

3 November 2022

# Preparing for CPRA Litigation and Enforcement

Wynter Deagle  
Sheppard Mullin

Orson Lucas  
KPMG

Johnny Collins  
KPMG

# Speakers



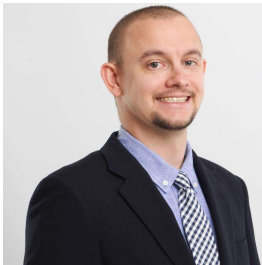
**Wynter Deagle**

Partner  
Sheppard Mullin LLP



**Orson Lucas**

Principal  
KPMG LLP



**Johnny Collins**

Director  
KPMG LLP

# Sephora Complaint and Cure Letter



<b>PEOPLE OF THE STATE OF CALIFORNIA,</b>	Case No.
<b>v.</b>	<b>COMPLAINT FOR INJUNCTION, CIVIL PENALTIES, AND OTHER EQUITABLE RELIEF</b>
<b>SEPHORA USA, INC.</b>	(CIVIL CODE, § 1798.155 & BUSINESS AND PROFESSIONS CODE, § 17206)
Plaintiff,	
Defendant.	

12. Sephora’s decision to provide third parties including “advertising networks, business partners, [and] data analytics providers” with access to its customers’ data in exchange for services from those entities was a sale of personal information as defined by the CCPA. Section 1798.140, subdivision (t), broadly defines sales as the exchange of personal information for anything of value. Sephora’s relationships with these third parties met that definition, because Sephora gave companies access to consumer personal information in exchange for free or discounted analytics and advertising benefits. For example, Sephora installed one widely-used analytics and advertising software package that let the analytics provider gather and keep personal information about an online shopper’s activities. The analytics provider then gave Sephora data about what shoppers did on its website or in its app, like how many people looked at a particular product. The analytics provider also would determine who the shopper was, using extensive data gathered from other sources, and then present Sephora with the valuable option to serve targeted advertisements to the same shopper on the analytics provider’s advertising network. Both the trade of personal information for analytics and the trade of personal information for an advertising option constituted sales under the CCPA.

# State of the Union



14. In June 2021, the Attorney General commenced an enforcement sweep of large retailers to determine whether they continued to sell personal information when a consumer signaled an opt-out via the GPC. In part, the testing and investigation used commercially available browser extensions to monitor network traffic involving third-party advertising and analytics providers, and analyzed how that traffic changed when the GPC sent its “do not sell” signal. In investigating Sephora’s website, the Attorney General found that activating the GPC had no effect and that data continued to flow to third-party companies, including advertising and analytics providers. Subsequent testing confirmed that Sephora’s website took no action to block the transmission of personal information even when a California consumer signaled their opt-out using the GPC. In short, Sephora completely ignored the GPC.

**AG Press Release:** “I hope today’s settlement sends a strong message to businesses that are still failing to comply with California’s consumer privacy law. My office is watching, and we will hold you accountable. It’s been more than two years since the CCPA went into effect, and businesses’ right to avoid liability by curing their CCPA violations after they are caught is expiring. There are no more excuses. Follow the law, do right by consumers, and process opt-out requests made via user-enabled global privacy controls.”

# Cure Letter



CORPORATION SERVICE COMPANY  
WHICH WILL DO BUSINESS IN  
CALIFORNIA AS CSC - LAWYERS  
INCORPORATING SERVICE  
2710 Gateway Oaks Dr, Ste 150N  
Sacramento, CA 95833

RE: CCPA Notice of Violations

Dear Sir/Madam:

The California Attorney General's Office writes to notify [REDACTED] (hereinafter "BUSINESS"), of alleged violations of the California Consumer Privacy Act of 2018, Civil Code, § 1798.100 *et seq.* ("CCPA"), specifically, BUSINESS's failure to honor a consumer's opt out of sales as signaled by a global privacy control. This letter constitutes notice under § 1798.155 and triggers the 30-day period before an enforcement action may be filed. This notice applies to any corporate affiliates that share common branding. The Attorney General shall retest BUSINESS's website in 60 days to determine if BUSINESS has come into compliance, in addition to making any other appropriate investigation. If continued violations are discovered at that point, we may inform BUSINESS that it appears to still have an actionable violation, ask for a response, or initiate an investigation under Government Code section 11180 *et seq.*

## Summary of the Violations

### (1) Civil Code, § 1798.120, subd. (a); Cal. Code Reg., tit. 11, § 999.315, subd. (c)

BUSINESS appears to be selling personal information of opted-out consumers. The CCPA vests California consumers with "the right, at any time," to opt out of the sale of their personal information. (Civ. Code, § 1798.120, subd. (a).) Businesses must honor such opt outs and refrain from selling personal information that they collect. (*Id.*, § 1798.135, subd. (a)(4).) Sales are broadly defined as disclosing or making available consumers' personal information to third parties for anything of value. (*Id.*, § 1798.140, subd. (t).) Unless exempted, "sale" may include trading access to consumers' online activities in exchange for free, discounted, or improved advertising or analytics services and ad targeting options.

To facilitate the submission of a consumer's right to opt out of sales, particularly in the context of online requests, the CCPA's implementing regulations require business to process a universal opt-out signal or "global privacy control." Specifically, section 7026 requires that if "a business collects personal information from consumers online, the business shall treat user-enabled global privacy controls, such as a browser plug-in or privacy setting, device setting, or other mechanism, that communicate or signal the consumer's choice to opt-out of the sale of their personal information as a valid request submitted pursuant to Civil Code section 1798.120 for that browser or device, or, if known, for the consumer." (Cal. Code Regs., tit. 11, § 7026, subd. (c).) For over a year, consumers have been able to signal such an opt-out using the aptly named "Global Privacy Control" ("GPC") available in certain browsers and extensions.

Preliminary investigation reveals that BUSINESS appears to be selling personal information despite consumers sending BUSINESS the GPC. The Attorney General tested BUSINESS's website using a GPC and BUSINESS continued to allow personal information to be made available to third parties providing advertising or analytics services. This appears to include circumstances where the third party is not a "Service Provider" under the CCPA and no other exception to sale appears to apply. For example, the Attorney General observed third party analytics providers attributing online activities to consumer-level user accounts accessed with the same IP address, even while the GPC was being broadcast. In doing so, BUSINESS appears to be ignoring valid opt-out requests and unlawfully selling personal information third parties.

# Implications and Actions



## Implications

- Targeted advertising = Sale
- Limitations around selling (or sharing) of info with third parties for benefit without opt-out capability
- Points to increased automation of scanning sites for “low hanging fruit”
- Third party relationships (e.g. branded but fully hosted sites)

## Immediate Actions

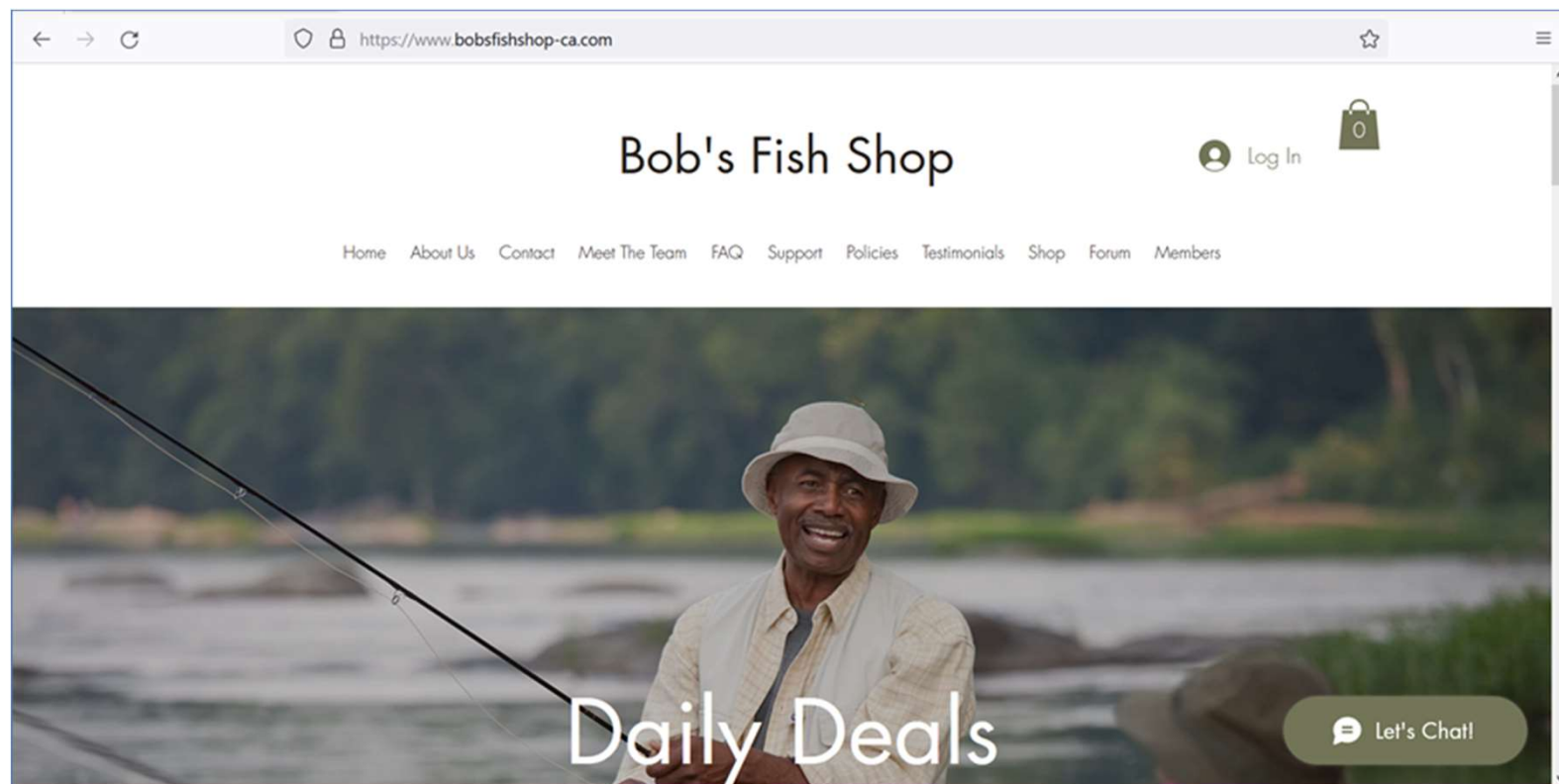
- Web portfolio inventory
- Cookie categorization
- Opt-out / preference banner (and supporting business processes)
- GPC enablement
- Google Restricted Data Processing (RDP) / Facebook Pixel Limited Data Usage (LDU) settings
- Testing and validation
- Contract review
- Update privacy notices



# Let's Take a Look – Sample Website Walkthrough



<https://www.bobsfishshop-ca.com/>



# Data Collection



## Contact Support

How Can We Help?

First Name	Last Name
<input type="text"/>	<input type="text"/>
Email	Phone
<input type="text"/>	<input type="text"/>
Choose an Issue	<input type="button" value="v"/>
<input type="text" value="Let us know what you need help with..."/>	

Get in Touch

## Get in Touch

104 Main St, San Francisco, CA 94105, USA

jwcolliii@yahoo.com

8008675309



Let's Chat!

Name \*

Enter your name

Email \*

Enter your email

Phone

Address

Enter your phone number

Enter your address

Subject

Type the subject

Message

Type your message here...

Submit

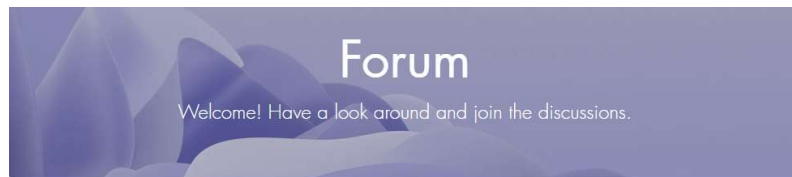
## Subscribe Form

e.g., email@example.com

Join



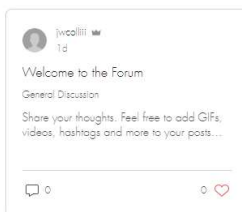
# Data Collection



Create New Post



## New Posts



### Add a Testimonial

How Did We Do?

First Name	Last Name
Email	Phone

Write your review here

Would you recommend us to your friends?

☒ Yes ☐ No

Anything else you would like to add?

Submit

## Log In to Connect With Members

View and follow other members, leave comments & more.

Log In

# Cookies



Cookie	Domain	Description	Duration	Type
ssr-caching	www.bobsfishshop-ca.com	The ssr-caching cookie is set by WIX and indicates how a site was rendered.	past	Necessary
XSRF-TOKEN	.www.bobsfishshop-ca.com	This cookie is set by Wix and is used for security purposes.	session	Necessary
hs	.www.bobsfishshop-ca.com	Wix platform sets this cookie for security purposes.	session	Necessary
svSession	.www.bobsfishshop-ca.com	Wix platform sets this cookie to identify unique visitors and track a visitor's session on a site.	2 years	Necessary
bSession	.www.bobsfishshop-ca.com	No description available.	30 minutes	Other
fedops.logger.defaultOverrides	www.bobsfishshop-ca.com	No description	1 minute	Other

# Opt-Outs



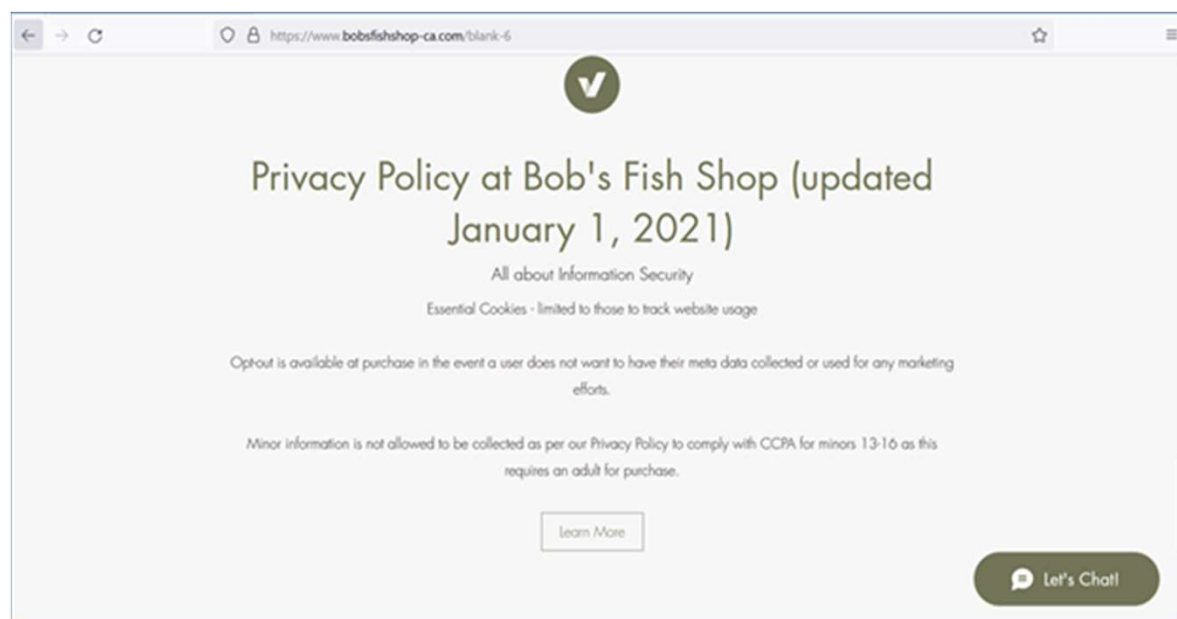
## Bob's Fish Shop



[Home](#) [About Us](#) [Contact](#) [Meet The Team](#) [FAQ](#) [Support](#) [Policies](#) [Testimonials](#) [Shop](#) [Forum](#) [Members](#)

Opt-out is available at purchase in the event a user does not want to have their meta data collected or used for any marketing efforts.

# Privacy Policy



# Security

The screenshot shows a web browser window with the address bar displaying `bobsfishshop-ca.com`. A modal window titled "Certificate Viewer: bobsfishshop-ca.com" is open, showing the following details:

**General** Details

**Issued To**

- Common Name (CN): bobsfishshop-ca.com
- Organization (O): <Not Part Of Certificate>
- Organizational Unit (OU): <Not Part Of Certificate>

**Issued By**

- Common Name (CN): Sectigo RSA Domain Validation Secure Server CA
- Organization (O): Sectigo Limited
- Organizational Unit (OU): <Not Part Of Certificate>

**Validity Period**

- Issued On: Tuesday, October 25, 2022 at 8:00:00 PM
- Expires On: Tuesday, January 24, 2023 at 6:59:59 PM

**Fingerprints**

- SHA-256 Fingerprint: A2 E7 47 1C 9F 6C 99 9E E5 AE 3D 78 3B 08 D6 2A C6 40 E5 E2 C0 C0 7E 8E 8E 76 C9 C1 93 3E 2F 46
- SHA-1 Fingerprint: 32 7E EF 52 E9 AF 8A 7E 26 7A 47 0A 53 6D 97 CA 79 BE 86 9A

The background of the browser window shows a map of San Francisco with labels for FORT MASON, RUSSIAN, UNION STREET, COW HOLLOW, POLK GULCH, and PACIFIC HEIGHTS. A search bar with the text "Enter your address" and a "Submit" button is visible on the right side of the browser window. A "Let's Chat!" button is also present in the bottom right corner of the browser window.

# Future Enforcement

Elimination of the cure period

Dual enforcement

Continued focus on websites

## § 7025. Opt-Out Preference Signals.

- (a) The purpose of an opt-out preference signal is to provide consumers with a simple and easy-to-use method by which consumers interacting with businesses online can automatically exercise their right to opt-out of sale/sharing. Through an opt-out preference signal, a consumer can opt-out of sale and sharing of their personal information with all businesses they interact with online without having to make individualized requests with each business.
- (b) A business **that sells or shares personal information** shall process any opt-out preference signal that meets the following requirements as a valid request to opt-out of sale/sharing:
- (1) The signal shall be in a format commonly used and recognized by businesses. An example would be an HTTP header field **or JavaScript object**.
  - (2) The platform, technology, or mechanism that sends the opt-out preference signal shall make clear to the consumer, whether in its configuration or in disclosures to the public, that the use of the signal is meant to have the effect of opting the consumer out of the sale and sharing of their personal information. The configuration or disclosure does not need to be tailored only to California or to refer to California.
- (c) When a business that collects personal information from consumers online receives or detects an opt-out preference signal that complies with subsection (b):
- (1) The business shall treat the opt-out preference signal as a valid request to opt-out of sale/sharing submitted pursuant to Civil Code section 1798.120 for that browser or device, and, if known, for the consumer. **This is not required for a business that does not sell or share personal information.**



# Longer Term Action Plan



Identity solutions

Google's Privacy  
Sandbox

Third party cookies  
/ data sharing ->  
first party data

Publisher Provided  
Identifiers (PPIDs)

Contextual  
advertising

Data Pools or Data  
Clean Rooms

User Identity  
Graphs

Digital  
Fingerprinting

Regular  
touchpoints  
between privacy  
and marketing

# Key Takeaways



Perform a data inventory of all business process activities

Know your exposure: understand the scope of cookies you have today, purpose of those cookies, and circumstances / purposes in which data is shared or sold to third parties.

Fix the low hanging fruit

“Shift left” in privacy

Privacy and the business, especially marketing, should work together all year long. This can include participating in marketing strategy sessions, reviewing new campaigns and evaluating new vendors — especially how data may be used by them.

# Questions & Contacts



**Wynter Deagle**

[wdeagle@sheppardmullin.com](mailto:wdeagle@sheppardmullin.com)

o: 858-720-8947

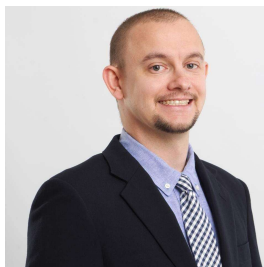
m: 401-439-0143



**Orson Lucas**

[olucas@kpmg.com](mailto:olucas@kpmg.com)

m: 704-502-1067



**Johnny Collins**

[johncollins@kpmg.com](mailto:johncollins@kpmg.com)

m: 703-851-7639