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Inaugural Annual Privacy Law Summit

Session 2

Privacy Law in the Courts – Updates on Class Action Developments

From Both Sides of the Aisle

MCLE: 1.0 Hours

Thursday, February 9, 2023

11:30 a.m. – 12:30 p.m.

Speakers:

Amy Lally, Class Action Defense Leader, Partner, Sidley Austin LLP

Christine M. Reilly, Leader and Partner, Consumer Protection,

Manatt, Phelps, & Phillips, LLP

Aaron Lawson, Partner, Edelson PC

Conference Reference Materials

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Privacy Law in the Courts

Inaugural Annual Privacy Summit
February 9, 2023

Updates on Class Action Developments from Both Sides of the Aisle

The Aisle:

Aaron Lawson, Edelson PC

Amy Lally, Sidley Austin LLP
Christine M. Reilly, Manatt, Phelps & Phillips, LLP

Moderator: Elaine F. Harwell, Procopio

Privacy Litigation in 2023

Overview of Discussion:

- Website Tracking Claims
- Biometric Privacy Cases
- Areas of focus for 2023 Privacy Claims
- Takeaways?



California Invasion of Privacy Act (CIPA)

Any person ... who willfully and **without the consent of all parties** to the communication ... **reads** ... or []**learn[s]** the **contents** or meaning of any message, report, or communication while the same is in transit or passing over any wire, line, or cable, or is being sent from, or received at any place within this state; or who uses, or attempts to use, in any manner, or for any purpose, or to communicate in any way, any information so obtained, ... is punishable by a fine not exceeding two thousand five hundred dollars (\$2,500), or by imprisonment in the county jail not exceeding one year...

California Penal Code § 631(a)

California Invasion of Privacy Act (CIPA)

Every person who, **without the consent of all of the parties** to a communication, intercepts or **receives** and intentionally records, or assists in the interception or reception and intentional recordation of, a **communication** transmitted between ... a cordless telephone [or] a cellular radio telephone, shall be punished by a fine not exceeding two thousand five hundred dollars (\$2,500), or by imprisonment in a county jail not exceeding one year, or in the state prison, or by both that fine and imprisonment.

California Penal Code § 632.7 (a)

Class Action Lawsuits and Pre-Suit Demand Letters

- The use of “session replay” tools intercepts data communications such as mouse clicks and keystrokes without users’ prior consent.
- Communications recorded from an online chat feature and stored with a third-party are alleged to be “wiretapping” in the absence of prior consent.

Javier v. Assurance IQ (9th Cir. May 9, 2022)

- Plaintiff “answered a series of questions about his demographic information and medical history.”
- “We conclude that the California Supreme Court would interpret Section 631(a) to require the prior consent of all parties to a communication.”
- “We do not reach Defendants’ other arguments, including whether Javier impliedly consented to the data protection [and] whether [the session replay tool] is a third-party under Section 631(a).”

Javier v. Assurance IQ (N.D. Cal. Jan. 5, 2023)

- “Defendants have not demonstrated that Javier ‘continued to use’ Assurance’s website after he had constructive notice that his communications ‘may be intercepted’ by Active Prospect.” Thus, implied consent does not provide basis for dismissal of Section 631 claim.
- Only evidence of consent was assent to the Privacy Policy, but Ninth Circuit reversed on this basis.
- Rejects arguments that ActiveProspect is not a third-party eavesdropper and just an “extension” of Assurance.
- Who is holding the tape recorder?

CIPA Cases

Williams v. What If Holdings, LLC, 2022 WL 17869275 (N.D. Cal. Dec. 22, 2022)

- Assurance IQ also a Defendant in this suit.
- Factually analogous to *Javier v. Assurance*, except user alleged that the website operator operated as an eavesdropper and that third-party software provider was an accomplice.
- The court held that a party may not eavesdrop on its own conversation. As for the software provider, the court held that the recording of user activity on a website, without further usage or processing of the data, was merely a “routine documentation,” not amounting to eavesdropping/listening.
- Court distinguished *Javier v. Assurance* on the basis that the claim was not for the interception of communications without consent. Thus, the court’s ruling is narrow and leaves the door open to suits under *Javier’s* rationale.

CIPA Cases (Cont'd)

Graham v. Noom, Inc., 533 F. Supp. 3d 823, 827 (N.D. Cal. 2021)

- Website uses Third-Party software to record visitor activity.
- Class action against Third-Party for wiretapping the communications and against Website for “aiding and abetting the eavesdropping.”
- Website and Third Party moved to dismiss on the basis that Website was a party to the communication and that Third Party is merely a vendor.
- Motion to dismiss granted. Only a third party can be liable for recording a conversation. Third-Party is a service provider, which merely aggregates data for customers, and thus is “an extension of [Website].” As such, Third Party was merely a “tool,” used by Website to lawfully record the communication.

CIPA Cases (Cont'd)

Silver v. Stripe Inc., 2021 WL 3191752 (N.D. Cal. July 28, 2021)

- Plaintiffs bought items from Instacart. Defendant used cookies to record interactions with Instacart's website using Defendant's software.
- Defendant moved to dismiss, contending that Instacart's privacy policy allowed sharing information "with the other parties who help enable the service," including "payment processing partners," who may use "various technologies to collect information about your online activity."
- Motion to dismiss granted. Contract created because the hyperlink to the policy was displayed in a conspicuous manner and was located close to the "place order" button. As such, Plaintiffs were "provided with an opportunity to review the terms." Plaintiffs checked a box, acknowledging that they accepted the privacy policy.

CIPA Cases (Cont'd)

- Recent surge of chatbot/digital privacy cases filed.
- Alleging business covertly embeds code into its chat feature that automatically records and creates transcripts of all chat conversations with customers and allows third party access to those “private” conversations in order to harvest users' data for financial gain, without the customers' consent.
- Plaintiffs (website users) are seeking statutory and punitive damages, as well as an order enjoining defendants from continuing to eavesdrop in chat communications.
- None of the complaints in these cases identify any personal/private information that allegedly was shared in the chats.

Risher v. Adecco (N.D. Cal. Nov. 18, 2022)

- Plaintiff submitted information for employment opportunity. Years later, he received a few text messages—e.g. “Hi Clarence! It’s Mya again. Are you free to chat for a few minutes?” Mya was not a human being, but a chatbot.
- Plaintiff filed class action alleging violations of the Telephone Consumer Protection Act, including artificial/prerecorded voice messages without consent.
- Plaintiff argued that messages had a “voice” in the metaphorical sense—“indeed the very intent of the Mya chatbot is to create the impression of an interactive human ‘voice,’ responding conversationally.”
- Grants motion to dismiss because text messages are not “voices” but noted that “position is not frivolous.”
- *See also Mina v. Red Robin* (D. Colo. 2022) (text messages are not prerecorded voice messages).

BIPA – 2022 Developments

Major decisions

McDonald v. Symphony Bronzeville Park LLC, 2022 IL 126511: BIPA claims against employers not preempted by Illinois Workers' Comp Act

Patterson v. Respondus, Inc., 2022 WL 7100547 (N.D. Ill. Oct. 11, 2022)

(college might not be exempt "financial institution" even though many students receive student aid). *Compare Doe v. Nw. Univ.*, 586 F. Supp. 3d 841 (N.D. Ill. 2022) (universities are exempt "financial institutions").

Mosby v. Ingalls Mem. Hosp., 2022 IL App (1st) 200822: Health-care employees not covered by health-care exception

Trial: Jury returns verdict for Plaintiff in *Rogers v. BNSF Railway Co.*, No. 19 C 3083 (N.D. Ill.). Total damages of \$228M.

BIPA – What to expect in 2023

- Two major decisions expected from Illinois Supreme Court
 - Tims v. Black Horse Carriers*: Does a 1- or 5-year statute of limitations apply to BIPA claims? (Or, as the lower court held, does a 1-year period apply to some types of claims, while a 5-year period applies to others?)
 - Cothron v. White Castle System, Inc.*: Once an entity has collected and/or disclosed a person’s biometric data, does a new claim accrue upon each subsequent collection or disclosure of the same data? Or is the violation complete after the first collection or disclosure?
- Filing of new cases should slow significantly
 - One set of new cases concerns “virtual try on” programs, *see, e.g., Pecho v. Maui Jim, Inc.*, 2022 WL 4609527 (N.D. Ill. Sept. 29, 2022)
- Insurance coverage litigation likely to be a big part of the BIPA space

Areas of focus for privacy litigation in 2023

- Other internet tracking cases
 - Meta Pixel
 - Lawsuits center on contention that website owners are unlawfully sharing video-viewing data to Facebook (18 U.S.C. s 2710)
- Geolocation—more on the regulator side of things, e.g., *FTC v. Kochava*, Google’s recent settlement with state AGs
- Social Media Addiction—social media platforms are “defective” products that are harmful to younger users

From the Panelists:

What are the takeaways?

From all of us:

Thank you!



PARTNER

Amy P. Lally

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Consumer Class Actions

Environmental

Privacy and Cybersecurity

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AMY LALLY is a trial lawyer who practices in all areas of litigation, including class actions, contract dispute litigation, and real estate litigation. She serves as a global co-leader of Sidley's Consumer Class Actions practice, which is ranked in *Chambers USA* for 2021 and recognized for its "deep bench noted for its expertise in the life sciences sector, having obtained a number of high-profile defense verdicts in this field." Amy is also a member of the firm's COVID-19 Task Force. She has broadly represented the consumer products and services industries in litigation arising under Proposition 65, California's Unfair Business Practices Act (UCL, Section 17200), False Advertising Law (FAL, Section 17500), the Consumer Legal Remedies Act (CLRA), labeling laws (including on comparative pricing and Made in America), the California Invasion of Privacy Act (CIPA), TCPA, the Song-Beverly Credit Card Act, and California's Shine the Light law. She is a leading member of [Sidley's California Consumer Privacy Litigation Task Force](#), a dedicated group of lawyers focused on the California Consumer Privacy Act (CCPA) and California Privacy Rights Act (CPRA), counseling clients on how to assess and mitigate litigation risks by putting in place the policies, procedures, and protocols that comply with the new law. Her clients include numerous consumer goods manufacturers and retailers, including vitamin and dietary supplement companies, pharmaceutical companies, apparel, furniture and home goods companies, and e-commerce companies. Amy has represented a wide variety of other businesses such as financial institutions, hedge funds, accounting firms and oil and gas companies. She also works with clients to assess their product and service offerings, and mitigate litigation risk in connection with strategic growth opportunities.

Amy has tried cases to verdict in both California state and federal court and the Court of Federal Claims. She litigates cases in multiple courts throughout California, including in the counties of Alameda, Los Angeles, Orange, Riverside, Sacramento, San Diego, San Francisco, and San Mateo. She also has significant experience assisting consumer products and services companies in strategic transactions, including Bodega Latina Corporation and Vegamour.

Amy received an *AmLaw Litigation Daily Shout-Out* honor in June 2021 for her work defending The Neiman Marcus Group, LLC against a putative privacy class action, and again in July 2022 for securing a win in a dispute spinning out of a US\$40 million loan her client, Fortress Investment Group affiliate DBD Credit Funding LLC, secured by The Beverly House. In 2020, Amy was recognized as one of the "Top Women Attorneys in Los Angeles" by the *Los Angeles Business Journal*. She also led the Sidley team in defense of a consumer class action that was recognized by the *Daily Journal* as one of the "Top Defense Verdicts" of 2020. Clients have described Amy as "an excellent trial lawyer; she is an aggressive and knowledgeable advocate in Prop. 65 Cases" (*Chambers USA*, 2015). She was also recommended in the 2017 edition of *The Legal 500* for dispute resolution. Amy is named to Lawdragon's list of 500 Leading Litigators in America (2022).

Amy earned her J.D. from Georgetown University Law Center and her B.A. from Boston College, *summa cum laude*, and was a member of *Phi Beta Kappa*, Golden Key National Honor Society and Cross and Crown Honor Society.

REPRESENTATIVE MATTERS

- Obtained trial win for an investment management firm in a long running legal dispute regarding financing secured by a historic property.
- Represented United Airlines in the formation of the Eco-Skies Alliance.
- Defeated putative class action in the Central District of California against defendants, alleging that a soap manufactured by a Mexican company and distributed in the United States was falsely labeled "natural." The Order granting the Motion Dismiss was affirmed by the Ninth Circuit.
- Prevailed on a motion to compel arbitration in the Central District of California against a putative class action asserting breach of contract, fraud, and unfair business practices (Section 17200) claims against a cable service provider.
- Obtained dismissal of RICO class action in the Northern District of California against defendants, including a national clothing retailer, alleging that an anti-shoplifting recidivism program constituted extortion.
- Defeated TCPA class action in the Central District of California challenging call to action text marketing campaigns.
- Obtained a dismissal of putative class action against a national retailer challenging outlet store pricing under Business & Professions Code Section 17501.
- Prevailed on a motion for summary judgment in the Central District of California against a putative false advertising class action regarding homeopathic cold and flu remedies.
- Motion to dismiss granted in the Northern District of California on a putative false advertising class action regarding personal care products.
- Negotiated several favorable single-plaintiff settlements in putative false advertising class actions against the cosmetics industry.
- Obtained Court dismissal of a putative class action alleging claims arising under California laws on gift certificates, liquidated damages, unconscionability, Section 17200 (unfair business practices),

Section 17500 (false advertising), and the Consumer Legal Remedies Act.

- Lead trial counsel for two dietary supplement companies in a Proposition 65 lawsuit asserting failure to warn with respect to certain dietary supplements. The court ruled in favor of dietary supplement companies on all issues in the bifurcated trial.
- Trial counsel for Pacific Gas & Electric Company in a lawsuit with co-plaintiffs Southern California Edison, San Diego Gas & Electric, and the State of California seeking to recover hundreds of millions of dollars in wholesale electricity overcharges from governmental entity defendants that sold power into the California markets during the Energy Crisis. The court found in favor of Pacific Gas and Electric and the other plaintiffs.
- Defeated class certification in a putative class action asserting breach of contract, fraud and unfair business practices (Section 17200) claims against a large on-line food ordering service.
- Representation of seven vitamin manufacturers and liaison counsel to all defendants in the industry in a Proposition 65 lawsuit brought by the California Attorney General and six district attorneys against 45 defendants.
- Several representations of consumer product manufacturers and retailers and consumer service companies in putative class actions arising out of the California Invasion of Privacy Act (CIPA).
- Obtained summary judgment for an oil & gas company in two concurrent lawsuits, a putative class action of all branded service station franchisees in California and a non-class action brought by nearly two dozen franchisees, alleging a violation of the franchisees' right of first refusal to purchase their stations and various purported unfair business practices in the pricing of gasoline and the implementation of the franchise agreement. Both summary judgments were affirmed on appeal.
- Lead counsel in multiple putative class actions brought against national consumer products retailers alleging privacy violations of the Song-Beverly Credit Card Act in connection with credit card transactions.
- Obtained court dismissal for AIG Retirement Services Inc. in a lawsuit brought by Brill Media Company LLC and its affiliates seeking more than \$75 million in damages in claims arising out of Brill Media's bankruptcy.
- Multiple representations of lenders in actions for foreclosure and breaches of guaranty agreements in connection with loans secured by real property located throughout California and involving a wide variety of businesses including nursing homes, casinos, hotels, restaurants, and residential developments.

PRO BONO

Amy maintains an active pro bono practice. Most recently, she led a Sidley team in obtaining a major victory in *Hunger Action Los Angeles, et al. v. County of Los Angeles, et al.*, in which the Los Angeles Superior Court entered a permanent injunction requiring the county to process and approve emergency applications for CalFresh — formerly known as food stamps — in a timely manner. She also led a large cross-office Sidley team working alongside pro bono partner Public Counsel to seek a preliminary injunction requiring the government to provide mental health services to a putative class of immigrant families separated upon entry into the United States. On November 6, 2019, in a groundbreaking 50-page order, Judge Kronstadt of the U.S. District Court for the Central District of California granted the preliminary injunction and certified the

class, requiring mental health screenings and treatment to help separated family members begin to address the severe and ongoing trauma associated with family separation. As a result of her work and on behalf of the team, Amy accepted the 2019 Public Counsel Pro Bono award in honor and recognition of Sidley's efforts on this matter.

MEMBERSHIPS AND ACTIVITIES

- Member, Prop 65. Clearinghouse Advisory Board
- Member, Steering Committee, Cambridge Food Law Forum
- Member, Board of Governors, USC Institute for Corporate Counsel
- Fellow, Litigation Counsel of America (2016)
- Member, American Bar Association
- Member, Los Angeles County Bar Association
- Member, Trial Law Institute (2015–2016)
- Member, Women Lawyers Association Los Angeles
- Director, Palisades Enrichment Programs (2012–2016)
- Director, Western Center on Law and Poverty (2010–2015)

PUBLICATIONS

Amy is interviewed regularly and also publishes articles on topics such as the California Consumer Privacy Act and Proposition 65. Coverage from the last five years and select earlier publications include:

- [Co-author, "California" chapter, *The Food, Beverage and Cosmetics Law Review, Second Edition, September 2022 \(Updated annually since 2021\).*](#)
- [Co-author, "Ninth Circuit En Banc Ruling Olean Creates Circuit Split Rejecting Bright Line Rule for Rule 23\(b\)\(3\) Predominance in Favor of Case by Case Analysis," *Sidley Update, April 12, 2022.*](#)
- [Co-author, "Circuit Spares Breakfast Foods, Snacks, and Other Favorite Foods From Cancer and Reproductive Toxicity Warnings," *Sidley Update, March 23, 2022.*](#)
- Co-author, "The Pitfalls of 'Made in America,'" *Today's General Counsel*, October 25, 2021.
- [Co-author, "FTC Issues Civil Penalty Notice to 700 Companies Regarding Endorsements and Reviews," *Sidley Update, October 14, 2021.*](#)
- [Co-author, "U.S. Supreme Court Tightens Standing Requirements in TransUnion Decision," *Sidley Update, June 29, 2021.*](#)
- Quoted in, "Mental Health Services for Migrants Delayed by DHS, Lawyers Say," *Bloomberg Law*, January 12, 2021.
- Quoted in, "Blending Personal and Professional Time Created Positive Changes, Say Parents/Lawyers," *Daily Journal*, December 21, 2020.
- [Co-author, "Bruce Springsteen May Have Been Born In The USA. But What About His Levi's?" *Daily*](#)

[Journal, September 24, 2020.](#)

- [Co-author, "California's Code of Civil Procedure Enters the 21st Century," *Daily Journal*, September 16, 2020.](#)
- "Fashion and Retail Law," in *Business and Commercial Litigation in Federal Courts* (Thomson Reuters, fourth and fifth editions), December 2016–2021.
- Quoted in, "Risk Reward," *Daily Journal*, April 23, 2020.
- Referenced in, "Trump's Response to Legal Defeats Shows He's a Paper Tiger," *Los Angeles Times*, February 28, 2020.
- Quoted in, "Physicians Group Releases Report on Psychological Effects of Family Separation," *Los Angeles Times*, February 25, 2020.
- Quoted in, "DOJ Drops Appeal In Case Over Separated Migrants' Care," *Law360*, February 24, 2020.
- Quoted in, "Appeal Lifted: Mental Health Care Approved for Immigrants; Trump Lawyers Drop Appeal Separated Immigrant Families To Get Mental Health Care," *San Francisco Chronicle*, February 22, 2020.
- Quoted in, "CCPA Litigation Risks: How to Avoid Claims Under Other Statutes," *Cybersecurity Law Report*, February 5, 2020.
- [Co-author, "Stuck in the Food Court: Settlements in Food Labeling Class Actions Likely To Fuel More Lawsuits," *The Recorder*, December 6, 2019.](#)
- Quoted in, "Gov't Owes Mental Health Care To Separated Migrant Parents," *Law360*, November 6, 2019.
- Quoted in, "California Privacy Law May Spur Data Breach Lawsuit Wave," *Bloomberg Law*, October 9, 2019.
- [Co-author, "Federal Challenges to Proposition 65: New Paths to Litigation and Lessons for Challenging State Laws," *ABA Environment, Energy, and Resources Section*, August 19, 2019.](#)
- ["Key Developments in California's Proposition 65 Right to Know Law," *ABA Products Liability Litigation Newsletter*, February 28, 2019.](#)
- [Co-author, "Judges Split on First Amendment Scrutiny in Sugar Drink Case," *Daily Journal*, February 13, 2019.](#)
- Quoted in, "Immigrant Mental Health Suit Likely Bound for Settlement Talks," *Daily Journal*, January 30, 2019.
- [Quoted in, "FTC Misrepresentation-Ad Settlement Offers Lessons for Outside Marketing Partners," *Corporate Counsel*, November 19, 2018.](#)
- [Author, "Your Favorite Cup of Coffee and Prop 65," *L.A. Biz*, April 30, 2018.](#)
- [Quoted in, "Playing by the Rules: What You Need To Know About Prop 65 and Furniture," *Casual Living*, April 2018.](#)

- [Co-author, "The Determinants of Class Certifications After *In re Tobacco II*," *Los Angeles Lawyer*, February 2018.](#)
- [Author, "Sugar Case Rehearing Could Affect Public Health Efforts," *Daily Journal*, February 13, 2018.](#)
- [Co-author, "Most Food Labeling Class Actions Remain Stayed While FDA Process Runs 'Natural' Course," *Bloomberg Law*, October 23, 2017.](#)
- [Author, "Sugar-Sweetened Drinks & the First Amendment," *Daily Journal*, September 29, 2017.](#)
- [Co-author, "California Court of Appeal Affirms Outlet Stores Can Sell Outlet Clothes," *The Recorder*, September 28, 2017.](#)
- [Quoted in, "Lead Standards Move Into Enforcement Spotlight," *Kids Today Online*, June 5, 2017.](#)
- [Co-author, "Taylor Swift and Kanye West's Feud Has Lessons for California Business Over Recorded Phone Calls," *L.A. Biz*, October 11, 2016.](#)
- [Co-author, "California OEHHA Issues Final Proposition 65 'Clear and Reasonable Warning' Regulations," *International Law Office*, October 3, 2016.](#)
- [Co-author, "The Post Foods Cases: When 'Natural' Means Stay," *Food Safety Magazine*, August 16, 2016.](#)
- [Co-author, "Supreme Court to Ninth Circuit in *Spokeo* —Get 'Real' on Injury," *Bloomberg BNA: Privacy and Security Law Report*, May 23, 2016.](#)
- ["Telemarketing's Untold Perils," *Target Marketing Magazine*, April 1, 2016.](#)
- [Co-author, "Food for Thought \(and Litigation\): FDA Thinks about Defining 'Natural'," *Corporate Counsel*, January 20, 2016.](#)
- [Co-author, "Federal, Calif. 'Slack-Fill' Laws Ensure Fill Of Litigation," *Law360*, November 18, 2015.](#)
- [Co-author, "Potential Changes to Rule 23 and Class Actions: Frontloading and Class Definition/Ascertainability," *ACC Docket.com*, October 22, 2015.](#)
- [Co-author, "'Prior Substantiation' Theory No Good in Consumer Actions," *Daily Journal*, June 17, 2015.](#)
- [Co-author, "Spike in False Advertising Legal Challenges To the Cosmetics Industry," *Cosmetics Design*, October 14, 2014.](#)
- [Co-author, "'Made in the USA' May Land a Lawsuit," *Daily Journal*, November 3, 2014.](#)
- [Co-author, "'Made in USA' Class Actions Target The Apparel Industry," *Apparel*, August 25, 2014.](#)

EVENTS

Amy speaks frequently at industry conferences and events. Engagements from the last five years include:

- Moderator, "Class Action Litigation- Lessons Learned from the Latest Food Court Decisions: An Issue Spotting Exercise," Momentum Food & Beverage Exchange, Chicago, IL, October 24, 2022.
- Moderator, "A New Era – Change and Convergence in Antitrust and Consumer Protection Law,"

[Retail Law Conference 2022, Retail Industry Leaders Association, October 13, 2022.](#)

- Speaker, "Food Litigation: Consumer Protection, Regulation, and Class Actions: Common Defenses - Part II," UCLA School of Law, September 27, 2022.
- Speaker, "What Statutory Changes Would Improve the Operation and Effectiveness of Prop. 65?" Prop. 65 Conference, Prop. 65 Clearinghouse, San Francisco, CA, September 19, 2022.
- Speaker, "Trend Watch 2022: Hot Topics in California Regulation and Litigation," Webinar, Sidley Austin LLP, January 25, 2022.
- Speaker, "Hot Topics in Food Litigation," Cambridge Forum on Defense Food Litigation, New Orleans, LA, November 18, 2021.
- Moderator, "Avoiding 'Dark Patterns' While Meeting Consumer Demand and Preferences in Online Shopping Experiences," Retail Law Conference 2021, Retail Industry Leaders Association, October 26, 2021.
- [Speaker, "Trend Watch 2021: Hot Topics in California Regulation and Litigation," Webinar, Sidley Austin LLP, January 20, 2021.](#)
- [Moderator, "The Changing Legal Landscape of the Ninth Circuit: What it Means for Retailers and Business Disputes," Retail Law Conference 2020, Retail Industry Leaders Association, October 20, 2020.](#)
- Speaker, "Before The 60-Day Notice Arrives: Strategies For Keeping Your Products Prop. 65 Compliant," Prop. 65 Conference, September 21, 2020.
- Speaker, "California Prop 65: What's New & What's Next," Webinar, American Home Furnishings Alliance, July 15, 2020.
- Speaker, Prop 65 Seminar, Asian Food Trade Association, June 1, 2020.
- Speaker, "E-Commerce: The New Kid on the Block," Consumer Brands Association Legal Forum 2020, Rancho Mirage, CA, February 26, 2020.
- [Speaker, "Trend Watch 2020: California Environmental Regulation of Consumer Products," Webinar, Sidley Austin LLP, January 14, 2020.](#)
- [Speaker, "The CCPA and Litigation Mitigation: What You Need to Know Before January 1," Webinar, Sidley Austin LLP, November 21, 2019.](#)
- Speaker, "Playing the Cards You're Dealt," Women in Law Empowerment Forum, Los Angeles, CA, November 13, 2019.
- Speaker, "Litigation Threats Under the California Consumer Privacy Act," Civil Justice Association of California, Newport Beach, CA, October 22, 2019.
- [Speaker, "Data Governance in the New Regulatory Age," Retail Law Conference 2019, Retail Industry Leaders Association, Nashville, TN, October 18, 2019.](#)
- Speaker, "Proposition 65: Best Practices for Implementing the Food & Beverage Safe Harbor Warnings," Perrin Food & Beverage Litigation Conference, Chicago, IL, October 17, 2019.

- Speaker, "Three in Twenty: Proposition 65," Momentum Food & Beverage Exchange, Chicago, IL, October 3, 2019.
- Speaker, "Prop. 65 Enforcement: Legal and Ethical Responsibilities for Plaintiff and Defense Attorneys," Prop. 65 Conference, San Francisco, CA, September 23, 2019.
- Speaker, "Recent Trends in Food and Beverage Litigation," American Bar Association 28th Annual Spring CLE Meeting: Toxic Torts & Environmental Law, Coronado, CA, April 6, 2019.
- Speaker, "Consumer Class Actions," Class Action Mastery Forum, Litigation Conferences, San Diego, CA, January 17, 2019.
- Speaker, "Trend Watch 2019: California Environmental Regulation of Consumer Products" Webinar, Sidley Austin LLP, December 11, 2018.
- Speaker, "Insights for Litigation-Proofing Product Labels & Store Operations to Ensure Compliance with New Clear and Reasonable Warning Requirements," Momentum Food & Beverage Exchange, Chicago, IL, October 17, 2018.
- Moderator, "Mooting Consumer Class Actions Claims Through Self-Initiated Market Actions," Retail Law Conference 2018, Retail Industry Leaders Association, Austin, TX, October 11, 2018.
- Speaker, "Prop 65: Are You Ready for the Changes?" Webinar, Association of Food Industries, August 23, 2018.
- Speaker, "Understanding the Furniture Safe Harbor," Prop 65 Workshop 2018, American Home Furnishings Alliance, Colfax, NC, March 21, 2018.
- Speaker, "Trend Watch 2018: California Environmental Regulation of Consumer Products" Webinar, Sidley Austin LLP, December 5, 2017.
- Speaker, "OEHHA's New Warning Regulations and Internet Platforms: Who Has the Responsibility to Warn?," Prop. 65 Conference, Prop. 65 Clearinghouse, San Francisco, CA, September 25, 2017.
- Speaker, Proposition 65 Webinar, American Home Furnishing Alliance, August 30, 2017.
- Speaker, "Preparing for a Cybersecurity Event," In-house Counsel Conference, Association of Corporate Counsel (ACC), Universal City, CA, January 17, 2017.
- Speaker, "Regulatory Climate for *Aloe Vera*," 2016 Fifth Annual Botanical Congress, American Herbal Products Association, Las Vegas, NV, October 8, 2016.
- Speaker, "New Prop 65 Clear and Reasonable Warning Requirements," American Home Furnishings Alliance, 2016 Regulatory Summit, Business & Institutional Furniture Manufacturers Association, Hickory, NC, September 15, 2016.
- Speaker, "California's Proposition 65," Global Chemical Regulations Conference, Washington, D.C., March 24, 2016.
- Moderator, "Key Privacy Law Developments for California in 2016," In-House Counsel Conference, Southern California Chapter of the Association of Corporate Counsel, Los Angeles, CA, January 27, 2016.

- Proposition 65 Webinar, American Home Furnishing Alliance, January 6, 2016.

SERVICES AND INDUSTRIES

Agribusiness and Food
Business Torts
California's Proposition 65
Commercial Litigation and Disputes
Consumer Class Actions
Consumer Products
Consumer Products and Services Litigation
Consumer Protection and Unfair Trade Practices
Consumer Regulatory and State Attorneys General
Contract Litigation
Dietary Supplements and Over-the-Counter (OTC) Products
Emerging Health Technology and Products
Environmental
Food, Beverages and Cosmetics
Global Life Sciences
Hospitality
Privacy and Cybersecurity
Real Estate Litigation
Real Estate Workouts and Restructurings
Risk Mitigation: U.S. Sales & Marketing
Trial Litigation

ADMISSIONS & CERTIFICATIONS

U.S. Court of Federal Claims
U.S. Court of Appeals, 9th Circuit
U.S. District Court, E.D. of California
U.S. District Court, N.D. of California
U.S. District Court, C.D. of California
U.S. District Court, S.D. of California
U.S. District Court, E.D. of Wisconsin
California

EDUCATION

Georgetown University Law Center, J.D., 1998
Boston College, B.A., 1995 (*summa cum laude*, *Phi Beta Kappa*, Golden Key National Honor Society, Cross and Crown Honor Society)



Profile

Christine Reilly heads the firm's consumer protection, advertising and competition practice. She defends companies in consumer class actions and other major civil litigation in various areas, including consumer protection, unfair competition, and false and deceptive advertising. She also represents clients facing investigations and proceedings initiated by the Federal Trade Commission, Federal Communications Commission and other federal and state regulatory agencies.

While leading Manatt's [Telephone Consumer Protection Act \(TCPA\) compliance and class action practice](#), Christine regularly defends companies from claims brought under the TCPA, and she frequently writes and speaks on TCPA compliance. She has significant experience litigating under other federal statutes, including the Federal Trade Commission Act; Electronic Communications Privacy Act; Electronic Fund Transfer Act; Fair Debt Collection Practices Act; and the Magnuson-Moss Warranty Act.

Christine also represents clients in the expanding area of Automatic Renewal Law (ARL). She defends clients in automatic renewal-related litigation and regulatory investigations in state and federal venues nationwide. She has experience representing clients with investigations at both the state and federal level, with particular experience in investigations undertaken by the California Automatic Renewal Task Force (CART). Christine counsels clients on how to maximize compliance under the various automatic renewal laws throughout the country while also achieving business objectives. Christine and her team track ARL developments throughout the country, prepare compliance audits and train companies on how to comply in this ever evolving area.

Within California, Christine defends companies facing allegations brought under state laws such as the False Advertising Law, Unfair Competition Law, the Rosenthal FDCPA, Consumers Legal Remedies Act, Song-Beverly Credit Card Act, California Penal Code Section 327 (endless chain/pyramid scheme), and the Invasion of Privacy Act.

In addition to litigation, Christine regularly counsels clients on marketing and advertising practices and compliance with various consumer laws. She represents companies in myriad industries and service sectors including sales and marketing, wireless/mobile technology, the Internet, lead generation, manufacturing, electrical components, software, telecommunications, television, music and entertainment, automotive parts and services, food, health, and beauty.



CURRICULUM VITAE

AARON LAWSON is a Partner on Edelson PC's Issues & Appeals group. Aaron regularly litigates complex issues in both trial and appellate courts, including jurisdictional issues and class certification. Aaron has argued in four federal Courts of Appeals and numerous district courts around the country. Aaron's practice focuses on consumer fraud, including false advertising, and data security.

In addition to his work at Edelson PC, Aaron serves on the Privacy Subcommittee of the California Lawyers Association's Antitrust, UCL & Privacy Section, and edits the yearly treatise produced by the subcommittee.

Representative Cases:

- *Beaton v. SpeedyPC Software*, No. 13-cv-08389 (N.D. Ill.); 907 F.3d 1018 (7th Cir. 2018). Won and successfully defended class certification in case involving allegedly fraudulently advertised computer software.
- *In re Facebook Biometric Info. Privacy Litig.*, 326 F.R.D. 535 (N.D. Cal. 2018); 932 F.3d 1264 (9th Cir. 2019). Won and successfully defended class certification in case challenging Facebook's collection of biometric data about user faces. Also successfully defended district court decision concluding that plaintiff class had standing.
- *Robins v. Spokeo*, No. 10-cv-5306 (C.D. Cal.). Helped achieve landmark decision affirming the ability of plaintiffs to bring statutory claims for relief in federal court.
- *Eichenberger v. ESPN, Inc.*, 876 F.3d 979 (9th Cir. 2017). Litigated jurisdictional and interpretive issues in case involving allegedly unlawful disclosure of consumer data. Achieved significant decision involving ability of plaintiffs to bring privacy claims in federal court.

PUBLIC SPEAKING:

- The Continued Uncertainty Over Article III Standing,” 2019 Litigating Class Actions Conference

PUBLICATIONS:

- *Rethinking Healthcare Data Breach Litigation, Competition*: The Journal of the Antitrust, UCL and Privacy Section of the California Lawyers Association, Vol. 27 (Winter 2017-18) (with Jay Edelson)
- *Educational Federalism*, 2013 B.Y.U. Educ. & L.J. 281 (2013)

Admissions:

- State of Illinois
- State of California

Miscellaneous:

Prior to joining Edelson PC, Aaron served for two years as a Staff Attorney for the United States Court of Appeals for the Seventh Circuit. Aaron graduated *cum laude* from the University of Michigan Law School, where he served as a Managing Editor for the *Michigan Journal of Race & Law*.