BakerHostetler

Prepared To Win

BakerHostetler's CCPA Litigation Strategy

100+
Attorneys and technologists
who focus on digital assets and risks

125+
Privacy and
data security class actions

6,000+
Incidents managed
in recent years

500
Breach preparation
workshops

1,000+
Regulatory investigations

The California Consumer Privacy Act (CCPA) permits California residents to seek statutory damages from companies that have suffered a data breach as a result of failing to implement "reasonable security procedures and practices." By permitting statutory damages, the CCPA not only increases the potential exposure of companies doing business in California, but it also requires companies to utilize innovative and adaptive strategies to defend against CCPA class actions.

BakerHostetler's litigation team is well positioned to help companies effectively navigate this new legal landscape because we have done it before. We have successfully guided hundreds of companies through litigation arising from new privacy statutes, novel privacy claims made under existing state and federal laws, and data breach class actions in California and throughout the country. This experience includes defending claims for statutory damages, such as claims under California law (e.g., Confidentiality of Medical Information Act, Song-Beverly, and Consumer Records Act), other state laws (e.g., Illinois' Biometric Information Privacy Act), and federal laws (e.g., Telephone Consumer Protection Act).

In fact, BakerHostetler attorneys have defended more than 125 privacy statute and data breach class actions (many in California courts), led clients through more than 6,000 security incidents and helped hundreds of companies develop and implement strategies to enhance their security posture before and after security incidents.

The BakerHostetler Litigation Approach – Litigate To Win

BakerHostetler develops a tailored, case-specific "litigate-to-win" strategy for each case it defends. The unmatched combination of our data security breach litigation, incident response, and e-discovery advocacy experience enables us to effectively assess a case at the outset to simulate likely outcomes of alternate strategies.

Examples of key strategic decisions from previous successes that BakerHostetler will leverage include the following:

- Enforcing consumer arbitration agreements and class-action waivers
- Enforcing forum-selection and choice-of-law clauses
- Dismissing and/or transferring and consolidating duplicative class actions to reduce litigation costs
- Limiting discovery to only the named plaintiffs' claims
- Staying discovery pending resolution of dispositive motions
- Utilizing BakerHostetler's in-house E-Discovery team to efficiently manage discovery

Representative Experience

California Consumer Privacy Act (CCPA)

■ We currently represent Golden Entertainment Group in a class action filed in the United States District Court for the District of Nevada. The plaintiffs initially served a CCPA demand letter alleging that between May 30, 2019 and October 6, 2019, Golden was the subject of a data breach due to its negligent failure to properly safeguard the information of its customer and employees. Following the demand, the plaintiffs filed the class action lawsuit. Leveraging a recent full dismissal with prejudice in this jurisdiction, Pruchnicki v. Envision Healthcare Corp., et al., No. 2:19-CV-1193-JCM-BNW, 2020 WL 853516 (D. Nev. Feb. 20, 2020)No. 2:19-CV-1193-JCM-BNW, 2020 WL 853516 (D. Nev. Feb. 20, 2020), the team negotiated a very favorable settlement of the class, which is currently pending preliminary approval with the Court.

■ We represented the currency exchange company Travelex in a class action filed in the United States District Court for the Southern District of New York. Prior to filing the lawsuit, the plaintiffs served a CCPA demand letter, to which Baker assisted Travelex in responding. Following the demand, the plaintiffs filed the class action lawsuit seeking relief under the CCPA as well as other statutory and common law causes of action. While a motion to dismiss the entire complaint was pending, the Baker team was able to negotiate a confidential, individual settlement with the plaintiffs to resolve the case.

California's Confidentiality of Medical Information Act (CMIA)

■ Won dismissal of a CMIA claim against an acute care hospital in one of the first attempts to apply the CMIA to a data breach incident in a precedent-setting putative class action.

■ Won dismissal on summary judgment of a putative class action seeking nearly $400 million in statutory damages under the CMIA against a healthcare billing services provider in a case alleging theft of protected health information.

■ Won dismissal on summary judgment of the CMIA and unlawful recording claims of the named plaintiff in a putative class action filed against a hospital in San Diego, California.

California's Consumer Records Act (CRA)

■ Won dismissal of three class action lawsuits against an artificial intelligence chat services provider, including CRA claims, alleging that plaintiffs' payment card and personal information was stolen and misused through online customer support services.

Other State Law Claims Alleging Companies Must Have Reasonable Security

■ Defending a grocery store company in multidistrict class action litigation involving allegations of the breach of employees' W-2 information. The team achieved success in a strategy to compel individual arbitrations over class litigation leading to individual settlements and a favorable outcome for the client.

- Obtained, with prejudice, dismissal of a nationwide class action against a video game retailer alleging that customers' personal information was disclosed to Facebook in violation of the client's privacy policy.

- Won dismissal of 12 class action lawsuits on behalf of a hospital system arising out of allegations that the hospital was negligent by allowing the theft of computers alleged to have contained patient information for more than 5 million patients.

- Defended a hospital system in a putative class action regarding a data breach in which hackers gained access to the email accounts of hospital employees when employees responded to phishing emails, exposing approximately 18,000 patients' personal information and health records. We obtained a dismissal on standing grounds in federal court, followed by a dismissal on the merits in state court.

- Currently defending Marriott in a multidistrict litigation (MDL) arising out of its 2018 data security incident.

- Successfully defeated class certification against a retailer in a putative class action filed by an issuing bank after a store disclosed a payment card data security incident.

- Successfully defeated class certification in a putative class action filed against a hospital in which the plaintiff alleged that the hospital had failed to implement reasonable data security and, therefore, was liable for a breach of protected health information.

- Defended the seventh-largest healthcare class action, including successful dismissal of negligence claims alleging the healthcare system unreasonably released its patients' and employees' protected health information and payment card information.

- Defended and settled a consolidated putative class action brought against a hospital system involving a cyberattack affecting 11 million people and allegations that the hospital system did not have adequate data security protections in place.

- Won dismissal of a hospital foundation and a cancer clinic in a class action involving Facebook privacy practices filed against several hospitals. The healthcare defendants' motion to dismiss based on standing was granted, and the plaintiffs did not appeal.

- Defending a hospital system in two putative class actions in which the plaintiff alleges numerous common-law and statutory claims in connection with a phishing attack in which hackers are alleged to have accessed the company's primary data repository and exfiltrated its patients' personal information as well as their protected health information. One case was successfully litigated on the basis of the first filed doctrine.

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Thought Leadership

Our attorneys have been at the forefront of CCPA preparedness since August 2018, and we have taken our experience in this area on the road, speaking and writing on a consistent basis. Our clients and friends turn to us for guidance, and we have shared our experience through legislative comments, blog posts, CCPA FAQs, client seminars, and webinars.

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