

DATA PRIVACY CLASS ACTION LITIGATION

Protecting Your Interests In and Out of the Courtroom

There has been a significant increase in class action complaints and private arbitration demands alleging that certain technologies on company websites invade consumers' privacy. As a result, the risk of privacy-related litigation for businesses has never been greater. Buchanan's multidisciplinary team of attorneys combines a deep understanding of data privacy laws with extensive litigation experience to navigate a wide array of data privacy and cybersecurity challenges.

Legal issues surrounding common website tools such as web pixels, cookies, and chatbots are rapidly evolving, with many states adopting new and often inconsistent consumer privacy laws. Several states have enacted comprehensive privacy laws, while many others are considering similar legislation, resulting in a complex regulatory environment. Company websites now face challenges on multiple fronts, including the use of third parties for chat functions, session replay software for analytics, and third-party cookies and pixels from social media platforms that collect and share consumers' browsing data for targeted advertising. Additionally, issues related to search bars, credit card payments, and cookie banners are raising further legal concerns.

How We Can Help You

Businesses must be vigilant in understanding and addressing emerging data privacy risks, as the implications of unauthorized data sharing can lead to costly litigation. If your company faces class action complaints, Buchanan is a true partner every step of the way. We treat privacy and data security litigation as a distinct legal field, recognizing the specialized knowledge necessary in such cases.

Representation in Class Action Lawsuits

Buchanan's data privacy litigation team is experienced in handling class action cases in courts nationwide. We'll assemble the appropriate team to help you achieve your objectives, including attorneys who focus specifically on the procedural aspects of class action cases, while keeping expenses at a minimum.

Our litigators possess an in-depth understanding of laws affecting privacy and data security litigation, including the federal Electronic Communications Privacy Act, the Wiretap Act and the Stored Communications Act, the California Invasion of Privacy Act, the California Consumer Privacy Act, the Video Privacy Protection Act, the Fair Credit Reporting Act, and the Telephone Consumer Protection Act. We are well-versed in the state-level counterparts to these statutes, state consumer protection laws, and common law privacy torts.

Case Strategy and Class Certification

Before any case gets to trial, our team of attorneys counsels clients on a number of strategic options they have to gain a more favorable environment or outcome. These include:

- Transfer to a preferred venue or location
- Removal to federal court
- Stay of discovery
- Case dismissal at the responsive pleading stage
- Summary judgment motion before class certification and class discovery

While the primary goal for defendants in a class action may be to defeat class certification or reduce the size of a class, that may not always be the best strategy. Defeating class certification often can lead to a defense judgment or a favorable settlement. In some circumstances, it may be to your advantage not to oppose class certification. Why? Because sometimes the cost of conducting discovery and litigating one class action with multiple plaintiffs may be less than litigating numerous single-plaintiff cases across jurisdictions. In that case, it may make sense to let a case go forward. Our deep experience in class action data cases informs us on the best path forward.

Discovery and E-discovery

In the course of discovery, we have the ability to respond to extensive discovery requests, including the use of technology to manage large-scale document analysis and production. The identification, preservation and disclosure of electronically stored information (ESI) has become a central focus in litigation; our e-discovery team will work closely with you to develop reasonable and defensible plans to address these issues while keeping costs in mind. We work with you to navigate e-discovery issues even before litigation is anticipated, threatened or pending. We not only understand the technology involved, but also the applicable law.

Settlement Negotiation and Litigation

Most class actions are resolved at the class certification stage, either upon a dispositive motion or settled after determination of the class. However, our attorneys' long trial experience means we will never be coerced into settlement by the threat of a jury trial. We conduct witness preparation, document preparation, depositions, and other pretrial administration with the full intention of winning at trial or, if needed, upon appeal.

Regulatory Compliance, Risk Management and Post-litigation Support

New litigation and evolving laws are reshaping the landscape for businesses and consumers. Companies must stay vigilant and proactive in understanding and complying with these regulations to mitigate risks associated with potential lawsuits. For companies coming out of litigation, updating compliance policies and implementing changes to prevent future violations is critical.

ADVANCING OUR CLIENTS' GOALS

Below are some of the ways we have helped our clients succeed:

- Successfully obtained a dismissal of all claims in a Florida invasion of privacy case alleging wiretapping violations on the client's website and received a favorable ruling from the arbitrator in a California invasion of privacy in a website wiretapping case, with the client prevailing on all counts and no award granted to the plaintiff.
- Secured a second consecutive dismissal for a global apparel manufacturer in a class action lawsuit involving California invasion of privacy and wiretapping, closing the case in our client's favor after the plaintiff chose not to amend for a third time.
- Secured dismissal of wiretapping, medical information act, CCPA, and other privacy claims against our online pharmacy client in a putative class action.
- Secured complete dismissal of a California wiretapping case after demurrer with no settlement or payment to the plaintiff.

We work with you to identify the privacy and data protection laws and regulations that apply to the specific types of data your organization handles. We help integrate these requirements with organizational operations and long-term planning, including compliance with:

- New and differing “comprehensive” data privacy laws
- Requirements for privacy policies, digital advertising, website consents, and preference selections
- Federal Trade Commission regulations and enforcement actions
- State regulatory action and court rulings on data privacy and security
- Federal and state action on the privacy risks of artificial intelligence (AI)
- Sector-specific requirements for healthcare, financial services, education, and government contractors
- Federal and state “reasonable security” requirements for personal data
- Health data privacy and breach notification compliance for organizations, whether subject to HIPAA or not
- Supply chain risk management, including third-party risk management and data protection agreements, and provisions for commercial contracts
- Workforce privacy and security requirements and training

New state privacy laws mandate data protection assessments for data-related activities that pose a risk of substantial privacy harm. These include processing health, geolocation, and other sensitive data; targeted behavioral advertising; consumer profiling; and automated decision-making. We can help create the tools, conduct the gap analysis, document the assessment process, and draft the contract protections necessary to meet all your compliance priorities to head off but also in response to any previous litigation.

The Go-to Partner for Data Privacy Litigation and Protection

Our cybersecurity, data privacy and litigation groups work seamlessly together to provide comprehensive strategies for navigating data privacy and cybersecurity challenges. Our firm also offers a flat-fee website auditing service designed to identify potential areas of risk and exposure.

**For additional information, contact our Cybersecurity & Data Privacy team
or email us at cyber@bipc.com.**



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