

Fourth Time is Not a Charm: Android Users' Plead Themselves Out of Court

Article By:

Margaret A Dale

Finding that the Plaintiffs lacked **Article III standing** to pursue their case, **Google, Inc.** ("Google") won dismissal of the **Android** users' putative class action lawsuit after more than three years of litigation. ***In re Google Inc. Privacy Policy Litigation***, No. 12-01382 (N.D. CA July 15, 2015). The Android users had claimed that Google violated its own privacy policy by disclosing personal information to third parties without permission.

In granting Google's third motion to dismiss, the Court previously found that the "Plaintiffs' only alleged injury-in-fact was the depletion of battery and bandwidth resulting from systemic, repeated transmission of personal information from Android devices to third-party developers." *Id.* at 2. However, in amending and re-pleading their claims for the fourth time, the Court found that "Plaintiffs managed something somewhat unusual: they pled themselves out of a case." *Id.* Finding that injury-in-fact was no longer sufficiently alleged, particularly given that Plaintiffs failed to allege any actual disclosure to third parties from Plaintiffs' own devices, the Northern California Court ruled that it would unfairly prejudice Google to let the Plaintiffs amend their complaint again, and ordered the dismissal without further leave to amend.

The Court held that Plaintiffs failed to satisfy all three prongs needed to establish Article III standing, including (i) injury-in-fact that is concrete and actual or imminent and not hypothetical; (ii) injury that is fairly traceable to the action of the defendant being challenged; and (iii) likelihood that the injury will be redressed by a favorable decision. *Id.* at 8. First, the Court found no evidence of any injury-in-fact because there was no longer any allegation that the battery-and-bandwidth-using transmissions containing personal information ever occurred from Plaintiffs' phones or ever went to a third party. The Court noted that, "Plaintiffs do not allege economic injury from any dissemination – or any dissemination at all – or any injury in the form of loss of the Plaintiffs' ability to sell their own information or its market value." *Id.* at 11 (footnotes omitted). Second, the Court found no nexus between Plaintiffs' claim of battery and bandwidth depletion and any action by Google. Specifically, the Court noted that there was no allegation of any personal information being transmitted when a user purchased an app from Google Play. "Put another way, the loss of battery life or use of bandwidth is not 'fairly traceable to the challenged action' as the downloading of the app occurs before any record of the transaction or making available of information for look-up." *Id.* at 13. Third, the Court held that any injury is not redressable by a favorable decision. Said differently, the Court found that, "[e]ven if tomorrow this court ordered Google to cease making any transaction data

available whatsoever to the developers from whom users purchase apps, it would not change the battery and bandwidth use of the purchase process at all.” Id. at 13 (footnote omitted).

In sum, the decision makes no new law but rather continues the trend of courts dismissing cases because the “mere risk of future disclosure is not an Article III injury-in-fact.” Id. at 9.

© 2025 Proskauer Rose LLP.

National Law Review, Volume V, Number 203

Source URL: <https://natlawreview.com/article/fourth-time-not-charm-android-users-plead-themselves-out-court>