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# TOP CYBER LAWYERS 2019

## Michael Rubin

**Latham & Watkins LLP**
San Francisco

Practice: Data privacy & security, litigation & trial

Specialties: Class actions, U.S. and international regulatory investigations

Rubin practices data privacy class action and regulatory defense in high stakes cases and government investigations. In December, he won dismissal for online ad tech company Turn Inc. in a potential class action in the Northern District.

Plaintiffs filed their case after a Stanford graduate student four years ago blogged that telecom conglomerate Verizon Communications Inc. placed ads targeting identifiers known as "supercookies" or "zombie cookies" on its network traffic. The New York Verizon subscriber plaintiffs asserted that the cookies allowed Turn to track the mobile device browsing habits of Verizon users, violating New York state privacy and consumer protection laws.

Rubin fought back.

"The plaintiffs needed to allege that information from the cookies went to Turn and specifically identified them, and they couldn't," he said. U.S. District Judge Jeffrey S. White of Oakland agreed. "Because plaintiffs have not alleged that their data is confidential and readily recognizable and identifiable as belonging to any particular person, the court finds that they have failed to state a cognizable injury," he wrote in his Dec. 17 dismissal order.

*Henson v. Turn Inc.*, 4:15-cv-01497 (N.D. Cal., filed April 1, 2015).

A parallel potential class action under California privacy laws is proceeding in Los Angeles County Superior Court and remains unresolved, though Rubin said that case suffers a fatal defect. "The plaintiffs there allege cookies were placed on a phone, but they cannot produce the phone. We are seeking sanctions based on their having brought a case without evidence." *Kay v. Turn Inc.*, BC585695 (L.A. Super. Ct., filed June 19, 2015).

"There's been a tendency to bring cases without rigorous investigation," Rubin said.

In defending client LifeLock Inc., a Symantec Corp. subsidiary, in federal court in Arizona, against a potential class action over claims that the company's core identity protection service fails to live up to its advertised promises, "the plaintiffs failed to produce a scintilla of evidence," Rubin said. There, the plaintiffs dismissed the case after discovery, admitting their allegations were not factually supported, he said. *Weingarten v. LifeLock Inc.*, 2:18-cv-01013 (D. Ariz., filed March 30, 2018).

The Arizona case was unusual because it was filed in one of two districts—the other is in Illinois—that are experimenting with a program called the Mandatory Initial Discovery Pilot Project. It requires litigants to engage in upfront disclosures within 90 days of filing.

"It's extremely burdensome: fast and expensive and condensed and we worked extraordinarily hard to comply with the rules," Rubin said. "But when the plaintiffs dragged their heels and we moved to compel, they couldn't produce. That led to a good result for us.

"We did the work of a year in three or four months. It was interesting in the best way. I expect that other jurisdictions will be following suit with the project."

— John Roemer