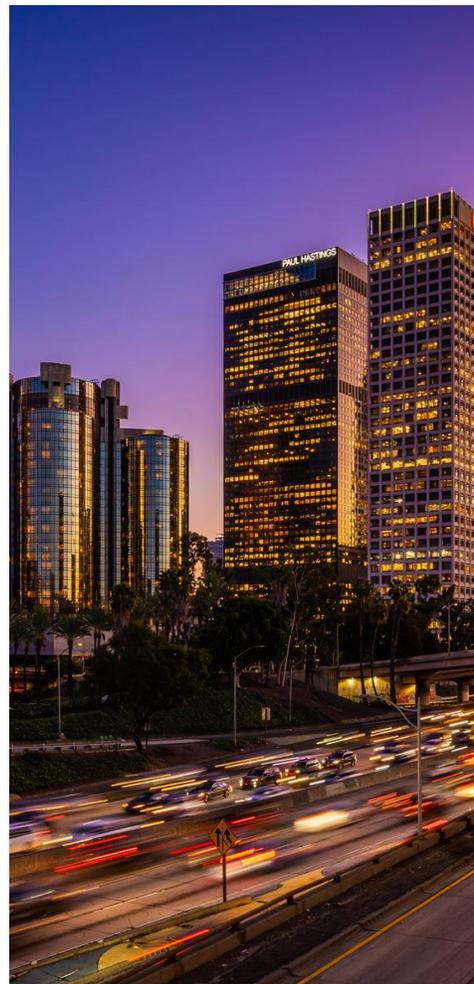


WHAT'S WORSE THAN QUICKSAND?

*Trading Irrational
Childhood Fears for
Rational Litigation Ones*

March 5, 2026

DTO
LAW



Irrational Fear:

Quicksand



Rational Fear:

Discovery Nightmares

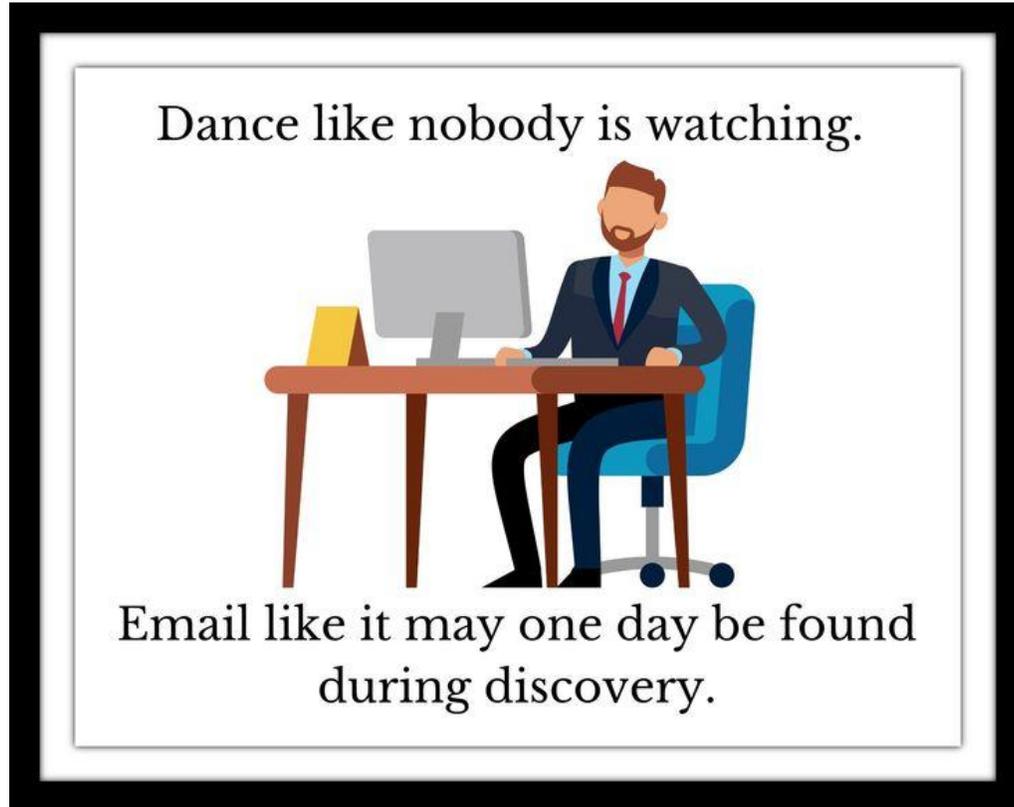


Exhibit A

Excerpt of **internal communications** between **Meta employees** in action alleging major social media companies designed their platforms to be intentionally addictive to minors.

In Re Social Media Adolescent Addiction/Personal Injury Products Liability
Litigation, MDL No. 3047 (N.D. Cal. 2026)



██████████ (9/10/2020 09:13:39 PDT):
>oh my gosh yall IG is a drug

Privileged ██████████ (9/10/2020 09:14:10 PDT):
>Lol, I mean, all social media. We're basically pushers.

██████████ (9/10/2020 09:15:24 PDT):
>seriously it is! We are causing Reward Deficit Disorder bc people are binging on IG so much they can't feel reward anymore...like their reward tolerance is so high

██████████ (9/10/2020 09:15:41 PDT):
shared: 118957596_327526298585926_2337390744359110678_n.jpg

Privileged ██████████ (9/10/2020 09:16:23 PDT):
>Yeah, I was starting to think the same thing yesterday when you made that gambling reference. It's kind of scary 😬

Exhibit B

Excerpt of internal communications between employees of the defendant. Plaintiff alleged she was terminated due to a visual disability. Defendant claimed she was terminated for making clerical errors. *Babb v. Maryville Anesthesiologists P.C.*, 942 F.3d 308, 323 (6th Cir. 2019)

Subject: Bad News

As most of you know, Paula has been having major issues with her eyesight and as of late, it has seemed to be getting even worse. We have had numerous complaints from OR staff regarding her inability to read the monitor, etc. Over the past several months the group has given her several opportunities to provide documentation from her eye specialist saying that she was safe to practice. She was unable to provide this documentation. This, in addition to a few other issues, has forced the group to make a very difficult decision. As of today, she is no longer with our group. Sorry to be the bearer of bad news. This was one of the reasons that our meeting was postponed. See you all tomorrow.

Crystal

Rational Solutions:

- Implement “responsible communication” training and policies around internal employee communications.
- Conduct refresher training at regular intervals.
- Avoid common privilege pitfalls.
- Assume AI use is discoverable.

Do Not Overuse ACP Designation

The New York Times

How Google Spent 15 Years Creating a Culture of Concealment

Trying to avoid antitrust suits, Google systematically told employees to destroy messages, avoid certain words and copy the lawyers as often as possible.

Be Selective on ACP Designation

Example: Don't designate the entire document ACP unless everything is privileged; just designate those portions that are ACP; restrict access to docs.

INFORMATION SECURITY POLICY

5.1 Incident Reporting and Response. The Information Security Coordinator maintains a cyber incident reporting and response process that ensures management notifications are made based on the seriousness of the incident. The Information Security Coordinator investigates all reported or detected incidents and documents the outcome, including any mitigation activities or other remediation steps taken.

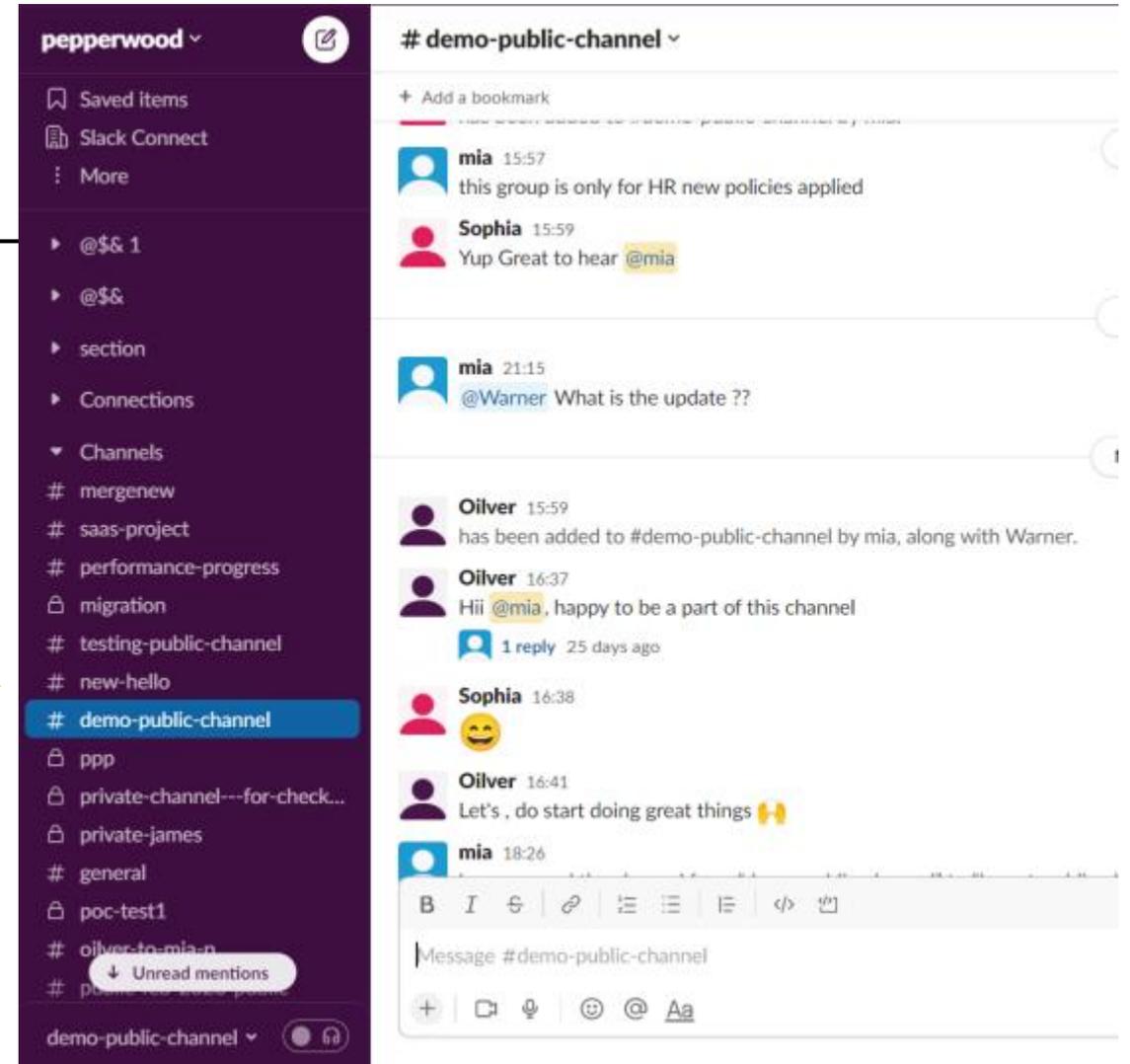
[ACP] 6.1 Incident Reporting. Immediately notify the CIO at xxx-xxx-xxxx if you discover a cyber incident or suspect a breach in Organization's information security controls and post in the #ACP-InfoSec-Breach slack channel to maintain privilege. The Organization maintains various forms of monitoring and surveillance to detect cyber incidents, but you may be the first to become aware of a problem. Early detection and response can mitigate damages and minimize further risk to the Organization.

[ACP] Treat any information regarding cyber incidents as Highly Confidential Information and do not share it, internally or externally, without specific authorization.

Slack, Teams, etc.

Create attorney-client privileged specific channels tied to an incident that needs legal counsel or investigation

- For example, **acp-20260305-employee-fraud**
- Make the channel private as shown by the lock icon 
- In the channel description, describe the legal issue necessitating the ACP designation



Auto-Deleting and Ephemeral Messaging Platforms

Messaging platforms like WhatsApp and Signal, and social media platforms like Snapchat can have autodelete functions that will need to be affirmatively turned off to preserve evidence.

FTC says Amazon executives destroyed potential evidence by using apps like Signal



Illustration by Alex Castro / The Verge

/ Jeff Bezos, Andy Jassy, and other execs are accused of using the ephemeral messaging app for months after the feds notified Amazon of the antitrust investigation.

by [Richard Lawler](#)
Apr 26, 2024, 3:59 PM PDT

[Link](#) [Share](#) [Gift](#) | 16 Comments (All New)

AI Use in Discovery

Me, after uploading 10 GB of confidential information into ChatGPT:

AI Use in Discovery



“AI Discovery” is a Now a Thing

TECHNOLOGY

Judge Orders OpenAI To Give Lawyers 20 Million Private Chats, Thinks ‘Anonymization’ Can Keep Them Private

From the seems-like-a-problem dept

By Techdirt on November 14, 2025 12:16 pm



Share

A federal magistrate judge just ordered that the private ChatGPT conversations of 20 million users be handed over to the lawyers for dozens of plaintiffs, including news organizations. Those 20 million people weren't asked. They weren't notified. They have no say in the matter.

AI Platform is "Plainly Not An Attorney"

HOME > COURTS

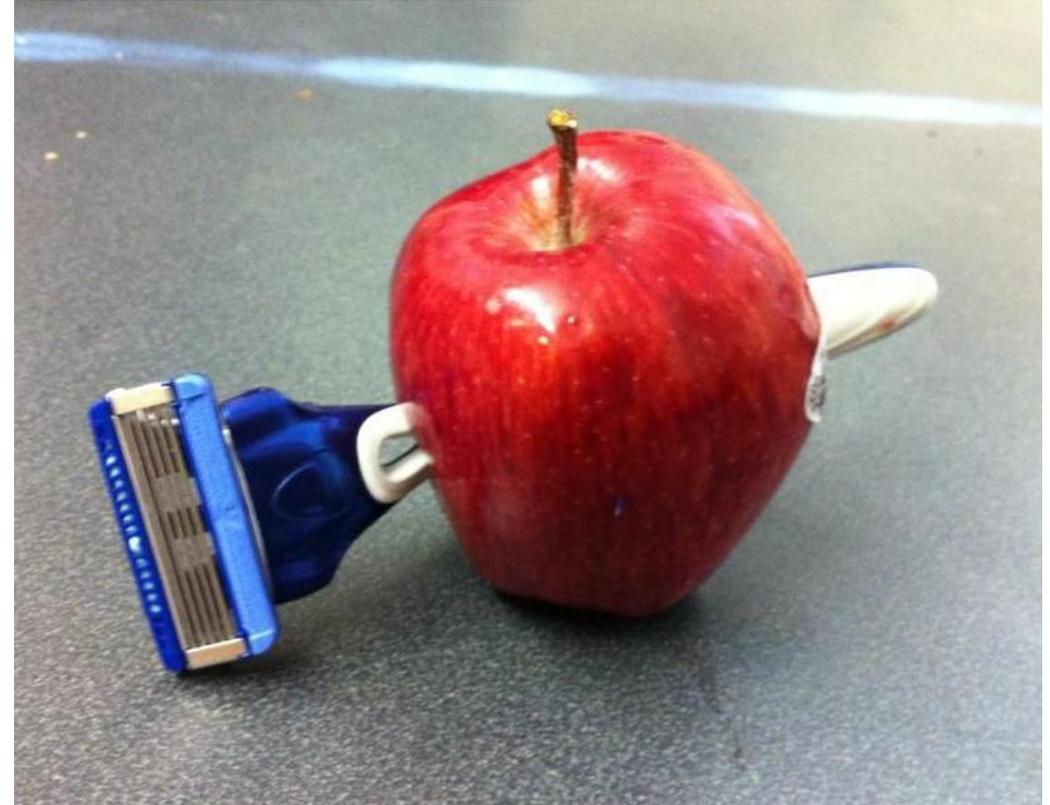
AI Docs Sent By Exec To Attys Not Privileged, Judge Says

NEW YORK — A Manhattan federal judge said Tuesday that a Texas financial services executive accused of a \$150 million fraud cannot claim privilege over documents that he prepared using an artificial intelligence service and sent to his attorneys — but suggested the materials could be problematic if used at trial.



Irrational Fear:

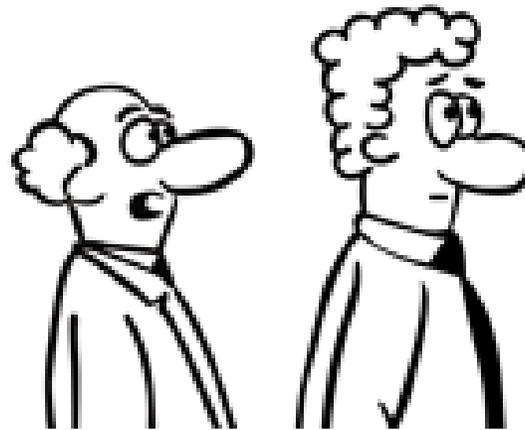
Halloween
Candy with
Razors



Rational Fear:

Unenforceable Contracts

We're here to litigate
the arbitration clause
that was meant to
avoid litigation.



Rational Solutions

Conduct regular audits of your important contractual terms:

- Terms of Use
- Privacy Policy
- Employment Agreements
- Class Action Waivers
- Arbitration Provisions
- Auto-Renewal Disclosures (Subscriptions)

Stay on top of case law.

Arbitration Agreements: Key Considerations

- Arbitration provision must be conspicuously placed
- Delegation clause should be “clear and unmistakable”
- Avoid one-sided provisions
- Limitations provisions should not conflict with state law
- Scope should be clear – especially if covering unrelated disputes
- Class action waivers/class proceedings carveouts

Arbitration Agreements: Class Proceedings Carveouts

“Except as it otherwise provides, this Arbitration Provision is intended to apply to the resolution of disputes that otherwise would be resolved in a court of law or before a forum other than arbitration ... Notwithstanding any other clause contained in this Agreement, any claim that all or part of the Class Action Waiver ... is invalid, unenforceable, unconscionable, void or voidable may be determined **only by a court of competent jurisdiction and not by an arbitrator.**”

Mohamed v. Uber Techs., Inc., 848 F.3d 1201, 1208 (9th Cir. 2016).

Irrational Fear:

Sharks



Rational Fear:

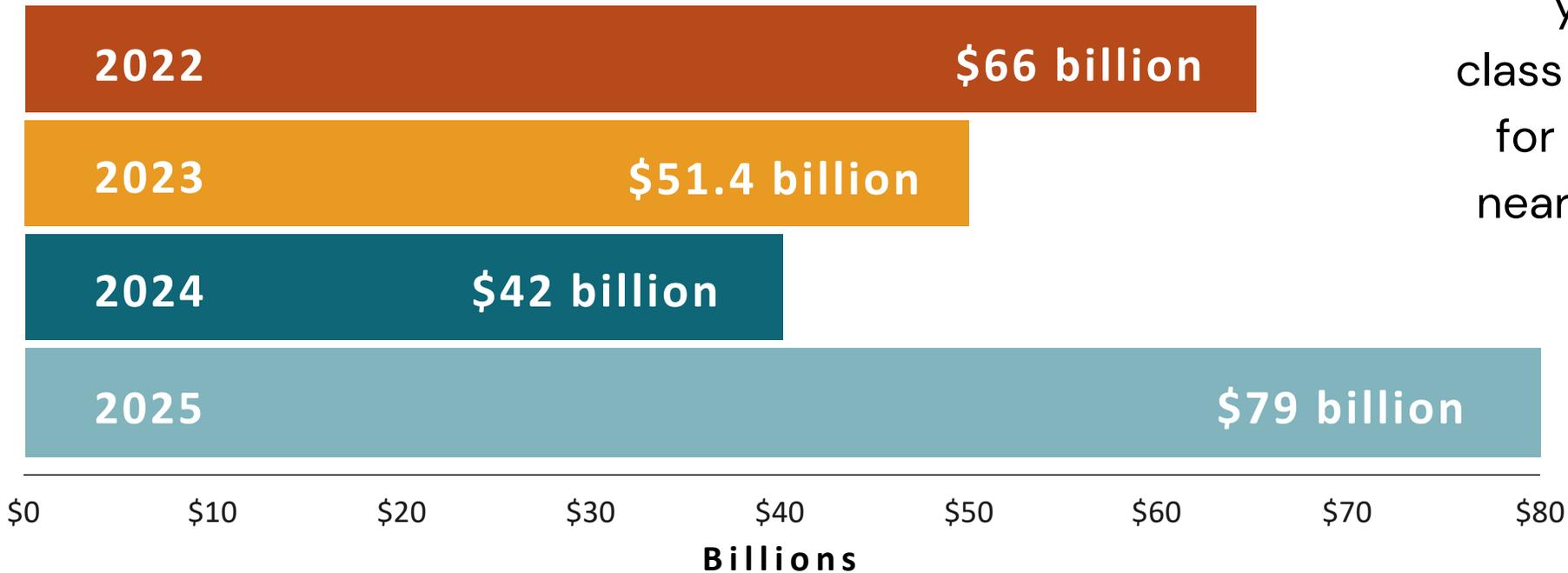
Being a Target for Trendy Litigation

YOU GET A LAWSUIT!! YOU GET A
LAWSUIT! YOU GET A LAWSUIT!!!!



Consumer Litigation Trends

Class Action Settlements by Year



Forbes reported that last year, “more than 1,700 class lawsuits were settled for a total of \$79 billion—nearly double the amount from the prior year.”

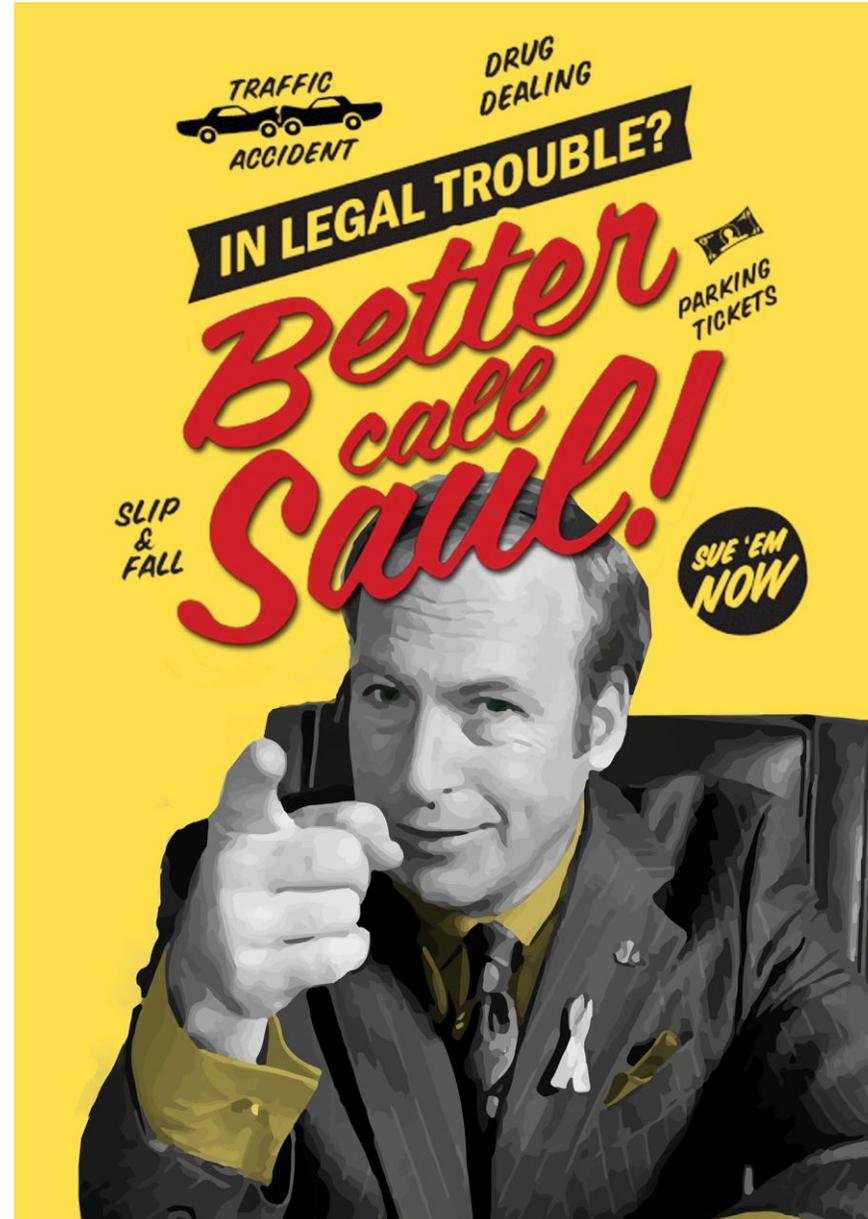
Trendy Consumer Litigation

- CIPA and other Website Privacy related Lawsuits
- TCPA Lawsuits
- Data Breach Lawsuits
- Anti-Spam / Email Marketing Lawsuits
- Pricing Lawsuits
- Auto-Renewal Lawsuits
- Hidden / Junk Fees Lawsuits
- Wage & Hour Lawsuits

Rational Solutions

- Regularly review customer-facing changes (website, terms of use, marketing campaigns, etc.)
- Conduct periodic legal risk audits
- “Litigation early warning system” – Maintain system for tracking demand letters/customer complaints
- Train non-legal employees on specific litigation risks
- Develop SOPs/Playbooks/best practices to avoid litigation (e.g., TCPA, Wage & Hour)

When in Doubt, Call Your Friendly Lawyer





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