



## Robert W. Sparkes, III

### Partner

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### OVERVIEW

Robert 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. Robert is a member of the firm's financial institution and services litigation, class action litigation defense, and appellate practice groups. He regularly represents banking, mortgage lending, mortgage servicing, and other consumer financial services institutions, as well as all manner of business entities, in consumer class actions, individual litigation matters, and appeals in federal and state courts throughout the United States. These actions frequently involve challenges under federal statutes, including the federal Real Estate Settlement Procedures Act, the Truth in Lending Act, the Fair Debt Collection Practices Act, the Fair Credit Reporting Act, and the Racketeer Influenced and Corrupt Organizations Act, as well as claims under state unfair and deceptive acts and practices statutes and common law. Robert also advises consumer financial services entities and other businesses in navigating complex regulatory and compliance issues.

Robert has additional experience representing corporate and individual clients in contract, tort, products liability, intellectual property, trade secret, consumer protection, and other general business litigation, arbitration, and appellate matters.

Robert has participated in jury and bench trials in state and federal court, has appeared before courts in a variety of proceedings, and has also represented clients in settlement negotiations, mediations, and arbitrations.

Robert has co-authored multiple 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, Robert served as a Law Clerk for the Honorable Judge 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 Fundraising Event for the American Heart Association (Chairman, Captains Committee - 2016-2020; Member, Executive Leadership Committee - 2017 - 2020; Member, Captains Committee - 2015; K&L Gates Team Captain - 2010-2020).

## SPEAKING ENGAGEMENTS

- Speaker, 2018 Consumer Financial Services Symposium, 3 December 2018
- 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, *Strafford Webinar Presentation*, by Ira Neil Richards, Robert W. Sparkes, III, and Andrew J. Trask, January 5, 2016
- The Mortgage Lifecycle: Litigation Hotspots From Origination Through Foreclosure, *Powerpoint Webinar Presentation*, by Irene C. Freidel, Brian M. Forbes, Robert W. Sparkes, III, and Jennifer Janeira Nagle, February 24, 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

- 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 (*Alerts/Updates*)
- 9 February 2021, A Chilly Reception at the 11th Circuit: The Court Narrows the Scope of the Ascertainability Requirement for Class Certification (*Alerts/Updates*)
- 18 May 2020, COVID-19: Echoes Don't Fade (*Alerts/Updates*)
- 4 May 2020, COVID-19: Class Actions in Session (*Alerts/Updates*)
- 30 April 2020, COVID-19: Credit Reporting in the Age of COVID-19 (*Alerts/Updates*)
- 14 April 2020, COVID-19: Defending Class Actions in Massachusetts in the Wake of COVID-19 (*Alerts/Updates*)
- 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 (*Alerts/Updates*)
- 26 November 2019, Absent But Not Forgotten: The Second Circuit Addresses the Impact of Arbitration on Absent Class Members (*Alerts/Updates*)
- 12 June 2019, Ninth Circuit U-Turns And Approves Nationwide Class Settlement In Automobile Class Action Involving Potential Variations In States' Laws (*Alerts/Updates*)
- 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 (*Alerts/Updates*)
- 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 (*Alerts/Updates*)
- 14 June 2018, CFPB Left with Rulemaking to Modify or Delay Payday Rule (*BlogPost*)
- 1 June 2018, It's Epic: Supreme Court Approves Class-Action Waivers in Employment Agreements (*Alerts/Updates*)
- 11 May 2018, Shedding Some Light: SCOTUS Grants Cert. in Lamps Plus to Answer Question on State-Law Contract Interpretation and Class Arbitration (*BlogPost*)
- 10 May 2018, Shedding Some Light: SCOTUS Grants Cert. in Lamps Plus to Answer Question on State-Law Contract Interpretation and Class Arbitration (*Alerts/Updates*)
- 11 April 2018, Another Shot at the Target: CFPB Payday Loan Rule Faces New Challenge from Trade Groups (*BlogPost*)
- 1 February 2018, A First in the Second (Circuit): On Remand, District Court Breaks New Ground by Vacating Arbitrator's Class Certification Award (*Alerts/Updates*)

- 17 January 2018, Payday Loan Rule To Be Officially Reconsidered (*BlogPost*)
- 16 January 2018, Payday Loan Rule Is Officially A Go—Or Is It? (*BlogPost*)
- 13 November 2017, Supreme Court Again Declines to Review Ruling That Courts Determine Availability of Classwide Arbitration (*BlogPost*)
- 3 November 2017, President Signs Congressional Resolution Overturning CFPB Arbitration Rule (*BlogPost*)
- 27 October 2017, Senate Joins House in Resolution Overturning CFPB Arbitration Rule; President Trump Is Likely to Sign (*BlogPost*)
- 17 October 2017, Payday Loan Rule Finalized: “Ability to Repay” Requirements Narrowed, but Challenges and Risks Loom Large (*Alerts/Updates*)
- 12 October 2017, The Supreme Court Hears Argument to Decide Whether Class-Action Waivers in Employment Arbitration Agreements Are Enforceable (*Alerts/Updates*)
- 6 October 2017, With Senate on the Sidelines So Far, Financial Services Trade Groups Launch Challenge to CFPB Arbitration Rule (*BlogPost*)
- 27 January 2017, Arbitration Is Back on the Docket: The Supreme Court to Review the Enforceability of Class Action Waivers in Employment Arbitration Agreements (*Alerts/Updates*)
- 19 January 2017, Revisiting Ascertainability: The Ninth Circuit Court of Appeals Weighs in on “Ascertainability” for Class Certification (*Alerts/Updates*)
- 8 August 2016, Light Reading for the Dog Days of Summer: CFPB Finalizes Amendments to Mortgage Servicing Regulations (*BlogPost*)
- 6 June 2016, Payday Loans Under Attack: The CFPB’s New Rule Could Dramatically Affect High-Cost, Short-Term Lending (*Alerts/Updates*)
- 16 May 2016, Supreme Court Vacates and Remands Ninth Circuit Decision on Article III Injury-in-Fact in Spokeo (*BlogPost*)
- 12 May 2016, CFPB’s Proposed Rule Would Put the Brakes on Pre-Dispute Arbitration Clauses in Consumer Financial Contracts (*Alerts/Updates*)
- 18 April 2016, Untangling the *Webb* of Arbitrability: The Fourth Circuit Holds That Courts Determine the Availability of Class-Wide Arbitration (*Alerts/Updates*)
- 7 April 2016, Don’t Look a Gift Card in the Mouth: Beware of Liability Under the Electronic Fund Transfers Act (*Alerts/Updates*)
- 14 March 2016, A Guaranty Is Only As Good As The Person Who Signs It: Enforcing Commercial Lending Guaranties In Massachusetts (*Alerts/Updates*)
- 8 February 2016, “Who Decides” Whether Class Arbitration Is Available?: The Third Circuit Provides New Guidance in *Chesapeake Appalachia, LLC v. Scout Petroleum, LLC* (*Alerts/Updates*)

- 16 December 2015, United States Supreme Court Rejects California State Courts' Attempt to Sidestep Federal Arbitration Act Preemption on Class Action Waivers (*BlogPost*)
- 26 August 2015, Grasping for a Hold on "Ascertainability": The Implicit Requirement for Class Certification and its Evolving Application (*Alerts/Updates*)
- 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 (*Alerts/Updates*)

## OTHER PUBLICATIONS

- Curious Case of the Class Cert. Evidentiary Standard: Part 2, *Law 360*, by Robert W. Sparkes, III, June 13, 2018
- Curious Case of the Class Cert. Evidentiary Standard: Part 1, *Law360*, by Robert W. Sparkes, III, June 13, 2018
- Employers Beware: FCRA Class Actions Are On The Rise, *Law360*, by Brian M. Forbes, Robert W. Sparkes, III, Mark D. Pomfret, June 11, 2014
- In the Wake of Stolt-Nielsen: The Supreme Court Dives into Multiple Arbitration-Related Cases, *U.S.- Mexico Bar Association Newsletter*, July/August 2010
- State Class Actions: Practice and Procedure, author of Illinois and Louisiana Chapters.

## NEWS & EVENTS

- August 2020, K&L Gates Lawyers Provide Insights on Impact of COVID-19 Across Various Industries (*Media Mention*)

## MEDIA MENTIONS

- BUMBLE BEE: K&L Gates Attorney Discusses Class Action Ruling, *Class Action Prospector*, 6 May 2021

## AREAS OF FOCUS

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

## REPRESENTATIVE EXPERIENCE

- Defend national mortgage loan servicer in putative class actions in Pennsylvania and California challenging certain disclosures contained in servicer's custom loan modification agreements, obtaining dismissal of two cases on motions to dismiss and defeating class certification in the other case
- Defend national mortgage loan servicer in putative class action in Washington challenging servicer and third-party vendor property preservation and inspection activities performed on vacant or abandoned properties before completion of foreclosure
- Defend national mortgage loan servicers in connection with various class and individual actions alleging violations of the Fair Debt Collection Practices Act and state unfair and deceptive acts and practices statutes related to servicing and foreclosure activities
- Defend national mortgage loan servicer in putative class action in West Virginia alleging violation of state law governing debt collection and foreclosure and raising issues regarding the enforceability of mandatory arbitration provisions, and obtained an order compelling individual arbitration after successful appeal to the West Virginia Supreme Court of Appeals
- 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 trustees for mortgage-backed securities trust and national mortgage loan servicers in individual actions alleging violation of state foreclosure laws, including litigation arising from challenges to trustees' or servicers' standing to foreclose under state law
- Defend national mortgage loan servicer in nationwide class action alleging violations of the Real Estate Settlement Procedures Act, California's Unfair Business Practices Act § 17200 and various common law claims
- 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;
- 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
- 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
- Defend national settlement service provider in putative class action in Massachusetts alleging claims for tortious interference with business expectancies and unfair and deceptive trade practices in violation of Mass. Gen. L. ch. 93A
- Defend national mortgage loan servicer in putative class action in Missouri alleging violation of state law governing the origination of second mortgage loans



- Defend national mortgage loan servicer in putative nationwide class action in New York and successfully moved to dismiss all state common law and statutory claims based on alleged improper charging of private mortgage insurance
- Defend national mortgage loan servicers in connection with various class and individual actions concerning lender-placed insurance
- Defend loan servicers and investors in response to subpoenas, civil investigative demands, and complaints/inquiries from state attorneys general and federal banking regulatory agencies, including the Consumer Financial Protection Bureau, concerning mortgage servicing and foreclosure issues
- Defend national settlement service provider in complex action alleging that provider's business providing certain real estate closing services to mortgage lenders violated the unauthorized practice of law provisions in Massachusetts, including representation before the U.S. Court of Appeals for the First Circuit and the Supreme Judicial Court of Massachusetts
- Defend national mortgage loan servicers in putative class actions in Massachusetts, Delaware, and New York, among other states, alleging state and federal law claims in connection with servicer conduct under the Home Affordable Modification Program ("HAMP") and/or in-house modification programs, including claims challenging servicers' evaluation and denial of loan modification applications
- Defend large door manufacturing company in several personal injury and products liability cases in Massachusetts state court
- Defend sports entertainment company in putative class action in Connecticut alleging breach of contract and violations of state law regarding treatment of athletes as independent contractors and obtained dismissal of all claims
- 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