



Shifting Trends: Privacy & Security Class Action Litigation

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Executive Summary

Shifting attack vectors, scanning for vulnerabilities and leveraging zero day exploits – these terms describe the plaintiffs’ class action bar just as easily as they do hackers. This quarter’s analysis of the types of complaints filed by the Plaintiffs’ bar, and the ways in which those complaints have been structured, shows an increase in class action filing and an ongoing evolution by the plaintiffs’ bar to identify the “right” strategy for obtaining damages or leveraging settlement value. The following are key findings concerning filings over this period (2014-Q1):

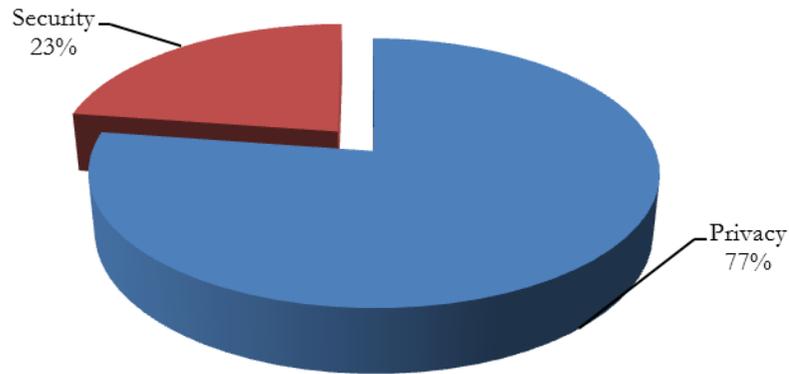
- A total of 178 data-related class action complaints were filed.
- Despite overwhelming media attention on payment card related data security breaches, the majority of complaints (77%) involve data *privacy* (i.e., collection, use, and sharing) as opposed to data *security* (i.e., safeguarding, and breach) (23%). As a result, while data security litigation is on the rise when compared to the [previous quarter](#) it remains a minority of the overall litigation.
- Complaints against Target accounted for more than 50% of all data security-related filings.
- Telemarketing remained the most common primary legal theory alleged (64%).¹
- The United States District Court for the Central District of California (25%) replaced the Northern District of Illinois (15%) as the most popular federal forum for filing.
- In terms of industry sectors, retail (21%), debt collection (16%), and marketing (7%) received the largest number of complaints.
- 96% of complaints filed in federal courts in the first quarter alleged putative national classes.
- Consumers’ mobile phone numbers were the leading type of data at issue (44%), followed by credit and debit card information (18%) and fax numbers (17%).
- Over 100 plaintiffs’ firms were involved in data-related litigation. The vast majority of firms filed less than four complaints.

¹ For an in-depth discussion of class action litigation Bryan Cave publishes a separate quarterly whitepaper on trends in telemarketing class action complaints. Please contact the authors for the most recent version of that whitepaper.

Part 1: Primary Legal Theories

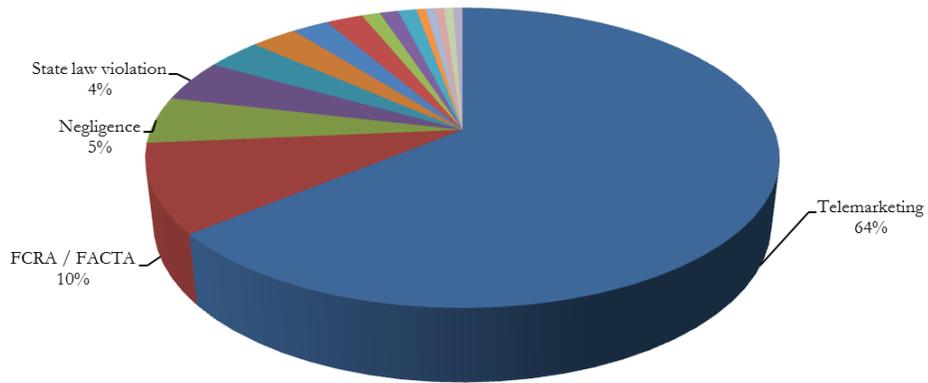
The majority of complaints (77%) focused on data privacy related issues – such as the propriety of a company’s collection, intentional sharing, or use of information. Data security – the protection of information from unintentional access or acquisition – was the primary focus in 23% of complaints.

Data Security Versus Data Privacy Litigation



The largest category of complaints continue to relate to alleged telemarketing violations under the Telephone Consumer Protection Act (“TCPA”) (64%). The next largest categories involved the Fair Credit Reporting Act (“FCRA”) (10%), and negligence (5%).

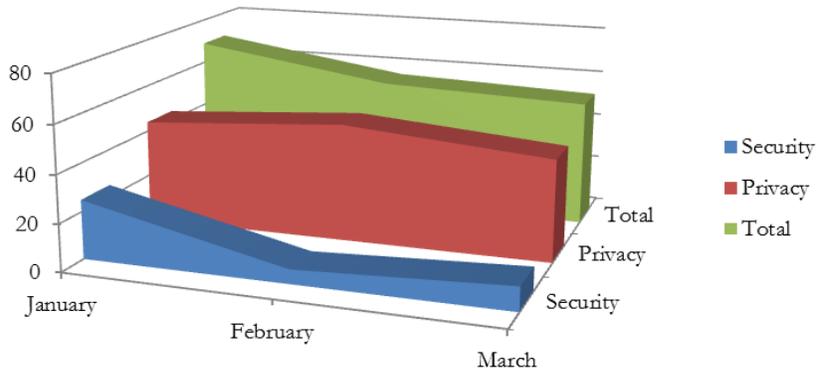
Primary Legal Theory Alleged



Part 2: Volume of Litigation

A total of 178 complaints were filed during the period. There were more privacy complaints filed in each month of the quarter, and there were a larger number of security-related complaints filed in January compared to the rest of the quarter. The following chart shows the quantity of litigation in Q1.

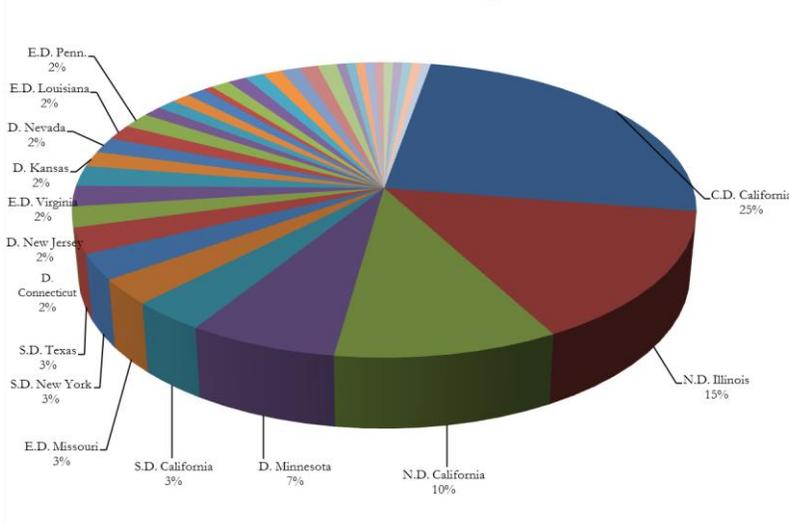
Volume of Complaint Filings By Month



Part 3: Favored Courts²

The largest number of complaints filed this quarter were filed in the Central District of California (25%) and the Northern District of Illinois (15% of complaints). The following chart shows the courts in which complaints were filed.

Courts in Which Complaints Were Filed

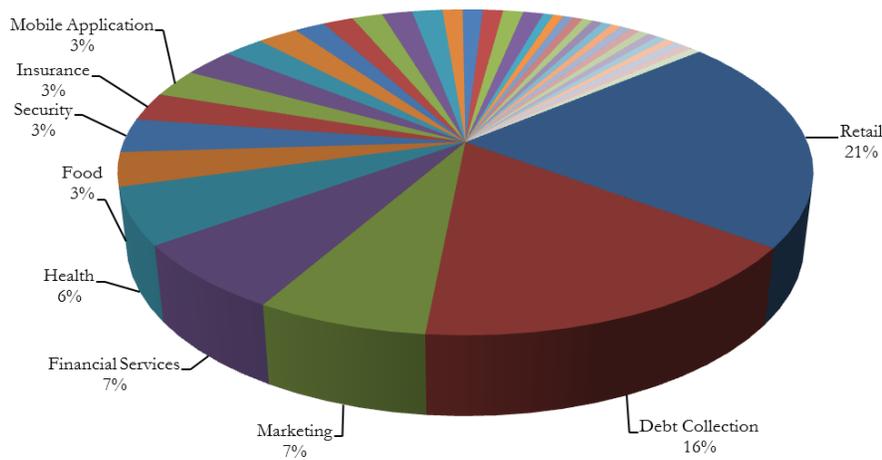


² This report does not include complaints filed in state courts. For more information, please see the Methodology section below.

Part 4: Litigation By Industry

Almost every industry has been targeted by class action plaintiffs, although the number of class action complaints against retail (21%), and debt collectors (16%) outpaced the filings in other industry segments. There was a significant reduction in claims against health-related companies as compared to the previous quarter (previously 18% now 6%). The following chart provides a breakdown of complaints by the defendant's industry.

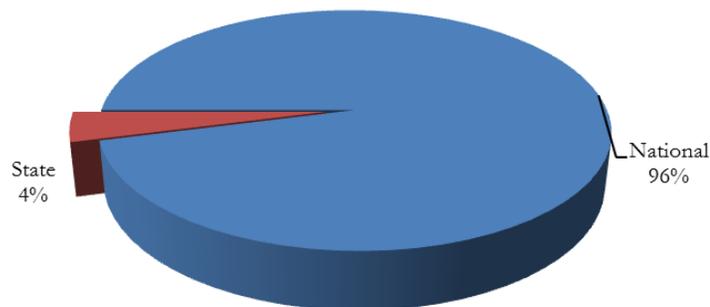
Percentage of Complaints By Defendant Industry



Part 5: Scope of Alleged Class (National v. State)

As indicated in the following chart, a large majority of complaints (96%) alleged a putative class that is national in scope (even if it also alleged one or more single-state subclasses).

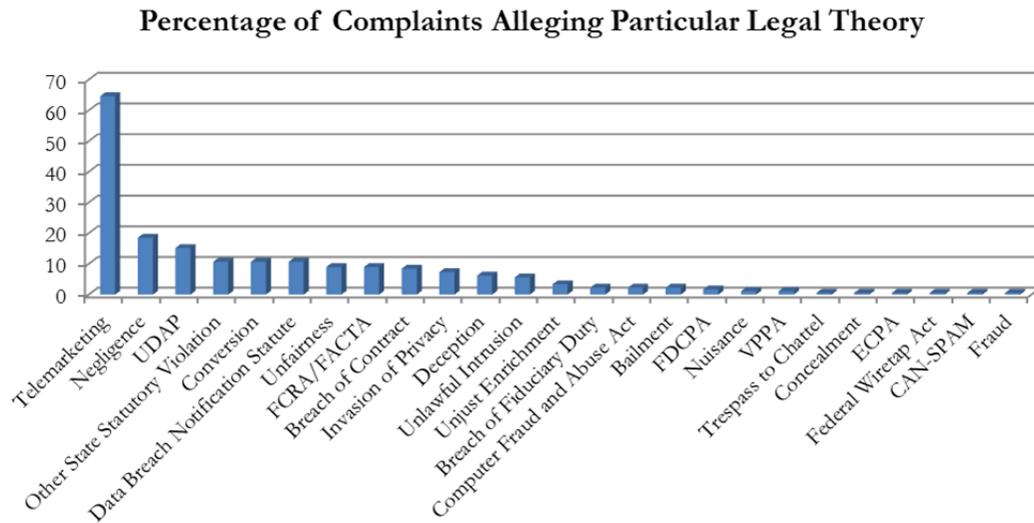
Scope of Alleged Class



Part 6: Variety of Legal Theories Alleged

As indicated in the chart below, complaints filed during the period alleged 24 different legal theories. The percentages collectively exceed 100% as many complaints include more than one legal theory.

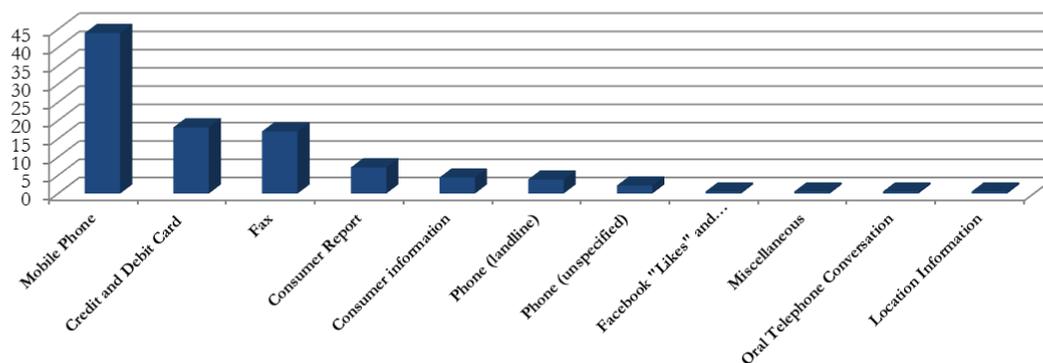
Although more legal theories overall were alleged than in the previous period, this was due primarily to plaintiffs' attorneys expanding the number of counts within each complaint, not shifting to entirely new legal strategies. As a result, the percentage of complaints alleging traditional legal theories (*e.g.*, telemarketing) remained the same or expanded.



Part 7: Data Fields At Issue

Complaints filed during the period involved approximately 11 different types of data. The most common fields at issue were consumer mobile phone numbers (45%), credit and debit card information (33%), and fax numbers (31%). The following chart provides a breakdown of the complaints by the primary data field at issue.

Data Fields at Issue



Part 8: Plaintiffs' Firms

Over 100 plaintiffs' firms were involved in filing the class action complaints during the period; like previous quarters, most firms filed less than four complaints.

Part 9: Methodology

Complaints included within the data analyzed in this report were identified within the Westlaw Pleadings and Dockets library as containing the phrase "class action," derivations of the phrases "personal information" or "personal data," and either the term "breach," "privacy," or "security." Searches were also run to identify any class action complaints filed during the period that specifically referenced the Telephone Consumer Protection Act ("TCPA"), the Children's Online Privacy Protection Act ("COPPA"), the Controlling the Assault of Non-Solicited Pornography and Marketing Act ("CAN-SPAM"), the Health Insurance Portability and Accountability Act ("HIPPA"), the Video Privacy Protection Act ("VPPA"), the Fair Credit Reporting Act ("FCRA"), the Electronic Communications Privacy Act ("ECPA"), and point-of-sale ("POS") statutes, including the Song Beverly Credit Card Act. These cases were then reviewed for relevance and complaints alleging suit against government entities were excluded. This report covers those complaints filed in the first quarter of 2014.

Although Bryan Cave's previous whitepapers included analysis of complaints filed in both federal and state courts, the availability of state complaint filings varies greatly by state. As a result, state complaints have been excluded so as not to inadvertently over-represent or under-represent the quantity of filings in any state. Complaints which are removed from state court to federal court were included within the analysis. While this report does include relative comparisons between quarters, those comparisons may be subject to selection biases depending upon the reliability of the databases used to identify complaints.

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