospective class members did not satisfy due process. This step allows all of the other robo-signing cases brought against Midland around the United States to proceed. NCLC represented one of the appellants in the case.

- *Dorrian v. LVNV* Second **Amended Complaint** on behalf of class of individuals sued by debt buyer which is unlicensed in Massachusetts. Class certified and partial Summary Judgment for Plaintiffs was overturned by the Massachusetts Supreme Judicial Court. 479 Mass. 265 94 N.E.3d 370 (2018).
- *Fritz v. Resurgent Capital Services and LVNV*, Case No. 11–CV–3300 FB VVP in the Eastern District of New York. Memorandum & Order. Final judgment, Sept. 16, 2016
  This case challenges the practice of debt buyer LVNV filing state court collection suits in the name of Resurent Capital, one of its unlicensed subsidiaries, in order to protect itself from liability. In a ruling on July 24, 2013, the court denied the defendants' Motion to Dismiss in all respects but one. He held that plaintiffs had stated a viable misrepresentation claim under the FDCPA. The court recognized that misrepresenting the owner of the debt was a material violation even though the true owner was a corporate parent because it could confuse and mislead the least sophisticated consumer. Another FDCPA violation that also passed muster was that defendants falsely reported the amount of the debt to CRAs by including state court costs even when they hadn't yet gotten a judgment in their collection action awarding such costs.
  Affirmative defenses of collateral estoppel (due to state court collection judgments), abstention and Noerr Pennington were rejected too. The only claim that was dismissed related to an individual collection letter that also misrepresented ownership of the debt, but was filed beyond the 1 year statute of limitations for such a claim. The decision is reported at 2013 WL 3821479.
- *Jenkins v. General Collection Co.*, Second Amended Class Action Complaint and **Settlement Agreement**
- *Kulig v. Midland Funding*, Case No. 13 CV 4715, US District Court (EDNY) – suit for systematically filing time-barred lawsuits against hundreds of New York consumers who fell behind on their credit card payments. The suit covers New York consumers whose credit card was issued by a Delaware bank. Under NY law, these collection suits must be filed within 3 years of default on the account, but Midland routinely sues long after that. Settled on an individual basis.
- *Lannan v. Levy & White*, Case No. 14 cv 13866 – Partial summary judgment as to liability and class certification were granted in an FDCPA and MA Ch. 93A suit against an attorney debt collector who misrepresented the amount owed by persons receiving ambulance services when he calculated prejudgment interest from the date the services were provided, rather than from the date a demand for payment was sent to the patient. In addition, as a separate violation, in his small claims complaints, the attorney lumped prejudgment interest that hadn't yet been awarded into the amount claimed to already be due at the time of filing of the complaint. The court found this could be confusing to an unsophisticated consumer deciding how to respond to the complaint. Complaint || Order Subsequently, a class action settlement was approved by the Court.
- *Pettway v. Harmon Law Offices*, P.C., Second Amended Class Action Complaint
- *Spence v. Cavalry*, **Complaint** and **Class Action Settlement** involving major debt buyer's practice of retroactively adding interest to the balances on credit card debts it purchased.

ERISA

- *Huffman v. Prudential Insurance Company of America,* Class Action Complaint
  Claim for insurance company's improperly benefiting from the use of proceeds of life insurance policies provided by employers.
- *Brenda J. Otte v. Cigna*, First Amended Class Action Complaint Final Notice of Settlement of Approval – claim for improper use of proceeds of life insurance provided by employer.

Fair Credit Reporting

- *White v. Experian/TransUnion/Equifax*
  The National Consumer Law Center is co-counsel for the plaintiffs in class action lawsuit against TransUnion LLC, Experian Information Solutions, Inc., and Equifax Information Services LLC ("Defendants"). The suit claims that the Defendants violated the Fair Credit Reporting Act ("FCRA") and state laws when reporting debts that had been discharged in bankruptcy as not discharged, failed to conduct proper investigations of consumer disputes regarding such debts and caused damage to consumers as a result. An injunctive relief settlement has been approved by the Court, and a proposed damages settlement has been reached and finally approved by the Court, subject to appeal by objectors.

Fair Housing

- *Connecticut Fair Housing Center, Inc. vs Liberty Bank Case No. 18-1654* || Press Release and Complaint The National Consumer Law Center and and the Connecticut Fair Housing Center filed a fair housing lawsuit in the United States District Court for the District of Connecticut against Liberty Bank, alleging that Liberty Bank violated the Fair Housing Act by: engaging in a pattern and practice of redlining communities where most of the residents are racial and ethnic minorities; discriminating against African – American and Latinx mortgage applicants and; discouraging African – American and Latinx mortgage applicants from applying for credit. Press Release and Settlement Agreement.

Foreclosure and Mortgage

- *Wilborn v. Bank One*, Class Action Complaint
  This lawsuit challenged provisions in mortgages that allow reinstatement of a loan after default only if the homeowner brings all payments current and also pays the attorney's fees incurred by the lender attempting to foreclose. NCLC and our co-counsel argued that these provisions were contrary to Ohio's public policy that creditors cannot collect attorney's fees from borrowers in debt collection actions. The Ohio Supreme Court found that because the right to reinstate was contractual, not statutory, the requirement to pay attorney's fees was an enforceable part of the bargain. However, the Court distinguished reinstatement from other circumstances such as redemption or paying off a home equity line of credit, where the borrower pays the entire debt and no contractual relationship remains – in those circumstances, the lender cannot collect its attorney's fees. The Ohio Supreme Court remanded the remaining portion of the case which it distinguished for trial in the Court of Common Pleas, and that the matter remains pending there for those class members who did not have their debts reinstated.
- *Archibald v. GMAC Mortgage* Class Action Complaint alleging routine use of fraudulent affidavits in foreclosures (Exhibits 1-4, Exhibits 5-25);
  Court Decision of the Maine S.Ct., on certified question from the U.S. District Court

Land Contracts

- *Horne et al. v. Harbour Portfolio et al.*
  Horne et al v. Harbour Portfolio et al. Second Amended Complaint (N.D. GA)
  Horne et al v. Harbour Portfolio et al. Third Amended Complaint (N.D. GA)
  Opposition to Defendant Harbour's Motion to Dismiss Second Amended Complaint
  Opposition to Defendant NAA's Motion to Dismiss Second Amended Complaint
  Order on Motion to Dismiss Second Amended Complaint (N.D. GA)

  Horne v. Harbour Portfolio, Unites States District Court for the Northern District of Georgia: Suit was brought by the Atlanta Legal Aid Society on behalf of 22 African-American residents representing 16 household. The action asserted claims of discriminatory targeting for abusive credit terms in home purchase "contract for deed" transactions extended by Harbour Portfolio. The complaint alleged that Harbour Portfolio, through both intentional targeting of African-American consumers and practices that have a foreseeable disparate impact on African-American consumers, violated the Fair Housing Act of 1968, as amended, 42 U.S.C. § 3601, *et seq.*, the Equal Credit Opportunity Act, 15 U.S.C. § 1691, *et seq.*, and the Georgia Fair Housing Act, O.C.G.A. § 8-3-200 *et seq.* NCLC subsequently joined the case as plaintiffs' co-counsel.On March 20, 3018, the Court denied a motion to dismiss for all but one of the claims asserted (wrongful eviction). Thereafter, during on-going discovery, including subpoenas issued to Fannie Mae, requests for production of documents by the defendants and depositions of the defendant principal, the parties engaged in mediation before a U.S. Magistrate Judge.
  The case settled in December, 2018. The 12 households who were still living in their homes received a deed converting their contract for deed to a mortgage with title insurance, reduced interest rates, shorter repayment terms and, in some cases, principal reductions. They also received a lump sum cash payment. The four households who were evicted/no longer living in the home received separate lump sum cash payments. As part of the settlement, separate attorneys' fees were paid to plaintiffs' counsel of record. (More information on land installment contracts including NCLC's 2016 report, Toxic Transactions: How Land Installment Contracts Once Again Threaten Communities of Color, here)

Military Pensions

- *Amos v. Advanced Funding, Inc. et al* Complaint
- *Henry v. Structured Investments Co. et al* ComplaintTrial Decision (Class-action lawsuit regarding assignment of pension rights in exchange for lump sum payments)
- Testimony of NCLC Director of Litigation Stuart Rossman before the U.S. Senate Committee on Aging re: pension advance schemes, Sept. 30, 2015

Mortgage Related Claims

HAMP Trial Period Plan (TPP) Contract Claims

- Complaint against Bank for failure to honor its agreements with borrowers to modify mortgages and prevent foreclosures under the United States Treasury's Home Affordable Modification Program ("HAMP").

Mortgage Discrimination by Subprime Lenders

National class action cases brought under the Fair Housing Act and the Equal Credit Opportunity Act against certain subprime mortgage lenders:

- *Barrett v. H & R Block* Class Certification Report of Ian Ayres (redacted and publicly filed)
- *Barrett v. H & R Block* Class Certification Reply Report of Ian Ayres (redacted and publicly filed)
- *Barrett v. H & R Block* Class Certificaiton Rebuttal Report of Patricia McCoy (redacted and publicly filed)
- *Barrett v. H&R Block* Class Certification Decision
- *Garcia v. Countrywide Financial Corporation*, Class Action Complaint
- *Ramirez v. Greenpoint*-Howell Jackson Expert Report (publicly filed)
- *Ramirez v. Greenpoint*-Howell Jackson Reply Expert Report (publicly filed)
- *Ramirez v. Greenpoint*-Patricia McCoy Rebuttal Expert Report (publicly filed)
- *In re Wells Fargo Mortgage Lending Practices Litigation*, First Consolidated and Amended Class Action Complaint
- *In re Wells Fargo Mortgage Lending Practices Litigation*, Class Certification Report
- *In re Wells Fargo Mortgage Lending Practices Litigation*, Reply Class Certification Report

Mortgage Securitization Discrimination

- *Beverly Adkins et al. v Morgan Stanley*
  The National Consumer Law Center is co-counsel for African American plaintiffs in a prospective class action lawsuit brought against Morgan Stanley. The lawsuit claims that the Defendant violated federal civil rights laws, the Fair Housing Act and the Equal Credit Opportunity Act as well as state laws by adopting mortgage securitization policies that caused predatory lending and adversely impacted African Americans in the Detroit, Michigan area. It is the first case where a prospective class of affected homeowners victimized by subprime lending abuses has directly sued an investment bank. It is also the first lawsuit to connect racial discrimination to the securitization of mortgage-backed securities.

    - The *Adkins v. Morgan Stanley* lawsuit asserts that Morgan Stanley pursued mortgage securitization policies and practices that, through their funding of now-defunct mortgage lender New Century Mortgage Company, resulted in a significant discriminatory impact on African-American borrowers in the Detroit metropolitan area, flooding the already highly segregated community with toxic, combined-risk subprime loans in the lead-up to the collapse of the housing market in 2008. Read the expert reports submitted in support of the reverse red-lining allegations made in the case and NCLC's issue brief detailing key findings by the experts.
      Appellants' 2nd Circuit Brief (Class Certification) (November 2015)
      AFSCME/SEIU 2nd Circuit Amicus Brief (November 2015)
      NAACP Legal Defense & Educational Fund, New York Law School Racial Justice Project, Damon J. Keith Center for Civil Rights and Michigan Welfare Rights Organization 2nd Circuit Amicus Brief (November 2015)
      Jerome N. Frank Legal Services Organization and Michigan Poverty Law Program 2nd Circuit Amicus Brief (November 2015)
      Opinion and Order (May 2015)
      NCLC Issue Brief (Nov. 2014)
      Ayers Expert Report
      McCoy Expert Report
      Oliver Expert Report
      Sugrue Expert Report

Mortgage Satisfactions

- *Maddox v. Bank of New York Mellon* Complaint
    - This putative class action was filed in 2015, seeking New York state statutory penalties for untimely filing mortgage loan satisfactions of record. In 2022, the Second Circuit Court of Appeals held that plaintiffs lacked a concrete injury and dismissed the action for lack of jurisdiction. Maddox v. Bank of New York Mellon Trust Company, N.A., 19 F.4th 58 (2d Cir. 2021)
- *Stromberg v. Ocwen Loan Servicing* Third Amended Complaint
    - This putative class action in the N.D. Cal. sought statutory penalties for untimely filing mortgage loan satisfactions of record. A settlement in 2020 for California class members required defendants to pay each member 2/3 of the state's statutory maximum penalty of $500 without a showing of harm from the delay.

Mortgage Servicing Litigation

- *Taylor v. Ocwen Loan Servicing* Complaint for Violating Chapter 13 Bankruptcy Notice of Discharge Cures

Private Child Support Collection Agencies

- *Zipperer v. Supportkids, Inc.* (Complaint and Court Decision and Order)

Refund Anticipation Loan Cross Lender Debt Collection

- Order After Hearing: Preliminary Approval of Class Settlement
- Settlement Agreement
- FAQ
- Press Release (March 18, 2003)
- *Hood v. Santa Barbara Bank & Trust* Complaint

Small Loans at High Cost

- *Anderson v. Native American Loan Co*. – Complaint for unlawful trade practices in connection with tax refund anticipation loans.
- *Daye v. Speedy Loans*– Complaint and Judgment for unlawful trade practices in connection with disguised payday loans.
- *Chester v. Tancorde* – Complaint and Class Action Settlement against small loan company for violations of TILA.
- *Tullie v.* T & R Market – Complaint and Class Action Settlement against pawnbroker for TILA and state law violations
- *In re: Chase Bank USA, N.A. "Check Loan" Contract Litigation*, Master Class Action Complaint

Student Loans

- *Bryant v. Navient Corp.* – Case No. 12-36689-BJH13 in the U.S. Bankruptcy Court, N.D. Texas, Dallas Division. Complaint.
  This putative class action on behalf of hundreds if not thousands of student loan borrowers across the country sought relief for individuals who made payments on their loans through their Chapter 13 plans, but whose payments were routinely returned to the Trustee, were then deposited in the Court Registry (where they are inaccessible to the borrowers), and were not credited to their loan accounts with the Department of Education. Soon after the Supreme Court decided TransUnion v. Ramirez, the court dismissed the case for lack of concrete injury

because the borrowers' loan accounts were still being held in forbearance and no one had yet been asked to make up for the uncredited payments.

- *Menendez v. DeVos and the US Department of Education*, Complaint.
  The Legal Aid Foundation of Los Angeles and National Consumer Law Center filed a lawsuit in federal court against the U.S. Department of Education and Secretary Betsy DeVos on behalf of three student loan borrowers defrauded by the for-profit Marinello Schools of Beauty ("Marinello"). At the time of its closure, Marinello had 56 campuses throughout California, Connecticut, Kansas, Massachusetts, Nevada, and Utah. The complaint challenged the Department's delay of student loan borrower defense regulations. Shortly after the case was filed, the Department mooted it by granting discharges to the three named plaintiffs.
- *National Consumer Law Center v U.S. Department of Education*, April 17, 2019, Complaint and Press Release
  The National Consumer Law Center (NCLC) filed a Freedom of Information Act (FOIA) complaint against the United States Department of Education (ED) in the Unites States District Court for the District of Massachusetts (C.A. No. 1:19-cv-10739). In the action NCLC seeks to have the ED produce a copy of its contract (including related amendments) with the Pennsylvania Higher Education Assistance Agency (PHEAA), one of the private student loan servicing companies with whom ED contracts to handle billing and other services for federal student loans. The U.S. Department of Justice and ED have stressed the importance of the requested materials, citing the contract as a basis to support their pronouncement that state regulators and law enforcement agencies are prohibited from enforcing state consumer protection statutes against student loan servicers. To date, however, nine (9) months after NCLC filed a FOIA Request on July 18, 2018 seeking the release of ED's contract and related documents arising from its relationship with PHEAA, ED has not communicated to NCLC its determination as to NCLC's Request, nor provided NCLC with any responsive documents as required by FOIA. NCLC has requested the Court to declare that ED has violated FOIA by its failure to timely respond to NCLC's Request and its failure to make the requested records promptly available and to order ED to make the requested records available to NCLC without further delay.
- *National Consumer Law Center v U.S. Department of Education*, April 19, 2018, Complaint and Press Release
  The National Consumer Law Center filed a lawsuit in the U.S. District Court for Massachusetts against the U.S. Department of Education for records related to its purported justification for delaying implementation of a rule to protect student loan borrowers from school fraud and abuse, including records of communications between agency officials and representatives of the for-profit college industry. NCLC filed a FOIA request for these records last summer and received limited, heavily redacted materials in response. NCLC asks the court to declare that the Department's search was inadequate and its withholding of the records is unlawful, and to order the agency to make the requested records available without delay. Public Citizen is serving as co-counsel on the case.
- Case against the United States Department of Education
  The National Consumer Law Center is co-counsel in a Freedom of Information Act suit requesting public records of the U.S. Department of Education regarding race and debt collection practices of third-party debt collectors hired by the Department.Complaint, Exhibit 1 (FOIA request, May 7, 2015), Exhibit 2, Exhibit 3, and Exhibit 4, and Press Release
- *Bible v. United Student Aid Funds, Inc* – Case Number 1:13-cv-00575, U.S. District Court, S.D. Indiana. A $23 Million dollar settlement was approved in this class action asserting that United Student Aid Funds, a non-profit guarantor for certain student loans, unlawfully imposed collection costs on student loan borrowers like Plaintiff. Plaintiffs' contention was that the Higher Education Act, which is incorporated in the parties' promissory note, provides that collection costs cannot be imposed if a borrower enters into a rehabilitation agreement within

60 days of default. Defendants argued that the applicable regulations should be interpreted to permit the imposition of such costs. The case had gone up to the 7th Circuit Court of Appeals, which in a split decision, reversed dismissal of the suit. USAF then filed a non-frivolous affirmative suit against DoE to strike down its favorable interpretation of the regulation on APA grounds. Nevertheless, mediation before a retired federal judge led to a favorable settlement for the class.