

Class Certification Granted – California Website Tracking Lawsuit Reminds Businesses about Notice Risks

Article By:

Jason C. Gavejian

Shannon Bettis Nakabayashi

A California federal district court recently [granted class certification](#) in a lawsuit against a financial services company. The case involves allegations that the company's website used third-party technology to track users' activities without their consent, violating the [California Invasion of Privacy Act \(CIPA\)](#). Specifically, the plaintiffs allege that the company along with its third-party marketing software platform, intercepted and recorded visitors' interactions with the website, creating "session replays" which are effectively video recordings of the users' real-time interaction with the website forms. The technology at issue in the suit is routinely utilized by website operators to provide a record of a user's interactions with a website, in particular web forms and marketing consents.

The plaintiffs sought class certification for individuals who visited the company's website, provided personal information, and for whom a certificate associated with their website visit was generated within a roughly year time frame. The company argued that users' consent must be determined on an individual and not class-wide, basis. The company asserted that implied consent could have come from multiple different sources including its privacy policies and third-party materials provided notice of data interception and thus should be viewed as consent. Some of the sources the company pointed to as notice included third-party articles on the issue.

The district court found those arguments insufficient and held that common questions of law and fact predominated as to all users. Specifically, the court found whether any of the sources provided notice of the challenged conduct in the first place to be a common issue. Further, the court found that it could later refine the class definition to the extent a user might have viewed a particular source that provided sufficient notice. The court also determined plaintiffs would be able to identify class members utilizing the company's database, including cross-referencing contact and location information provided by users.

While class certification is not a decision on the merits and it is not determinative whether the company failed to provide notice or otherwise violated CIPA, it is a significant step in the litigation process. If certification is denied, the potential damages and settlement value are significantly lower. However, if plaintiffs make it over the class certification hurdle, the potential damages and settlement value of the case increase substantially.

This case is a reminder to businesses to review their current website practices and implement updates or changes to address issues such as notice (regarding tracking technologies in use) and consent (whether express or implied) before collecting user data. It is also important when using third-party tracking technologies, to audit if vendors comply with privacy laws and have data protection measures in place.

Jackson Lewis P.C. © 2025

National Law Review, Volume XV, Number 37

Source URL: <https://natlawreview.com/article/class-certification-granted-california-website-tracking-lawsuit-reminds-businesses>