



BILLING CODE: 6750-01-S

FEDERAL TRADE COMMISSION

Agency Information Collection Activities;

Proposed Collection; Comment Request

AGENCY: Federal Trade Commission (“Commission” or “FTC”).

ACTION: Notice.

SUMMARY: The FTC proposes to conduct a study to examine consumer perception of class action notices (“Notice Study”). This is the second of two notices required under the Paperwork Reduction Act (“PRA”) seeking public comments on proposed research before requesting Office of Management and Budget (“OMB”) review and clearance of the collection of information discussed herein.

DATES: Comments must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write “Class Action Notice Consumer Perception Study, Project No. P024210” on your comment, and file your comment online at <https://ftcpublic.commentworks.com/ftc/classactionnoticepra2>, by following the instructions on the web-based form. If you prefer to file your comment on paper, write “Class Action Notice Consumer Perception Study, Project No. P024210” on your comment and on the envelope, and mail your comment to the following address: Federal

Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue, NW, Suite CC-5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street, SW, 5th Floor, Suite 5610, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Robin Moore and Colin MacDonald, Attorneys, 202-326-2167 (Moore) or 202-326-3192 (MacDonald), Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission.

SUPPLEMENTARY INFORMATION:

I. Background

The Class Action Fairness Project strives to protect injured consumers from settlements that provide them with little to no benefit and to protect businesses from the incentives such settlements may create for the filing of frivolous lawsuits. As part of this program, the FTC monitors class actions and files amicus briefs or intervenes in appropriate cases;¹ coordinates with state, federal, and private groups to advise and seek suggestions on matters that merit FTC attention; and monitors the progress of legislation and class action rule changes.

¹ See, e.g., FTC's Mem. of Law as Amicus Curiae, *Nwabueze v. AT&T, Inc.*, 3:09-cv-1529 (N.D. Cal. Aug. 30, 2013), available at https://www.ftc.gov/sites/default/files/documents/amicus_briefs/nwabueze-v.att-inc./130830nwabuezeamicus.pdf; FTC's Mem. of Law as Amicus Curiae, *White v. EDebitPay, LLC*, 2:11-cv-06738 (C.D. Cal. Aug. 9, 2013), available at https://www.ftc.gov/sites/default/files/documents/amicus_briefs/anita-white-et-al.v.edebitpay-1.1.c.et-al.no.211-cv-06738-cbm-ffm-c.d.cal-august-9-2013/130809edebitpayamicusbrief.pdf; Mot. of FTC for Leave to File Brief as Amicus Curiae, *Moore v. Verizon Commc'ns, Inc.*, 4:09-cv-08123 (N.D. Cal. Aug. 17, 2012), available at https://www.ftc.gov/sites/default/files/documents/amicus_briefs/moore-v.verizon-communications-inc./120817mooreverizonamicusbrief.pdf.

On May 5, 2015, the FTC published the first notice regarding this study in the Federal Register. *See* 80 FR 25676 (May 5, 2015).²

II. The FTC's Proposed Study

To further the above-noted goals, the FTC staff proposes to conduct an Internet-based consumer research study to explore consumer perceptions of class action notices. Based on marketplace trends identified through review of class action settlements and discussions with notice administrators, the study will focus on notices sent to individual consumers via email. Using a treatment-effect methodology, the study will examine whether variables such as the email address of the sender and subject line impact respondents' perception of and willingness to open an email notification. The proposed study will also gauge consumer comprehension of the options conveyed by the notice, including the process for participating in the settlement and the implications of consumers' choices. In the May 5, 2015, Federal Register Notice, the Commission also proposed to study whether respondents understood the implications for opting out of a

²The FTC announced the instant study in May 2015. However, in light of the Advisory Committee on Civil Rules' ("Advisory Committee") consideration of explicitly including electronic notice as permissible under Rule 23(c)(2) of the Federal Rules of Civil Procedure, FTC staff determined that it would be appropriate to assess the prevalence of electronic notification and to consider issues raised by commenters on the Advisory Committee's proposal. *See e.g.*, Letter from Todd B. Hilsee to The Advisory Committee on Civil Rules of the Judicial Conference of the United States (undated), *available at* <http://www.uscourts.gov/file/19653/download>. As part of that process, FTC staff reviewed class action settlements, researched additional issues, and consulted with class action administrators. In addition, in November 2016, pursuant to Section 6(b) of the FTC Act, the Commission issued orders seeking data, which further informed FTC staff's analysis. *See* Press Release, Fed. Trade Comm'n, FTC Seeks to Study Class Action Settlements (Nov. 14, 2016), *available at* <https://www.ftc.gov/news-events/press-releases/2016/11/ftc-seeks-study-class-action-settlements>. FTC staff will also use data obtained through the 6(b) Orders to inform a second study, the Deciding Factors Study. *See* 80 FR 25677, 25678 (May 5, 2015). Based on marketplace trends identified through FTC's staff's research and data analysis, the study will focus on notices sent to individual consumers via email.

settlement. However, to avoid duplication of the Commission's Deciding Factors Study, the Commission has determined not to examine this issue in the Notice Study.³ Notices used in the study are based on notices sent to class members in various nationwide class action settlements and streamlined versions designed by the FTC staff. We plan to use the study results, along with other information such as public comments, to guide the FTC's Class Action Fairness Project.

Having considered the costs and benefits of various data collection methods, FTC staff has concluded that an Internet panel with nationwide coverage will provide the most efficient way to collect data to meet the research objectives within a feasible budget. Thus, the Commission proposes to collect responses from a broad spectrum of the U.S. adult population. Participants will be drawn from an Internet panel maintained by a commercial firm that operates the panel. All participation will be voluntary. While the results will not be generalizable to the U.S. population, comparing the responses to various treatments should provide useful insight into consumer understanding of the claims being considered.⁴ The FTC staff has contracted with Great Lakes Marketing, a consumer research firm with substantial experience assessing consumer communications via the Internet and other alternative protocols, to administer the Internet study.

III. Paperwork Reduction Act

³The Commission has determined that the opt-out issue is more appropriately addressed in the Deciding Factors Study, which will examine factors that influence class members' decision to participate in settlement, opt out of the settlement, or object to the settlement. *See* 80 FR 25677, 25678 (May 5, 2015).

⁴*See* FED. TRADE COMM'N, APPLIANCE LABELING RULE: PROPOSED RULE, 72 FR 6836, 6838-39, 6841, 6843-51, 6854 (Feb. 13, 2007) (codified at 16 CFR Part 305) (discussing results of consumer research involving treatment groups).

Under the PRA, 44 U.S.C. 3501-3521, federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. “Collection of information” means agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party.⁵ As required by Section 3506(c)(2) of the PRA, the FTC published a notice seeking public comment on: (1) whether the reporting requirements are necessary, including whether the information will be practically useful; (2) the accuracy of our burden estimates, including whether the methodology and assumptions used are valid; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information. *See* 80 FR 25676 (May 5, 2015). In response, the Commission received two comments, neither of which substantively commented on the FTC’s proposed study.⁶ Each comment is discussed in Section IV below.

Pursuant to Section 3507 of the PRA and OMB regulations, 5 CFR Part 1320, that implement the PRA, the Commission is providing this second opportunity for public comment. All comments should be filed as prescribed in the Request for Comment part of the SUPPLEMENTARY INFORMATION section below, and must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

As before, staff estimates that respondents will require, on average, approximately

⁵ 44 U.S.C. 3502(3); 5 CFR 1320.3(c).

⁶ The Commission received comments from the Class Action Trolls, Inc. (#615-00004) and one individual commenter (#615-00005), available at <http://www.ftc.gov/policy/public-comments/initiative-615>.

20 minutes to complete the Internet questionnaire. Staff will also pretest the questionnaire with approximately 100 respondents to ensure that all questions are easily understood. Allowing for an extra three minutes for questions unique to the pretest, staff estimates that the pretest will take approximately 23 minutes. Cumulatively, those completing the questionnaire will require approximately 2,667 hours (8,000 persons x 20 minutes each), and those completing the pretest will require approximately 38 hours (100 respondents x 23 minutes each).

Staff is revising its overall estimate of burden to include those responders who do not complete the questionnaire and pretest. Staff projects that those who will prematurely end the process will do so in less than one minute. The staff anticipates that 60 percent of those invited to participate in the study will complete the questionnaire. Accordingly, the contractor might contact as many as 13,333 people to achieve the study's goal of surveying 8,000 respondents, which would result in an additional 89 hours total.

[(13,333 total contacts – 8,000 people completing the questionnaire) x 1 minute each].

For the pretest, the staff estimates that an additional 67 people will prematurely end the process, which totals an additional 1 hour [(167 total contacts – 100 persons completing the pretest) x 1 minute each]. Cumulatively, complete and partial surveying of 13,333 people will total about 2,756 hours and complete and partial pretesting will total 39 hours, for an overall total of 2,795 hours. The cost per respondent should be negligible. Participation will not require start-up, capital, or labor expenditures.

IV. Analysis of Comments Received

As noted above, the Commission received two comments regarding the proposed

collections of information. *Class Action Trolls, Inc.* requested updates as information becomes available on issues related to this study. Information will be made public as appropriate on FTC.gov and through other means. The *Individual Commenter* expressed support for the FTC's work in this area.

V. Request for Comment

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. Write "Class Action Notice Consumer Perception Study, Project No. P024210" on your comment. Your comment – including your name and your state – will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Website, at <https://www.ftc.gov/policy/public-comments>.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at <https://ftcpublic.commentworks.com/ftc/classactionnoticepra2>, by following the instructions on the web-based form. If this Notice appears at <http://www.regulations.gov/#!home>, you also may file a comment through that website.

If you file your comment on paper, write "Class Action Notice Consumer Perception Study, Project No. P024210" on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue, NW, Suite CC-5610 (Annex J), Washington, DC

20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610, Washington, DC 20024. If possible, please submit your paper comment to the Commission by courier or overnight service.

Comments on any proposed information collection requirements subject to review under the PRA should additionally be submitted to OMB. If sent by U.S. mail, they should be addressed to Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Federal Trade Commission, New Executive Office Building, Docket Library, Room 10102, 725 17th Street, NW, Washington, D.C. 20503. Comments sent to OMB by U.S. postal mail, however, are subject to delays due to heightened security precautions. Thus, comments instead can also be sent via email to wliberante@omb.eop.gov.

Because your comment will be placed on the publicly accessible FTC Website at <https://www.ftc.gov/>, you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information, such as your or anyone else's Social Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any "trade secret or any commercial or financial information which . . . is

privileged or confidential” – as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2) – including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled “Confidential,” and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted on the public FTC Website – as legally required by FTC Rule 4.9(b) – we cannot redact or remove your comment from the FTC Website, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

Visit the FTC Website to read this Notice. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. For information on the Commission’s privacy policy, including routine uses permitted by the Privacy Act, *see* <https://www.ftc.gov/site-information/privacy-policy>.

By direction of the Commission.

Donald S. Clark,
Secretary.

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