

**PREPARED STATEMENT OF
THE FEDERAL TRADE COMMISSION**

on

“Staying A Step Ahead: Fighting Back Against Scams Used To Defraud Americans”

Before the

UNITED STATES SENATE COMMITTEE ON COMMERCE,

SCIENCE, AND TRANSPORTATION

SUBCOMMITTEE ON CONSUMER PROTECTION,

PRODUCT SAFETY, AND DATA SECURITY

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I. INTRODUCTION

Chairman Moran, Ranking Member Blumenthal, and members of the Subcommittee, we are pleased to appear before you to testify on behalf of the Federal Trade Commission (“FTC” or “Commission”) and discuss the agency’s work to combat consumer fraud.¹ The impact of the FTC’s consumer protection work is significant. In the past year, the agency has obtained judgements totaling over \$ 11.9 billion for consumers affected by deceptive and unfair practices.² We detail some of our accomplishments in the attached Appendix.

The FTC is a highly productive, bipartisan independent agency with a broad mission. It is the only federal agency with jurisdiction to both protect consumers and maintain competition in most sectors of the economy.³ In fulfilling its consumer protection mission, the agency enforces laws that prohibit business practices that are unfair or deceptive to consumers, being mindful not to impede legitimate business activity. The FTC also educates consumers and businesses to encourage informed consumer choices and compliance with the law. Through its research, reports, and policy work, the FTC further promotes an honest and competitive marketplace.

Government enforcement of the rule of law is also essential for an honest and competitive marketplace to flourish. Thus, fighting fraud is at the core of the FTC’s consumer protection mission. Our anti-fraud program tracks down and stops some of the most pernicious frauds that

¹ The views expressed in this statement represent the views of the Commission. Our oral presentations and responses to questions are our own and do not necessarily reflect the views of the Commission.

² As discussed below, this figure includes a \$10.03 billion settlement order with Volkswagen Group of America, Inc. related to its alleged misrepresentation of fuel efficiency ratings. *See FTC v. Volkswagen Group of Am., Inc.*, No. 3:15-md-02672-CRB (N.D. Cal. Oct. 25, 2016), available at <https://www.ftc.gov/enforcement/cases-proceedings/162-3006/volkswagen-group-america-inc>.

³ The FTC has broad law enforcement responsibilities under the Federal Trade Commission Act, 15 U.S.C. § 41 *et seq.*, and enforces a wide variety of other laws ranging from the Clayton Act to the Fair Credit Reporting Act. In total, the Commission has enforcement or administrative responsibilities under more than 70 laws. *See* <http://www.ftc.gov/ogc/stats.shtm>.

prey on U.S. consumers, often on those who can least afford to lose money.

The FTC's commitment to fighting fraud is as strong as ever, and I am pleased to share with you some of the highlights of the FTC's Bureau of Consumer Protection's work.

I. CIVIL LAW ENFORCEMENT ACTIONS TO STOP FRAUD

Aggressive law enforcement is the key component in the FTC's efforts to fight fraud. When we identify unfair or deceptive acts or practices that harm consumers, we sue the fraudsters in federal district court, seeking injunctive relief to stop illegal business practices and monetary relief in the form of redress for consumers or disgorgement of ill-gotten gains. Below are just a few examples of the variety of frauds the Commission pursues, and the ways that we leverage our limited resources to do this effectively.

Imposter Scams – When I'm Not Who I Say I Am

Reports about imposter scams have been on the rise for the past few years.⁴ Scammers falsely claiming to be government agents, well-known businesses, family members, or others, contact consumers and ask them to send money, often via cash-like payment methods. Many of these scams are conducted over the phone and originate in call centers outside the United States, where fraudsters use technology and payment services that enable them to hide their identities and locations.

"I'm Calling from the IRS"

Government imposter scams topped our consumer complaint charts in 2016. IRS impersonation scams have been particularly prevalent, often scaring consumers with threats of lawsuits and arrests if they do not send money to pay a phantom debt to the tax collector. Last

⁴ Fed. Trade Comm'n Report, *Consumer Sentinel Network Data Book January – December 2016* ("FTC Sentinel Data Book") at 3 and 79, Appendix B2 (March 2017), available at https://www.ftc.gov/system/files/documents/reports/consumer-sentinel-network-data-book-january-december-2016/csn_cy-2016_data_book.pdf.

month, the FTC brought an action against *PHLG Enterprises LLC* alleging that the company and its owner collected more than \$1.5 million from about 3,000 consumers in a variety of schemes that included IRS tax scams, government grant scams, and advance-fee loan scams.⁵ The FTC alleged that telemarketers at Indian call centers conned consumers into sending payments via wire transfers, and the defendants paid “runners” to collect the money at retail stores that offer money transfer services throughout the United States. The defendants and their runners kept a portion of the money and delivered the rest to the India-based scammers.

To tackle offshore callers who impersonate the IRS and perpetrate other scams, the FTC has organized four summits, including three in India, to bring together the Indian call center industry, technology companies, as well as U.S. and Indian law enforcers. One product of this collaboration was a four-city training program in India for Indian law enforcement, led in part by FTC staff. The training was designed to enhance the capacity of Indian law enforcement to investigate, arrest, and prosecute people in that country who perpetrate these imposter frauds, including against consumers in the U.S. Last fall, Indian police shut down a massive telemarketing fraud ring operating outside Mumbai, arresting 70 people and detaining more than 600 employees.⁶ Shortly after that action, the U.S. Department of Justice (“DOJ”) unsealed an indictment charging 61 individuals with involvement in a transnational telemarketing fraud scheme operating out of a network of call centers in India that bilked U.S. consumers out of hundreds of millions of dollars through IRS and other government imposter scams.⁷ Following

⁵ *FTC v. PHLG Enterprises LLC*, No. 8:17-cv-00220-RAL-AEP (M.D. Fla. Jan. 27, 2017), available at <https://www.ftc.gov/enforcement/cases-proceedings/152-3245-x170019/phlg-enterprises-llc>.

⁶ See, e.g., Shefali Anand, *Indian Police Bust IRS ‘Scam Center,’* The Wall Street Journal (Oct. 5, 2016), available at <http://www.wsj.com/articles/indian-police-detain-workers-over-possible-irs-phone-scam-1475674691>.

⁷ Press Release, U.S. Dept. of Justice, *Dozens of Individuals Indicted in Multimillion-Dollar Indian Call Center Scam Targeting U.S. Victims* (Oct. 27, 2016), available at <https://www.justice.gov/opa/pr/dozens-individuals-indicted-multimillion-dollar-indian-call-center-scam-targeting-us-victims>.

these law enforcement actions, the number of IRS imposter scams reported to the FTC plummeted.⁸ Unfortunately, IRS imposter complaints appear to be on the rise once again, demonstrating that aggressive and persistent law enforcement action is needed to combat fraud.

“We’ve Detected a Problem with Your Computer”

Technical support scams are another form of impersonation scams that have proliferated in recent years. The con artists typically impersonate legitimate technical support companies or claim affiliation with large computer or software manufacturers. For example, last June, the FTC and the State of Florida obtained a court order temporarily shutting down an operation that allegedly used Internet ads to imitate alerts on consumers’ computer displays.⁹ The complaint alleged that the phony alerts mimicked legitimate messages from Apple or Microsoft, misleading consumers (many of whom were senior citizens) into believing their computers had serious problems and directing them to call a toll-free number. Once on the phone, the operation’s telemarketers allegedly “diagnosed” the computer, claimed to find issues requiring immediate repair by a technician, and charged consumers hundreds of dollars for repairs they likely did not need. The case remains in litigation. Technical support scams like this one have caused consumers hundreds of millions of dollars in injury.¹⁰ The FTC continues to target such scams, consulting and cooperating with state and federal partners as well as researchers and computer

⁸ Nat Wood, *Police raids in India cut down IRS imposter calls*, FTC Consumer Blog (Jan. 5, 2017), available at <https://www.consumer.ftc.gov/blog/police-raids-india-cut-down-irs-imposter-calls>.

⁹ *FTC v. Big Dog Solutions LLC*, No. 16-CV-6607 (N.D. Ill. June 24, 2016), available at <https://www.ftc.gov/enforcement/cases-proceedings/162-3042-x160045/help-desk-national>; see also *FTC v. Global Access Technical Support LLC*, No. 16-CV-1556 (E.D. Miss. Oct. 3, 2016), available at <https://www.ftc.gov/enforcement/cases-proceedings/162-3095-x170001/global-access-technical-support> (FTC alleged that the defendants misled consumers with pop-up ads that mimicked legitimate alerts warning consumers of computer infections).

¹⁰ See, e.g., *FTC v. Inbound Call Experts, LLC*, No. 9:14-cv-81395-KAM, (Nov. 10, 2014), available at <https://www.ftc.gov/enforcement/cases-proceedings/132-3135/inbound-call-experts-llc>. (FTC alleged consumer harm of more than \$190 million).

software and manufacturing industry members.

Imposter Scams Affecting Small Businesses

Although individuals are often the targets of imposter scams, these schemes also prey on small businesses. For example, last summer the FTC brought an action against *D&S Marketing Solutions LLC*, alleging the defendants bilked at least \$1.3 million from newly opened small businesses by pretending to be the Occupational Safety and Health Administration and threatening to shut down or fine the businesses unless they bought posters about occupational safety and other government regulations.¹¹ In addition, this past fall, the FTC alleged that several interrelated companies, including *DOT Authority.com, Inc.*, deceived small commercial trucking businesses into paying them for federal and state motor carrier registrations by impersonating government transportation agencies.¹² The court issued a preliminary injunction that bars defendants from continuing to engage in the alleged practices. These cases follow a history of over thirty FTC law enforcement actions in the past ten years protecting small businesses, including actions addressing office supply scams,¹³ fake directory listing services,¹⁴

¹¹ *FTC v. D&S Marketing Solutions LLC*, No. 8:16-CV-1435 (M.D. Fla. June 16, 2016), available at <https://www.ftc.gov/enforcement/cases-proceedings/162-3022-x160042/ds-marketing-solutions-llc>.

¹² *FTC v. DOTAuthority.com, Inc.*, No. 0:16-cv-62186-WJZ (S. D. Fla. Sept. 13, 2016), available at <https://www.ftc.gov/enforcement/cases-proceedings/152-3157/dotauthority>.

¹³ See, e.g., *FTC v. American Industrial Enterprises, LLC*, No. 1:16-CV-0281 (D. Md. Feb. 11, 2016), available at <https://www.ftc.gov/enforcement/cases-proceedings/1523246/lighting-x-change-company-llc> (office supply operation that targeted non-profit organizations and small businesses, such as child care centers, educational institutions, churches, and hospitals, tricking them into paying for unordered and overpriced office and cleaning supplies).

¹⁴ See, e.g., *FTC v. Your Yellow Book, Inc.*, No. 14-cv-00786-D (W.D. Oka. July 24, 2014), available at <https://www.ftc.gov/enforcement/cases-proceedings/142-3070-x140045/your-yellow-book-inc> (defendants used bogus invoices to trick small businesses, doctors' offices, retirement homes, and religious schools into paying for unordered online business directory listings). In November 2015, the FTC obtained a contempt order against the defendants for subsequently running a virtually identical scam.

domain name registration scams,¹⁵ and others.

“You Are Eligible for a Credit Card Interest Rate Reduction”

Since 2009, the FTC’s Telemarketing Sales Rule has prohibited the vast majority of robocalls selling a good or service.¹⁶ Despite this, unscrupulous actors have taken advantage of technological advancements to blast prerecorded messages, or robocalls, often pitching fraudulent goods or services.¹⁷ Last June, the FTC led a multinational crackdown on robocallers, working with domestic and international law enforcement partners to bring nearly 40 cases against operations believed to be responsible for billions of illegal robocalls.¹⁸ As part of that crackdown, the FTC and the Florida Attorney General obtained a court order temporarily shutting down *Life Management Services*, a company that allegedly bombarded consumers with illegal robocalls touting bogus credit card interest rate reduction and debt relief services.¹⁹ The complaint charged that the defendants used fake company names that deceived consumers into thinking that the defendants had a relationship or affiliation with the consumers’ credit card issuers. In some instances, the defendants allegedly tailored their debt elimination pitch to consumers over age 60. The complaint states that this scheme bilked consumers out of more than \$15.6 million since 2013. This matter remains in litigation.

¹⁵ See, e.g., *FTC v. Data Business Solutions Inc.*, No. 08-CV-2783 (N.D. Ill. May 14, 2008), available at <https://www.ftc.gov/enforcement/cases-proceedings/072-3038/data-business-solutions-inc-also-dba-internet-listing-service> (defendants allegedly posed as domain name registrars and convinced thousands of U.S. consumers, small businesses and non-profit organizations to pay bogus bills by leading them to believe they would lose their web site addresses unless they paid).

¹⁶ See 16 C.F.R. § 310.4(b)(1)(v).

¹⁷ New technologies have led to an immense source of consumer frustration – the blasting of prerecorded messages that primarily rely on Voice over Internet Protocol technology. In 2016, the FTC received an average of more than 290,000 robocall complaints per month.

¹⁸ See Press Release, FTC, *Florida Attorney General Take Action Against Illegal Robocall Operation* (June 14, 2016), available at <https://www.ftc.gov/news-events/press-releases/2016/06/ftc-florida-attorney-general-take-action-against-illegal-robocall>.

¹⁹ See *FTC v. Life Management Services of Orange County, LLC*, No. 6:16-CV-982-Orl (M.D. Fla. June 7, 2016), available at <https://www.ftc.gov/enforcement/cases-proceedings/152-3216/life-management>.

“You’ve Hit the Jackpot!”

Prize promotion scams continue to defraud large numbers of consumers. In the *International Advisory Services* action, the FTC alleged the defendants sent hundreds of thousands of phony prize notifications, tricking consumers who were mostly elderly, into thinking they had won \$1 million or more and needed to pay a \$25 fee to collect the “prize”.²⁰ The many consumers who paid the “fee” received nothing. The FTC reached a stipulated agreement with one of the defendants that prohibits him from making misrepresentations about prize promotions or any good or service. The case against the other defendants is ongoing.

“Be Your Own Boss!”

The Commission also combats a range of business opportunity, investment, and other deceptive money-making schemes. Fraudsters deceive consumers who are looking to start a business or seeking to generate additional income, such as entrepreneurs, service members and veterans, and seniors on fixed incomes.²¹ These con artists often promise jobs, income, or returns on investments in exchange for hefty payments upfront. Unfortunately, consumers deceived by these scams *lose* money rather than make it. These scams wreak havoc on individuals’ financial lives and divert money from viable opportunities.²²

²⁰ *FTC v. Terry Somenzi*, No. 16-CV-7101 (C.D. Cal. Sept. 21, 2016), available at <https://www.ftc.gov/enforcement/cases-proceedings/1623226/terry-somenzi-individually-officer-international-advisory>.

²¹ See, e.g., *FTC v. Advertising Strategies, LLC*, No. 2:16-cv-03353 (D. Az. Oct. 3, 2016), available at <https://www.ftc.gov/news-events/press-releases/2017/03/business-opportunity-scheme-operators-banned-telemarketing>. The FTC has coordinated sweeps going after this kind of fraud. See e.g., Press Release, FTC, *FTC Expands Fight Against Deceptive Business Opportunity Schemes*, (Nov. 15, 2012) (announcing more than 70 actions brought by the FTC and law enforcement partners) available at <https://www.ftc.gov/news-events/press-releases/2012/11/ftc-expands-fight-against-deceptive-business-opportunity-schemes>; Press Release, FTC, *FTC Steps Up Efforts Against Scams That Target Financially-Strapped Consumers* (Mar. 2, 2011), available at <https://www.ftc.gov/news-events/press-releases/2011/03/ftc-steps-efforts-against-scams-target-financially-strapped>.

²² See, e.g., *FTC v. The Tax Club, Inc.*, No. 13-cv-210 (JMF) (S.D. N.Y. Jan. 8, 2013), available at <https://www.ftc.gov/enforcement/cases-proceedings/122-3071-x130019/tax-club-inc-et-al> (FTC alleged the defendants took in more than \$200 million with some consumers losing tens of thousands of dollars trying to start

For example, this month, the FTC brought a case against *World Patent Marketing*.²³ The Commission alleged that the defendants defrauded individual inventors who hoped to market their inventions and obtain commercial success. The defendants promised inventors that, in exchange for thousands of dollars in up-front fees, they would obtain patents for the inventions and promote the inventions to industry. In fact, the defendants did little if anything for the inventors, who rarely, if ever, received patents and virtually none of them made money from their inventions.

The FTC has also brought cases against multi-level marketing companies that mislead consumers. For example, the Commission obtained an order requiring multi-level marketing company Herbalife to fully restructure its U.S. business operations and pay \$200 million in consumer redress to settle allegations, among others, that the company deceived consumers into believing they could earn substantial money selling diet and nutritional supplements, and personal care products.²⁴ We alleged that Herbalife represented that people who joined its ranks could expect to quit their jobs, earn thousands of dollars a month, make a career-level income, or even get rich. However, the truth, as alleged in our complaint, was that the overwhelming majority of Herbalife distributors earned little or no money.

home-based businesses). In December 2016, the FTC returned \$18 million to victims of this scam. *See also FTC v. Ivy Capital, Inc.*, No. 2:11-cv-00283-JCM-GWF (D. Nev. Feb. 22, 2011), *available at* <https://www.ftc.gov/enforcement/cases-proceedings/102-3218/ivy-capital-inc-et-al> (FTC alleged the defendants took more than \$130 million from people who paid thousands of dollars – some up to \$20,000 – believing they would earn up to \$10,000 per month). In September 2014, the FTC mailed more than \$4.4 million in refund checks to consumers harmed by the business “coaching” scheme.

²³ *FTC v. World Patent Marketing, Inc.*, No. 1:17-cv-20848-DPG (S.D. Fla. Mar. 6, 2017), *available at* <https://www.ftc.gov/enforcement/cases-proceedings/172-3010/world-patent-marketing>.

²⁴ *FTC v. Herbalife Int’l of Am., Inc.*, No. 2:16-cv-05217 (C.D. Cal. July 15, 2016), *available at* <https://www.ftc.gov/enforcement/cases-proceedings/142-3037/herbalife-international-america-inc-et-al>.

“Try It For Free!”

The Restore Online Shoppers’ Confidence Act (“ROSCA”),²⁵ which strengthens consumer protections related to negative option sales, originated in this Committee in 2010.²⁶ Enforcement of this law has helped the FTC address consumer fraud.

In September 2016, the FTC and the states of Illinois and Ohio returned almost \$20 million to more than 145,000 consumers who were charged by a group of defendants, which included *One Technologies, LLC*, in a deceptive negative option billing scheme.²⁷ We alleged that the defendants lured online consumers with “free” access to their credit scores and then billed them a recurring \$29.95 monthly fee for credit monitoring they never ordered. The defendants marketed their credit monitoring programs through at least 50 websites.²⁸

“We Will Lower Your Payments!”

The FTC continues to fight scams targeting consumers who are struggling to pay their mortgages and other debts.²⁹ In *FTC v. Good Ebusiness LLC*, the FTC charged a debt relief operation with falsely representing to financially distressed homeowners and student loan borrowers that it would help modify their mortgage or student loan debt.³⁰ The FTC alleged that

²⁵ 15 U.S.C. §§ 8401 *et seq.*

²⁶ *Id.* § 8403.

²⁷ *FTC v. One Technologies, LP*, No. 3:14-cv-05066 (N.D. Cal. Nov. 17, 2014), available at <https://www.ftc.gov/enforcement/cases-proceedings/132-3021/one-technologies-lp>.

²⁸ See also *FTC v. Credit Bureau Center, LLC*, No. 17-cv-00194 (N.D. Ill. Jan. 10, 2017), available at <https://www.ftc.gov/enforcement/cases-proceedings/162-3120/credit-bureau-center-llc-formerly-known-myscore-llc>.

²⁹ Since the economic downturn in 2008, the FTC has coordinated actions aimed at stopping schemes taking advantage of the economically distressed. See FTC, *Prepared Statement of the Federal Trade Commission on Financial Services and Products: The Role of the Federal Trade Commission in Protecting Consumers* (Feb. 4, 2010), available at <https://www.ftc.gov/public-statements/2010/02/prepared-statement-federal-trade-commission-financial-services-and> (describing the agency’s efforts to prosecute financial fraud and deception, including working with states to bring hundreds of cases against mortgage relief scams in 2009).

³⁰ *FTC v. Good EBusiness LLC*, No. 16-CV-1048 (C. D. Cal. Feb. 16, 2016), available at <https://www.ftc.gov/enforcement/cases-proceedings/152-3079-x160029/student-loan-help-direct>.

the defendants illegally collected advance fees and told consumers, many of whom were current on their mortgage or student loan payments, to stop making payments to, and communicating with, their lenders during the purported loan restructure process. The FTC’s settlement prohibits the defendants from making similar misrepresentations in the future.

“Pay Up!”

Fraudulent debt collection practices continue to plague consumers and cause significant economic injury. In December 2016, the Commission charged *SQ Capital* with selling portfolios of fake payday loan debts that debt collectors used to get consumers to pay on obligations they did not owe.³¹ According to the complaint, the defendants sold fake debt that listed social security numbers and bank account numbers of real consumers, and falsely claimed that the purported borrowers had failed to repay debts they, in fact, never owed. Debt buyers then used that information to persuade consumers to pay these phony debts. At the FTC’s request, a federal court entered a preliminary injunction halting this operation pending litigation.

In another case, *FTC v. National Payment Processing LLC*, the defendants allegedly called consumers and demanded payment of payday loans or other purported debt, even after consumers disputed the debts and the defendants failed to verify that money was owed.³² The defendants also allegedly impersonated law enforcement, accused consumers of bank fraud, and falsely threatened to arrest or sue them if they did not pay. The final order the Commission

³¹ *FTC v. Joel Jerome Tucker*, No. 2:16-cv-082816 (D. Kan. Dec. 16, 2016); see also Press Release, FTC, *FTC Charges Defendants with Selling Fake Payday Loan Debt Portfolios* (Jan. 9, 2017), available at <https://www.ftc.gov/news-events/press-releases/2017/01/ftc-charges-defendants-selling-fake-payday-loan-debt-portfolios>.

³² *FTC v. National Payment Processing LLC*, No. 1:15-cv-03811-AT, (N.D. Ga. Oct. 30, 2015), available at <https://www.ftc.gov/enforcement/cases-proceedings/152-3173/national-payment-processing-llc-afs-legal-services-0> (complaint alleged, *inter alia*, that the defendants failed to provide consumers, either in the initial communication with a consumer or in a written notice sent within five days after the initial communication, with statutorily required information about the debt and the right to dispute the debt, in violation of Section 809(a) of the FDCPA, 15 U.S.C. § 1692g(a)).

obtained in this case imposed a judgment of more than \$4.4 million.

“Fun to Drive and Good for the Environment!”

Deceptive and fraudulent schemes can also affect car purchases and refinancing. In June, the FTC reached an historic \$10 billion settlement of its deception case against Volkswagen Group of America, Inc.³³ The FTC alleged that Volkswagen falsely advertised its cars as “Clean Diesel” vehicles after rigging them so that their emissions controls operated fully only during emissions testing. A federal judge approved a stipulated order requiring Volkswagen to provide up to \$10.03 billion to owners and lessees of the affected vehicles.

“Our Miracle Cure is Clinically Proven to Make You Feel Better!”

The FTC continues to focus on the deceptive marketing of health-related products. False claims that products will improve consumers’ health or cognitive abilities can sometimes create health risks³⁴ and keep consumers from obtaining legitimate medical advice or treatment. We actively monitor and take action against such advertisers.

For example, in *Sunrise Nutraceuticals, LLC*, the defendants claimed that Elimidrol, a powder containing vitamins, minerals, and herbs, alleviated opiate withdrawal symptoms and increased their likelihood of overcoming opiate addiction.³⁵ The FTC charged that these claims were false or misleading. The stipulated order requires the defendants to have competent and reliable scientific evidence to back up claims for opiate-treatment products, bars deceptive claims for any health-related products, and imposes a monetary judgment.

³³ *FTC v. Volkswagen Group of Am., Inc.*, No. 3:15-md-02672-CRB (N.D. Cal. June 28, 2016), available at <https://www.ftc.gov/enforcement/cases-proceedings/162-3006/volkswagen-group-america-inc>.

³⁴ See, e.g., *FTC v. Nat’l Urological Group*, 645 F. Supp. 2d 1167 (N.D. Ga. 2008), *aff’d*, 356 Fed. Appx. 358 (11th Cir. 2009) (complaint alleged, *inter alia*, that supplements posed safety risks because they raised blood pressure); *FTC v. Christopher Enterprises*, No. 201 CV-0505ST (D. Utah 2001) (complaint alleged, *inter alia*, that supplement contained toxic substances and could lead to serious liver damage).

³⁵ *FTC v. Sunrise Nutraceuticals, LLC*, 9:15-cv-81567 (S. D. Fla. Nov. 16, 2015), available at <https://www.ftc.gov/enforcement/cases-proceedings/152-3208-x160006/sunrise-nutraceuticals-llc>.

In October, the sellers of the liquid supplement Supple agreed to settle FTC charges that they falsely advertised that their product provided complete relief from chronic and severe joint pain caused by arthritis and fibromyalgia.³⁶ The company agreed to a court order requiring scientific evidence to support any future claims and imposing a \$150 million judgment, most of which was suspended based on the defendants' inability to pay.

Money Systems Used in Fraud

The FTC has aggressively pursued the money transfer services commonly used in many scams. When sending money via a wire transfer, a consumer is effectively sending cash, and she is unable to retrieve the money once she discovers she has been deceived. Last month, the FTC and the DOJ each announced settlements with the money transfer company Western Union that will return \$586 million to harmed consumers. The FTC alleged that for many years, fraudsters around the world have used Western Union's system to obtain payments from consumers. Our complaint charged that the company has long been aware of the problem, and that some of its representatives were complicit in fraud.³⁷ According to the complaint, Western Union's database has numerous complaints about the use of its system by perpetrators of a wide variety of common and pernicious scams, including Internet purchase scams; lottery or prize scams; "emergency" or grandparent scams;³⁸ advance-fee loan scams; and online dating or romance

³⁶ *FTC v. Supple LLC*, No. 1:16-cv-1325 (E.D. Wis. Oct. 4, 2016), available at <https://www.ftc.gov/enforcement/cases-proceedings/142-3231/supple-llc>.

³⁷ *FTC v. The Western Union Company*, No. 1:17-cv-00110-CCC (M.D. Penn. Jan. 19, 2017), available at <https://www.ftc.gov/enforcement/cases-proceedings/122-3208/western-union-company>.

³⁸ A grandparent scam involves an imposter claiming to be a grandchild in need of immediate financial help, such as money to get out of jail or to cover hospital costs. See, e.g., Press Release, FBI, *Alleged Operator of "Grandparent Scam" Indicted* (Oct. 26, 2012), available at <http://www.fbi.gov/losangeles/press-releases/2012/alleged-operator-of-grandparent-scam-indicted>.

scams.³⁹ The FTC’s settlement requires Western Union to take proactive steps to prevent scammers from using its services.⁴⁰

Evolving Technologies’ Effect on Fraud

Advances in technology often change the means by which fraudsters work. The FTC has taken steps to respond to threats that exploit recent technological changes. For example, over the past several years, the Commission has extensively studied the problem of unwanted and illegal robocalls. We learned that technology is the root of the robocall epidemic and, accordingly, technology will need to play a key role in ensuring consumers have the peace and protection they want. In response, the FTC successfully led four public challenges to spur industry initiatives to develop consumer applications to block robocalls, as well as new law enforcement tools for use in finding and stopping robocallers.⁴¹

Further, to keep abreast with technology changes, the FTC’s Bureau of Consumer Protection has created an Office of Technology Research and Investigation (“OTech”). This office is comprised of technologists and researchers who study and support our work on a wide variety of consumer protection topics. Most recently, OTech has performed research looking at the use of email authentication tools that could make a big difference in combatting fraud

³⁹ A romance scam involves an online imposter pretending to have a romantic interest in the consumer but ultimately tricking the consumer into sending money to help cover some claimed emergency expense. See FTC, Online Dating Scams, available at <https://www.consumer.ftc.gov/articles/0004-online-dating-scams>.

⁴⁰ Because of the high number of fraudulent telemarketing transactions using this method of payment, the FTC amended the Telemarketing Sales Rule to bar sellers and telemarketers from accepting cash-to-cash money transfers. See Telemarketing Sales Rule Statement of Basis and Purpose, 80 Fed.Reg. 77520 (Dec. 14, 2015), pp. 77528-29, available at <https://www.ftc.gov/policy/federal-register-notices/16-cfr-part-310-telemarketing-sales-rule-final-rule-amendments> (amending the Telemarketing Sales Rule to bar the use of certain payment methods including cash-to-cash money transfers, remotely created payment orders, and cash reload mechanisms).

⁴¹ See, e.g., Robocalls: Humanity Strikes Back Challenge, available at <https://www.ftc.gov/news-events/contests/robocalls-humanity-strikes-back>; Detectarobo Challenge, available at <https://www.ftc.gov/news-events/contests/detectarobo>; Zapping Rachel Challenge, at <https://www.ftc.gov/news-events/contests/zapping-rachel>; FTC Robocall Challenge (2012-2013), available at <https://www.ftc.gov/news-events/press-releases/2013/04/ftc-announces-robocall-challenge-winners>.

perpetrated via spoofed email.⁴² OTech’s work provides insights and guidance for businesses addressing this problem.

II. LEVERAGING RESOURCES

The ubiquity of consumer scams and the limited resources of the FTC demand that the Commission target fraud strategically and that we cooperate with other law enforcement agencies to broaden our reach and improve our effectiveness. The FTC coordinates with federal, state, and international law enforcement agencies, including those with criminal authority, to leverage resources to track down fraudsters and build actions to stop them.

To effectively combat fraud, the FTC collects and analyzes consumer complaint information through its Consumer Sentinel Network (“CSN”). CSN is an online complaints database that provides federal, state, and local law enforcement agencies with secure access to consumer complaints on a wide variety of fraud-related topics. Law enforcement agencies and private organizations contribute consumer complaints to the database, which is searchable by such criteria as the name, address, and telephone number of an entity, and the type of fraud.⁴³ The CSN serves as a cornerstone of the FTC’s ability to act quickly and effectively against fraud. It contains more than 13 million complaints dating from calendar year 2012 through calendar year 2016.⁴⁴

⁴² FTC Staff Perspective, *Businesses Can Help Stop Phishing and Protect their Brands Using Email Authentication*, March 2017, available at https://www.ftc.gov/system/files/attachments/press-releases/online-businesses-could-do-more-protect-their-reputations-prevent-consumers-phishing-schemes/email_authentication_staff_perspective_0.pdf.

⁴³ The Consumer Financial Protection Bureau, the Council of Better Business Bureaus, 21 state law enforcement agencies, and some private entities such as MoneyGram and Western Union, are among the entities that contribute data to CSN.

⁴⁴ FTC Sentinel Data Book at 3.

Almost 1.3 million complaints filed last year were fraud-related.⁴⁵ Consumers reported paying over \$744 million in those fraud complaints; the median amount paid was \$450. Fifty-one percent of the consumers who reported a fraud related complaint also reported an amount paid. Fifty-five percent of all fraud-related complaints reported the method of initial contact. Of those complaints, 77% said they were contacted by telephone and 8% by email. Only 3% of those consumers reported mail as the initial point of contact.⁴⁶ Notably, the FTC and its law enforcement partners mine the CSN database to identify trends and targets, as well as to develop cases against existing targets.

The FTC, with the DOJ, organizes and participates in the International Mass Marketing Fraud Working Group, a multilateral network of agencies that enforce laws prohibiting mass marketing fraud. The Working Group has been pivotal in recent enforcement actions that targeted a global network of mass mailing fraud schemes that allegedly defrauded millions of elderly and vulnerable consumers out of hundreds of millions of dollars. In September 2016, the FTC, the DOJ, the U.S. Postal Inspection Service, the Department of the Treasury's Office of Foreign Assets Control, and a number of other domestic and foreign law enforcement partners announced civil and criminal actions against a host of defendants.⁴⁷ As part of this effort, the FTC filed an action seeking to shut down an allegedly deceptive mail order prize promotion scheme that had mostly affected elderly consumers.⁴⁸

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ Press Release, U.S. Dept. of Justice, *Justice Department and Law Enforcement Partners Announce Civil and Criminal Actions to Dismantle Global Network of Mass Mailing Fraud Schemes Targeting Elderly and Vulnerable Victims* (Sept. 22, 2016), available at <https://www.justice.gov/opa/pr/justice-department-and-law-enforcement-partners-announce-civil-and-criminal-actions-dismantle>.

⁴⁸ *FTC v. Terry Somenzi*, No. 16-CV-7101 (C.D. Cal. Sept. 21, 2016), available at <https://www.ftc.gov/enforcement/cases-proceedings/1623226/terry-somenzi-individually-officer-international-advisory>.

Given the cross-border nature of many scams, the Commission also partners with multiple foreign agencies to combat fraud. For example, the Commission is a member of the Centre of Operations Linked to Telemarketing Fraud (“Project COLT”), a joint operation involving U.S. and Canadian agencies to combat cross-border offenses. Through this mechanism, the FTC coordinates law enforcement efforts and exchanges intelligence with Canadian authorities.⁴⁹

Our work with our state partners is equally important. Over the last two years, we have collaborated with the states on dozens of investigations and numerous joint enforcement actions. These matters have addressed robocalls,⁵⁰ imposter scams,⁵¹ charities scams,⁵² and debt collection practices,⁵³ among other deceptive and unfair practices.

Finally, collaboration with criminal law enforcement partners is also critical. In 2003, the Commission created its Criminal Liaison Unit (“CLU”) and, since that time, hundreds of fraudsters have faced criminal charges and prison time as a result of our prosecution referrals. For example, last year the former CEO and the former General Manager of IWorks, Inc., which the FTC alleged bilked more than \$275 million from consumers in a massive online marketing

⁴⁹ See Press Release, FTC, *FTC Signs Memorandum of Understanding with Royal Canadian Mounted Police to Strengthen Enforcement Cooperation* (Mar. 15, 2017), available at <https://www.ftc.gov/news-events/press-releases/2017/03/ftc-signs-memorandum-understanding-royal-canadian-mounted-police>.

⁵⁰ See Press Release, FTC, *Florida Attorney General Take Action Against Illegal Robocall Operation* (June 14, 2016), available at <https://www.ftc.gov/news-events/press-releases/2016/06/ftc-florida-attorney-general-take-action-against-illegal-robocall>.

⁵¹ See Press Release, FTC, *FTC and Florida Charge Tech Support Operation with Tricking Consumers into Paying Millions for Bogus Services* (July 8, 2016), available at <https://www.ftc.gov/news-events/press-releases/2016/07/ftc-florida-charge-tech-support-operation-tricking-consumers>.

⁵² See Press Release, FTC, *All 50 States and D.C. Charge Four Cancer Charities With Bilking Over \$187 Million from Consumers* (May 19, 2015), available at <https://www.ftc.gov/news-events/press-releases/2015/05/ftc-all-50-states-dc-charge-four-cancer-charities-bilking-over>.

⁵³ See, e.g., Press Release, FTC, *FTC and Illinois Attorney General Halt Chicago-Area Operation Charged with Collecting and Selling Phantom Payday Loan Debts* (Mar. 30, 2016), available at <https://www.ftc.gov/news-events/press-releases/2016/03/ftc-illinois-attorney-general-halt-chicago-area-operation-charged>.

scheme, were convicted of providing multiple false statements to a bank. These two defendants, who have settled with the FTC, are now serving lengthy prison terms and the FTC is preparing to provide redress to tens of thousands of customers.⁵⁴

III. FRAUD PREVENTION EDUCATION AND OUTREACH INITIATIVES

Consumer and business outreach and education complement the FTC's law enforcement work. These programs reach tens of millions of people and businesses each year through our websites, the media, and partner organizations that disseminate consumer information on the agency's behalf.⁵⁵

The FTC educates the public on a wide range of consumer protection topics, both in English and in Spanish, and we convey our messages in print and online materials, consumer and business blog posts, and speeches and presentations. In response to input from legal services providers about consumers' needs, the FTC created *Consumer.gov* and its Spanish language version *Consumidor.gov*. These websites provide consumer protection basics, helping users access important information about money management, credit and debt, protecting personal information, and identifying scams. The websites make this content accessible through straightforward design and audio read-along of text, video explanations of key issues, and easy conversion to a larger font.

The lessons of *Consumer.gov* were further developed in *Pass It On*, the agency's campaign to get older adults to talk about fraud. *Pass It On* seeks to arm older people with

⁵⁴ *United States v. Jeremy Johnson et al.*, No. 2:11-cr-00501 (D. UT verdict filed Mar. 25, 2016).

⁵⁵ In 2016, there were more than 58 million views of the FTC's online consumer education and business guidance pages. In addition, over 14,000 community groups and individuals ordered more than 15.5 million free consumer and business publications to use and share.

information that they can “pass on” to family and friends who might need it. The materials and videos available at <http://www.ftc.gov/PassItOn> are direct and to the point, with a friendly and respectful tone informed by research about the target community’s preferences. The materials cover topics such as imposter and health care scams, charity fraud, and identity theft. The distribution of 6.2 million *Pass It On* materials since the campaign’s launch indicate that these resources have resonated with the target audience.

A further example of the FTC’s work is the *IdentityTheft.gov* website, which helps consumers report identity theft, get personalized recovery plans, and put these plans into action. When a consumer creates an account, the website walks the consumer through each recovery step, updates the personalized plan as needed, tracks progress, and gives pre-filled forms and letters for the consumer to use. *IdentityTheft.gov* has allowed the agency to give consumers not only actionable advice, but an interactive, personalized experience that consumers say makes a real difference.

In November 2016, the FTC unveiled *Military.Consumer.gov*, a mobile-optimized website about financial readiness for the military community. We created the site in collaboration and consultation with the Department of Defense, the Consumer Financial Protection Bureau, Military Saves, and other partners. *Military.Consumer.gov* helps servicemembers and their families navigate personal financial decisions in light of the unique challenges they face. With deployments and frequent relocations, military families regularly need to rent or buy a new place to live, manage money while on the move, and be vigilant about dealing with businesses in new locales. *Military.Consumer.gov* lets servicemembers and their families find quick tips on the go, right from their smart phone.

The FTC also offers materials to help small businesses avoid becoming victims of fraud. These resources are found in the FTC’s Business Center at *business.ftc.gov*.⁵⁶ One such resource, *Small Business Scams*, is a six-page brochure that outlines the common scams affecting business owners, such as directory listing scams, office supply scams, webpage hosting scams, charity scams, and fake check scams.⁵⁷ The FTC also offers guidance for businesses on how to protect themselves from phishing and other cyber attacks. All of the FTC’s resources for businesses are available online.

IV. THE COMMON CARRIER EXCEPTION

As explained above, through its enforcement and education efforts, the FTC has been effective in its work combatting fraud across the economy. However, the outdated common carrier exception in the FTC Act has, in some cases, made this work more difficult. The FTC has long called for repeal of this exception, which puts common carriers subject to the Communications Act beyond the reach of the FTC’s enforcement authority. The exception can deprive the FTC of the ability to protect consumers from unfair or deceptive acts or practices, matters that fall squarely within the agency’s core mission.

The Court of Appeals for the Ninth Circuit’s recent decision holding that the common carrier exception is “status based” has made the problem worse.⁵⁸ Under the Ninth Circuit’s status based approach, any company that has or acquires the status of a “common carrier” is immune from FTC enforcement against *any* of its lines of business. In contrast, the FTC has long interpreted the common carrier exception to be “activity based”. That is, companies that

⁵⁶ In 2016, there were 15.7 million pages viewed on the Business Center.

⁵⁷ In 2016, 47,150 copies of the Small Business Scams brochure were ordered.

⁵⁸ See *Federal Trade Comm’n v. AT&T Mobility LLC*, 835 F.3d 993 (9th Cir. 2016). The Commission has asked the court to rehear the case *en banc*, and its petition remains pending.

engage in both common carrier and non-common carrier activities are still subject to FTC jurisdiction for those products or services they provide that are not common carriage.

Because no other agency has the FTC's economy-wide authority, the Ninth Circuit's decision creates significant gaps in consumer protection. The FCC, for example, has authority over only matters "for and in connection with" common carrier services.⁵⁹ Thus, under the Ninth Circuit ruling, when a company offers both common carrier services and other non-common carriage products or services, such as the sale of electronic devices, home security, or entertainment content, neither the FCC nor the FTC would be able to protect consumers in matters relating to those non-common carriage products or services. Elimination of the common carrier exception will close this gap and allow the FTC to use more effectively its extensive consumer protection experience and law enforcement tools to protect consumers from unfair and deceptive practices in the marketplace.

V. CONCLUSION

Thank you for the opportunity to provide the Commission's views. We appreciate Congress's confidence in the FTC's ability to protect consumers. Through our enforcement, education, and policy efforts, we will continue to ensure that your confidence is well placed.

⁵⁹ See 47 U.S. Code § 201.

Appendix

Snapshot of BCP's Law Enforcement, Consumer Complaints, and Education and Outreach

Enforcement Actions (since FY 2014)

- Federal Complaints
 - 179 complaints filed in Federal Court
- Consumer Redress
 - 377 orders entered in Federal Court granting \$14 billion in consumer redress
- Civil Penalties
 - 37 civil penalty complaints filed totaling \$44.1 million in penalties
- Criminal Liaison Unit Statistics
 - In the past three calendar years, our state and federal partners relied on FTC information and support to charge 318 criminal defendants and secure dozens of convictions, with an average sentence of 5.5 years.

Consumer Sentinel Network

Between 2012 and 2016, the FTC's Consumer Sentinel Network complaint database received more than 13 million complaints not related to Do Not Call and 20 million Do Not Call complaints.¹

- In calendar year 2016, over 3 million complaints (excluding Do Not Call) were received by the CSN.
 - Forty two percent were fraud complaints; thirteen percent were identity theft complaints; and forty five percent were general complaints about various industries, products, or services;
 - Debt Collection was the number one complaint category, followed by Impostor Scams ; Identity Theft; Telephone and Mobile Services; Banks and Lenders; and Prizes, Sweepstakes and Lotteries;
 - Almost 1.3 million complaints were fraud-related. Consumers reported paying over \$744 million for fraudulent products and services, and the median amount paid was \$450; and
 - Employment-or Tax-related fraud was the most common form of reported identity theft.
- In fiscal year 2016, more than 5.3 million Do Not Call complaints were received by the CSN²
 - As of September 30, 2016, there were 226 million separate telephone lines registered with Do Not Call Registry

¹ See Press Release, FTC Releases Annual Summary of Consumer Complaints (March 3, 2017) available at <https://www.ftc.gov/news-events/press-releases/2017/03/ftc-releases-annual-summary-consumer-complaints>

² See Press Release, FTC Issues FY 2016 National Do Not Call Registry Data Book (December 9, 2016) available at <https://www.ftc.gov/news-events/press-releases/2016/12/ftc-issues-fy-2016-national-do-not-call-registry-data-book>

Education and Outreach

- Outreach events
 - The Bureau of Consumer Protection and the FTC's Regional Offices participated in over 275 outreach events in 2016, including conferences, workshops, webinars, trainings, presentations, exhibits, and Twitter chats.

- Website Views
 - In calendar year 2016, the FTC had more than 58 million views of its online consumer education and business guidance pages. Of that, 2.9 million page views were in Spanish. 15.7 million page views were on the Business Center.

- Blog Subscribers
 - The FTC Consumer Blog has 168,000 English subscribers and 46,000 Spanish subscribers, and the Business Blog has more than 61,000 subscribers.

- Print Publications
 - In calendar year 2016, the FTC distributed 15.4 million print publications, of which almost 2 million were in Spanish.
 - More than 6.2 million Pass It On materials have been distributed since the campaign launched, including 2.1 million in 2016.
 - In 2016, the FTC distributed 3.7 million copies of its Identity Theft consumer education materials.
 - In 2016, 47,150 copies of Small Business Scams (a brochure outlining common scams affecting business owners) were ordered.