

October 19, 2012

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FEDERAL ISSUES

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COURTS

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Federal District Court Allows Data Breach Class Action to Proceed Based On Risk Of Future Harm. On October 11, the U.S. District Court for the Southern District of California [held](#) that the plaintiffs in a consolidated data breach class action have plead sufficient harm to satisfy Article III's injury-in-fact requirement despite having not suffered any actual harm to date. *In re Sony Gaming Networks & Customer Data Security Breach Litig.*, No. 11-md-2258, 2012 WL 4849054 (S.D. Cal. Oct. 11, 2012). The plaintiffs allege on behalf of a putative class that Sony Computer Entertainment America and a group of related entities (collectively Sony) failed to implement industry-standard practices to protect customers' personal information. The plaintiffs claim that as a result of Sony's failings they suffered an increased risk of future harm following a criminal theft of personal information from Sony's PlayStation computer network. The defendants moved to dismiss the plaintiffs' numerous claims, including on the grounds that the plaintiffs have suffered no real injury and therefore do not have standing to pursue the case. The court agreed with the plaintiffs that their claims are analogous to those sustained by the Ninth Circuit in *Krottner v. Starbucks Corp.*, 628 F.3d 1139 (9th Cir. 2010). As in *Krottner*, the court held that although none of the plaintiffs have suffered any actual loss, the increased threat of future injury is sufficient for standing and the

plaintiffs sufficiently allege that such increased risk is causally connected to Sony's actions. However, the court held that plaintiffs' allegations do not show any cognizable injury necessary to sustain their claim of negligence under California law. The court dismissed the plaintiffs' negligence and other claims with leave to amend, and dismissed certain other claims with prejudice.

FIRM NEWS

[Margo Tank](#) will speak at the [ACORD Implementation Forum](#) in Ft. Lauderdale, FL, on October 24, 2012. Ms. Tank's panel is titled "Guidelines for e-Signatures and e-Delivery in the Insurance - Cutting through the Legalese."

[David Krakoff](#), [James Parkinson](#), [Andrew Schilling](#), and [Thomas Sporkin](#) will speak at the [Commerce and Industry Group's](#) seminar, "[Anti-Bribery: The Changing Anti-Corruption Environment in Key Jurisdictions](#)" on October 24, 2012, in London. The panel will examine recent developments in anti-corruption enforcement in the UK, US, and Continental Europe; it will also consider best practices to identify and mitigate exposure to corruption risk.

[Ben Klubes](#) will moderate a panel entitled "Trends in Consumer Financial Protection: Proceed with Caution" during an October 25-26, 2012 Symposium entitled "[Navigating Dodd - Frank: Are We Avoiding Another Financial Crisis?](#)" The symposium, presented by the George Washington University Law School Center for Law, Economics and Finance, will feature senior regulators, legal experts, market participants and leading academics with intimate knowledge of the financial services industry. Keynote speakers include Hon. Mary L. Schapiro, Chairman of the SEC, and Hon. John C. Dugan, Comptroller of the Currency. BuckleySandler is a proud sponsor of the symposium. To register, click [here](#).

[James Shreve](#) will speak at the [Information Systems Security Association's International Conference](#) in Anaheim, California on October 26, 2012. The session, "Not a Data Breach? Addressing Security Incidents Involving Unregulated Data," will examine issues in responding to information security incidents involving non-consumer or de-identified data.

[Jonathan Cannon](#) will participate in a webinar entitled "[What do cases like Edwards v. First American, Freeman v. Quicken Loans and Carter v. Welles-Bowen really mean to your operations?](#)" on November 1, 2012. This webinar will cover the importance of each case, the impact of these cases on settlement service providers, and strategies for compliance with RESPA.

[Andrew Sandler](#) will moderate a panel at the [Fall Meeting of the Banking Law Committee](#), American Bar Association, Business Law Section. Mr. Sandler's panel entitled "Enforcement Trends" will focus on supervisory attention and enforcement actions affecting bank holding companies, and will take place on November 2, 2012.

[James Parkinson](#) will moderate a panel at the [ACI's 28th National Conference on Foreign Corrupt Practices Act](#) in Washington, D.C. Mr. Parkinson's panel, entitled "Data and Document Management Strategies for FCPA Investigations: Practical Tools for Effectively Accessing, Obtaining and Controlling Data and Documents during an FCPA Investigation," will be held November 14.

[Margo Tank](#) will speak at [The Electronic Signature and Records Association's Annual Conference](#), November 14-15, 2012, in Washington, DC. Ms. Tank's panel will discuss electronic signatures and mobile technology.

[David Krakoff](#) will speak at ACI's [Inaugural Summit on White Collar Litigation](#) being held January 22-23, 2013, in New York, NY. Mr. Krakoff will participate in the January 22 session entitled "The FCPA

Year In Review: Assessing the Biggest Cases of the Year and What Litigators Need to Take Away to Best Protect Their Clients."

FIRM PUBLICATIONS

[David Krakoff](#) and [Lauren Randall](#) contributed "FCPA: Were the Sting Trials Doomed from the Start?" to the September 2012 Business Crimes Bulletin.

[Matthew Previn](#), [Andrew Pennacchia](#), and [Jonathan Cannon](#) published "[Rising Tide of Operational Risk Demands Due Diligence in Vendor Selection](#)" on September 20, 2012 in National Mortgage News.

[Jonice Gray Tucker](#) and [Jeff Naimon](#) wrote "Liability for Servicers: Localities Jump in the Game," which appears in *Mortgage Servicing News*' October 2012 issue.

About BuckleySandler LLP (www.buckleysandler.com)

With over 150 lawyers in Washington, New York, Los Angeles, and Orange County, BuckleySandler provides best-in-class legal counsel to meet the challenges of its financial services industry and other corporate and individual clients across the full range of government enforcement actions, complex and class action litigation, and transactional, regulatory, and public policy issues. The Firm represents many of the nation's leading financial services institutions. "The best at what they do in the country." (Chambers USA).

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Los Angeles: 100 Wilshire Boulevard, Suite 1000, Santa Monica, CA 90401, (424) 203-1000

Orange County: 3121 Michelson Drive, Suite 210, Irvine, CA 92612, (949) 398-1360

We welcome reader comments and suggestions regarding issues or items of interest to be covered in future editions of InfoBytes. Email infobytes@buckleysandler.com.

In addition, please feel free to email our attorneys. A list of attorneys can be found [here](#).

For back issues of InfoBytes, please see: <http://www.buckleysandler.com/infobytes/infobytes>.

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