

## Cybersecurity & Privacy Group Of The Year: Latham

By Emma Whitford

*Law360 (December 9, 2020, 4:58 PM EST)* -- Latham & Watkins LLP narrowed a consolidated data breach class action against Facebook from 16 plaintiffs to one and achieved a preliminary settlement with no damages, earning the firm a spot among Law360's 2020 Cybersecurity & Privacy Practice Groups of the Year.

The firm's data privacy and security team is composed of 54 attorneys concentrated in San Francisco, Washington, D.C., and New York, and is jointly led by three partners: Michael Rubin in San Francisco, Jennifer Archie in D.C. and Serrin Turner in New York.

Together, the co-leads bring experience in privacy and security litigation, as well as regulatory matters before the Federal Trade Commission and state attorneys general.

The past year has found the team busier than ever before, Rubin told Law360. Even before the coronavirus pandemic raised new data privacy concerns for clients, the year kicked off dramatically with the implementation of the California Consumer Privacy Act, which gives residents the right to opt out of the sale of their personal information to third parties.

"Throughout the pandemic we were on the roller coaster of the regulations that [were going] into effect, version after version after version whip-sawing everyone," Rubin recalled.

Meanwhile, he added, the Federal Trade Commission has been "extraordinarily active."

Throughout, Rubin said, the team has benefited from "being as efficient as possible, getting straight to the issue [and] not wasting anyone's time."

Turner said he is particularly proud of his team's work on behalf of Facebook in *Adkins v. Facebook* before U.S. District Judge William Alsup in the Northern District of California.

In November 2019, Latham lawyers defeated a class certification effort by plaintiffs seeking \$6 billion in damages over the company's alleged role in a 2018 data breach that exposed 50 million user accounts, though an injunctive class was certified. And in January, the team helped negotiate a



preliminary settlement without monetary damages.

"I think it's notable that at the very first hearing in the case, Judge Alsup remarked that, at least based on the complaints, the plaintiffs' claims appeared to be worth 'real money,'" Turner said.

Plus, Facebook's win occurred "in the context of an increasingly adverse litigation environment for defendants" where "you have lots of cases on standing that are increasingly plaintiff-friendly and ever-larger monetary settlements in matters, exceeding \$100 million."

Turner credits the "depth of our bench," including class action experts Melanie Blunsch and Andrew Clubok who could complement his data security subject-area expertise.

Outside of the courtroom, Latham lawyers were simultaneously fielding regulatory inquiries into Facebook from around the world.

"I can't stress enough the importance of Latham's global reach and the integrated team we were able to put together," Turner said. "We had attorneys in London working with us and elsewhere around the world, so we were responding to these global regulatory inquiries at the same time that we're litigating the case."

Also in the regulatory arena, Archie was part of the team of lawyers that represented children's mobile game developer HyperBeard Inc. and its founder, whom the FTC accused of violating the Children's Online Privacy Protection Act by allowing third-party app networks to gather information from its users under the age of 13 playing games such as KleptoCats.

The FTC hit HyperBeard with a \$4 million statutory penalty under COPPA in June, but the company was only compelled to pay \$150,000 due to its "inability to pay the full amount," according to the FTC. Commissioner Noah Phillips issued a dissenting opinion on the move, calling the fine "too much" in light of relatively little harm to consumers.

"A theme across our FTC practice ... [is] you have to earn your reputation and credibility with those decision makers one matter at a time, especially when you're in these demanding and high-stakes areas," Archie said.

"COPPA especially is very technical and not an entirely intuitive regime for small companies in particular," she added. "It is important to fully understand and communicate your client's business, practices and intentions with regard to apps that may attract children."

In the case of HyperBeard, Archie thinks it drew a dissent because "the lack of proportionality between the harm and the application of the statutory penalty scheme was well understood."

Looking ahead to 2021, Rubin said he expects a "continued ramping up" of the data security practice, as regulations continue to proliferate.

"So much of the work that we do is beneath the surface," he added. "Matters we get closed ... all of the work that we do every day to keep our clients out of trouble."

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