



Robert W. Sparkes, III

Partner

Boston

+1.617.951.9134

robert.sparkes@klgates.com

OVERVIEW

Rob Sparkes, a partner in the Boston office of K&L Gates, has extensive experience litigating complex civil and commercial matters, with a focus on defending class actions in federal and state courts. Rob is a member of the firm's Commercial Disputes, Class Action Litigation Defense, Financial Institutions and Services Litigation, and Appellate Litigation practice groups. He regularly represents retailers, financial services institutions—including banking, lending, and loan servicing companies—and other business entities in consumer class actions, individual litigation matters, and appeals in federal and state courts throughout the United States. These actions frequently involve claims alleging violations of state consumer protection statutes, breaches of warranty, violations of federal laws, such as the Real Estate Settlement Procedures Act, the Fair Debt Collection Practices Act, and the Fair Credit Reporting Act, and various common law causes of action. Rob also has experience representing corporate and individual clients in non-consumer business litigation, arbitration, and appellate matters, including cases involving contract, tort, product liability, intellectual property, and trade secret claims.

Rob's experience covers a wide array of subject matters, including the advertising of foods and beverages; the labeling of over-the-counter medication and dietary supplements; the sale of consumer electronics; mortgage loan modifications, automobile financing arrangements, and credit card products; the construction of an oil refinery megaproject; the development of home security system software; and the manufacture of door frames.

Rob has participated in jury and bench trials in state and federal court, has appeared before courts in a variety of proceedings, and has represented clients in settlement negotiations, mediations, and arbitration proceedings. Rob has also advised consumer financial services entities and other businesses in navigating complex regulatory and compliance issues.

Rob has spoken and written extensively on class action issues, and is the co-author of chapters of the K&L Gates' treatise entitled *Defense of Class Action Litigation in Federal Courts*, including chapters on "Class Certification" and "Alternative Dispute Resolution."

PROFESSIONAL BACKGROUND

Prior to joining K&L Gates, Rob served as a Law Clerk for the Honorable Joseph L. Tauro of the United States District Court for the District of Massachusetts, 2005-2006.

PROFESSIONAL / CIVIC ACTIVITIES

- American Bar Association
- Boston Bar Association
- Lawyers Have Heart Boston, 5K Road Race and Charity Fundraising Event for the American Heart Association (Chairman, Captains Committee: 2016-2023; Member, Executive Leadership Committee: 2017-2023; Member, Captains Committee: 2015; K&L Gates Team Captain: 2010-2023).

SPEAKING ENGAGEMENTS

- Presenting Evidence at Class Certification: Strategies for navigating divergent admissibility standards and the split among the Circuits, hosted by MyLawCLE and the Federal Bar Association, 24 May 2023
- Class Certification Evidence: Standards of Admissibility and Probative Value Among the Circuits: Strategies for Opposing or Narrowing Class Certification and Preserving Objections, hosted by Strafford Webinars, 2 March 2023
- Limits on Federal Judicial Power in Class Actions: Demonstrating Insufficient Case or Controversy, Mootness, and Remedy, hosted by Strafford Webinars, 21 July 2022
- Defining or Challenging Class Membership: Evaluating Ascertainability under New Decisions and Evolving Law, hosted by Strafford Webinars, 7 April 2022
- Class Certification Evidence: Standards of Admissibility and Probative Value Among the Circuits: Strategies for Opposing or Narrowing Class Certification and Preserving Objections, hosted by Strafford Webinars, 17 February 2022
- Drafting Guaranties and Nonrecourse Carveouts in Commercial Finance Transactions: Enforceability Issues for Lenders and Guarantors In and Out of Bankruptcy, hosted by Strafford Webinars, 20 January 2022
- Employment Arbitration Agreements: Class Action Waivers, Lorman Education Services Webinar Presentation, by Robert W. Sparkes, III and Mark D. Pomfret, 24 October 2018
- CFPB Final Payday Rule - New Requirements for Short-Term, Auto-Title, and Other Covered Loans, Lorman Education Services Webinar Presentation, by Robert W. Sparkes, III and Jennifer Janeira Nagle, October 18, 2018
- Defining or Challenging Class Membership: Evaluating Ascertainability, Overbreadth and Failsafe Class Issues, hosted by Strafford Webinars, 5 January 2016
- The Mortgage Lifecycle: Litigation Hotspots From Origination Through Foreclosure, Webinar Presentation, 24 February 2016

EDUCATION

- J.D., Boston University School of Law, 2005 (*summa cum laude*; *Articles Editor, Boston University Law Review*)
- B.A., Stonehill College, 2002 (*summa cum laude*)

ADMISSIONS

- Bar of Massachusetts
- United States Court of Appeals for the District of Columbia Circuit
- United States Court of Appeals for the Eighth Circuit
- United States Court of Appeals for the First Circuit
- United States Court of Appeals for the Ninth Circuit
- United States Court of Appeals for the Second Circuit
- United States District Court for the District of Massachusetts

THOUGHT LEADERSHIP *POWERED BY HUB*

- 2 May 2022, *The De Minimis Standard Sleeps with the (Tuna) Fish: The En Banc Ninth Circuit Rejects a Per Se Prohibition on the Certification of Classes with Uninjured Class Members*
- 12 April 2021, *Something is Buzzing in the 9th Circuit: How Canned Tuna, Bumble Bees, and Uninjured Class Members Combine for an Important Class Certification Ruling*
- 9 February 2021, *A Chilly Reception at the 11th Circuit: The Court Narrows the Scope of the Ascertainability Requirement for Class Certification*
- 18 May 2020, *COVID-19: Echoes Don't Fade*
- 4 May 2020, *COVID-19: Class Actions in Session*
- 30 April 2020, *COVID-19: Credit Reporting in the Age of COVID-19*
- 14 April 2020, *COVID-19: Defending Class Actions in Massachusetts in the Wake of COVID-19*
- 5 December 2019, *The Shifting Currents of Arbitration: The Supreme Court of Texas Reverses Course, Holding That the Availability of Class Arbitration Is for the Courts to Decide*
- 26 November 2019, *Absent But Not Forgotten: The Second Circuit Addresses the Impact of Arbitration on Absent Class Members*
- 12 June 2019, *Ninth Circuit U-Turns And Approves Nationwide Class Settlement In Automobile Class Action Involving Potential Variations In States' Laws*

- 8 November 2018, Expounding on Arbitrability: The Seventh Circuit Joins the Growing Ranks of Circuit Courts Finding that Courts Presumptively Decide the Availability of Class Arbitration
- 4 September 2018, When “Clear and Unmistakable” Is neither Clear nor Unmistakable: Circuit Split Emerges as to Whether Arbitrator or Court Should Decide Class Arbitrability When Parties Incorporate Arbitration Facility Rules into Their Agreements
- 14 June 2018, CFPB Left with Rulemaking to Modify or Delay Payday Rule
- 1 June 2018, It’s Epic: Supreme Court Approves Class-Action Waivers in Employment Agreements
- 10 May 2018, Shedding Some Light: SCOTUS Grants Cert. in Lamps Plus to Answer Question on State-Law Contract Interpretation and Class Arbitration
- 11 April 2018, Another Shot at the Target: CFPB Payday Loan Rule Faces New Challenge from Trade Groups
- 1 February 2018, A First in the Second (Circuit): On Remand, District Court Breaks New Ground by Vacating Arbitrator’s Class Certification Award
- 17 January 2018, Payday Loan Rule To Be Officially Reconsidered
- 16 January 2018, Payday Loan Rule Is Officially A Go—Or Is It?
- 13 November 2017, Supreme Court Again Declines to Review Ruling That Courts Determine Availability of Classwide Arbitration
- 3 November 2017, President Signs Congressional Resolution Overturning CFPB Arbitration Rule
- 27 October 2017, Senate Joins House in Resolution Overturning CFPB Arbitration Rule; President Trump Is Likely to Sign
- 17 October 2017, Payday Loan Rule Finalized: “Ability to Repay” Requirements Narrowed, but Challenges and Risks Loom Large
- 12 October 2017, The Supreme Court Hears Argument to Decide Whether Class-Action Waivers in Employment Arbitration Agreements Are Enforceable
- 6 October 2017, With Senate on the Sidelines So Far, Financial Services Trade Groups Launch Challenge to CFPB Arbitration Rule
- 27 January 2017, Arbitration Is Back on the Docket: The Supreme Court to Review the Enforceability of Class Action Waivers in Employment Arbitration Agreements
- 19 January 2017, Revisiting Ascertainability: The Ninth Circuit Court of Appeals Weighs in on “Ascertainability” for Class Certification
- 8 August 2016, Light Reading for the Dog Days of Summer: CFPB Finalizes Amendments to Mortgage Servicing Regulations

- 6 June 2016, Payday Loans Under Attack: The CFPB's New Rule Could Dramatically Affect High-Cost, Short-Term Lending
- 16 May 2016, Supreme Court Vacates and Remands Ninth Circuit Decision on Article III Injury-in-Fact in Spokeo
- 12 May 2016, CFPB's Proposed Rule Would Put the Brakes on Pre-Dispute Arbitration Clauses in Consumer Financial Contracts
- 18 April 2016, Untangling the *Webb* of Arbitrability: The Fourth Circuit Holds That Courts Determine the Availability of Class-Wide Arbitration
- 7 April 2016, Don't Look a Gift Card in the Mouth: Beware of Liability Under the Electronic Fund Transfers Act
- 14 March 2016, A Guaranty Is Only As Good As The Person Who Signs It: Enforcing Commercial Lending Guaranties In Massachusetts
- 8 February 2016, "Who Decides" Whether Class Arbitration Is Available?: The Third Circuit Provides New Guidance in *Chesapeake Appalachia, LLC v. Scout Petroleum, LLC*
- 16 December 2015, United States Supreme Court Rejects California State Courts' Attempt to Sidestep Federal Arbitration Act Preemption on Class Action Waivers
- 26 August 2015, Grasping for a Hold on "Ascertainability": The Implicit Requirement for Class Certification and its Evolving Application
- 29 April 2015, *Spokeo, Inc. v. Robins*: U.S. Supreme Court to Consider Whether Plaintiffs Have Standing to Assert a Statutory Violation without Alleging any Actual Harm

OTHER PUBLICATIONS

- Using Rule 23(f) To Review Class Certification Orders, *Law360*, 22 April 2024
- How To Navigate Class Incentive Awards After Justices' Denial, *Law360*, 7 June 2023
- What 5-Year BIPA Time Limit Means For Class Action Defenses, *Law360*, 6 March 2023
- 5th Circ. Class Action Rulings Reflect Post-TransUnion Trends, *Law360*, 1 December 2022
- 9th Circuit Gets Tougher on Experts at Class Certification, *Law360*, 11 January 2021
- Inside 2 Strategies for Schools Hit with Refund Class Actions, *Law360*, 8 May 2020
- Curious Case of the Class Cert. Evidentiary Standard: Part 2, *Law360*, 14 June 2018
- Curious Case of the Class Cert. Evidentiary Standard: Part 1, *Law360*, 13 June 2018
- Employers Beware: FCRA Class Actions Are On The Rise, *Law360*, 11 June 2014
- The Past Holds Lessons for COVID-19 Mortgage Cases, *Law360*, 1 June 2020

- Curious Case of the Class Cert. Evidentiary Standard: Part 2, *Law360*, by Robert W. Sparkes, III, 13 June 2018
- Curious Case of the Class Cert. Evidentiary Standard: Part 1, *Law360*, by Robert W. Sparkes, III, 13 June 2018
- The First Circuit Clarifies That A Defendant's Deadline to Remove is Principally Influenced by the Actions of the Plaintiff, *K&L Gates Alerts*, 12 November 2014
- Employers Beware: FCRA Class Actions Are On The Rise, *Law360*, by Brian M. Forbes, Robert W. Sparkes, III, Mark D. Pomfret, 11 June 2014
- Winding the Removal Clock: The Second Circuit Clarifies The Deadline for Removal Under the Class Action Fairness Act, *K&L Gates Alerts*, 2 June 2014
- Beyond Credit Reporting: The Extension of Potential Class Action Liability to Employers under the Fair Credit Reporting Act, *K&L Gates Alerts*, 7 April 2014
- A Decision to Arbitrate in the Mountain State: The West Virginia Supreme Court of Appeals Rejects Retroactive Application of the Dodd-Frank Act and Enforces Mandatory Arbitration Agreement in Residential Mortgage, *K&L Gates Alerts*, 26 November 2013
- Once More unto the Breach: The U.S. Supreme Court Takes Another Case Regarding Class-Wide Arbitration, *K&L Gates Alerts*, 12 December 2012
- *Wal-Mart Stores, Inc. v. Dukes*: The Supreme Court Reins In Expansive Class Actions, *K&L Gates Alerts*, 18 July 2011
- "Waive of Change:" Class Arbitration in the Aftermath of the Supreme Court's Decision in *AT&T Mobility LLC v. Concepcion*, *K&L Gates Alerts*, 11 May 2011
- "The Reports of My Death are Greatly Exaggerated": Foreclosures in Massachusetts Following the Supreme Judicial Court Decision in *Ibanez*, *K&L Gates Alerts*, 12 January 2011
- In the Wake of Stolt-Nielsen: The Supreme Court Dives into Multiple Arbitration-Related Cases, *U.S. - Mexico Bar Association Newsletter*, July/August 2010
- Class Arbitration Waivers: Silence Reigns In Stolt-Nielsen, But The Courts Have More To Say, *K&L Gates Alerts*, 15 June 2010
- That's Unconscionable: An Update Regarding the Enforceability of Arbitration Provisions in Form Contracts, Commercial Disputes, *K&L Gates*, 5 March 2009
- That's Unconscionable: An Update Regarding The Enforceability of Arbitration Provisions in Form Contracts, *Uniform Commercial Code Journal*, Vol. 42, No. 1, November 2009
- K&L Gates, *Defense of Class Action Litigation in Federal Courts*, author of "Class Certification" and "Alternative Dispute Resolution" Chapters
- State Class Actions: Practice and Procedure, author of Illinois and Louisiana Chapters.

NEWS & EVENTS

- 2 March 2022 , Class Certification Evidence: Standards of Admissibility and Probative Value Among the Circuits: Strategies for Opposing or Narrowing Class Certification and Preserving Objections, Hosted by Strafford Webinars
- 21 July 2022, Limits on Federal Judicial Power in Class Actions: Demonstrating Insufficient Case or Controversy, Mootness, and Remedy, Hosted by Strafford Webinars
- 7 April 2022, Defining or Challenging Class Membership: Evaluating Ascertainability under New Decisions and Evolving Law, Hosted by Strafford Webinars
- 17 February 2022, Class Certification Evidence: Standards of Admissibility and Probative Value Among the Circuits: Strategies for Opposing or Narrowing Class Certification and Preserving Objections, Hosted by Strafford
- 20 January 2022, Drafting Guaranties and Nonrecourse Carveouts in Commercial Finance Transactions: Enforceability Issues for Lenders and Guarantors In and Out of Bankruptcy, hosted by Strafford Webinars

MEDIA MENTIONS

- BUMBLE BEE: K&L Gates Attorney Discusses Class Action Ruling, Class Action Prospector, 6 May 2021
- K&L Gates Lawyers Provide Insights on Impact of COVID-19 Across Various Industries, August 2020

AREAS OF FOCUS

- Commercial Disputes
- Appellate Litigation
- Class Action Litigation Defense
- Financial Institutions and Services Litigation
- Payments, Banking Regulation, and Consumer Financial Services

REPRESENTATIVE EXPERIENCE

- Defend global online retailer in putative class action alleging deceptive labeling of melatonin supplements and asserting claims for violation of Washington and New York consumer protection laws, breach of warranty, breach of contract, and unjust enrichment
- Defend global online retailer in putative class action alleging deceptive and misleading labeling of over-the-counter “non-drowsy” cold medication and asserting claims for violation of Washington, Wisconsin, and Ohio consumer protection laws, breach of express and implied warranties, and unjust enrichment

- Defend global online retailer in putative class actions alleging false advertising and deceptive labeling of spices and asserting claims for violation of Washington, California, and Pennsylvania consumer protection laws, as well as various common law causes of action
- Defend global online retailer in putative class action alleging unlawful marketing and sale of children's toy figurines in violation of the California Unfair Competition Law
- Defend global online retailer in putative class action alleging deceptive and misleading advertising of a consumer video game console and asserting claims for violation of the Illinois Consumer Fraud Act, breach of express warranty, breach of implied warranty, and unjust enrichment
- Defended a sports entertainment company in a putative class action in Connecticut alleging breach of contract and violations of state law regarding treatment of athletes as independent contractors; successfully moved to dismiss all claims
- Defended a national mortgage loan servicer in putative class actions in Pennsylvania and California challenging certain disclosures contained in servicer's custom loan modification agreements; obtained dismissal of two cases on motions to dismiss and defeated class certification in the other case
- Defend national mortgage loan servicer in putative class action in Washington challenging property preservation and inspection activities performed on vacant or abandoned homes before foreclosure; successfully opposed and defeated class certification
- Defend national mortgage loan servicer in putative class action in West Virginia alleging violation of state debt collection and foreclosure laws and raising issues regarding the enforceability of mandatory arbitration provisions and class action waivers; obtained an order compelling individual arbitration after successful appeal to the West Virginia Supreme Court of Appeals
- Defend national mortgage loan servicer in putative nationwide class action in New York alleging improper charging of private mortgage insurance to consumers; successfully moved to dismiss all claims
- Defend national mortgage loan servicers in several putative class actions brought by consumers in Massachusetts, Delaware, and New York, among other states, alleging state and federal law claims in connection with the servicers' participation in the Home Affordable Modification Program ("HAMP")
- Defend national settlement service provider in complex action alleging that client's business, which provided real estate closing services to mortgage lenders, violated the unauthorized practice of law provisions of Massachusetts law, including representation before the US Court of Appeals for the First Circuit and the Supreme Judicial Court of Massachusetts
- Represent home security company in complex software-related litigation in Delaware Chancery Court seeking recovery of intellectual property, trade secrets, and technology improperly obtained by competitor, including through expedited pre-trial proceedings and a bench trial; successfully obtained post-trial injunction
- Represent global contractor in an arbitration before the International Chamber of Commerce arising from the construction of an oil refinery megaproject valued at US\$8 billion

- Defend trustees for mortgage-backed securities trusts and national mortgage loan servicers in actions alleging violation of state foreclosure laws, including litigation arising from challenges to trustees' or servicers' standing to foreclose under state law
- Defend national automobile and auto finance companies in connection with state court litigation matters involving products liability, repossession, and lemon law issues under Massachusetts law
- Defend large door manufacturing company in several personal injury and products liability cases in Massachusetts state court
- Represent national credit card companies in connection with FDIC enforcement matter and implementation of remediation plan related to the marketing and sale of credit card add-on products
- Assist consumer financial institutions in responding to subpoenas, civil investigative demands, and complaints/inquiries from state attorneys general and federal banking regulatory agencies, including the Consumer Financial Protection Bureau
- Represent pro bono individual immigrants seeking permanent resident status in the United States, including defending several unaccompanied minors through the "Kids In Need of Defense" ("KIND") organization and adult individuals through the Political Asylum / Immigration Representation Project
- Represent pro bono several prison inmates at Massachusetts Correctional Institution-Cedar Junction alleging civil rights violations, including excessive use of force and unconstitutional conditions of confinement, stemming from the aftermath of a cell-block disciplinary incident