Insights: Alerts

5 Key Takeaways: Doing Business in California

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In the recent webinar, "**Doing Business in California**", Kilpatrick Townsend partner **Nancy Stagg** provided an overview of the current California consumer class action and regulatory landscape for retailers and other consumer goods and services providers conducting business in The Golden State.

Five key takeaways from the "Doing Business in California" webinar:

You can't afford to ignore California as a market for your company's consumer goods or services despite the risk of class actions and government enforcement actions.

California is the world's 6th biggest economy, with over 39 million residents. 15 million of those Californians are full or part-time employees earning income. California's median household income is well above the U.S. average and increased more than 4% in 2015. California's personal consumption expenditure increase in 2015 exceeded the nationalaverage too.

Three statutes form the basis for most consumer law claims in California.

The Consumer Legal Remedies Act ("CLRA," Civ. Code §1750 et seq.), the Unfair Competition Law ("UCL," Bus. & Prof. Code §17200, et seq.), and the False Advertising Law ("FAL," Bus. & Prof. Code §17500, et seq.) are three California statutes most frequently invoked in consumer class actions in California. The CLRA has 24 separate prohibited acts or practices.

A violation of any other statute can be the basis of a UCL "unlawful" claim.

The UCL prohibits any "unlawful, fraudulent or unfair business act or practice." That means the violation of any other law, including a statute that doesn't provide for its own private civil right of action, can be the predicate act for a UCL claim.

UCL class actions alleging violation of California's auto-renewal statute are HOT!

California enacted Bus. & Prof. Code §17600 in 2010. That statute sets out California's stringent mandatory requirements for advertising any "automatic purchase renewals" (aka continuous service or paid subscription plans or agreements). Terms of sale, including how to cancel the service, must be complete, clear and conspicuous.

FAL class actions and government enforcement actions over sale pricing & advertising are also on the rise.

Bus. & Prof. Code §17501 doesn't allow the price of a product to be advertised as the "former" price unless it was the prevailing market price in the same locality within 3 months immediately preceding the advertisement. To defend against these claims, educate your sales/marketing staff, audit pricing regularly and keep good records of product pricing.