



March 26, 2021

CALIFORNIA DISTRICT COURT RULES THAT CCPA DOES NOT APPLY RETROACTIVELY

The U.S. District Court for the Northern District of California dismissed a proposed class action lawsuit that alleged that a retailer violated the California Consumer Privacy Act ("CCPA"). *Gardiner v. Walmart Inc.*, Case No. 20-cv-04618-JSW (N.D. Cal., filed Mar. 5, 2021).

In this case, the plaintiff alleged that his personal identifying information, including his credit card information, was accessed by hackers because of a data breach that took place at the retailer. However, the plaintiff could not identify when and how the data breach occurred. The plaintiff brought a number of causes of action for the alleged breach, including violations of the CCPA. The retailer filed a motion to dismiss the complaint, arguing that the CCPA claim fails for two reasons: (i) the plaintiff failed to allege when the breach occurred as the statute only applies to breaches occurring after January 1, 2020 and (ii) plaintiff did not adequately allege the disclosure of personal information, as defined by the statute.

The CCPA permits any consumer whose nonencrypted and nonredacted personal information is subject to an unauthorized access and exfiltration, theft or disclosure as a result of the business's violation of the duty to implement and maintain reasonable security procedures and practices appropriate to the nature of the information to protect the personal information to institute a civil action.

The court concluded the based on the CCPA text and California law, the challenged provision of the CCPA does not apply retroactively. Accordingly, data breaches are only actionable under the CCPA if they occur after January 1, 2020. The court stated that the plaintiff failed to allege that the data breach occurred after January 1, 2020, and therefore, dismissed the plaintiff's claim.

On February 2, 2021, the U.S. District Court for the Northern District of California dismissed a CCPA claim that alleged that another company violated the CCPA's provisions related to notice and consent. *McCoy v. Alphabet, Inc. et al.*, Case No. 5:20-cv-5427 (N.D. Cal., filed Feb. 2, 2021). The court emphasized that the CCPA only confers a private right of action for violations related to personal information security breaches. In this case, the plaintiff alleged that the company violated the CCPA's provisions related to notice and

consent. Thus, the court dismissed the CCPA claim. ☐

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UPDATE OF CCPA CLASS ACTION LAWSUITS

In April 2020, we reported on the first wave of CCPA class action lawsuits. See our prior ALERT dated [Apr. 27, 2020](#). We have provided an update on the cases below.

***Barnes v. Hanna Anderson, LLC and Salesforce.com, Inc.*, No. 4:20-cv-00812 (N.D. Cal. Feb. 3, 2020)**

On December 29, 2020, the U.S. District Court for the Northern District of California granted preliminary approval of the class action settlement. The settlement creates a settlement fund of \$400,000 that will provide cash payments of up to \$500 per class member, with expense awards of up to \$5,000. The settlement estimates that the likely payout is \$38 per class member (which is approximately 200,273 individuals).

The settlement also requires that the retailer: (i) enable multi-factor authentication for all cloud services accounts, (ii) conduct risk assessments consistent with the NIST Risk Management Framework; (iii) hire additional technical personnel and a Director of Cybersecurity; (iv) conduct phishing and penetration testing of the retailer's enterprise environment and enterprise user base; (v) deploy additional intrusion detection and prevention, malware and anti-virus and monitoring applications within the retailer's environment; and (vi) implement regular review of the logs of the retailer's ecommerce platforms.

Interestingly, as noted in the complaint and settlement documents, the lawsuit asserted claims related to a security incident that affected the retailer's computer systems from *September 16, 2019 to November 11, 2019* and was disclosed January 15, 2020. This is the first CCPA class action lawsuit to be settled.

Sheth v. Ring, LLC, No. 2:20-cv-01538 (C.D. Cal. Feb. 18, 2020)

This case was consolidated with four other privacy-related cases. The case is still in the pleadings stage.

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Fuentes v. Sunshine Behavioral Health Group LLC,
No. 8:20-cv-00487 (C.D. Cal. Mar. 10, 2020)

On October 26, 2020, the case was dismissed after the plaintiff voluntarily dismissed the complaint. There is no public information related to any potential settlement agreement.

Almedia v. Slickwraps Inc., No. 2:20-at-00256 (E.D. Cal. Mar. 12, 2020)

This case record and history is sealed. The status of this case is undisclosed.

Cullen v. Zoom Video Communications, Inc.,
No. 5:20-cv-02155-SVK (N.D. Cal. Mar. 30, 2020)

This case is still active and in the pleadings stage.

Future CCPA Class Actions

As we previously reported, and was emphasized in the *Alphabet, Inc.* case, the CCPA gives California residents a limited private right of action to recover damages if any consumer whose nonencrypted and nonredacted personal information is subject to an unauthorized access and exfiltration, theft or disclosure as a result of the business's violation of the duty to implement and maintain reasonable security procedures and practices appropriate to the nature of the information.

The CCPA class action complaints are pushing the boundaries and attempting to hold companies liable for other violations that fall outside of the scope of the private right of action statute. The *Walmart* and *Alphabet, Inc.* decisions should bring some relief to businesses subject to such cases. Additional good news for businesses subject to the CCPA is that the voter-approved California Privacy Rights Act does not alter the CCPA's existing private right of action for data breaches, with the exception that consumer login credentials were added to the list of data types that can be actionable under the law if breached.

We will continue to actively monitor and report on other CCPA updates. We can assist businesses in complying with the privacy policy and notice requirements of the CCPA. Please let us know if you have any questions. ☐

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