

Federal Judge Upholds California’s Small-business Lending Disclosures

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On December 4, Judge R. Gary Klausner of the U.S. District Court for the Central District of California [granted](#) summary judgment to California’s DFPI upholding the recently adopted commercial financing disclosure regulations related to the implementation of [SB 1235](#) (we blogged about the rule [here](#)). The regulations require small business financing providers to disclose key metrics to small businesses to help them understand potential financing options, including the amount of funding provided, APR, finance charge, and payment amounts. The plaintiffs in this latest challenge – a trade association of small business finance companies – asserted that the disclosure requirements violated plaintiffs’ free speech rights under the First Amendment and that the disclosures were preempted by the Truth in Lending Act (TILA).

The court first held that the DFPI’s regulations do not violate the First Amendment under the test for compelled commercial speech established in *Zauderer v. Office of Disciplinary Counsel of Supreme Court of Ohio* because the disclosures are (1) purely factual, (2) noncontroversial, (3) not unduly burdensome, and (4) reasonably related to a substantial governmental interest. With respect to the federal preemption claim, the court then held that it would defer to a ruling by the CFPB issued in March 2023 that SB 1235 and similar laws enacted by New York, Utah, and Virginia do not conflict with TILA (see our blog about the CFPB’s determination [here](#)). The court would not disturb the CFPB’s interpretation unless it was “demonstrably irrational,” which the court found it was not.

Putting It Into Practice: While this challenge strikes a blow to small business commercial lenders, impacted companies should have in place the appropriate disclosure forms for the states where laws are currently effective, and will likely need to prepare for additional disclosure laws being considered in several other states.

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