CLIENT ALERTS & INSIGHTS

Google Faces Eight-Figure Settlements Following Data Privacy Claims

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Google has agreed to pay a whopping $155M to resolve a government investigation and a class action lawsuit stemming from its use of location data, including claims that it stored and collected consumers' location-related information after the consumers opted out of sharing such data. Notably, individual consumers will not receive direct payment in either of the two settlements.

Google to Pay the State of California $93 Million

On September 14, 2023, the California Attorney General filed a lawsuit captioned *People of the State of California v. Google, LLC*, following a multi-year investigation into Google's alleged practice of storing and collecting consumers' location-related data after leading them to believe that such location data would not be retained. By collecting and storing consumers' location-related data, Google allegedly developed behavioral profiles for consumers, which helped the Company sell more targeted advertisements. The Complaint claims that Google's "Turn Location history on or off" and "Ads Personalization" functions did not actually give users the right to control their location and browsing data. The AG's office filed claims under California's Unfair Competition Law (UCL) and False Advertising Law (FAL), each of which provides for $2,500 per violation.

On the same day the Complaint was filed, the Parties submitted a proposed stipulated judgment which was entered by the Court on September 18, 2023. Under the judgment, Google must pay $93 million to the state of California, and must also:

- Maintain a "Location Technology" webpage that discloses how the company collects and retains location information;
- Give users the ability to disable location-related tracking and delete captured location data on their own; and
- Automatically delete certain location data within 30 days of collection.

This is not Google's first settlement with a state government relating to location tracking. Last November, Google agreed to pay $391.5 million to resolve similar allegations by 40 other U.S. states.

Google Settles Consolidated Class Action for $62 Million

The same day that Google and the State of California filed the stipulated judgment above, the Plaintiffs in *In re: Google Location History Litigation* moved for preliminary approval of a $62 million settlement, in a series of consolidated class actions involving similar claims.

This litigation consists of six cases, which were filed in 2018 and consolidated in 2019. The consolidated complaint, filed April 29, 2019, claimed that Google violated the California Invasion of Privacy Act (CIPA), the California Constitutional Right to Privacy, and the common law claim of intrusion upon seclusion. Google successfully dismissed all of those claims in December 2019. However, in July 2020, the Plaintiffs amended the complaint to plead claims under the California Constitutional Right to Privacy, intrusion upon seclusion, and unjust enrichment.

After nearly five years of litigating the case, and 11 months of negotiating a potential settlement, the Parties executed a settlement term sheet on April 27, 2023. The motion for preliminary approval suggests that the putative class consists of an estimated 247.7 million members and includes anyone in the U.S. "who used one or more mobile devices and whose location information was stored by Google while 'Location History' was disabled at any time" between January 1, 2014 through the notice date.

Under the settlement, Google agreed to create a $62 million fund, up to $18.6 million of which is reserved for attorneys' fees. Aside from the costs of attorney's fees, notice and settlement administration expenses, and class representative service awards of $5,000 each, the balance of the fund will be distributed to 17 court-appointed *cy pres* recipients, including educational institutions, non-profit organizations, and independent researchers that investigate and influence privacy policies across the country. Notably, none of the $62 million will go to the consumers who were allegedly tracked. Lawyers for the Plaintiffs said this was because it was "infeasible" to distribute money to the approximately 247.7 million potentially affected users.

Conclusion

This new series of settlements should serve as the latest reminder to e-commerce companies to exercise caution when advising consumers about their data practices, so that customers understand when their information will be collected and how to effectively opt out.

For more information, please contact a member of Benesch's Litigation Practice Group or Retail & E-Commerce industry team.