

July 31, 2014

James A. Kohm, Associate Director,
Division of Enforcement, Bureau of Consumer Protection
The Federal Trade Commission
600 Pennsylvania Ave., N.W.
Washington, D.C. 20580

RE: Google Referrer Header Litigation Settlement

Dear Mr. Kohm,

We are writing to you, as leading consumer privacy organizations, regarding a pending settlement in the Ninth Circuit concerning consumer privacy that we believe is unfair and unjust. We have already communicated our views to the Court. We are writing to the Federal Trade Commission to urge you to intervene and block approval of the settlement.

On July 25, 2014, counsel for Plaintiffs in *Gaos v. Google*, known as the “Google Referrer Header” case, filed a Motion for Final Approval.¹ The final fairness hearing for the settlement is scheduled for August 29, 2014. The proposed settlement is bad for consumers, bad for online privacy, and does nothing to change Google’s business practices. The settlement confers no monetary relief to class members, compels no change in Google’s behavior, and misallocates the *cy pres* distribution to organizations that, save one, are not aligned with the interests of class members and do not further the purpose of the litigation. The “remedy” is a warning notice to Internet users that Google will disclose their personal information to third parties in violation of the 2011 consent order with the Commission, federal law, and Google’s privacy policy. It is not just a bad or imperfect settlement; it is a farce.

The Federal Trade Commission recently filed an *amicus* brief in *Fraleley v. Facebook*.² In that brief, you explained that the Children’s Online Privacy Protection Act does not “preempt state law privacy protections for people outside of COPPA’s coverage, including teenagers.” The FTC helped ensure that all class members affected by an class action settlement retain the privacy rights to which they are entitled.

¹ *Gaos v. Google*, No. 10-4809 (N.D. Cal. filed Oct. 25, 2010).

² *Fraleley v. Facebook*, No. 11-1726, 830 F. Supp. 2d 785 (N.D. Cal. 2011) (No. 13-16918). *See also* Federal Trade Commission’s Memorandum of Law as Amicus Curiae, *Chavez v. Netflix*, No. 04-434884 (filed Jan. 5, 2006, Cal Sup. Ct.) (“The Federal Trade Commission (FTC) opposes the pending class action settlement in this case because the class member’s compensation is coupled with a ‘negative option’ – which leaves many class members without any compensation and could leave others worse off than if they had not participated in the settlement at all.”)

Like the *Fraley* settlement, the proposed Google Referrer Header settlement provides no relief to class members and does nothing to prevent Google from engaging in the same practice that provided the basis for the Plaintiff's attorneys to claim that they were representing the interests of Internet users.

We write today to urge the Commission to participate in the *Gaos* matter. If the proposed settlement survives the final fairness hearing, millions of Google users will suffer an ongoing privacy violation with no means of redress. Your contribution as *amicus* would help bring an end to this trend of settlement agreements that do nothing to advance the purpose of class action privacy litigation.

We have enclosed both the motion of the plaintiff's attorneys and the objection to the Court of the consumer privacy organizations.

If approved, the settlement will be a dramatic setback for the privacy of Internet users and American consumers. Will the FTC let that happen?

Respectfully,

/s/ Marc Rotenberg

Marc Rotenberg, Executive Director
Electronic Privacy Information Center
(EPIC)

/s/ Jeff Chester

Jeff Chester, Executive Director
Center for Digital Democracy (CDD)

/s/ John Simpson

John Simpson, Privacy Project Director
Consumer Watchdog

/s/ Deborah Peel

Deborah Peel, Founder and Chair
Patient Privacy Rights

/s/ Beth Givens

Beth Givens, Director
Privacy Rights Clearinghouse

CC: Ms. Jessica Rich, Director, Bureau of Consumer Protection

Enclosures