

## Jay N. Varon

### Partner/Retired

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Jay N. Varon has litigated a broad cross-section of commercial cases around the country including matters relating to the Real Estate Settlement Procedures Act (RESPA) and other federal and state consumer financial services laws, as well as cases involving antitrust, unfair competition, deceptive trade practice, trade secrets, environmental, business tort, securities fraud, and products liability issues. At different times throughout his career, Jay has been chair of the firm's Antitrust Practice Group, Environmental Litigation Group, and Consumer Law Class Action Group, as well as a member of the firm's Management Committee.

Many of Jay's cases involve the defense of class actions or other high stakes matters as well as proceedings before administrative agencies like the Consumer Financial Protection Bureau (CFPB) or Federal Trade Commission (FTC).

### **RESPA and Other Consumer Financial Services Experience**

A niche area of Jay's practice involves defending and counseling real estate clients (i.e., real estate brokers, MLS's, mortgage brokers and lenders, mortgage, title and hazard insurers, home warranty companies, title agents) with respect to consumer finance, fair lending, UDAAP and related issues including those involving the establishment of affiliated business arrangements and joint ventures under RESPA.

Jay is regularly involved in representing such clients on forming compliant arrangements and defending other clients in investigations and enforcement proceedings before the CFPB, HUD/FHA, and/or state agencies and departments of insurance.

### **Representative Experience**

- Representing HomeServices of America in several class actions filed against the National Association of Realtors and the country's four largest owners of real estate brokerage networks that challenges operation of Multiple Listing Systems and long-standing manner of establishing compensation to buyer brokers.

- *Baehr v. The Creig Northrop Team P.C. et. al.*, 2018 WL 6434502 (D. Md. Dec. 7, 2018) (awarding defendants summary judgment in RESPA class action because of lack of Article III standing and failure to satisfy equitable tolling requirements such that case was time barred) aff'd 953 F. 3d 244 (4th Cir. 2020) (confirming lack of Article III standing and dismissing case).
- *Friedman v. Old Republic Home Protection Co., Inc.*, 2015 U.S. Dist. LEXIS 175735 (C.D. Cal. May 18, 2015) (denying motion to certify plaintiff's California state law claims for false advertising and unfair competition).
- *Campion v. Old Republic Home Protection Co., Inc.*, 775 F.3d 1144 (9th Cir. 2014) (holding that appeal from summary judgment ruling for the defense and denial of class certification was moot, with concurrence affirming on merits).
- *White v. JRHBW Realty Inc.*, 2015 U.S. Dist. LEXIS 123432 (N.D. Ala. Sept. 16, 2015) (dismissing RESPA class action claims modeled after CFPB settlement complaint).
- *Bolinger v. First Multiple Listing Service, Inc.*, 838 F. Supp. 2d 1340 (N.D. Ga. 2012) (granting summary judgment for defendants in rejection of novel RESPA claim that multiple listing service (MLS) fees to real estate brokers were part of the brokers' fees to consumers and that alleged referrals to MLS and discounting of MLS fees violated RESPA Section 8).
- *Minter v. Wells Fargo Bank, N.A.*, 762 F.3d 339 (4th Cir. 2014) (in a certified class action, affirming jury trial verdict for defendants, as well as post-trial rulings, for the defense on RESPA "sham" joint venture claims).
- *Petry v. Wells Fargo Bank, N.A.*, 2014 U.S. APP LEXIS 13064 (4th Cir. Jul. 10, 2014) (affirming judgment for the defense in Maryland Finder's Fee Act case).
- *Busby v. JRHBW Realty, Inc.*, 2012 U.S. Dist. LEXIS 145037 (N.D. Ala. June 14, 2012) (awarding summary judgment to the defense in RESPA mark-up case).
- *Hannan v. Weichert South Jersey Inc.*, 2007 N.J. Super. Unpub. LEXIS 1238 (App. Div. May 22, 2007) (affirming denial of class certification in New Jersey Consumer Fraud Act case).
- *Snow v. First Am. Title Ins. Co.*, 332 F.3d 356 (5th Cir. 2003) (consolidated appeal from rulings for the defense on RESPA statute of limitations grounds).

Other similar representations have resulted in favorable rulings or class settlements including in cases under TILA and FCRA, as well as the defense of a major mortgage insurer in a series of nationwide RESPA class actions involving captive reinsurance.

### **Consumer Financial Industry *Amicus* Briefs**

Jay has authored a number of *amicus* briefs on issues of importance to members of the consumer financial industry including:

- *PHH Corp v. CFPB*, No. 15-1177, U.S. Court of Appeals for the D.C. Circuit (arguing against CFPB Director Cordray's interpretation of RESPA Section 8(c) and RESPA statute of limitations)
- *Spokeo v. Thomas Robins*, No. 13-1339, U.S. Supreme Court (re no-injury class actions)

- *Carter v. Wells Bowen Realty*, 736 F.3d 722 (6th Cir. 2013) (re interpretation of HUD sham joint venture guidelines)
- *Freeman v. Quicken Loans, Inc.*, 132 S.Ct. 2034 (2012) (re meaning of RESPA 8(b) and markup claims)

## **Antitrust**

- Represented HomeServices of America in several antitrust class actions alleging anticompetitive practices in the residential real estate industry.
- Served as lead counsel for one of the two defendants in two antitrust and consumer protection MDL cases, as well as an FTC investigation regarding activities in the propane distribution business.
- Represents various clients including some consumer finance clients (e.g., mortgage and title insurers), in antitrust and related regulatory investigations before the Federal Trade Commission, the Department of Justice, state Departments of Insurance, as well as before state district attorneys and attorney generals.

## **CERCLA**

- Obtained favorable results in CERCLA cases following several federal bench trials and in summary judgment decisions. In one such case that went to trial, Jay's utility client was absolved from liability at 12 different Manufactured Gas Plant (MGP) sites, a result that was affirmed on appeal. *See Yankee Gas Servs. Co. v. UGI Utils., Inc.*, 428 Fed. App'x 18 (2d Cir. 2011).
- Obtained a successful result in a related allocation trial concerning an additional site. *See Yankee Gas Servs. Co. v. UGI Utils., Inc.*, 852 F. Supp. 2d 229 (D. Conn. 2012).
- Obtained a favorable ruling following a bench trial in South Carolina. *See South Carolina Elec. & Gas Co. v. UGI Utils., Inc.*, 2012 WL 1432543 (D.S.C. Apr. 11, 2012). *See also Consol. Edison Co. of New York v. UGI Utils., Inc.*, 153 F. App'x 749 (2d Cir. 2005); *Atlanta Gas Light Co. v. UGI Utils., Inc.*, 463 F.3d 1201 (11th Cir. 2006) (each affirming summary judgment rulings for the defendant).

## **Other Complex Litigation Experience**

- Jay served as lead counsel for an energy client in sixteen different consumer fraud and deceptive practices class actions that were consolidated for pretrial proceedings and discovery by the Multidistrict Panel on Litigation and then resolved via settlement.

## **Presentations and Publications**

- "China Agritech: The Supreme Court Ends Class Action Stacking," (2018)
- "Justices Scrutinize The Pros and Cons of Extending American Pipe Tolling," (2018)
- "A Response To the CFBP's Recent Compliance Bulletin on MSAs"
- "RESPA Primer on Joint Ventures and Affiliated Business Arrangements"
- "Guide to Section 8 of RESPA for Settlement Service Salespersons"
- "Promoting Settlements and Limiting Costs By Means of the Offer of Judgment: Some Suggestions for Using and Revising Rule 68, 33 Am. U. Law Rev. 813 (1984)"

- Several additional articles appear on Foley's [Consumer Class Defense Counsel blog](#)

## Sectors

- [Racial Justice & Equity](#)

## Practice Areas

- [Antitrust & Competition](#)
- [Consumer Law, Finance & Class Action Group](#)
- [Direct Selling & Multi-Level Marketing](#)
- [FTC Consumer Protection](#)
- [Financial Institutions](#)
- [Litigation](#)
- [Mergers, Acquisitions & Complex Reinsurance Transactions](#)
- [Regulatory Compliance](#)
- [State Attorneys General](#)

## Education

- Stanford Law School (J.D.)
  - Articles Editor, *Stanford Law Review*
  - Order of the Coif
- Law clerk to the Honorable Robert F. Peckham, Chief Judge of the United States District Court for the Northern District of California in San Francisco
- Wharton School of the University of Pennsylvania (magna cum laude)