PREPARED STATEMENT OF THE

FEDERAL TRADE COMMISSION:

OVERSIGHT OF THE FEDERAL TRADE COMMISSION

Before the

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

UNITED STATES SENATE

WASHINGTON, DC

AUGUST 5, 2020

I. INTRODUCTION

Chairman Wicker, Ranking Member Cantwell, and Members of the Committee, we are pleased to appear before you today (if remotely).[1] Despite the challenges that the Federal Trade Commission, like everyone these days, is facing, the agency continues to protect vigorously consumers and competition.

For the Subcommittee hearing two weeks ago, we described the many actions the Commission has taken since March to address COVID-related fraud. In this testimony, we take a step back and first provide an overview of Commission resources and operations during the pandemic. Next, we highlight the pressing need, in light of legal challenges, for Congress to affirm the FTC's authority to get money back to consumers using Section 13(b) of the FTC Act. We also call on Congress to reauthorize the SAFEWEB Act, which allows the FTC to work with foreign authorities on cross-border law enforcement. Then, we describe the Commission's major accomplishments and challenges on the consumer protection front, and reiterate our support for enactment of privacy legislation. We know how hard you, Mr. Chairman, Ranking Member Cantwell, and other members of this Committee have worked for this goal. Finally, the testimony also provides a short summary of the FTC's work to protect and promote competition through the enforcement of the antitrust laws.

II. RESOURCES AND OPERATIONS DURING THE PANDEMIC

We greatly appreciate the additional $20 million Congress appropriated for the FTC in FY2020. Rather than having to reduce Full Time Equivalent employees ("FTEs") to cover pay increases and other expenses, this increase instead allows us to hire up to our full FTE-level—which means adding approximately 20 new staff for some of the FTC's most critical work,

[1] This written statement presents the views of the Federal Trade Commission. The oral statements and responses to questions reflect the views of individual Commissioners, and do not necessarily reflect the views of the Commission or any other Commissioner.

including privacy and a new division in the Bureau of Competition dedicated to enforcing the antitrust laws in the technology industry.

Continued budget support over the years has allowed us to invest in the technologies that enabled us to transition smoothly during this pandemic from nearly 100% office-based work to nearly 100% telework.

FTC employees have risen to meet the challenges posed by the pandemic. Since early March, a cross-agency working group has convened daily to consider and manage the immediate operational impacts of the pandemic, along with the longer-term impacts on the agency and its employees. As for operational details, during the pandemic, the FTC has maintained essential services on site (e.g., mail, security, building maintenance) and ensured that all facilities are operating within CDC and GSA building and cleaning guidelines. We have developed virtual processes for a range of activities that used to be done in person, including acceptance of filings, depositions, court appearances, training, and hiring.

III. LEGISLATION IS NEEDED TO ENSURE EQUITABLE MONETARY RELIEF AND ALLOW FOR CROSS-BORDER ENFORCEMENT

A. Section 13(b)

The FTC appreciates your support of our mission. An essential part of that mission is getting back to consumers money wrongly taken from them. Over the past four fiscal years, the FTC has returned more than $975 million directly to consumers and won judgments under which consumers received nearly $10 billion more through defendant-administered redress programs. We are immensely proud of this work, which as the numbers show, provides a massive public benefit. Unfortunately, however, our ability to keep getting such results for consumers has been threatened or curtailed by recent judicial decisions. We therefore respectfully request that Congress clarify the agency's statutory authority to obtain complete equitable monetary relief

under Section 13(b) of the FTC Act, our principal means of securing judicial orders that require this relief.

Section 13(b) provides that the FTC can seek "permanent injunctions," and for decades, courts interpreted that language to mean that the FTC could secure not just behavioral restrictions but also equitable monetary remedies, including restitution to consumers and disgorgement of ill-gotten gains. Until recently, eight courts of appeals had adopted that approach, and none had disagreed. Two years ago, however, two Ninth Circuit judges questioned that court's favorable holdings on the issue,[2] and in short order the Seventh Circuit held that Section 13(b) did not allow monetary remedies.[3] The Supreme Court has now agreed to hear both the Seventh and Ninth Circuit cases.[4] We expect the Court to resolve this issue by next summer. A ruling adverse to the FTC would have dire consequences for consumer redress and other forms of monetary relief.

Our redress authority is threatened in two additional ways. First, a decision last year from the Third Circuit held that the FTC could bring cases under Section 13(b) only if the illegal acts were ongoing or impending at the time the FTC sues, limiting our ability to pursue past illegality.[5] Although we have been successful so far in fending off arguments relying on that case, the Third Circuit's approach could allow wrongdoers to stop their unlawful conduct and potentially keep their ill-gotten gains on the ground that they are not currently violating the law. Second, the Supreme Court's recent *Liu* decision may place limitations on the amount of money we can obtain from wrongdoers and ultimately return to consumers.[6]

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[2] *See AMG Cap. Mgmt., LLC v. FTC*, 910 F.3d 417 (9th Cir. 2018), (O'Scannlain, J., specially concurring).
[3] *See FTC v. Credit Bureau Ctr., LLC*, 937 F.3d 764 (7th Cir. 2019).
[4] *FTC v. Credit Bureau Ctr., LLC*, 937 F.3d 764 (7th Cir. 2019), *cert. granted*, No. 19-825 (July 9, 2020); *AMG Cap. Mgmt., LLC v. FTC*, 910 F.3d 417 (9th Cir. 2018), *cert. granted*, No. 19-508 (July 9, 2020).
[5] *See FTC v. Shire ViroPharma, Inc.*, 917 F.3d 147 (3rd Cir. 2019).
[6] *See Liu v. Sec. Exch. Comm'n*, 140 S.Ct. 1936 (2020).

In short, our ability to get full redress for consumers is in peril. We request that Congress act now to preserve the FTC's ability to restore to consumers money they lose to scammers and fraudsters.

B. SAFE WEB Reauthorization

We want to thank this Committee for your leadership and support in reauthorizing SAFE WEB. The SAFE WEB Act is an indispensable part of the FTC's enforcement arsenal. It provides the Commission with critical law enforcement tools to combat fraudulent telemarketing, robocalls, privacy violations, misleading health claims, spam, spyware, malware, and other cross-border misconduct that harms American consumers. These tools support cooperation with foreign counterparts and enforcement action against unlawful cross-border activity. Critically, without the Act, the FTC might not prevail in enforcement actions against foreign wrongdoers. SAFE WEB contains an express provision stating that the FTC's authority over unfair and deceptive practices extends to foreign conduct that has a "reasonably foreseeable" effect on U.S. consumers, or that involves "material conduct" in United States. Without SAFE WEB's "clear statement of Congressional intent," FTC enforcement against foreign wrongdoers would be in jeopardy. The Act will sunset on September 30, 2020, absent action by the Senate. Expiration of the Act would hobble the FTC's enforcement efforts to protect American consumers victimized by cross-border fraud and privacy violations, efforts that are even more critical in the current COVID-19 environment.

IV. CONSUMER PROTECTION MISSION

As the nation's primary consumer protection agency, the FTC has a broad mandate to protect consumers from unfair and deceptive practices in the marketplace, including fraud. We do this by, among other things, pursuing law enforcement actions to stop and deter unlawful

practices, and educating consumers and businesses about their rights and responsibilities. The FTC's enforcement and education efforts include working closely with federal, state, international, and private sector partners on joint initiatives.

The FTC has brought all of these tools to bear to fight scams involving the pandemic, including law enforcement actions, warning letters, consumer and business education, and national and local outreach. Simultaneously, we also are continuing the important day-to-day work of protecting privacy and data security, addressing fraud across most sectors of the economy, preventing unfair, deceptive, or discriminatory financing transactions, helping ensure that advertising claims to consumers are truthful and not misleading, and combating illegal robocalls. With Americans' physical and financial health on the line, we also have stepped up our consumer and business education and outreach, building COVID-specific webpages, drafting more than 100 blog posts and scam alerts, and partnering with other law enforcement partners and industry to reach all segments of the population.

The FTC's law enforcement orders prohibit defendants from engaging in further illegal activity, impose other compliance obligations, and in some cases, ban defendants from engaging in certain businesses altogether. Where appropriate, the FTC collects money to return to harmed consumers. During FY 2019, Commission actions resulted in the return of more than $822.4 million to consumers. Through the third quarter of FY 2020, Commission actions resulted in the return of more than $480.5 million to consumers.[7] The FTC also collected civil penalties worth

[7] Specifically, the Commission returned more than $100.7 million in redress to consumers, and FTC defendants provided an additional $379.8 million through self-administered consumer refund programs required by prior FTC settlements. *See, e.g.*, *FTC v. Volkswagen Group of America, Inc.*, No. 3:16-cv-1534 (N.D. Cal. May 17, 2017), https://www.ftc.gov/enforcement/cases-proceedings/162-3006/volkswagen-group-america-inc; *FTC v. The University of Phoenix, Inc. and Apollo Education Group, Inc.*, No. 2:19-cv-05772 (D. Ariz. Dec. 20, 2019), https://www.ftc.gov/enforcement/cases-proceedings/152-3231/university-phoenix-inc; *FTC v. AT&T Mobility LLC*, No. 3:14-cv-04785 (N.D. Cal. Dec. 04, 2019), https://www.ftc.gov/enforcement/cases-proceedings/122-3253/att-mobility-llc-mobile-data-service; *FTC v. The Western Union Company*, No. 1:17-cv-0110 (M.D. Pa. Jan. 20, 2017),

more than $5 billion pursuant to FTC orders—including in the *Facebook*[8] matter—and forwarded an additional $6.6 million to the U.S. Treasury through the third quarter of FY 2020, which represents redress funds that could not be distributed to consumers.

A. Protecting Consumer Privacy and Data Security

Since the enactment of the Fair Credit Reporting Act ("FCRA")[9] in 1970, the FTC has served as the chief federal agency charged with protecting consumer privacy. With the development of the internet as a commercial medium in the 1990s, the FTC expanded its focus on privacy to reflect the growing collection, use, and sharing of consumer data in the commercial marketplace.

The Commission's primary source of legal authority in the privacy and data security space is Section 5 of the FTC Act, which prohibits deceptive or unfair commercial practices.[10] Under Section 5 and other authorities granted by Congress, the FTC has aggressively pursued privacy and data security cases in myriad areas, including children's privacy, financial privacy, health privacy, and the Internet of Things.[11]

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https://www.ftc.gov/enforcement/cases-proceedings/122-3208/western-union-company; *FTC v. Fashion Nova, Inc.*, No. 2:20-cv-03641 (C.D. Cal. Apr. 20, 2020), https://www.ftc.gov/enforcement/cases-proceedings/182-3031/fashion-nova-inc. Also, in September 2019, a court approved a $170 million judgment, including $136 million in civil penalties that the Commission and New York Attorney General negotiated with Google and YouTube. FTC Press Release, *Google and YouTube Will Pay Record $170 Million for Alleged Violations of Children's Privacy Law* (Sept. 4, 2019), https://www.ftc.gov/news-events/press-releases/2019/09/google-youtube-will-pay-record-170-million-alleged-violations.

[8] In April 2020, a court approved the record-breaking $5 billion penalty the FTC negotiated with Facebook. FTC Press Release, *FTC Gives Final Approval to Modify FTC's 2012 Privacy Order with Facebook with Provisions from 2019 Settlement* (Apr. 28, 2020), https://www.ftc.gov/news-events/press-releases/2020/04/ftc-gives-final-approval-modify-ftcs-2012-privacy-order-facebook.

[9] 15 U.S.C. §§ 1681-1681x. Among other things, the FCRA prohibits the unauthorized disclosure of sensitive data used for credit, employment, and other decisions.

[10] 15 U.S.C. § 45. The Commission also enforces sector-specific statutes containing privacy and data security provisions, such as the Gramm-Leach-Bliley Act ("GLB Act"), Pub. L. No. 106-102, 113 Stat. 1338 (1999) (codified as amended in scattered sections of 12 and 15 U.S.C.), and the Children's Online Privacy Protection Act ("COPPA"), 15 U.S.C. §§ 6501-6506.

[11] *See, e.g.*, FTC Press Release, *FTC Releases 2019 Privacy and Data Security Update* (Feb. 25, 2020), https://www.ftc.gov/news-events/press-releases/2020/02/ftc-releases-2019-privacy-data-security-update.

In total, we have brought about 80 general privacy cases, more than 70 data security cases, more than 100 spam cases (with more than $100 million ordered in monetary relief), 30 cases enforcing the Children's Online Privacy Protection Act ("COPPA") (with more than $180 million in civil penalties), more than 100 cases enforcing the FCRA (with more than $40 million in civil penalties), 147 cases alleging violations of Do Not Call (with orders totaling $1.7 billion in civil penalties, redress, or disgorgement, and actual collections exceeding $160 million), and 106 cases enforcing the Fair Debt Collection Practices Act (with more than $700 million ordered in monetary relief). In addition to our enforcement work, in the privacy and security area, we have hosted about 75 workshops and issued approximately 50 reports.

Most notably, in April 2020, the Commission obtained court approval of its settlement with Facebook, Inc. and modified its 2012 administrative order.[12] This settlement resolved a six-count complaint that the company violated the 2012 order by deceiving users about their ability to control the privacy of their personal information, among other things, and also violated the FTC Act.[13] In addition to a $5 billion penalty for violating the order, the modified order places additional restrictions and obligations on Facebook's business operations as they relate to privacy.[14]

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[12] FTC Press Release, *FTC Gives Final Approval to Modify FTC's 2012 Privacy Order with Facebook with Provisions from 2019 Settlement* (Apr. 28, 2020), https://www.ftc.gov/news-events/press-releases/2020/04/ftc-gives-final-approval-modify-ftcs-2012-privacy-order-facebook.

[13] FTC Press Release, *FTC Imposes $5 Billion Penalty and Sweeping New Privacy Restrictions on Facebook* (July 24, 2019), https://www.ftc.gov/news-events/press-releases/2019/07/ftc-imposes-5-billion-penalty-sweeping-new-privacy-restrictions.

[14] Relatedly, the Commission also issued an opinion against Cambridge Analytica, and approved settlements with a Cambridge Analytica executive and an app developer, relating to the collection, sharing, and/or use of data obtained from Facebook users. *See* FTC Press Release, *FTC Issues Opinion and Order Against Cambridge Analytica For Deceiving Consumers About the Collection of Facebook Data, Compliance with EU-U.S. Privacy Shield* (Dec. 6, 2019), https://www.ftc.gov/news-events/press-releases/2019/12/ftc-issues-opinion-order-against-cambridge-analytica-deceiving; *see also* FTC Press Release, *FTC Grants Final Approval to Settlement with Former Cambridge Analytica CEO, App Developer over Allegations they Deceived Consumers over Collection of Facebook Data* (Dec. 19, 2019), https://www.ftc.gov/news-events/press-releases/2019/12/ftc-grants-final-approval-settlement-former-cambridge-analytica.

Using its enforcement authority under COPPA, the Commission also has been active in protecting children's privacy. In September 2019, the Commission announced a settlement against Google LLC and its subsidiary YouTube, LLC. The settlement resolves charges by the FTC and the New York Attorney General that the YouTube video sharing service violated COPPA by illegally collected persistent identifiers, which are used to track users across the internet, from children without their parents' consent.[15] The defendants agreed to injunctive relief and a $170 million monetary judgment. Most recently, the Commission enforced the COPPA Rule against an app developer that allowed third-party ad networks to collect personal information in the form of persistent identifiers, without notifying parents or obtaining verifiable parental consent.[16]

The Commission also continues to take action against companies that fail to protect consumer data. In July 2019, credit reporting agency Equifax Inc. agreed to pay at least $575 million, and potentially up to $700 million, as part of a global settlement with the FTC, the Consumer Financial Protection Bureau ("CFPB"), and 50 U.S. states and territories.[17] The complaint alleged that the company's failure to take reasonable steps to secure its network led to a data breach in 2017 that affected approximately 147 million people, exposing millions of names and dates of birth, Social Security numbers, physical addresses, and other personal information that could lead to identity theft and fraud. In addition to monetary relief, the order

[15] FTC Press Release, *Google and YouTube Will Pay Record $170 Million for Alleged Violations of Children's Privacy Law* (Sept. 4, 2019), https://www.ftc.gov/news-events/press-releases/2019/09/google-youtube-will-pay-record-170-million-alleged-violations.
[16] FTC Press Release, *Developer of Apps Popular with Children Agrees to Settle FTC Allegations It Illegally Collected Kids' Data without Parental Consent* (June 4, 2020), https://www.ftc.gov/news-events/press-releases/2020/06/developer-apps-popular-children-agrees-settle-ftc-allegations-it.
[17] FTC Press Release, *Equifax to Pay $575 Million as Part of Settlement with FTC, CFPB, and States Related to 2017 Data Breach* (July 22, 2019), https://www.ftc.gov/news-events/press-releases/2019/07/equifax-pay-575-million-part-settlement-ftc-cfpb-states-related.

requires the company, among other things, to implement a comprehensive information security program and to obtain third-party assessments of that program every two years.

Notably in the data security area, the Commission has sought to improve the effectiveness of its orders. In recent data security cases involving entities as diverse as an auto dealer management service provider,[18] a multi-level marketing company service provider,[19] an internet router manufacturer,[20] and a smartwatch manufacturer,[21] the Commission has required board-level oversight of data security issues where appropriate, set forth more specific requirements (e.g., requirements to encrypt data and segment networks), and improved the accountability of third-party data security assessors.

Section 5, which we use to bring our general privacy and data security cases, is not without its limitations. In fact, Section 5 is a general consumer protection statute enacted in the early 20th century that we use to tackle modern technologies. To better equip the Commission to meet its statutory mission to protect consumers, we urge Congress to enact privacy and data security legislation, enforceable by the FTC, which grants the agency civil penalty authority, authority to issue targeted rules under the Administrative Procedure Act, and jurisdiction over non-profits and common carriers.[22]

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[18] FTC Press Release, *FTC Gives Final Approval to Settlement with Auto Dealer Software Company That Allegedly Failed to Protect Consumers' Data* (Sept. 6, 2019), https://www.ftc.gov/news-events/press-releases/2019/09/ftc-gives-final-approval-settlement-auto-dealer-software-company.

[19] FTC Press Release, *Utah Company Settles FTC Allegations it Failed to Safeguard Consumer Data* (Nov. 12, 2019), https://www.ftc.gov/news-events/press-releases/2019/11/utah-company-settles-ftc-allegations-it-failed-safeguard-consumer.

[20] FTC Press Release, *D-Link Agrees to Make Security Enhancements to Settle FTC Litigation* (July 2, 2019), https://www.ftc.gov/news-events/press-releases/2019/07/d-link-agrees-make-security-enhancements-settle-ftc-litigation.

[21] FTC Press Release, *Canadian Maker of Smart Locks Settles FTC Allegations That it Deceived Consumers about its Security Practices* (Apr. 6, 2020), https://www.ftc.gov/news-events/press-releases/2020/04/canadian-maker-smart-locks-settles-ftc-allegations-it-deceived.

[22] Commissioner Noah Joshua Phillips supports congressional efforts to consider consumer data privacy legislation. He believes legislation should be based on harms that Congress agrees warrant a remedy, and that tools like penalties and rulemaking should be calibrated carefully to address those harms. Commissioner Phillips believes

While the Commission believes new authority could be very beneficial for American consumers, we strive to continue to use every tool currently at our disposal to address consumer harm. Despite the relatively small number of employees dedicated to privacy enforcement, we aim to use our existing resources effectively, and we have brought more cases and obtained larger fines than any other privacy enforcement agency in the world. However, with additional resources, we could better ensure that American consumers' privacy is protected.

We currently have well under the number of FTEs that data protection authorities in other, much smaller, countries have. Our Division of Privacy and Identity Protection includes 40-45 employees and its work is supplemented by the privacy-related work of other units within the FTC's Bureau of Consumer Protection. For example, the Enforcement Division enforces our privacy and data security orders, including against Facebook and Google; the Division of Marketing Practices enforces the Do Not Call Rule and CAN-SPAM; the Division of Financial Practices enforces the Fair Debt Collection Practices Act; the Division of Consumer and Business Education and the Division of Consumer Response and Operations are responsible for our identity theft program, including IdentityTheft.gov; the Division of Litigation Technology and Analysis employs several technologists and other professionals who focus on research and development; and the FTC regional offices bring privacy and security cases. Despite dedicating these resources to privacy, we possess far fewer resources than other countries for addressing privacy issues.

Congress should also give appropriate consideration to the trade-offs involved in new regulation, and, with regard to rulemaking, reserve to itself fundamental value judgments appropriately made by the legislature. Finally, Commissioner Phillips believes data security legislation is a critical step Congress should also take to protect consumer privacy.

In addition to its enforcement efforts in the privacy and data security areas, the Commission seeks to improve agency decision-making through its policy initiatives. The Commission is currently examining whether regulatory changes are needed in the COPPA Rule in light of advancements in technology or other developments.[23] On July 13, 2020, the Commission hosted a workshop examining proposed changes to the Gramm-Leach-Bliley Safeguards Rule.[24] Last month, the FTC also held its fifth PrivacyCon, an annual event that explores evolving privacy and data security research.[25]

The Commission also is empowered to conduct industry studies under Section 6(b) of the FTC Act, including those related to privacy and data security.[26] In 2019, we issued orders to several internet service providers to evaluate their privacy practices.[27] As we have in the past, we will use the information we learn from this study to better inform our policy and enforcement work.

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[23] Federal Register, Request for Public Comment on the Federal Trade Commission's Implementation of the Children's Online Privacy Protection Rule (July 25, 2019), https://www.federalregister.gov/documents/2019/07/25/2019-15754/request-for-public-comment-on-the-federal-trade-commissions-implementation-of-the-childrens-online. *See also* FTC Press Release, *FTC to Host Workshop on October 7 to Examine COPPA Rule* (Oct. 4, 2019), https://www.ftc.gov/news-events/press-releases/2019/10/ftc-host-workshop-october-7-examine-coppa-rule; The Future of the COPPA Rule: An FTC Workshop event page, https://www.ftc.gov/news-events/events-calendar/future-coppa-rule-ftc-workshop.

[24] FTC Press Release, *FTC to Host Workshop Examining Issues Related to Proposed Amendments to the Safeguards Rule* (Mar. 2, 2020), https://www.ftc.gov/news-events/press-releases/2020/03/ftc-host-workshop-examining-issues-related-proposed-amendments; *see also* Information Security and Financial Institutions: FTC Workshop to Examine Safeguards Rule event page, https://www.ftc.gov/news-events/events-calendar/information-security-financial-institutions-ftc-workshop-examine.

[25] FTC Press Release, *FTC Announces PrivacyCon 2020 and Calls for Research Presentations* (Oct. 11, 2019), https://www.ftc.gov/news-events/press-releases/2019/10/ftc-announces-privacycon-2020-calls-research-presentations; *see also* PrivacyCon 2020 event page, https://www.ftc.gov/news-events/events-calendar/privacycon-2020.

[26] 15 U.S.C. § 46(b).

[27] FTC Press Release, *FTC Seeks to Examine the Privacy Practices of Broadband Providers* (Mar. 26, 2019), https://www.ftc.gov/news-events/press-releases/2019/03/ftc-seeks-examine-privacy-practices-broadband-providers; *see also* FTC Press Release, *FTC Revises List of Companies Subject to Broadband Privacy Study* (Aug. 29, 2019), https://www.ftc.gov/news-events/press-releases/2019/08/ftc-revises-list-companies-subject-broadband-privacy-study.

Consumer and business education also is an important part of the Commission's privacy toolkit. To further our privacy and data security mission, the agency has published consumer and business education materials on artificial intelligence,[28] edtech,[29] and cloud computing.[30] More recently, we have focused on providing privacy education materials related to the pandemic.[31] For example, in April, given the exponential rise in virtual learning, and with school districts increasingly offering educational services online, we issued guidance to parents, schools, and educational technology companies on how to protect student privacy.[32] We also issued guidance on privacy and security for videoconferencing services, as well as guidance to businesses on how to use data responsibly to further public health purposes during the pandemic in a privacy-protective way.[33]

Finally, many of the FTC's privacy and data security investigations and cases involve complex facts and technologies and well-financed defendants, which require retaining costly outside experts. It is critical that the FTC has sufficient resources to support its investigative and

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[28] FTC Business Blog, *Using Artificial Intelligence and Algorithms* (Apr. 8, 2020), https://www.ftc.gov/news-events/blogs/business-blog/2020/04/using-artificial-intelligence-algorithms.

[29] FTC Business Blog, *COPPA Guidance for Ed Tech Companies and Schools during the Coronavirus* (Apr. 9, 2020), https://www.ftc.gov/news-events/blogs/business-blog/2020/04/coppa-guidance-ed-tech-companies-schools-during-coronavirus; FTC Consumer Blog, *Remote learning and children's privacy* (Apr. 9, 2020), https://www.consumer.ftc.gov/blog/2020/04/remote-learning-and-childrens-privacy.

[30] FTC Business Blog, *Six steps toward more secure cloud computing* (June 15, 2020), https://www.ftc.gov/news-events/blogs/business-blog/2020/06/six-steps-toward-more-secure-cloud-computing.

[31] FTC Business Blog, *Privacy during coronavirus* (June 19, 2020), https://www.ftc.gov/news-events/blogs/business-blog/2020/06/privacy-during-coronavirus.

[32] FTC Business Blog, *COPPA Guidance for Ed Tech Companies and Schools during the Corona*virus (Apr. 9, 2020), https://www.ftc.gov/news-events/blogs/business-blog/2020/04/coppa-guidance-ed-tech-companies-schools-during-coronavirus; FTC Consumer Blog, *Remote learning and children's privacy* (Apr. 9, 2020), https://www.consumer.ftc.gov/blog/2020/04/remote-learning-and-childrens-privacy

[33] FTC Business Blog, *Video conferencing: 10 privacy tips for your business* (Apr. 16, 2020), https://www.ftc.gov/news-events/blogs/business-blog/2020/04/video-conferencing-10-privacy-tips-your-business; FTC Consumer Blog, *Stay safe while video conferencing* (Apr. 16, 2020), https://www.consumer.ftc.gov/blog/2020/04/stay-safe-while-video-conferencing; *see also* FTC Business Blog, *Privacy during coronavirus* (June 19, 2020), https://www.ftc.gov/news-events/blogs/business-blog/2020/06/privacy-during-coronavirus.

litigation needs, including expert work, particularly as demands for enforcement in this area continue to grow.

B. Protecting Consumers from Fraud

Fighting fraud is a major focus of the FTC's law enforcement efforts. The Commission's anti-fraud program tracks down and stops some of the most egregious scams that prey on U.S. consumers—often, the most vulnerable consumers who can least afford to lose money.

In 2020, imposter scams remained the top consumer fraud complaint. In fact, in just the first six months of 2020, the FTC received 168,818 reports about imposter scams, of which more than 62,970 were about government imposters. The FTC has filed multiple cases against defendants who deceptively pose as the government or well-known tech companies,[34] and the FTC continues to coordinate with law enforcement partners to monitor the marketplace and bring cases where appropriate.

In the wake of the pandemic, unscrupulous businesses have begun posing as the Small Business Administration ("SBA"). To combat this newly emerging fraud, the FTC—in conjunction with the SBA—issued eight warning letters to companies making potentially misleading claims about federal loans or other temporary small business relief, and potentially

[34] *See, e.g.*, FTC Press Release, *Operators of Tech Support Scam Settle FTC Allegations they Tricked Consumers into Buying Computer Repair Services* (Dec. 10, 2019), https://www.ftc.gov/news-events/press-releases/2019/12/operators-tech-support-scam-settle-ftc-allegations-they-tricked; FTC Press Release, *American Immigration Center Settles with FTC on Government Imposter Allegations* (Oct. 16, 2018), https://www.ftc.gov/news-events/press-releases/2018/10/american-immigration-center-settles-ftc-government-imposter. The court entered the Stipulated Order for Permanent Injunction and Monetary Judgment against the defendants on December 7, 2018. *See also* FTC Press Release, *FTC Takes Action against the Operators of Copycat Military Websites* (Sept. 6, 2018), https://www.ftc.gov/news-events/press-releases/2018/09/ftc-takes-action-against-operators-copycat-military-websites. The Commission has also taken action against companies that used deceptively-generated sales leads from Sunkey and others to market their schools. FTC Press Release, *Operator of Colorado Technical University and American InterContinental University Will Pay $30 Million to Settle FTC Charges it Used Deceptive Lead Generators to Market its Schools* (Aug. 27, 2019), https://www.ftc.gov/news-events/press-releases/2019/08/operator-colorado-technical-university-american-intercontinental.

deceiving consumers into believing that they are affiliated with the SBA.[35] In April 2020, the FTC also took action to stop a company the FTC charged with deceptively claiming to be an approved lender for the federal coronavirus relief lending program for small businesses.[36]

The Commission has a long history of focusing on halting fraud that targets older consumers, and the last year was no different. For example, the Commission recently brought a case against Online Trading Academy, charging that the company targeted older Americans and claimed to teach them how to make substantial income in the financial markets through its training, which often cost as much as $50,000.[37] The Commission also recently completed a month-long trial against the defendants in Sanctuary Belize, a massive land sale scam that allegedly bilked consumers out of nearly $140 million, largely from retirees.[38]

Many of the Commission's law enforcement actions address scams that target those already struggling with debt and credit issues. For example, earlier this year, the Commission obtained settlements in the *Grand Teton Professionals* matter that permanently ban the owners of an alleged bogus credit repair scam from future credit repair activities and provide over $11 million in monetary relief.[39] The Commission also obtained bans and an $18.5 million

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[35] *See* FTC Press Release, *FTC and SBA Warn Six Companies to Stop Potentially Misleading Marketing Aimed at Small Businesses Seeking Coronavirus Relief Loans* (June 24, 2020), https://edit.ftc.gov/news-events/press-releases/2020/06/ftc-sba-warn-six-companies-stop-potentially-misleading-marketing; FTC Press Release, *FTC and SBA Warn Operator of SBA.com and Lead Generator Lendio to Stop Potentially Misleading Coronavirus Relief Loan Marketing* (May 18, 2020), https://www.ftc.gov/news-events/press-releases/2020/05/ftc-sba-warn-operator-sbacom-lead-generator-lendio-stop.

[36] FTC Press Release, *FTC Takes Action to Stop Company Posing as SBA Lender and Preying on Small Businesses* (Apr. 17, 2020), https://www.ftc.gov/news-events/press-releases/2020/04/ftc-takes-action-stop-company-posing-sba-lender-preying-small.

[37] *FTC v. OTA Franchise Corporation*, No. 8:20-cv-00287 (C.D. Cal. Feb. 12, 2020). In April 2020, the court issued a preliminary injunction against Online Trading Academy, which bars it from using false or unfounded earnings claims and freezes assets for potential consumer redress. FTC Press Release, *FTC Obtains Preliminary Injunction Against Investor Training Scheme Online Trading Academy* (Apr. 7, 2020), https://www.ftc.gov/news-events/press-releases/2020/04/ftc-obtains-preliminary-injunction-against-investor-training.

[38] *In re Sanctuary Belize Litigation*, No. 1:18-cv-03309 (D. Md. Nov. 8, 2018).

[39] FTC Press Release, *Defendants in FTC Credit Repair Scheme Case Agree to Settle Charges* (Jan. 17, 2020), https://www.ftc.gov/news-events/press-releases/2020/01/defendants-ftc-credit-repair-scheme-case-agree-settle-charges. Similarly, in July 2019, the Commission's case against Educare Centre Services halted a telemarketing

judgment against the Preferred Law defendants, who preyed on financially distressed consumers by falsely promising to make their mortgages more affordable.[40] The Commission also has been active in stopping debt-relief scams targeting students.[41] For example, in July 2020, the FTC won summary judgment against a student loan scheme run by Mission Hills Federal. In that case, the judge banned the operators from telemarketing and debt relief activities and ordered over $27 million in monetary relief for consumers.[42]

The FTC also continues to target business opportunity and coaching and mentoring scams that prey on people seeking extra household income. In June 2019, the FTC sued the operators of "8 Figure Dream Lifestyle" and "Online Entrepreneur Academy," alleging that the defendants falsely claimed—at times using illegal robocalls—that consumers could make $10,000 or more in 60 to 90 days using defendants' programs.[43] More recently, the Commission halted the operations of two large real estate training schemes, Zurixx and Nudge, which allegedly used TV celebrities and lavish false or unfounded earnings claims to bilk consumers out of at least $900

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credit card interest reduction scheme run by Canadian nationals that allegedly preyed on U.S. consumers with false promises of debt reduction. FTC Press Release, *FTC and Ohio Stop Rogue Payment Processor and a Credit Card Interest-Reduction Telemarketing Scheme that Allegedly Worked Together to Scam Consumers* (July 29, 2019), https://www.ftc.gov/news-events/press-releases/2019/07/ftc-ohio-stop-rogue-payment-processor-credit-card-interest.

[40] FTC Press Release, *Court Rules in Favor of FTC Against Mortgage Scammers* (Dec. 30, 2019) https://www.ftc.gov/news-events/press-releases/2019/12/court-rules-favor-ftc-case-against-mortgage-relief-scammers.

[41] *See, e.g.*, FTC Press Release, *Ringleader of Student Loan Debt Relief Scheme Liable for $11 Million in Settlement of FTC Charges* (May 30, 2019), https://www.ftc.gov/news-events/press-releases/2019/05/ringleader-student-loan-debt-relief-scheme-liable-11-million; FTC Press Release, *Three Defendants in Student Debt Relief Scheme Banned from Selling Debt Relief and Telemarketing* (Mar. 10, 2020), https://www.ftc.gov/news-events/press-releases/2020/03/three-defendants-student-debt-relief-scheme-banned-selling-debt.

[42] FTC Press Release, *Court Rules in FTC's Favor Against Student Debt Relief Scammers* (July 20, 2020), https://www.ftc.gov/news-events/press-releases/2020/07/court-rules-ftcs-favor-against-student-debt-relief-scammers.

[43] FTC Press Release, *FTC, Law Enforcement Partners Announce New Crackdown on Illegal Robocalls* (June 25, 2019), https://www.ftc.gov/news-events/press-releases/2019/06/ftc-law-enforcement-partners-announce-new-crackdown-illegal. Similarly, in *Digital Altitude*, the Commission shuttered an online business coaching operation that the Commission alleged defrauded consumers out of millions of dollars—some individuals paid more than $50,000 for defendants' services. FTC Press Release, *FTC Obtains Court Order Halting Business Coaching Scheme* (Feb. 8, 2018), https://www.ftc.gov/news-events/press-releases/2018/02/ftc-obtains-court-order-halting-business-coaching-scheme.

million.[44] The FTC also recently has sued or settled with several multi-level marketers alleging they operated as pyramid schemes.[45]

The FTC strives to stay ahead of fraudsters by analyzing complaints received in our Sentinel complaint database. To help our law enforcement partners—and to help raise public awareness about fraud—the FTC has recently built interactive dashboards to make Sentinel data more accessible.[46] These dashboards, which provide a bird's eye view of the types of fraud in a particular state or metropolitan area, help enforcers and others more effectively target fraud and protect and warn consumers. In March 2020, the FTC also began publishing aggregated statistics on complaints related to COVID-19 and, beginning in June 2020, started publishing a daily series of interactive dashboards that allow COVID-related complaints tracking in real-time.[47]

In addition, the FTC recently published a data spotlight focusing on online shopping, the top complaint category related to the pandemic.[48] The spotlight uses data to illustrate how fraudsters are targeting consumers during the pandemic, such as non-delivery scams for face masks and hand sanitizer, and provides consumer tips for avoiding these schemes.

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[44] The Commission charges that Zurixx took more than $500 million, and Nudge more than $400 million, from consumers. FTC Press Release, *FTC Expands Its Case Against Zurixx Real Estate Seminar Scheme* (May 20, 2020), https://www.ftc.gov/news-events/press-releases/2020/05/ftc-expands-its-case-against-zurixx-real-estate-seminar-scheme; FTC Press Release, *FTC Acts to Shut Down Companies Operating Real Estate Seminar Scheme* (Nov. 5, 2019), https://www.ftc.gov/news-events/press-releases/2019/11/ftc-acts-shut-down-companies-operating-real-estate-seminar-scheme.

[45] FTC Press Release, *FTC Acts to Shut Down 'Success by Health' Instant Coffee Pyramid Scheme* (Jan. 16, 2020), https://www.ftc.gov/news-events/press-releases/2020/01/ftc-acts-shut-down-success-health-instant-coffee-pyramid-scheme; FTC Press Release, *FTC Sues Multi-Level Marketer Neora, formerly known as Nerium, Alleging it Operates as an Illegal Pyramid Scheme* (Nov. 1, 2019), https://www.ftc.gov/news-events/press-releases/2019/11/ftc-sues-multi-level-marketer-neora-formerly-known-nerium; FTC Press Release, *Multi-Level Marketer AdvoCare Will Pay $150 Million To Settle FTC Charges it Operated an Illegal Pyramid Scheme* (Oct. 2, 2019), https://www.ftc.gov/news-events/press-releases/2019/10/multi-level-marketer-advocare-will-pay-150-million-settle-ftc.

[46] *See* https://public.tableau.com/profile/federal.trade.commission#!/.

[47] *See* https://public.tableau.com/profile/federal.trade.commission#!/vizhome/COVID-19andStimulusReports/Map.

[48] FTC Data Spotlight, *Pandemic Purchases Lead to Record Reports of Unreceived Goods* (July 1, 2020), https://www.ftc.gov/news-events/blogs/data-spotlight/2020/07/pandemic-purchases-lead-record-reports-unreceived-goods.

C. Protecting Consumers from Unfair, Deceptive, or Discriminatory Financing Transactions

The FTC is also focused on protecting consumers in financing transactions. Many consumers rely on financing to pay for important purchases. It is thus important for consumers who seek financing to be able to count on truthful and accurate information to evaluate their financing options, and to be treated fairly and in a non-discriminatory manner when engaging in financing transactions. The FTC has taken a number of actions to protect consumers from deceptive, unfair, or discriminatory financing transactions.

In April, the FTC obtained a $175 million settlement against Progressive Leasing, a company that markets rent-to-own payment plans in retail stores nationwide, to resolve the FTC's allegations that the company misled consumers about the true price of items purchased through its plans.[49] Then in May, the FTC secured a $1.5 million settlement against an auto dealer and its manager in a novel case alleging violations of Equal Credit Opportunity Act (ECOA) for discriminating against African-American and Hispanic car buyers, and for deceptively and unfairly charging unnecessary fees and charges, as alleged in the FTC complaint.[50]

In addition to protecting individual consumers, the FTC has broad jurisdiction under the FTC Act and other laws to stop deceptive, unfair, and other unlawful practices that target small businesses. In June 2020, the FTC sued RCG Advances LLC, a related company, and several officers and managers for operating a small business financing operation that allegedly used

[49] FTC Press Release, *Rent-To-Own Payment Plan Company Progressive Leasing Will Pay $175 Million to Settle FTC Charges It Deceived Consumers About Pricing* (Apr. 20, 2020), https://www.ftc.gov/news-events/press-releases/2020/04/rent-own-payment-plan-company-progressive-leasing-will-pay-175.
[50] *See FTC v. Liberty Chevrolet, Inc. et al.*, No. 1:20-cv-03945 (May 21, 2020), https://www.ftc.gov/enforcement/cases-proceedings/162-3238/bronx-honda.

deception and threats of physical harm to seize personal and business assets from small businesses, non-profits, religious organizations, and medical offices.[51]

D. Truthfulness in National Advertising

Ensuring that advertising is truthful and not misleading has long been one of the FTC's core missions. Truthful advertising allows consumers to make well-informed decisions about how to best use their resources and promotes the efficient functioning of market forces by encouraging the dissemination of accurate information.

The FTC continues to bring cases challenging false and unsubstantiated health claims, including cases against entities targeting consumers concerned about coronavirus, older consumers, consumers who seek health information online, and consumers affected by the opioid crisis. The Commission recently filed concurrent administrative and federal district court complaints challenging claims that a dietary supplement treats, prevents, or cures COVID-19 and that its efficacy is clinically proven.[52] The Commission has pursued marketers who targeted older consumers claiming their products were "cure-alls" for pain and inflammation and for age-related ailments.[53] We also challenged native advertising—commercial advertising masquerading as

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[51] FTC Press Release, *New York-Based Finance Companies Deceived Small Businesses, Non-Profits and Seized Their Personal and Business Assets, FTC Alleges* (June 10, 2020), https://www.ftc.gov/news-events/press-releases/2020/06/new-york-based-finance-companies-deceived-small-businesses.

[52] *Marc Ching*, FTC Docket No. 9394 (Apr. 22, 2020); *FTC v. Marc Ching*, No. 2:20-cv-3775 (C.D. Cal. Apr. 24, 2020). To date, the federal district court has approved a stipulated preliminary injunction against the defendant, and the Commission approved a proposed consent agreement that is pending public comment. FTC Press Release, *FTC Order Stops the Marketer of "Thrive" Supplement from Making Baseless Claims It Can Treat, Prevent, or Reduce the Risks from COVID-19* (July 10, 2020), https://www.ftc.gov/news-events/press-releases/2020/07/ftc-order-stops-marketer-thrive-supplement-making-baseless-claims.

[53] *See, e.g.*, *FTC v. Mile High Madison Grp., Inc.*, No. 1:20-cv-21622 (S.D. Fla. Apr. 17, 2020), https://www.ftc.gov/enforcement/cases-proceedings/172-3132-172-3143/nordic-clinical-inc-encore-plus-solutions-inc; *FTC v. Renaissance Health Publ'g, LLC*, No. 9:20-cv-80640 (S.D. Fla. Apr. 15, 2020), https://www.ftc.gov/enforcement/cases-proceedings/renaissance-health-matter; *FTC v. Health Center, Inc.*, No. 2:20-cv-00547 (D. Nev. Mar. 19, 2020), https://www.ftc.gov/enforcement/cases-proceedings/182-3002/health-center-inc; *FTC v. Quantum Wellness Botanical Inst., LLC*, No. 2:20-cv-00244 (D. Ariz. Feb. 3, 2020), https://www.ftc.gov/enforcement/cases-proceedings/172-3131/quantum-wellness-botanical-institute-llc; *FTC v. NatureCity, LLC*, No. 9:19-cv-81387 (S.D. Fla. Oct. 15, 2019), https://www.ftc.gov/enforcement/cases-proceedings/172-3153/naturecity-llc. We have also challenged claims that electrical stimulation devices will provide

editorial content—to deceptively sell health products,[54] as well as marketing that failed to disclose that it used paid social media influencers.[55] The Commission also has sued companies that claimed, allegedly without scientific evidence, that using their products could alleviate the symptoms of opioid withdrawal and increase the likelihood of overcoming opioid dependency.[56] In addition, pursuant to the recently enacted SUPPORT (Substance Use-Disorder Prevention that Promotes Opioid Recovery and Treatment) for Patients and Communities Act,[57] Congress has authorized the Commission to seek civil penalties for unfair or deceptive acts or practices with respect to substance use disorder treatment service or substance use disorder treatment products, and the FTC will use that authority where appropriate.[58]

In addition to health claims, the FTC has pursued enforcement action against companies that run national advertising campaigns making false or deceptive claims about job prospects and career earnings—a central concern for consumers considering higher education. For example, in December, the Commission announced a $191 million settlement with a for-profit school, the University of Phoenix, and its parent company, Apollo Education Group, to resolve charges that

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relief from pain, including pain throughout the body and chronic, severe pain and inflammation. *See FTC v. Physician's Technology, LLC*, No. 2:20-cv-11694 (E.D. Mich. June 25, 2020), https://www.ftc.gov/enforcement/cases-proceedings/172-3129/physicians-technology-llc; *FTC v. NeuroMetrix, Inc.*, No. 1:20-cv-10428 (D. Mass. Mar. 3, 2020), https://www.ftc.gov/enforcement/cases-proceedings/1723130/neurometrix-inc.

[54] *See, e.g.*, *FTC v. Glob. Cmty. Innovations LLC*, No. 5:19-CV-00788 (N.D. Ohio Apr. 10, 2019), https://www.ftc.gov/enforcement/cases-proceedings/162-3135/global-community-innovations-llc-et-al-geniux; *Creaxion Corp.*, No. C-4668 (Feb. 8, 2019), https://www.ftc.gov/enforcement/cases-proceedings/172-3066/creaxion-corp; *Inside Publ'ns, LLC*, No. C-4669 (Feb. 8, 2019), https://www.ftc.gov/enforcement/cases-proceedings/172-3067/inside-publications-llc.

[55] *FTC v. Teami, LLC*, No. 8:20-cv-00518 (M.D. Fla. Mar. 5, 2020), https://www.ftc.gov/enforcement/cases-proceedings/182-3174/teami-llc.

[56] *FTC v. Catlin Enters., Inc.*, No. 1:17-cv-403 (W.D. Tex. May 17, 2017), https://www.ftc.gov/enforcement/cases-proceedings/1623204/catlin-enterprises-inc. In addition, in conjunction with the FDA, the FTC issued letters to companies that appeared to be making questionable claims in order to sell addiction or withdrawal remedies. *See* FTC Press Release, *FTC, FDA Warn Companies about Marketing and Selling Opioid Cessation Products* (Jan. 24, 2018), https://www.ftc.gov/news-events/press-releases/2018/01/ftc-fda-warn-companies-about-marketing-selling-opioid-cessation.

[57] P.L. 115-271 (2018). This legislation included provisions affecting several agencies, including the Commission.

[58] *See* The Opioid Addiction Recovery Fraud Prevention Act of 2018, P.L. 115-271, 15 U.S.C. § 45d, *et seq*. (2018).

they used deceptive advertisements that falsely touted their relationships and their ability to provide job opportunities with companies such as AT&T, Yahoo!, Microsoft, Twitter, and The American Red Cross.[59]

One of the most effective ways to protect consumers from false claims is to remove the claims from the market quickly and efficiently. To accomplish this, the Commission has used warning letters to halt quickly proliferating scams. For example, since the pandemic began in March, we have issued joint warning letters with the Food and Drug Administration ("FDA") to more than seventy marketers regarding claims that their products will treat, cure, or prevent COVID-19, and there are additional warning letters in the pipeline.[60] The FTC also has issued its own warning letters to more than 200 additional marketers of COVID-19 products.[61] In addition, the Commission and FDA have issued joint warning letters to marketers who claim their dietary supplements and cannabidiol ("CBD") products treat or prevent other serious diseases, including Alzheimer's disease, cancer, and autism.[62] Overwhelmingly, companies that have received FTC

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[59] FTC Press Release, *FTC Obtains Record $191 Million Settlement from University of Phoenix to Resolve FTC Charges It Used Deceptive Advertising to Attract Prospective Students* (Dec. 10, 2019), https://www.ftc.gov/news-events/press-releases/2019/12/ftc-obtains-record-191-million-settlement-university-phoenix.

[60] *See* FTC, *Coronavirus Warning Letters*, https://www.ftc.gov/coronavirus/warning-letters. Please note that this webpage is continuously updated.

[61] In addition to targeting health claims, some of the warning letters addressed allegedly unsubstantiated claims that consumers recently out of work could earn significant income through involvement with multi-level marketing. *See* FTC Press Release, *FTC Sends Warning Letters to Multi-Level Marketers Regarding Health and Earnings Claims They or Their Participants are Making Related to Coronavirus* (Apr. 24, 2020), https://www.ftc.gov/news-events/press-releases/2020/04/ftc-sends-warning-letters-multi-level-marketers-regarding-health; FTC Press Release, *FTC Sends Second Round of Warning Letters to Multi-Level Marketers Regarding Coronavirus Related Health and Earnings Claims* (June 5, 2020), https://www.ftc.gov/news-events/press-releases/2020/06/second-round-warning-letters-to-mlms-regarding-coronavirus. A vast majority of the claims at issue have been taken down.

[62] *See* FTC Press Release, *FTC and FDA Warn Florida Company Marketing CBD Products about Claims Related to Treating Autism, ADHD, Parkinson's, Alzheimer's, and Other Medical Conditions* (Oct. 22, 2019), https://www.ftc.gov/news-events/press-releases/2019/10/ftc-fda-warn-florida-company-marketing-cbd-products-about-claims; FTC Press Release, *FTC Joins FDA in Sending Warning Letters to Companies Advertising and Selling Products Containing Cannabidiol (CBD) Claiming to Treat Alzheimer's, Cancer, and Other Diseases* (Apr. 2, 2019), https://www.ftc.gov/news-events/press-releases/2019/04/ftc-joins-fda-sending-warning-letters-companies-advertising; FTC Press Release, *FTC and FDA Send Warning Letters to Companies Selling Dietary Supplements Claiming to Treat Alzheimer's Disease and Remediate or Cure Other Serious Illnesses Such as Parkinson's, Heart Disease, and Cancer* (Feb. 11, 2019), https://www.ftc.gov/news-events/press-releases/2019/02/ftc-fda-send-warning-letters-companies-selling-dietary.

warning letters these past several months have taken quick steps to correct their problematic claims. As a result, warning letters are frequently the most rapid and efficient means to address the problem. However, when a warning letter does not work, or is not appropriate given the conduct at issue, the FTC has pursued law enforcement.

When consumers with serious health concerns fall victim to unsupported health claims, they may put their health at risk by avoiding proven therapies and treatments. Thus, in addition to enforcement actions and warning letters, the FTC has launched consumer education campaigns. Through the FTC's advisories, the agency urges consumers to check with a medical professional before starting any treatment or product to treat serious medical conditions.[63] In response to the pandemic, we also launched a webpage, "Coronavirus Scams: What the FTC is Doing," available at www.ftc.gov/coronavirus, which provides consumer education regarding COVID-19 scams.

The Commission also has exercised its authority under the Consumer Review Fairness Act of 2016 ("CRFA").[64] We obtained orders with five companies to settle allegations that they violated the CRFA by including restrictions in consumer form contracts on consumers' ability to provide negative reviews.[65] The Commission also has continued to invoke this relatively new authority to challenge non-disparagement provisions used to facilitate, among other things, fraudulent business operations and real estate seminars.[66]

The Commission also hosts public workshops, where relevant stakeholders discuss emerging issues in the national advertising landscape, and promulgates rules and guides. Last

[63] FTC Consumer Blog, *Treatments and Cures*, https://www.consumer.ftc.gov/topics/treatments-cures.
[64] 15 U.S.C. § 45b.
[65] FTC Press Release, *FTC Approves Final Consent Orders with Five Companies that Allegedly Violated the Consumer Review Fairness Act* (Aug. 16, 2019), https://www.ftc.gov/news-events/press-releases/2019/08/ftc-approves-final-consent-orders-five-companies-allegedly.
[66] FTC Press Release, *Defendants in FTC Credit Repair Scheme Case Agree to Settle Charges* (Jan. 17, 2020), https://www.ftc.gov/news-events/press-releases/2020/01/defendants-ftc-credit-repair-scheme-case-agree-settle-charges; FTC Press Release, *FTC Acts Against Company Using Celebrity Endorsements, Bogus Earnings Claims to Sell Real Estate Seminars* (Oct. 4, 2019), https://www.ftc.gov/news-events/press-releases/2019/10/ftc-acts-against-company-using-celebrity-endorsements-bogus.

year, we held a workshop examining consumer protection issues in the online ticket sales market, and in May, Commission staff issued a Staff Perspective summarizing its observations about the workshop.[67] Last August, we hosted a workshop to explore consumer issues surrounding loot boxes in the video game industry, such as concerns with the marketing and use of loot boxes and other in-game purchases, and the potential behavioral impact of these virtual items on consumers, especially children.[68] In March, we co-hosted an "FDA/FTC Workshop on a Competitive Marketplace for Biosimilars," where we led a panel on truthful and non-misleading advertising and promotional communications.[69] Finally, in June, the Commission approved a final rule amending the Contact Lens Rule, which facilitates shopping for contact lenses by requiring prescribers to provide automatically a copy of a patient's prescription and to verify or provide prescriptions to third-party sellers.[70] When it goes into effect, the revised final rule, among other things, will provide confirmation that patients have received their contact lens prescriptions. The Commission also is undertaking regulatory review of its Guides Concerning the Use of Endorsements and Testimonials in Advertising.[71]

E. Illegal Robocalls

Illegal robocalls remain a significant consumer protection problem and one of consumers' top complaints to the FTC. Through the first nine months of FY2020, the FTC has received more than 2.7 million complaints about unwanted calls, including 1.9 million complaints about robocalls. The FTC has used all the tools at its disposal to fight these illegal

[67] FTC Press Release, *FTC Staff Perspective Recaps Online Event Tickets Workshop* (May 7, 2020), https://www.ftc.gov/news-events/press-releases/2020/05/ftc-staff-perspective-recaps-online-event-tickets-workshop.
[68] *See* FTC Workshop, *Inside the Game: Unlocking the Consumer Issues Surrounding Loot Boxes* (Aug. 7, 2019), https://www.ftc.gov/news-events/events-calendar/inside-game-unlocking-consumer-issues-surrounding-loot-boxes.
[69] *See* FTC Workshop, *FDA/FTC Workshop on a Competitive Marketplace for Biosimilars* (Mar. 9, 2020), https://www.ftc.gov/news-events/events-calendar/fda-ftc-workshop-competitive-marketplace-biosimilars.
[70] The Rule is codified at 16 C.F.R. Part 315. The final rule will be published in the Federal Register shortly.
[71] 16 C.F.R. Part 255.

calls and has brought 148 enforcement actions against 502 corporations and 398 individuals to date.[72]

The FTC's most recent law enforcement crackdown, "Operation Call It Quits," included 94 total actions by the FTC and 25 federal, state, and local agencies.[73] Collectively, the defendants in these cases were responsible for making more than a billion illegal robocalls to consumers nationwide. Other FTC cases reflect the FTC's robocall enforcement efforts. For example, in *Grand Bahama Cruise Line*, the FTC is litigating claims against defendants who allegedly made or facilitated millions of illegal calls to consumers pitching free cruise vacations.[74] In *Career Education Corporation*, the operator of several post-secondary schools agreed to pay $30 million to settle FTC charges that it used sales leads from lead generators that called consumers on the National Do Not Call Registry, making false representations that the callers were affiliated with the U.S. military.[75] The FTC also recently filed its first action against a Voice over Internet Protocol ("VoIP") service provider based on evidence that it provided

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[72] *See* FTC Robocall Initiatives, https://www.consumer.ftc.gov/features/feature-0025-robocalls. In its enforcement actions, the Commission has collected over $160 million in equitable monetary relief and civil penalties. *See* Enforcement of the Do Not Call Registry, https://www.ftc.gov/news-events/media-resources/do-not-call-registry/enforcement.

[73] *See* FTC Press Release, *FTC, Law Enforcement Partners Announce New Crackdown on Illegal Robocalls* (June 25, 2019), https://www.ftc.gov/news-events/press-releases/2019/06/ftc-law-enforcement-partners-announce-new-crackdown-illegal.

[74] *FTC v. Grand Bahama Cruise Line, LLC*, No. 6:20-cv-52 (M.D. Fla. filed Jan. 10, 2020), https://www.ftc.gov/enforcement/cases-proceedings/162-3005/grand-bahama-cruise-line-llc.

[75] *FTC v. Career Education Corp.*, No. 1:19-cv-5739 (N.D. Ill. filed Aug. 27, 2019), https://www.ftc.gov/enforcement/cases-proceedings/152-3264/career-education-corporation. There are many other recent cases in which the FTC has stopped illegal robocalls. *See, e.g.*, *U.S. v. Derek Jason Bartoli*, No. 6:19-cv-01160 (M.D. Fla. filed June 21, 2019), https://www.ftc.gov/enforcement/cases-proceedings/182-3105/derek-jason-bartoli (banning a robodialer responsible for more than 57 million calls to numbers on the Do Not Call Registry in just six months in 2017); *U.S. v. Media Mix 365*, No. 8:19-cv-01243 (C.D. Cal. filed June 21, 2019), https://www.ftc.gov/enforcement/cases-proceedings/182-3070/media-mix-365-llc (obtaining $264,000 in civil penalties from a solar panel lead generator and its owners who called millions of numbers on the National Do Not Call Registry); *FTC v. First Choice Horizon LLC*, No. 6:19-cv-1028 (M.D. Fla. filed June 3, 2019), https://www.ftc.gov/enforcement/cases-proceedings/172-3161-x190029/first-choice-horizon-llc (shutting down illegal robocalls allegedly used to contact financially distressed consumers with offers of bogus credit card interest rate reduction services). The Commission's case against fraudulent business opportunity 8 Figure Dream Lifestyle, described above, was also part of Operation Call it Quits. *See FTC v. 8 Figure Dream Lifestyle LLC*, No. 8:19-cv-01165 (C.D. Cal. filed June 12, 2019), https://www.ftc.gov/enforcement/cases-proceedings/182-3117/8-figure-dream-lifestyle-llc.

marketers the means to make the alleged illegal calls.[76] While there is more work to do and there were likely many factors—including more aggressive blocking by phone companies and warning letters from the FTC and others—the FTC has seen a sharp drop in the number of robocall complaints since bringing its first VoIP case in December 2019.[77]

Despite the FTC's vigorous law enforcement program, however, technological advances continue to permit bad actors to place millions or even billions of calls, often from abroad, at very low cost, and in ways that are difficult to trace. This phenomenon infuriates consumers and challenges enforcers. Recognizing that law enforcement, while critical, is not enough to solve the problem of illegal calls, the FTC has taken steps to spur the marketplace to develop technological solutions. For instance, from 2013 to 2015, the FTC led four public challenges to incentivize innovators to help tackle the unlawful robocalls that plague consumers, which led to a shift in the development and availability of technological solutions in this area.[78] The telecommunications industry also has developed a new framework, SHAKEN/STIR, to help limit illegitimate number spoofing and reduce illegal robocalls. Congress mandated the implementation of this or a similar framework in last year's TRACED Act.[79]

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[76] The FTC amended its complaint in the *Educare Centre Services* litigation to add Globex Telecom, Inc. *FTC v. Educare Centre Services, Inc.*, No. 3:19-cv-196 (W.D. Tex., Am. Compl. filed Dec. 3, 2019), https://www.ftc.gov/enforcement/cases-proceedings/192-3033/educare-centre-services-inc.

[77] *See* FTC Press Release, *Court Halts Operations of VoIP Service Provider after the FTC and Ohio Alleged that It Helped Promote Credit Card Interest Reduction Scheme* (Dec. 5, 2019), https://www.ftc.gov/news-events/press-releases/2019/12/court-halts-operations-voip-service-provider-after-ftc-ohio.

[78] The first challenge, in 2013, called upon the public to develop a consumer-facing solution to block illegal robocalls. One of the winners, "NomoRobo," was on the market within 6 months after being selected by the FTC. NomoRobo, which reports blocking over 600 million calls to date, is being offered directly to consumers by a number of telecommunications providers and is available as an app on iPhones. *See* FTC Press Release, *FTC Announces Robocall Challenge Winners* (Apr. 2, 2013), https://www.ftc.gov/news-events/press-releases/2013/04/ftc-announces-robocall-challenge-winners; *see also* FTC Press Release, *FTC Awards $25,000 Top Cash Prize for Contest-Winning Mobile App That Blocks Illegal Robocalls* (Aug. 17, 2015), https://www.ftc.gov/news-events/press-releases/2015/08/ftc-awards-25000-top-cash-prize-contest-winning-mobile-app-blocks; FTC Press Release, *FTC Announces Winners of "Zapping Rachel" Robocall Contest* (Aug. 28, 2014), https://www.ftc.gov/news-events/press-releases/2014/08/ftc-announces-winners-zapping-rachel-robocall-contest.

[79] Pub. L. No. 116-105, § 4, 133 Stat. 3274, 3276–80 (2019). Congress directed the FCC to establish a hospital protection working group in the Telephone Robocall Abuse Criminal Enforcement and Deterrence Act of 2019 (TRACED Act), Pub. L. No. 116-105, § 4, 133 Stat. 3274, 3276–80 (2019). Pursuant to the TRACED Act, on June

The FTC continues to engage with industry stakeholders and supports industry initiatives to authenticate caller ID numbers and curb illegal calling. For example, the FTC sent 15 warning letters to VoIP service providers and others that may have been assisting and facilitating the transmission of robocalls using coronavirus-related messages (six of the letters were sent jointly with the FCC).[80] To identify these entities, the FTC used information provided by the USTelecom Industry Traceback Group, a collaborative effort of companies across the wireline, wireless, VoIP, and cable industries that actively trace and identify the source of illegal robocalls.[81] The FTC also regularly works with its state, federal, and international partners to combat illegal robocalls.[82]

For many years, the Commission has recommended eliminating the common carrier exemption to our jurisdiction. The exemption is outdated and no longer makes sense in today's marketplace where the lines between telecommunications and other services are increasingly

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25, 2020, the FCC established the Hospital Robocall Protection Group (HRPG), a federal advisory committee dedicated to combatting robocalls to hospitals.

[80] FTC Press Release, *FTC and FCC Send Joint Letters to VoIP Service Providers Warning against 'Routing and Transmitting' Illegal Coronavirus-related Robocalls* (Apr. 3, 2020), https://www.ftc.gov/news-events/press-releases/2020/04/ftc-fcc-send-joint-letters-voip-service-providers-warning-against; FTC Press Release, *FTC and FCC Send Joint Letters to Additional VoIP Providers Warning against 'Routing and Transmitting' Illegal Coronavirus-related Robocalls* (May 20, 2020), https://www.ftc.gov/news-events/press-releases/2020/05/ftc-fcc-send-joint-letters-additional-voip-providers-warning.

[81] *FTC Coronavirus Warning Letters to Companies*, https://www.ftc.gov/coronavirus/enforcement/warning-letters. On July 27, 2020, the FCC's Enforcement Bureau designated the USTelecom Industry Traceback Group as the official consortium for coordinating industry-led efforts to trace back the origin of suspected unlawful robocalls. https://www.fcc.gov/document/fcc-designates-robocall-traceback-manager.

[82] *See, e.g.*, FTC Press Release, *FTC and FCC to Host Joint Policy Forum on Illegal Robocalls* (Mar. 22, 2018), www.ftc.gov/news-events/press-releases/2018/03/ftc-fcc-host-joint-policy-forum-illegal-robocalls; FTC Press Release, *FTC and FCC Seek Exhibitors for an Expo Featuring Technologies to Block Illegal Robocalls* (Mar. 7, 2018), www.ftc.gov/news-events/press-releases/2018/03/ftc-fcc-seek-exhibitors-expo-featuring-technologies-block-illegal; *see also* Memorandum of Understanding Among Public Authorities of the Unsolicited Communications Enforcement Network Pertaining to Unlawful Telecommunications and SPAM (May 2016), https://www.ftc.gov/policy/cooperation-agreements/international-unlawful-telecommunications-spam-enforcement-cooperation; FTC Press Release, *FTC Signs Memorandum of Understanding With Canadian Agency To Strengthen Cooperation on Do Not Call, Spam Enforcement* (Mar. 24, 2016), https://www.ftc.gov/news-events/press-releases/2016/03/ftc-signs-memorandum-understanding-canadian-agency-strengthen. The FTC also held a workshop in January 2020 titled "You Don't Say: An FTC Workshop on Voice Cloning Technologies" that examined the use of cloned voices to perpetuate telemarketing fraud. *See* FTC Workshop, *You Don't Say: An FTC Workshop on Voice Cloning Technologies* (Jan. 28, 2020), https://www.ftc.gov/news-events/events-calendar/you-dont-say-ftc-workshop-voice-cloning-technologies.

blurred. It impedes the FTC's work tackling illegal robocalls and more broadly circumscribes other enforcement initiatives. For example, a carrier that places, or assists and facilitates, illegal telemarketing might argue that its common carrier activities are beyond the Commission's reach because of the common carrier exemption. Likewise, the exemption may frustrate the Commission's ability to obtain complete relief for consumers when there are multiple parties, some of whom engage in common carrier activity. It also may pose difficulties when a company engages in deceptive or unfair practices involving a mix of common carrier and non-common carrier activities. Even where the FTC prevails against common carrier arguments raised in litigation,[83] fighting such arguments uses resources that could be better spent on finding—and halting—the next fraud.

F. Consumer and Business Education and Outreach

The FTC also supports and amplifies its consumer protection mission by engaging the public through outreach and education that reach tens of millions of people each year. Using the FTC's website, the media, partner organizations, and grass roots networking, the Commission disseminates actionable, practical, plain-language guidance to the public on timely topics and issues affecting American consumers and businesses.

As our activities during the past several months illustrate, the FTC keeps pace with current trends and strives to create education materials and campaigns that are timely and relevant to both consumers and business. In early February, the FTC posted its first blog warning consumers about potential COVID-related scams.[84] Within weeks, the FTC

[83] Recently, for example, the court rejected a defendant's argument that it was a common carrier and thus not subject to FTC jurisdiction. It held that the defendant's VoIP service constituted an unprotected "information service," as opposed to protected "telecommunication service." *See* Order at 13–18, Dkt. No. 145, *FTC v. Educare Centre Services, Inc.*, No. 3:19-cv-196 (W.D. Tex. Jan. 14, 2020), https://www.ftc.gov/enforcement/cases-proceedings/192-3033/educare-centre-services-inc.

[84] FTC Consumer Blog, *Coronavirus: Scammers follow the headlines* (Feb. 10, 2020), https://www.consumer.ftc.gov/blog/2020/02/coronavirus-scammers-follow-headlines.

developed a multi-media campaign, complete with a dedicated website[85] containing a library of nearly 100 consumer and business blog posts, scam alerts, and videos on topics ranging from relief checks[86] and treatment claims[87] to charity fraud,[88] government imposter scams,[89] and misinformation.[90] Simultaneously, the Commission leveraged its relationships with national and local organizations,[91] as well as its partnerships with federal agencies, to coordinate messaging and to deliver webinars, presentations, social media shareables, and infographics about COVID-related scams.[92] And, as concerns about contact tracing scams began to emerge, the FTC developed consumer messaging that it delivered through consumer blog posts,[93] an infographic,[94] and a joint announcement with the U.S. Department of Justice ("DOJ") and Health and Human Services,[95] all with the aim of helping people spot scams

[85] FTC Website, *Coronavirus Pandemic: The FTC in Action*, ftc.gov/coronavirus (English) and ftc.gov/coronavirus/es (Spanish).
[86] FTC Consumer Blog, *Want to get your Coronavirus relief check? Scammers do too.* (Apr. 1, 2020), https://www.consumer.ftc.gov/blog/2020/04/want-get-your-coronavirus-relief-check-scammers-do-too.
[87] FTC Consumer Blog, *More FTC warnings about scam Coronavirus treatments* (June 4, 2020), https://www.consumer.ftc.gov/blog/2020/06/more-ftc-warnings-about-scam-coronavirus-treatments.
[88] FTC Consumer Blog, *Make your Coronavirus donations count* (May 5, 2020), https://www.consumer.ftc.gov/blog/2020/05/make-your-coronavirus-donations-count.
[89] FTC Consumer Blog, *Scammers are using COVID-19 messages to scam people* (Apr. 10, 2020), https://www.consumer.ftc.gov/blog/2020/04/scammers-are-using-covid-19-messages-scam-people.
[90] FTC Consumer Blog, *CBD, COVID-19 and cancer: The unfounded facts* (Apr. 28, 2020), https://www.consumer.ftc.gov/blog/2020/04/cbd-covid-19-and-cancer-unfounded-facts.
[91] A small sample includes: the national Better Business Bureau and several state BBBs; the American Bankers Association Foundation; AARP National; AARP Oregon; Small Business Development Corporations; affordable housing managers; the Bar Association of Puerto Rico; the National Asian American Coalition; members of the Financial Literacy and Education Commission (FLEC), and public librarians in multiple states.
[92] These partnerships include: the Federal Depository Insurance Corporation; Federal Emergency Management Agency; Department of Justice ("DOJ"); and Department of Health and Human Services. *See, e.g.*, DOJ Press Release, *The Justice Department, Department of Health and Human Services, and the Federal Trade Commission Partner to Alert Public of Contact Tracing COVID-19 Fraud Schemes* (June 30, 2020), https://www.justice.gov/opa/pr/justice-department-department-health-and-human-services-and-federal-trade-commission-partner#:~:text=The%20Justice%20Department%2C%20HHS%20and,or%20ftc.gov%2Fcomplaint.
[93] FTC Consumer Blog, *COVID-19 contact tracing text message scams* (May 19, 2020), https://www.consumer.ftc.gov/blog/2020/05/covid-19-contact-tracing-text-message-scams; FTC Consumer Blog, *Help COVID-19 tracers, not scammers* (June 25, 2020), https://www.consumer.ftc.gov/blog/2020/06/help-covid-19-contact-tracers-not-scammers.
[94] FTC Infographic, *Contact Tracing Call? 5 Things To Know* (June 25, 2020). https://www.consumer.ftc.gov/articles/contact-tracing-infographic.
[95] DOJ Press Release, *The Justice Department, Department of Health and Hunan Services, and the Federal Trade Commission Partner to Alert Public of Contact Tracing COVID-19 Fraud Schemes* (June 30, 2020)

while maintaining trust in the important public health process. The FTC also has developed and delivered materials and presentations on the financial impact of the coronavirus,[96] and expects to continue its work to inform and protect consumers and businesses in this challenging environment.

The FTC continues to expand its outreach to consumers of diverse backgrounds, ages, education, and experience. For example, for more than a decade, the FTC has reached consumers in Spanish,[97] but the Commission recently launched a new webpage containing key consumer education materials translated into additional languages, including Chinese, Korean, Tagalog, and Vietnamese.[98] The agency also initiated an ambitious outreach campaign aimed at educating consumers and businesses in Puerto Rico, including webinars for the Legal Services of Puerto Rico and the Bar Association of Puerto Rico, as well as broadcast events with the local AARP office in Puerto Rico. Working with organizations around the country, the FTC also continues to host Ethnic Media Roundtables aimed at increasing consumer engagement and fraud reporting in diverse communities.[99] In addition, the FTC recently refreshed and revised the *Pass It On* campaign for older adults,[100] which remains a cornerstone of the agency's efforts to educate older adults in English and Spanish about how to avoid scams. Through continued partnership with organizations like AARP to

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https://www.justice.gov/opa/pr/justice-department-department-health-and-human-services-and-federal-trade-commission-partner.

[96] FTC Website, *Financial Impact of the Coronavirus*, https://www.consumer.ftc.gov/coronavirus/financial-impact.

[97] *See, e.g.*, https://www.consumidor.ftc.gov/, https://www.ftc.gov/es/coronavirus/las-estafas-relacionadas-con-el-coronavirus, https://www.consumidor.gov, https://www.consumidor.ftc.gov/destacado/destacado-0030-pasalo, and https://www.ftc.gov/es/consejos/para-empresarios/las-estafas-y-su-pequeno-negocio-una-guia-para-los-negocios.

[98] The website ftc.gov/languages features other languages, including Amharic, Arabic, Dari, French, Haitian Creole, Russian, and Somali.

[99] For example, the Commission brought together public officials, legal aid providers, community advocates and reporters in Indianapolis, IN; Charleston, WV; Milwaukee, WI; Birmingham, AL; and Oklahoma City, OK. A listing of these events is available at https://www.consumer.gov/content/common-ground-conferences-and-roundtables-calendar.

[100] Materials are available in English at https://www.ftc.gov/passiton and in Spanish at https://www.ftc.gov/pasalo.

deliver nationwide webinars and tele-town halls for this audience, the FTC has shared well over 13 million copies of *Pass It On* print materials throughout the country.

The Commission also works to provide companies with timely and relevant resources on a variety of issues that affect businesses. For example, the FTC continues to promote its popular *Cybersecurity for Small Business* campaign to make sure that businesses have the tools they need to meet their security obligations.[101] In addition, the FTC recently launched *Green Lights & Red Flags: FTC Rules of the Road for Business*, a new one-day business seminar series on advertising, data security, antitrust, social media marketing, and other business basics designed for business owners, marketing professionals, and attorneys.[102] As with consumer education, the Commission fosters and leverages its numerous partnerships with other agencies and private organizations. In collaboration with the SBA, Small Business Development Corporations, and the Better Business Bureau, the agency has focused on expanding the reach of its Spanish language campaign materials, including *Scams and Your Small Business: A Guide for Businesses*, which describes common scams and the steps businesses can take to avoid them.[103]

V. COMPETITION MISSION

The FTC also enforces U.S. antitrust laws in many sectors that affect consumers and their wallets, such as health care, consumer products and services, technology, manufacturing, and energy. The Commission shares federal antitrust enforcement responsibilities with the Antitrust Division of the DOJ (collectively, "the agencies").

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[101] *See Cybersecurity for Small Business*, https://www.ftc.gov/tips-advice/business-center/small-businesses/cybersecurity and https://www.ftc.gov/es/tips-advice/business-center/small-businesses/cybersecurity/espanol.

[102] FTC Press Release, *FTC and Partners Sponsor "Back-to-Basics" Advertising and Data Security Workshop in Atlanta* (July 2, 2020), https://www.ftc.gov/news-events/press-releases/2019/07/ftc-partners-sponsor-back-basics-advertising-data-security.

[103] This publication is available on the FTC's website at https://www.ftc.gov/tips-advice/business-center/guidance/scams-your-small-business-guide-business.

One of the agencies' principal responsibilities is to prevent mergers that may substantially lessen competition. Under U.S. law, parties to certain mergers and acquisitions must file premerger notification and observe a statutorily prescribed waiting period before consummating their transactions. Prior to the COVID pandemic, premerger filings under the Hart-Scott-Rodino ("HSR") Act had increased steadily since FY 2013, with more than 2,000 HSR filings in each of the past three fiscal years.[104] Filings for the last three months have been below historic levels, down approximately 50 percent compared to the most recent years.[105]

Even so, between previously reported deals and non-reportable transactions, the Commission has maintained a very full merger docket, and our resources continue to be stretched thin; in fact, the agency is on pace to record the most merger enforcement actions in a year since 2001.[106] Since the beginning of this fiscal year—and despite the challenges created by the COVID-19 pandemic—the Commission has sued to block or unwind seven mergers,[107] and another eight were abandoned in the face of antitrust concerns raised in our investigations. The

[104] In FY 2019, the FTC and DOJ received notice of 2,089 transactions, compared with 1,326 in FY 2013. For historical information about HSR filings and U.S. merger enforcement, see the joint FTC/DOJ Hart-Scott-Rodino annual reports, https://www.ftc.gov/policy/reports/policy-reports/annual-competition-reports.

[105] In response to heightened interest in the level of merger activity during the pandemic, the FTC's Premerger Notification Office is now posting monthly figures for HSR filings on the FTC website at https://www.ftc.gov/enforcement/premerger-notification-program.

[106] Since Congress raised the HSR filing thresholds in 2001, FTC merger enforcement actions peaked at 25 in FY 2012. So far in FY 2020, the FTC has already challenged 24 mergers with more than two months to go.

[107] FTC Press Release, *FTC Sues to Unwind Altria's $12.8 Billion Investment in Competitor JUUL* (Apr. 1, 2020), https://www.ftc.gov/news-events/press-releases/2020/04/ftc-sues-unwind-altrias-128-billion-investment-competitor-juul; FTC Press Release, *FTC and Commonwealth of Pennsylvania Challenge Proposed Merger of Two Major Philadelphia-area Hospital Systems* (Feb. 27, 2020), https://www.ftc.gov/news-events/press-releases/2020/02/ftc-commonwealth-pennsylvania-challenge-proposed-merger-two-major; FTC Press Release, *FTC Files Suit to Block Joint Venture between Coal Mining Companies Peabody Energy Corporation and Arch Coal* (Feb. 26, 2020), https://www.ftc.gov/news-events/press-releases/2020/02/ftc-files-suit-block-joint-venture-between-coal-mining-companies; FTC Press Release, *FTC Files Suit to Block Edgewell Personal Care Company's Acquisition of Harry's, Inc.* (Feb. 3, 2020), https://www.ftc.gov/news-events/press-releases/2020/02/ftc-files-suit-block-edgewell-personalcare-companys-acquisition; FTC Press Release, *FTC Challenges Consummated Merger of Companies that Market Body-Worn Camera Systems to Large Metropolitan Police Departments* (Jan. 3, 2020), https://www.ftc.gov/news-events/press-releases/2020/01/ftc-challenges-consummated-merger-companies-market-body-worn; FTC Press Release, *FTC Alleges Post Holdings, Inc.'s Proposed Acquisition of TreeHouse Foods, Inc.'s Private Label Ready-to-Eat Cereal Business will Harm Competition* (Dec. 19, 2019), https://www.ftc.gov/news-events/press-releases/2019/12/ftc-alleges-post-holdings-incs-proposed-acquisition-treehouse; FTC Press Release, *FTC Challenges Illumina's Proposed Acquisition of PacBio* (Dec. 17, 2019), https://www.ftc.gov/news-events/press-releases/2019/12/ftc-challenges-illuminas-proposed-acquisition-pacbio.

Commission also accepted negotiated settlements in an additional nine mergers, requiring divestitures to preserve competition in markets as diverse as blockbuster pharmaceuticals,[108] prosthetic joints,[109] specialty veterinary services,[110] and gas stations.[111] The Commission also assessed a civil penalty for failure to comply with a consent order to divest ten gas stations in a timely manner.[112] The Commission's vigorous enforcement has led to a significant competition litigation workload, which continues to expand and requires significant resources, and which also includes federal preliminary injunction hearings and multiple administrative trials pending against unconsummated and consummated mergers.

The Commission is dedicated to using the antitrust laws actively to promote competition, including using established law to address emerging trends and evolving industries so as to ensure that consumers continue to benefit from competition. For example, this year the Commission has challenged several mergers in which an established incumbent proposed to acquire an emerging competitor in order to reduce competition in the future.[113] In one instance,

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[108] FTC Press Release, *FTC Imposes Conditions on AbbVie Inc.'s Acquisition of Allergan plc (*May 5, 2020), https://www.ftc.gov/news-events/press-releases/2020/05/ftc-imposes-conditions-abbvie-incs-acquisition-allergan-plc; FTC Press Release, *FTC Approves Final Order Requiring Bristol-Myers Squibb Company and Celgene Corporation to Divest Psoriasis Drug Otezla as Condition of Acquisition* (Jan. 13, 2020), https://www.ftc.gov/news-events/press-releases/2020/01/ftc-approves-final-order-requiring-bristol-myers-squibb-company. The BMS/Celgene divestiture, valued at $13.4 billion, is the largest divestiture that the FTC or DOJ has ever required in a merger enforcement matter.

[109] FTC Press Release, *FTC Imposes Conditions on Össur Hf's Acquisition of College Park Industries, Inc*. (Apr. 7, 2020), https://www.ftc.gov/news-events/press-releases/2020/04/ftc-imposes-conditions-ossur-hfs-acquisition-college-park.

[110] FTC Press Release, *FTC Requires Veterinary Service Providers Compassion First and National Veterinary Associates to Divest Assets in Three Local Markets* (Feb. 14, 2020), https://www.ftc.gov/news-events/press-releases/2020/02/ftc-requires-veterinary-service-providers-compassion-first.

[111] FTC Press Release, *FTC Requires Divestitures as Condition of Tri Star Energy, LLC's Acquisition of Certain Assets of Hollingsworth Oil Company, Inc., C & H Properties, and Ronald L. Hollingsworth* (Jun. 24, 2020), https://www.ftc.gov/news-events/press-releases/2020/06/ftc-requires-divestitures-condition-tri-star-energy-llcs.

[112] FTC Press Release, *Alimentation Couche-Tard Inc. and CrossAmerica Partners LP Agree to Pay $3.5 Million Civil Penalty to Settle FTC Allegations that they Violated 2018 Order* (July 6, 2020), https://www.ftc.gov/news-events/press-releases/2020/07/alimentation-couche-tard-crossamerica-partners-agree-to-pay-civil-penalty.

[113] *See, e.g.*, FTC Press Release, *FTC Imposes Conditions on Össur Hf's Acquisition of College Park Industries, Inc*. (Apr. 7, 2020), https://www.ftc.gov/news-events/press-releases/2020/04/ftc-imposes-conditions-ossur-hfs-acquisition-college-park; FTC Press Release, *FTC Files Suit to Block Edgewell Personal Care Company's*

the Commission challenged Illumina, Inc.'s proposed acquisition of Pacific Biosciences of California under both Section 2 of the Sherman Act (which addresses monopolization) and Section 7 of the Clayton Act (which targets anticompetitive mergers).[114] Similarly, the Commission is pursuing dual Sherman Act Section 1 (unlawful agreement) and Clayton Act Section 7 theories in seeking to undo Altria's $12.8 billion investment in its e-cigarette competitor, JUUL Labs, which the complaint alleges would eliminate competition between the companies and allow the companies to share JUUL's profits.[115]

The Commission also maintains a robust program to identify and stop anticompetitive conduct, relying on antitrust enforcement to combat practices that harm consumers by suppressing, and at times eliminating, beneficial price competition. For instance, the Commission continues to challenge anticompetitive conduct by drug manufacturers, whether it involves the abuse of government process through sham litigation,[116] a product-hopping scheme that relies on deception to maintain a lucrative monopoly,[117] or other elaborate agreements designed to

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Acquisition of Harry's, Inc. (Feb. 3, 2020), https://www.ftc.gov/news-events/press-releases/2020/02/ftc-files-suit-block-edgewell-personalcare-companys-acquisition.

[114] FTC Press Release, *FTC Challenges Illumina's Proposed Acquisition of PacBio* (Dec. 17, 2019), https://www.ftc.gov/news-events/press-releases/2019/12/ftc-challenges-illuminas-proposed-acquisition-pacbio. The complaint alleged that the proposed acquisition would remove a nascent competitive threat to Illumina's monopoly power in the U.S. market for next-generation DNA sequencing systems and prevent increased future competition between Illumina and PacBio. Two weeks after the Commission issued its complaint, the parties abandoned their transaction.

[115] FTC Press Release, *FTC Sues to Unwind Altria's $12.8 Billion Investment in Competitor JUUL* (Apr. 1, 2020), https://www.ftc.gov/news-events/press-releases/2020/04/ftc-sues-unwind-altrias-128-billion-investment-competitor-juul.

[116] *FTC v. AbbVie Inc.*, No. 14-cv-5151 (E.D. Pa. Sept. 8, 2014), https://www.ftc.gov/enforcement/cases-proceedings/121-0028/abbvie-inc-et-al.

[117] FTC Press Release, *Indivior, Inc. to Pay $10 Million to Consumers, Settling FTC Charges that the Company Illegally Maintained a Monopoly over the Opioid Addiction Treatment Suboxone* (July 24, 2020), https://www.ftc.gov/news-events/press-releases/2020/07/indivior-inc-pay-10-million-consumers-settling-ftc-charges; FTC Press Release, *Reckitt Benckiser Group plc to Pay $50 Million to Consumers, Settling FTC Charges that the Company Illegally Maintained a Monopoly over the Opioid Addiction Treatment Suboxone* (July 11, 2019), https://www.ftc.gov/news-events/press-releases/2019/07/reckitt-benckiser-group-plc-pay-50-millionconsumerssettling-ftc.

maintain high prices for life-saving drugs.[118] The Commission is attentive to the use of overly broad non-compete agreements, which can effectively block competition and harm consumers.[119] To ensure that employees reap the benefits of competition among employers for their skills, the Commission also will consider the implications of any conduct, including a merger that may reduce competition in labor markets.[120]

The Commission continues to focus on developments in the high-technology sector. Given the important role that technology companies play in the American economy, it is critical that the Commission—in furthering its mission to protect consumers and promote competition—not only understand the current and developing business models, but also ensure that companies in this sector abide by the same rules of competitive markets that apply to any company. To marshal the Commission's scarce resources more effectively, the agency created the Technology Enforcement Division ("TED") within the Bureau of Competition. Working with staff throughout the agency, TED is pursuing a number of investigations involving technology platforms. In addition, to ensure that the Commission understands the scope of these companies' business strategies, the agency has used its authority under Section 6(b) of the FTC Act to issue special

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[118] FTC Press Release, *FTC and NY Attorney General Charge Vyera Pharmaceuticals, Martin Shkreli, and Other Defendants with Anticompetitive Scheme to Protect a List-Price Increase of More Than 4,000 Percent for LifeSaving Drug Daraprim* (Jan. 27, 2020), https://www.ftc.gov/news-events/press-releases/2020/01/ftc-ny-attorney-general-charge-vyera-pharmaceuticals-martin.

[119] *See e.g.*, FTC Press Release, *FTC Sues to Unwind Altria's $12.8 Billion Investment in Competitor JUUL* (Apr. 1, 2020), https://www.ftc.gov/news-events/press-releases/2020/04/ftc-sues-unwind-altrias-128-billion-investment-competitor-juul; FTC Press Release, *Rent-to-Own Operators Settle Charges that They Restrained Competition through Reciprocal Purchase Agreements* (Feb. 21, 2020), https://www.ftc.gov/news-events/press-releases/2020/02/rent-own-operators-settle-charges-they-restrained-competition; FTC Press Release, *FTC Challenges Consummated Merger of Companies that Market Body-Worn Camera Systems to Large Metropolitan Police Departments* (Jan. 3, 2020), https://www.ftc.gov/news-events/press-releases/2020/01/ftc-challenges-consummated-merger-companies-market-body-worn; FTC Press Release, *FTC Puts Conditions on NEXUS Gas Transmission, LLC's Acquisition of Generation Pipeline LLC* (Sept. 13, 2019), https://www.ftc.gov/news-events/press-releases/2019/09/ftc-puts-conditions-nexus-gas-transmission-llcs-acquisition.

[120] FTC Press Release, *Statement of the FTC Chairman Regarding Announcement that Aveanna Healthcare and Maxim Healthcare Services have Terminated Their Acquisition Agreement* (Jan. 30, 2020), https://www.ftc.gov/news-events/press-releases/2020/01/statement-ftc-chairman-regarding-announcement-aveanna-healthcare.

orders to five large technology firms (Alphabet, Amazon, Apple, Facebook, and Microsoft) requiring them to provide information about prior acquisitions not reported to the antitrust agencies under the HSR Act.[121] This initiative will allow the Commission to determine whether and to what extent large tech companies are making potentially anticompetitive acquisitions of nascent or potential competitors, outside the purview of advance HSR Act review.

The FTC supports its enforcement work with a vigorous policy agenda, which includes substantial research to stay informed of market developments. In June 2019, the Commission concluded its series of public *Hearings on Competition and Consumer Protection in the 21st Century*, through which the agency examined whether broad-based changes in the economy, evolving business practices, and new technologies might require adjustments to competition and consumer protection law, enforcement priorities, and policy.[122] One output from the hearings is the recently released Vertical Merger Guidelines, which is the first time the FTC and the DOJ have issued joint guidelines explaining how the agencies evaluate the likely competitive impact of vertical mergers.[123]

VI. CONCLUSION

The FTC remains committed to marshalling its resources efficiently in order to effectively protect consumers and promote competition, to anticipate and respond to changes in

[121] FTC Press Release, *FTC to Examine Past Acquisitions by Large Technology Companies* (Feb. 11, 2020), https://www.ftc.gov/news-events/press-releases/2020/02/ftc-examine-past-acquisitions-large-technology-companies.
[122] *See* Prepared Remarks of Chairman Simons Announcing the Competition and Consumer Protection Hearings (June 20, 2018), https://www.ftc.gov/system/files/documents/public_statements/1385308/prepared_remarks_of_joe_simons_announcing_the_hearings_6-20-18_0.pdf. From September 2018 through June 2019, the FTC held 14 sessions over the course of 23 days as a part of its Hearings on Competition and Consumer Protection in the 21st Century. In addition to the 393 individuals from outside the agency who participated in the Hearings, 71 members of FTC staff also participated. The hearings garnered a combined online audience of over 21,000 in addition to those who attended in person. The FTC held hearing sessions in Washington, DC; New York City; and Omaha, Nebraska.
[123] FTC News Release, *FTC and DOJ Issue Antitrust Guidelines for Evaluating Vertical Mergers* (Jun. 30, 2020), https://www.ftc.gov/news-events/press-releases/2020/06/ftc-doj-issue-antitrust-guidelines-evaluating-vertical-mergers.

the marketplace, and to meet current and future challenges. We look forward to continuing to work with the Committee and Congress, and we would be happy to answer your questions.