The Consumer Finance Podcast – Feeling the Heat: Strategies to Keep Cool Under California's Consumers Legal Remedies Act
Host: Chris Willis
Guests: Lindsey Kress and Regina McClendon
Date Aired: May 22, 2025

Chris Willis:

Welcome to *The Consumer Finance Podcast*. I'm Chris Willis, the co-leader of the Troutman Pepper Locke's Consumer Financial Services Regulatory Practice. Today, we're going to be talking about some important updates and strategy issues, concerning a very important statute, the California Consumers Legal Remedies Act.

But before we jump into that topic, let me remind you to visit and subscribe to our blogs, TroutmanFinancialServices.com and ConsumerFinancialServicesLawMonitor.com. And don't forget about all of our other podcasts: *The FCRA Focus*, *The Crypto Exchange*, *Unauthorized Access*, which is our privacy and data security podcast, *Payments Pros*, and our auto finance podcast *Moving the Metal*. All of those are available on all popular podcast platforms. Speaking of those platforms, leave us a review on your podcast platform of choice and let us know how we're doing.

Now, as I said, today, we're going to be talking about some important updates under the California Consumers Legal Remedies Act. Joining me to do that are two of my partners, Regina McClendon and Lindsey Kress, who are both partners in our San Francisco office, and who are some of our Consumer Financial Services litigators who are very experienced with this California statute and with consumer finance litigation in California. So, Lindsey, Regina, thanks very much for being on the podcast to talk about this today.

Regina McClendon:

Glad to be here.

Lindsey Kress:

Thanks for having us, Chris.

Chris Willis:

So, Lindsey, let me start with you. Do you mind just giving us a place to start by describing the CLRA for those listeners who might not be familiar with it? And they're probably glad they're not familiar with it, by the way.

Lindsey Kress:

Absolutely, Chris. The CLRA is a California Consumer Protection Statue that prohibits 30 distinct methods of unfair and deceptive business practices. This applies to specific practices, such as false advertising, adding unconscionable terms in a contract, disparaging the goods or services of another. The statute even specifically references advertising the sale of furniture without indicating that assembly is required. It also prohibits offering a rebate or discount with hidden conditions, failing to make certain disclosures in a solicitation of consumer finance products, charging unreasonable fees to assist with social services applications, and the list goes on.

But a particular note, the CLRA was amended last summer to include a prohibition against so-called drip pricing, or what some might consider, junk fees. California's Senate Bill 478, also known as the Honest Pricing Law, or the Hidden Fee Statue went into effect on July 1, 2024, and amended the CLRA to prohibit companies from advertising, displaying, or offering a price for a good or service that does not include all mandatory fees or charges. Though, there is an exclusion for fees for things such as taxes or shipping.

So, this prohibition generally applies to service charges, convenience fees, and other charges that are commonly tacked on at the end of a transaction. It's worth pointing out that there was some initial ambiguity as to whether this new prohibition applies if the fee is clearly displayed to the customer elsewhere in the transaction. The California Attorney General has weighed in and clarified that even fees disclosed upfront are prohibited if not included in the initial advertised price.

The AG emphasized that the price listed to the consumer must be the full price that that consumer is required to pay. This means that companies cannot avoid the prohibition against so-called junk fees or drip pricing by simply displaying additional fees under the advertised price or indicating additional fees may apply. Now, this doesn't mean that companies can't still itemize charges under the displayed price, but the takeaway is, the price initially played to the consumer must include all mandatory fees for the transaction.

Chris Willis:

What the interesting thing about this, Lindsey, is that, it really sounds very reminiscent of the original incarnation of the FTC's so-called junk fees rule, which the FTC subsequently narrowed to only apply to certain types of transactions, but it doesn't look like California was that narrow in terms of its implementation of this. So, California can be a litigious place, Lindsey. Are you seeing private litigants try to take advantage of this new provision in the CLRA yet?

Lindsey Kress:

Yes, Chris. We're already seeing it. There has been a substantial increase in claims brought under the CLRA over the last year, particularly regarding the so-called junk fees and drip pricing. These lawsuits are targeting companies in every industry and are typically focusing on online sales practices.

Chris Willis:

Given that there has been an increase in litigation on this point, it's probably important for our listeners to understand how the CLRA differs from other of California's many consumer protection statutes, like the Unfair Competition Law. I personally honestly find there to be a bewildering array of consumer protection laws in California. Do you mind telling the audience what's special about the CLRA?

Lindsey Kress:

Yes, great point, Chris. The CLRA has a more narrow scope than other consumer protection statutes, such as the California Unlawful Competition Law, also known as the UCL, but it has broader remedies. So, for example, the UCL generally prohibits any unlawful, unfair, fraudulent conduct in connection with nearly all business activity in California, while the CLRA only applies to those 30 distinct methods of unfair conduct referenced in the statute, and the application is limited to consumer transactions involving the sales or lease of goods or services.

Now, for a bit of background, this more limited scope was by design as the CLRA was not intended to be a catch-all statute for deceptive business practices. Instead, the CLRA was adopted to mitigate specific social and economic problems in the late 1960s that legislators believed were contributing to riots in low-income areas. The statute was actually drafted following a report by the 1967 National Advisory Commission on Civil Disorders, which found that some of the ongoing civil unrest at the time was caused by merchants in low-income areas, engaging in deceptive sales practices, including by charging excessive prices and misrepresenting the character of goods.

The CLRA was thus created in a response to this report and was the product of intense negotiations between consumer and business groups. While the business groups succeeded in limiting the scope of the CLRA, as I mentioned earlier, the statute does provide for broader remedies than that general UCL statute. So, the UCL only provides for equitable remedies, such as restitution and injunctive relief. However, the CLRA provides for actual damages, statutory damages of $1,000 per violation, punitive damages, and attorneys' fees. In other words, the compromise reached between the business and consumer groups was that, while the CLRA would provide for broader remedies, it would only apply to those distinct practices referenced in the statute.

Chris Willis:

Okay. So, given the breadth of the relief that you just mentioned, you know, statutory damage is actual damages, punitive damages, and attorneys' fees. It sounds like even an individual lawsuit might pose significant risk to a company under the CLRA. But I have to ask this, even though I'm afraid to hear the answer, does the CLRA also allow plaintiffs to bring claims on a class action basis?

Lindsey Kress:

Yes, Chris. The CLRA expressly permits class actions and actually provides its own streamlined method for class certification. Under the CLRA, a court must certify a class if the plaintiff shows, one, it is impractical to bring all members of the class before the court. Two, the questions of law or fact common to the class are substantially similar and predominate over individual issues. Three, the claims or defenses of the representative plaintiffs are typical of the class, and four, the representative plaintiff will fairly and adequately protect the interests of the class. Courts have no discretion to deny certification of a CLRA class if these elements are met. And most notably, superiority is not a required element for a CLRA class certification. A plaintiff moving to certify class under the CLRA does not need to show a substantial benefit will result to the litigants or the court in order to succeed on class certification.

Chris Willis:

Now, that is very interesting. You don't see a substantive statute have its own sort of procedure for class certification very often. So, I'm really glad that you shared that with us. Based on everything that you've told us so far, who should be concerned about the Consumers Legal Remedies Act?

Lindsey Kress:

All companies engaged in the sale of goods or services to customers in California should be familiar with the prohibitions in the CLRA, especially the recent drip pricing amendment. The broad remedies available under the CLRA and the streamlined class procedure will continue to make so-called junk fees a high priority focus for plaintiff class action attorneys, but it's not all doom and gloom. Despite the broad reach of the statute, there are various defenses available, including a safe harbor provision that allows companies to cure class claims before a lawsuit is filed, potentially, resulting in significant cost savings, which Regina will talk about next.

Chris Willis:

Okay, good. So, now that we figured out all the danger that we're in. Let's see if we can open up some sunshine on this episode of the podcast. Regina, I'm going to turn to you for that. Lindsey mentioned some of the sort of defenses and safe harbors under the statute. So, do you mind telling the audience about the pre-suit demand requirement under the CLRA and the safe harbor option for class actions?

Regina McClendon:

Sure, Chris. The CLRA requires that a demand letter be sent before a lawsuit for damages can be brought. The statute requires a letter to be sent at least 30 days before the lawsuit is filed, and it has to notify the wrongdoer of the particular violation and demand that that person correct, repair, replace, or otherwise rectify, basically fix the problem. The typical letter will ask the company to refund a disputed fee, or other charge, and agree not to charge the amount going forward.

So, if within 30 days of receipt of the notice, the recipient makes the correction or refund, or agrees to do so within a reasonable time, then, the consumer cannot bring any action for damages under the CLRA. What's interesting here in the class sense is that, the letters will often seek relief, not just on behalf of the consumer sending the letter, but also on behalf of other similarly situated consumers. So, essentially, the same defense applies. No class action lawsuit for damages can be brought against the supposed wrongdoer if relief to all affected consumers is provided during that 30-day safe harbor period. The statute goes on to specifically explain what that requires a business to do in response.

First, the business needs to identify all the consumers that are similarly situated, or at least make a reasonable effort to identify them. Second, the identified consumers have to be notified that upon their request, the business will make the correction or other remedy, and that must be done in a reasonable amount of time. Third, the business has to discontinue, or within a reasonable period of time discontinue, the challenge practice. What's critical here is that the business being targeted by one of these letters can substantially reduce its financial exposure by agreeing to provide the remedy within the 30 days afforded. That requires some pretty quick work, but it can result in a substantial cost savings.

Chris Willis:

Okay. Well, that sounds interesting. What kind of cost savings are possible if a potential defendant responds to one of these pre-suit letters the right way.

Regina McClendon:

Well, first, the business being targeted will limit its own attorneys' fees significantly. Because instead of paying the attorney to litigate, the attorney will largely be writing a response letter, and then overseeing the implementation of the correction process. Second, the business will be able to limit the consumer's recovery of attorneys' fees. A payment of the consumer's attorneys' fees will almost certainly be required because the letter will have demanded it, and the CLRA authorizes reasonable fees to a prevailing consumer. But it will be difficult for a consumer's attorney to justify fees in a very large amount when they've written a letter and done little or nothing more.

Third, the savings will come through what is in effect a claims-made settlement process that the statute authorizes. Remember I said earlier that the statute itself states that the recipient of the demand letter has to notify the similarly situated consumers, that upon their request, the company will make the correction or other remedy. So, in practice, what that means is, the company will send notices to the group of consumers explaining that a claim has been made, and that the company has elected to provide a refund, or whatever the relief, is upon request.

Then, the refund or other remedy only needs to be given to those who make the request in response. That's typically going to be a very low percentage. That leads to yet another benefit that will result from the low percentage of claimants. The CLRA does not contain a provision requiring any unclaimed amounts to be distributed to a charity or other Cy Pres recipient. This means that the payment or other relief only has to be given to the people who request it. This built-in claims process that the CLRA affords if the business agrees to give the class-wide relief

in response to the demand letter is the main reason to respond favorably to a letter without awaiting litigation.

Chris Willis:

Yes, that sounds very interesting, because we all know from our experience with claims made settlements that the response rates on those can be pretty low, particularly if the amount involved is relatively low, you know, like a few dollars per person. Still though, it seems unusual, Regina, to in effect execute a class-wide settlement when you don't even have litigation, or court approval, or anything. So, why would a business want to do this?

Regina McClendon:

Absolutely, Chris. It's counterintuitive in a lot of ways. The process is best used when there's a strong desire to resolve the claim quickly to avoid litigation or to avoid significant defense costs or both. The approach probably does not work if the challenged practice or fee is going to continue. It's probably best used for situations when a change in practice is underway already, or you're dealing with a past practice that was already discontinued. Another benefit is the process is faster. A class action settlement, as everyone knows, takes a long time to wrap up because of the need for court approval. First, you have to get preliminary approval of the settlement, then, class notice has to be given, and then there's a period of time to allow for objections and opt-outs.

After that, you have a final approval hearing. And if there were any objectors, you have to wait for any appeals to be resolved before the settlement payments can be made. It can take a long time, often a year or more, to get through this process. The benefit of the CLRA class-like settlement in response to a demand letter is that the business skips all of these steps with the court. It only has to identify the affected consumers, notify them of the dispute and their right to request the remedy, and typically, that will be a refund, and then, make the refund. This can be wrapped up in the space of a couple of months.

Chris Willis:

That sounds great, Regina, but I'm wondering, are there any downsides of doing this sort of pre-litigation, class-like settlement that may arise from skipping all those steps of court approval, and objections, and right to opt out, and all this other stuff.

Regina McClendon:

Yes, definitely. There are some risks with this. As you just said, with this class action settlement process, you have the court approval, and the defendant is protected from future litigation following that process because of the release of claims by everyone in the classified class, and also by res judicata principles. A settlement in response to a CLRA demand letter doesn't give that protection at all. Probably at most, you can obtain a release from the consumer who sent the letter, but the approach is still worth considering in the right circumstances because the likelihood of a lawsuit by other consumers is probably low.

Those who made a request for relief and obtained the relief are not likely to have a basis to sue because they'll have been refunded, or the issue otherwise corrected. And those who didn't make a claim probably are not interested. But it is important to take into consideration that this type of resolution does not give the same protection as a class action settlement, and really weigh the pros and cons before going ahead. Another factor to consider with this type of settlement is that the CLRA safe harbor only precludes a lawsuit for damages if the relief is given in response to the demand letter. It does not preclude a lawsuit for injunctive relief under the CLRA, and it also doesn't preclude a lawsuit under a different statute or legal theory.

So, this process may only be appropriate for cases meeting specific criteria. The best type is one where the challenged practice is ended or is about to end because that limits the risk of a class action seeking injunctive relief, and also, for situations where the interest in a quick and relatively inexpensive resolution outweighs the risk of additional future claims.

Chris Willis:

Okay. So, Regina, it sounds like there's some benefits to this approach in the right case. Why is it so rare for businesses to invoke the safe harbor that you've just been telling us about?

Regina McClendon:

The main reason is that clients don't typically loop in a law firm until after the lawsuit is filed. Oftentimes, the CLRA demand letters get routed to a customer complaint department for response instead of to a legal department, and the request in the letter for relief on behalf of others may be overlooked. By the time it gets to an attorney, the 30-day safe harbor response time has long passed, and the lawsuit has typically been filed. It can also be difficult to quickly ascertain class size or liability exposure, depending on the nature of the claim, and especially because there is only a 30-day period for response.

The other reason this is rare is what I was mentioning earlier. Invoking the safe harbor by issuing refunds to a group of people is less protective than letting the class action lawsuit be filed, and receiving the greater protections that come through the class action settlement and court approval process.

Chris Willis:

So those are some important factors for companies to consider when they get one of these letters. So, Regina, what do you suggest that companies do when they're served with one of these CLRA demand letters?

Regina McClendon:

Well, start perhaps before the letter comes in by implementing a protocol to send CLRA letters, or really any letter seeking class-wide relief, to the legal department. Have an attorney review the letter quickly and evaluate the risk. Then, consider implementing a pre-litigation cure if it's decided that the cost savings and speed of resolution through the safe harbor process outweighs the risks of possible future litigation.

Chris Willis:

Okay. So, Regina, do you have any other tips on what to do when a company is facing a CLRA lawsuit?

Regina McClendon:

Yes, I do. Hire a law firm that's experienced with CLRA defense so that they can analyze whether the challenged practice pertains to a good or service as those phrases were defined in the statute. As Lindsey said earlier, the CLRA is limited, and that it only applies to a transaction in connection with the sale or lease of a good or service. Those terms are defined in the statute in case law more narrowly than the common-sense definitions would indicate.

As an example, the California Supreme Court has held that life insurance is not a good or service within the meaning of the CLRA. Other cases have expanded that analysis to other areas, such as credit cards and timeshare points, which have been found to be outside of the CLRA's reach. Another important thing to do is to determine whether the disputed transaction is sufficiently tethered to California, such that the consumer can even invoke the CLRA. The CLRA is not supposed to have extraterritorial effect.

In general, courts have found that the CLRA does not apply to actions occurring outside of California that injure non-residents. It doesn't stop non-residents from trying to sue under the statute, so that's an important factor to take into account.

Chris Willis:

Okay, thanks very much. Well, Lindsey, I'm going to come back to you for sort of the last word, sort of the parting shot of podcast. So, do you have sort of a key set of takeaways that you want the listeners to leave the podcast with relating to the CLRA?

Lindsey Kress:

Yes, Chris. To sum it up, I'd say that while businesses can face substantial expenses for violating the statute, there are a number of tools available to limit exposure under the CLRA. And this ranges from agreeing to a quick class-like settlement to litigating the claim and invoking available defenses, such as those based on the more limited definition goods and services that Regina just mentioned. But the best defense is always a good offense. With the CLRA, that means being proactive in reviewing your business's policies to ensure compliance with the statute before a violation occurs. And this is especially true with the new prohibition against so-called drip pricing. So, it's a good idea to review your company's pricing policies for compliance with the CLRA.

Chris Willis:

Well, that's great advice, Lindsey. So, thank you for being on the podcast. And Regina, thank you for being on today too. This has been a great episode, and I'm sure, very informative to our listeners. Of course, thanks to our listeners for tuning in to today's episode as well. Don't forget

to visit and subscribe to our blogs, TroutmanFinancialServices.com and ConsumerFinancialServicesLawMonitor.com. While you're at it, why not visit us on the web at troutman.com and add yourself to our Consumer Financial Services email list. That way, we can send you copies of the alerts and advisories that we send out, as well as invitations to our industry-only webinars that we put on from time to time. And of course, stay tuned for a great new episode of this podcast every Thursday afternoon in your podcast feed. Thank you all for listening.