

Class Action Defense

With decades of experience in class action defense, Benesch litigators have defeated cases at the trial court level and on appeal for global companies, national brands, local businesses and startups across the nation. Using case-tailored strategies, like motions to defeat class certification and motions to bifurcate discovery, we take control of cases early and avoid the need for costly litigation.

Benesch litigators have successfully defended hundreds of high-stakes class action suits, including more than 100 cases under the Unfair Competition Law of California. Our work includes defending clients facing consumer fraud, false labeling and advertising, deceptive practices, antitrust allegations, claimed violations of automatic renewal laws, data breaches and disclosure, and statutory privacy claims, including those brought under the Telephone Consumer Protection Act (TCPA), the Fair Credit Reporting Act, the Fair and Accurate Credit Transactions Act and the Biometric Information Privacy Act (BIPA).

Consumer Privacy/CIPA Claims

We have been defending consumer privacy class actions since they first arose and have now represented more than 60 clients in cases involving claims under federal and state consumer privacy laws, including the Federal Wiretapping Act, Video Privacy Protection Act, California Invasion of Privacy Act, and more. Some of our team members work on these issues practically full-time, and we are therefore well-versed in the relevant technologies and the current state of the case law, both of which are complex and constantly evolving. We have won on motions to compel arbitration, advanced successful motions to dismiss in state and federal courts and obtained multiple voluntary dismissals. As leaders in the space, we also provide our clients with recommendations on how to minimize the risk of class actions on a going-forward basis.

Telemarketing/TCPA-Related Claims

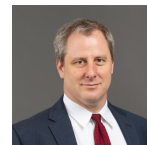
Related Practices

Litigation

Key Contacts



David D. Pope
Chicago Administrative
Partner; Co-Chair, Class
Action Practice Group
Litigation
T. 312.212.4940
dpoppe@beneschlaw.com



Andrew J. Jarzyna
Partner
Litigation
T. 312.212.4950
ajarzyna@beneschlaw.com

Our experience with telemarketing and TCPA-related claims is extensive. We have litigated more than 100 cases involving claims under the TCPA and state telemarketing laws, obtaining summary judgments, winning motions to dismiss, obtaining voluntary dismissals, achieving denials of class certification and defeating nationwide putative class actions on behalf of global multinationals and some of the largest companies in America. Benesch lawyers have litigated telemarketing cases in more than 30 states throughout the country and serve as national telemarketing counsel for numerous companies.

Illinois Biometric Information Privacy Act Claims

Benesch has been at the forefront of BIPA litigation, defending cases in the fingerprint, palm scan and facial geometry contexts. Our class action litigators have handled more than 20 BIPA class actions, addressing novel issues like the impact of HIPAA on the statute and constitutional defenses. We have also successfully used critical arbitration, preemption and government contractor defenses to avoid substantial risk on the pleadings. Our lawyers are also regularly tapped to craft and revise biometric policies.

Strategic and Successful in Handling Groundbreaking Cases

- **300+ HIGH-STAKES CLASS ACTION SUITS FILED OR THREATENED OVER THE PAST DECADE**
- **Defended more than 100 consumer class actions involving allegations of consumer fraud, deceptive pricing, false advertising, federal and state privacy laws and automatic renewal laws**
- **Defended more than 50 filed or threatened retail consumer class actions**
- **Litigated more than 100 cases under the Unfair Competition Law**
- **Litigated more than 100 federal statutory cases under statutes like the TCPA, FCRA and FACTA**

Innovative Approaches

Our team has prevailed in numerous groundbreaking cases, applying novel strategies, arguments and approaches to evidence presentation that have resulted in outright dismissal of cases or persuaded opposing counsel to walk away from cases or settle on favorable terms for our clients. We use creative approaches to expose plaintiffs' manufactured claims, such as video security footage and metadata from our opponent's court filings to win cases.

Working closely with each client and collectively with attorneys across Benesch's other practices, we build the right team, keeping it lean and nimble, to ensure the best outcome cost-effectively for our clients. We assess the likelihood of success and determine the best strategy tailored to meet our clients' needs and business objectives.

Beyond the courtroom, our attorneys have represented clients in investigations brought by state and federal public enforcers, including several actions brought by government task forces in California.

At the Forefront of the Law

Our attorneys are at the forefront of the law. We are often selected as nationwide counsel on a variety of topics because of our near-encyclopedic knowledge of the laws and regulations and our impressive record of success in resolving consumer statutory cases. And, in California specifically, we are frequently chosen as counsel due not only to our knowledge and track record, including with matters brought by the California Auto-Renewal Taskforce (CART), but also our presence and reputation in the state.

A Preeminent Retail Litigation Practice

While many firms purport to offer retail and e-commerce services, Benesch is one of the only firms in the U.S. with a dedicated, decades-long practice in this space. We have defended dozens of high-stakes retail class actions for hundreds of leading retail clients, including brick-and-mortar and prominent digital retailers and e-commerce companies nationwide.

Proactive Counsel That Minimizes Risk Exposure

We proactively counsel clients on complex consumer, marketing and privacy issues, including consumer-facing disclosures, and provide guidance on conducting effective marketing campaigns within the bounds of state unfair competition and consumer protection laws. Our lawyers draft privacy policies, arbitration clauses with class waivers, product warnings, representations and warranties, and terms of use and service. Clients also often retain us to provide onsite training and refreshers for their new and existing staff on risk avoidance best practices and compliance-related matters.

Representative Matters

- Won an affirmative motion to strike class claims, resulting in a denial of class certification as to monetary relief, in a proposed class action alleging deceptive pricing practices. Our motion advanced novel arguments based on the class waiver provision in our client's terms of use that had not been raised in other, nearly identical litigation. *Hennessey v. Kohl's Corp.*, 571 F. Supp.3d 1060 (E.D. Mo. 2021).

- Won on summary judgment in a pricing case alleging that our client listed deceptive “compare at” reference prices on its price tags, by persuading the court as a matter of law that our client’s practices were not deceptive. This was the only pricing class action to date where a judge held as a matter of law that the retailer’s pricing practices were not deceptive. *Sperling v. Stein Mart, Inc.*, 291 F. Supp.3d 1076 (C.D. Cal. 2018).
- Secured dismissal of a heavily publicized series of putative class actions across the country alleging that our client’s changes to its satisfaction guarantee denied customers the benefit of the guarantee in place when they made their purchases. Each court found that plaintiffs lacked standing to pursue their claims because they had not suffered a concrete injury and their purported future inability to make returns was too speculative.
- Obtained complete dismissal in state court of a class action brought under the Fair and Accurate Credit Transactions Act, creating incredibly helpful case law in Florida in the process. The decision was affirmed after oral argument in the Fourth District Court of Appeals and was denied review by the Florida Supreme Court. *Southam v. Red Wing Shoe Co., Inc.*, 343 So.3d 106 (Fla. 4th DCA 2022), *review denied*, No. SC22-1052, 2022 WL 16848677 (Fla. Nov. 10, 2022).
- Won a rare affirmative motion to deny class certification for our client Albertsons, cutting short a putative class action under the Telephone Consumer Protection Act at the pleading stage. *Dorfman v. Albertson’s, LLC*, No. 1:18-CV-00094-DCN, 2020 WL 86192, at *1 (D. Idaho Jan. 7, 2020).
- Obtained dismissal with prejudice of a consumer fraud class action brought against Blistex alleging that the packaging of one of its products did not allow the consumer to obtain the entirety of the contents. *Hillen v. Blistex, Inc.*, No. 17 C 2074, 2017 WL 2868997, at *1 (N.D. Ill. July 5, 2017).

Experience

- Obtained voluntary dismissal of VPPA class action involving Facebook “Meta pixel” after establishing that the plaintiff subscribed to services specifically for the purpose of manufacturing litigation.
- Won summary judgment in certified nationwide TCPA class action on the grounds that there was insufficient evidence that the seller sent or authorized the at-issue communications.
- Forced voluntary dismissal with prejudice of putative TCPA class action based on bad faith claim-splitting argument.
- Obtained dismissal of VPPA class action after establishing that the at-issue videos involving Facebook “Meta pixel” were publicly available and did not require subscription to access.

- Represented multiple defendants in class action lawsuits for alleged violations of the Florida FCCPA by sending customer contact emails between the hours of 9:00 p.m. and 8:00 a.m.
- Defended 10+ retailers involving claims under federal Wiretap Act and/or California Invasion of Privacy law concerning recording of chat conversation, use of session replay technology, and/or use of Facebook “Meta pixel.”
- Won summary judgment in TCPA action on the basis that the customer could not unilaterally revoke contractually provided consent.
- Defeated class certification on behalf of telehealth company, convincing court that individualized questions regarding injury and damages precluded class treatment and that class plaintiffs’ damages and consumer survey experts’ opinions were not reliable.
- Defeated class certification and prevailed on *Daubert* arguments dismissing the opinions of class plaintiffs’ damages and consumer survey experts, successfully arguing on behalf of telehealth company that plaintiffs’ claims involved too many individualized questions regarding injury and damages, rendering class treatment inappropriate.
- Defended more than 40 class actions across the country alleging deceptive pricing practices with an unmatched track record, including winning at trial, summary judgment, defeating class certification, and multiple appeals.*
- Defended a dozen putative class action alleging that the sale of customer information to data cooperatives and list brokers, who in turn sold their information to telemarketers and other advertisers without notice or their consent, in violation of state law.*
- Secured dismissal of consumer class action after using metadata on the as-filed complaint to prove that the complaint was finalized within days of the purchase at issue, and weeks before the date that the other side told the Court it was prepared.*
- Defended the largest cosmetics company in North America in four putative class actions in both federal and state court concerning advertising representations made in relation to its branded cosmetic products.*
- After negotiating a very low-cost settlement in this class action alleging violations of California’s Song-Beverly Credit Card Act, we opposed Plaintiff’s request for attorneys’ fees, and the court awarded only \$135,711 of the \$440,445 requested by Plaintiff.*
- Defeated motion for catalyst fees seeking in excess of \$1mm, where Plaintiff argued that client’s change in business practice resulted from the class action they filed.*

- Secured dismissal of four highly-publicized class actions filed across the country against beloved clothing and outdoor recreation equipment retailer relating to changes to its return policy.*
- Obtained a dismissal of several putative class action seeking refunds for allegedly defective medical devices, despite the fact that product had been subject to a voluntary recall.*
- Secured dismissal with prejudice for national consumer health company in defense of consumer class action concerning product labeling.
- Represented national consumer goods company in putative class action concerning alleged product defect.
- Defended threatened class action regarding the labeling of popular snack foods product.
- Managed defense of series of class actions concerning the recall of a consumer good.
- Defended multiple class actions regarding the labeling of over-the-counter pharmacy products.
- Successfully defeated nationwide putative class action for alleged violation of the Telephone Consumer Protection Act by compelling arbitration on an individual basis despite the consumer contesting that she was not bound by arbitration agreement.
- Successfully forced voluntary dismissal of a putative class action alleging violations of California Labor Laws.
- Obtained summary judgment on behalf of defendant in Telephone Consumer Protection Act claim on grounds that the consumer did not use a reasonable method of attempting to revoke consent.
- Obtained summary judgment on behalf of financial institution for alleged violations of Fair Credit Reporting Act for allegedly misreporting spouse as co-holder of account.
- Won motion to dismiss claim involving serial-plaintiff for alleged violations of the Telephone Consumer Protection Act, Ohio Telephone Solicitation Act, and Ohio Consumer Sales Practices Act.
- Represented Fortune 500 cellular phone manufacturer in putative class action stemming from alleged defects in mobile application. Obtained dismissal of several key claims resulting in a favorable class-wide settlement of the remaining claims.
- Represented major insurer in putative class action brought by former insurance broker alleging improper commission splitting and administrative expense deductions. Secured favorable settlement after obtaining dismissal of all claims without prejudice.*
- Represented major insurer in putative class action alleging that insurer improperly clawed back commissions.*

- Represents companies defending class action lawsuits that allege violations of various federal statutes, including the Telephone Consumer Protection Act.
- Obtained voluntary dismissal of nationwide putative class action against retailer of consumer products, alleging violations of the Telephone Consumer Protection Act, 47 USC 227(b).
- Defended moving company for alleged violation of Truth-In-Leasing Regulations in putative nationwide class action.
- Successfully resolved multi-state class action alleging violations of Truth-In-Leasing Regulations by motor carrier.
- Successfully struck class allegations in putative state-wide class action.
- Successfully defended a nationwide putative class action seeking to hold ADT vicariously liable for approximately 5 million phone calls made by an independent third-party in alleged violation of the Telephone Consumer Protection Act
- Successfully defended a nationwide putative class action seeking to hold DISH vicariously liable for 1+ million phone calls made by over a dozen third-parties in alleged violation of the Telephone Consumer Protection Act.
- Developed policies and procedures for complying with federal Fair Credit Reporting Act obligations (and state-level versions of the law) for nationwide business in connection with employment applications.
- Obtained denial of class certification on behalf of corporate defendant in nationwide putative class action alleging violations of the Telephone Consumer Sales Protection Act.
- Successfully recovered \$400,000 of wrongfully diverted funds in commission payments.
- Defended corporation in suit seeking certification of state wide class action for alleged product defect.
- Defended insurance company in suit seeking certification of class action for alleged wrongful denial of insurance benefits.
- Defended corporation in nationwide class action suit for alleged violations of the disclosure and adverse action requirements of the Fair Credit Reporting Act.
- Defended corporation in suit seeking class certification of claims alleging breach of contract, unjust enrichment, and violations of the Ohio Valentine (antitrust) Act.
- Represented company for alleged cybersquatting, violations of Anticybersquatting Consumer Protection Act, and false designation of origin.
- Defended corporation, directors, and majority shareholders in suit alleging fraud, successor-liability, Uniform Fraudulent

Transfer Act liability, and seeking to pierce corporate veil to holder shareholders individually liable.

- Won trial on behalf of corporation in suit seeking damages for breach of contract. Decision affirmed on appeal.
- Won trial defending corporation in claim alleging breach of contract and violations of the Ohio Consumer Sales Practices Act.