

Buchalter

Robert S. McWhorter

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Areas of Practice & Industry Specialties

Insolvency & Financial Law Group; Litigation; White Collar & Investigations; Consumer Financial Services and Mortgage Regulatory; Sports Industry Law; Financial Services Regulatory; Financial Institutions Law

Robert McWhorter is a Shareholder in Buchalter's Sacramento office, and is a member of the Firm's Litigation Practice Group. He is the Chair of Sacramento's Litigation Practice Group. His practice focuses on representing financial institutions and business entities in commercial, business and bankruptcy litigation. He has extensive experience handling lender liability actions, franchise litigation, bankruptcy, insolvency law, creditors' rights, real estate disputes, corporate dissolutions, loan workouts and restructuring, receiverships, and litigation involving business torts and contract law. He has handled multiple complex liability claims against officers and directors of corporate entities. Through his bankruptcy and commercial practice, Mr. McWhorter possesses substantial expertise handling Article 9 issues under the Uniform Commercial Code.

He has defended national banking associations and/or receivers for failed financial institutions in lender liability actions. His experience includes cases involving the Real Estate Settlement Procedures Act (RESPA), 12 U.S.C. §§ 2601 et seq., the Truth in Lending Act (TILA), 15 U.S.C. §§ 1601 et seq. (TILA), the Fair Debt Collection Practices Act (FDCPA), 15 U.S.C. §§ 1692 et seq., the Fair Credit Reporting Act ("FCRA"), 15 U.S.C. §§ 1681, the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), 12 U.S.C. §§ 1821 et seq., the Rosenthal Fair Debt Collection Practices Act (RFDCPA), California Civil Code sections 1788 et seq., the Unfair Competition Law, California Business and Professions Code sections 17200 et seq. and the California Homeowner Bill of Rights. He has defended lenders in federal actions brought under the Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 227.

For over 26 years, Mr. McWhorter has represented secured and unsecured lenders, trustees, troubled companies and individuals in chapter 7 and 11 bankruptcy proceedings, reorganizations and out-of-court restructurings. He also has represented clients in all aspects of debt restructurings, reorganizations, and debt enforcement, including real and personal property foreclosures. In addition, Mr. McWhorter has represented clients in chapter 9 bankruptcy proceedings, including California's AB 506 process and has represented receivers in state court proceedings. His experience spans a wide range of industries, including real estate, manufacturing, and healthcare industries. His clients have included banks, pension funds, automotive suppliers, manufacturing companies, employee leasing companies, and mortgage companies.

His experience extends to representing beneficiaries, trustees and court-appointed special masters in contested trust litigation matters. His representation has included defending two beneficiaries in a contested breach of fiduciary action involving a multimillion real estate trust and co-trustee against other co-trustees for misconduct concerning trust administration.

Mr. McWhorter has extensive background in administrative law and healthcare, representing physicians and hospitals in disciplinary proceedings before state and federal agencies, including the Medical Board of California. He represented a county health plan against the State of California challenging the establishment of capitation rates under Medi-Cal.

Distinctions

- AV Preeminent Peer Review Rated by *Martindale-Hubbell*
- Named a Northern California “Super Lawyer” for Business Litigation in *San Francisco Magazine*, 2013 – 2022
- Recognized as a “Top Lawyer” in Bankruptcy and Creditor/Debtor, and Business Litigation by *Sacramento Magazine*, 2015 and 2021, 2022

Representative Matters

Banking and Financial Services Litigation

- *Narvasa v. U.S. Bancorp*, 713 F. App’x 728 (9th Cir. 2018). Represented national banking association; successfully obtained affirmation of trial court’s dismissal of case based upon failure to allege a violation of California Civil Code section 2923.6(f)(3).
- *Evans v. ZB, N.A.*, No. 2:17-1123 WBS DD, 2017 U.S. Dist. LEXIS 209632 (E.D. Cal. Dec. 19, 2017). Represented national banking association in successfully dismissing class action brought by investors of bankrupt entity based upon claims that the national banking association knowingly provided substantial assistance to, and aided and abetted, the bankruptcy entity in engaging in a Ponzi scheme.
- *Stinson v. Specialized Loan Servicing, LLC*, No. 2:16-cv-01903-MCE-GGH, 2016 U.S. Dist. LEXIS 152892 (E.D. Cal. Nov. 2, 2016). Successfully defended loan servicer in claims for violation of the federal Equal Credit Opportunity Act (“ECOA”), 15 U.S.C. § 1691, negligence, and violation of California Civil Code sections 2923.7, 2924.10, and 2924.12.*
- *Narvasa v. U.S. Bancorp*, No. 2:15-cv-02369-KJM-EFB, 2016 U.S. Dist. LEXIS 98991 (E.D. Cal. July 28, 2016). Represented national banking association to obtain ruling that the National Bank Act (“NBA”), 12 U.S.C. § 24, and its corresponding regulations, 12 C.F.R. § 34.4(a)(9) preempted California Civil Code sections 2923.6(f)(3) and 2923.7(b).*
- *Del Rio v. U.S. Bank Nat’l Ass’n*, No. E060609, 2016 Cal. App. Unpub. LEXIS 3338 (May 6, 2016). Represented national banking association in causes of action for constructive fraud, promissory estoppel, and negligent misrepresentation.*
- *Rothman v. U.S. Bank Nat’l Ass’n.*, 2014 WL 4966907 (N.D. Cal. Oct. 3, 2014). Represented lender in case examining the requirements to state a claim for violation of the Fair Credit Reporting Act, 15 U.S.C. § 1681s-2(b), the Real Estate Settlement Procedures Act, 12 U.S.C. § 2605(e), and California Business and Professions Code sections 17200 et seq.*
- *Huy Thanh Vo v. Nelson & Kennard*, 2013 U.S. Dist. LEXIS 36323 (E.D. Cal. Mar. 14, 2013). Represented lender in one of the leading cases defining the scope of the litigation privilege and vicarious liability for banks under the Fair Debt Collection Practices Act and the Rosenthal Act.*
- *Ros v. Deutsche Bank Nat’l Trust Co.*, 2012 U.S. Dist. LEXIS 169976 (S.D. Cal. Nov. 28, 2012). Successfully represented bank in action wherein the court ruled that a federal district court lacks jurisdiction to interfere with or preclude enforcement of a judgment obtained in an unlawful detainer action under the Anti-Injunction Act, 28 U.S.C. § 2283.*
- *Malixi v. U.S. Bank*, N.A., 2012 U.S. Dist. LEXIS 112318 (E.D. Cal. Aug. 9, 2012). Successfully defended lender in action alleging violation of the Real Estate Settlement Procedures Act and California Business and Professions Code sections 17200 et seq. and seeking to quiet title.*
- *Oliver v. U.S. Bank*, N.A., 2012 U.S. Dist. LEXIS 87126 (N.D. Cal. June 22, 2012). Successfully represented lender in action challenging the constitutionality of California Civil Code §2924 and alleging violation of the Fair Debt Collection Practices Act, the Truth in Lending Act, and the Real Estate Procedures Act.*
- *GTS 900F, LLC v. FDIC*, 2012 U.S. Dist. LEXIS 83046 (June 1, 2012). Successfully defended the FDIC in the first administrative challenge to the validity of the FDIC’s no asset determination of Corus Bank, N.A.
- *Lew v. U.S. Bank*, N.A., 2012 U.S. Dist. LEXIS 40983 (N.D. Cal. March 26, 2012). Successfully defended

lender in action alleging violation of the Truth in Lending Act and fraud.*

- *Singh v. U.S. Bank (In re Singh)*, 2011 Bankr. LEXIS 3555 (Bankr. E.D. Cal. Sept. 15, 2011). Represented U.S. Bank in a wrongful foreclosure action by bankrupt debtor alleging violations of the automatic stay, the Real Estate Procedures Act, and other claims; court dismissed case for failure to state a claim.*
- *Bernardo v. U.S. Bank N.A.*, 2011 U.S. Dist. LEXIS 93643 (N.D. Cal. Aug. 22, 2011). Defended U.S. Bank in action under the Truth in Lending Act and the Real Estate Settlement Procedures Act; court dismissed case for failure to state a claim.*
- *Cerecedes v. U.S. Bankcorp*, 2011 U.S. Dist. LEXIS 75559 (C.D. Cal. July 11, 2011) and 2011 U.S. Dist. LEXIS 51452 (C.D. Cal. Apr. 29, 2011). Defended U.S. Bank and MERS in action under California Business and Professions Code section 17200 et seq. and California Civil Code sections 2923.5 and 2924; court dismissed case for failure to state a claim.*
- *Aspray v. Fed. Home Loan Mortg. Corp.*, 2011 U.S. Dist. LEXIS 46029 (C.D. Cal. Apr. 20, 2011). Represented Freddie Mac and U.S. Bank for alleged violations of California Civil Code sections 2923, 2923.5, and 2924, wrongful foreclosure, fraud and intentional infliction of emotional distress.*
- *Horton v. IndyMac Fed. Bank*, F.S.B., 2010 U.S. Dist. LEXIS 102476 (E.D. Cal. Aug. 30, 2010). Represented the Federal Deposit Insurance Corporation (FDIC), as Receiver for IndyMac Bank; court ruled that court lacked subject matter jurisdiction based on no asset determination by the FDIC.*

Bankruptcy and Insolvency Litigation

- *JTS Cmty., Inc. v. ZB, N.A. (In re Int'l Mfg. Grp., Inc.)*, 574 B.R. 717 (Bankr. E.D. Cal. 2017). Represented national banking association in bankruptcy adversary proceeding in which the bankruptcy court remanded the adversary proceeding to state court on the grounds that the bankruptcy court lacked subject matter "related to" jurisdiction.
- *GTS 900 F, LLC v. Corus Constr. Venture, LLC*, 2010 U.S. Dist. LEXIS 129112 (C.D. Cal. Nov. 23, 2010). Defended the Federal Deposit Insurance Corporation (FDIC) as Receiver for Corus Bank in an adversary proceeding by debtor/developer challenging for alleged breach of construction loan agreement.
- *Merritt v. Franklin Bank, N.A. (In re Merritt)*, 2000 U.S. App. LEXIS 6877 (6th Cir. April 12, 2000)* Represented chapter 7 debtor in case wherein the court ruled that the debtor's lack of effort to enter into settlement negotiations prior to filing of chapter 7 evidenced bad faith and warranted dismissal under 11 U.S.C. § 707(a).*

Business and Commercial Litigation

- *Jack in the Box, Inc. v. Mehta*, 727 F. App'x 360 (9th Cir. 2018). Affirmed trial court's granting of summary judgment on breach of contract, trademark infringement, and unfair competition claims.
- *Telecom Asset Mgmt., LLC v. Fiberlight, LLC*, No. 14-cv-00728-SI, 2017 U.S. Dist. LEXIS 29919 (N.D. Cal. Mar. 2, 2017) and 2016 U.S. Dist. LEXIS 171642 (N.D. Cal. Dec. 12, 2016). Represented designer and engineer of fiber optic networks in post-judgment proceedings relating to an assignment order against judgment debtor.
- *Jack in the Box, Inc. v. Mehta*, No. 2014 WL 2069530 (N.D. Cal. May 19, 2014). Represented national franchisor in obtaining authority for foreclosure on personal property under California Commercial Code sections 9601 et seq.*
- *Jack in the Box Inc. v. Mehta*, 2014 WL 1396197 (N.D. Cal. Apr. 9, 2014). Represented national franchisor in a motion to intervene by GE Capital Bank in franchise litigation matter.*
- *SunCal La Quinta, LLC v. Eston*, 2014 WL 3587466, (Cal. Ct. App. July 22, 2014), reh'g denied (Aug. 11, 2014). Represented co-trustees challenging the validity a purchase agreement under the Subdivision Map Act, California Government Code sections 66410 et seq. Case also examined the requirements for unconditional acceptance of an option real estate contract.*
- *Video Gaming Techs., Inc. v. Bureau of Gambling Control*, 356 Fed. Appx. 89 (9th Cir. Cal. 2009)* Represented disabled individuals and non-profit organizations challenging the right to ban certain electronic bingo machines under Title II of the American with Disabilities Act (ADA).*

Healthcare Litigation

- *Roy v. Superior Court*, 198 Cal. App. 4th 1337 (Cal. App. 3d Dist. 2011). Represented physician challenging the Medical Board of California's finding that he engaged in sexual relations in violation of California Business and Professions Code section 726.*
- Represented county health plan against State of California in mandate action and in the Court of Appeal challenging capitation rates under Medi-Cal for 2003-2004 and 2004-2005 rate years.*
- Represented physicians in disciplinary actions and writs of mandate involving the Medical Board of California.*
- Represented trustee in liquidating a municipal hospital and health plan.*
- Represented health system as creditor in chapter 11 hospital bankruptcy proceedings.*

* Represents experience from a previous law firm.

Publications

- Sheen v. Wells Fargo Bank, N.A.: The California Supreme Court Delivers a Big Win for Lenders and Loan Servicers, *Buchalter Client Alert*, March 8, 2022
- SB 1079 Is a Setback for both Lenders and Borrowers, *Los Angeles Daily Journal*, October 19, 2020

Presentations

- Speaker, "Lenders under Attack – The Good, the Bad and The Ugly," Las Vegas Western Banker's Bank Counsel Conference, November 15, 2022
- Speaker, "How to Identify Potential Problem Loans in your Loans Portfolio," Risk Management Association, June 29, 2022
- Moderator, "Ask the Experts: Current Climate of Receiverships, COVID-19 & Financing," California Receivers Forum, October 20, 2020

Education

Mr. McWhorter earned his J.D. from Wayne State University School of Law where he was also Assistant Editor of the *Wayne Law Review*. He earned his M.B.A. from the University of Michigan and his B.A. from the University of Chicago.

Bar Admissions

- California
- Michigan

Court Admissions

- U.S. Court of Appeals for the Sixth Circuit
- U.S. Court of Appeals for the Ninth Circuit
- U.S. District Court, Eastern District of Michigan
- U.S. District Court, Western District of Michigan
- U.S. District Court, District of Colorado
- U.S. District Court, Eastern District of California
- U.S. District Court, Northern District of California
- U.S. District Court, Central District of California
- U.S. District Court, Southern District of California

- Michigan State Courts
- California State Courts