



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Division of Financial Practices

May 13, 2020

Paul Sanford, Assistant Director
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Bureau of Consumer Financial Protection
1700 G Street, N.W.
Washington, D.C. 20552

Dear Mr. Sanford:

This letter responds to your request for information concerning the Federal Trade Commission's (Commission or FTC) enforcement activities related to compliance with Regulation Z (the Truth in Lending Act or TILA); Regulation M (the Consumer Leasing Act or CLA); and Regulation E (the Electronic Fund Transfer Act or EFTA) (collectively "the Regulations").¹ You request this information for use in preparing the Bureau of Consumer Financial Protection's (CFPB) 2019 Annual Report to Congress. Specifically, you ask for information concerning the FTC's activities with respect to the Regulations during 2019. We are pleased to provide the requested information below.²

I. FTC Role in Administering and Enforcing the Regulations

The Dodd-Frank Act, signed into law on July 21, 2010, substantially restructured the financial services law enforcement and regulatory system. Among other things, the Act made important changes to the TILA, the CLA, and the EFTA, and other consumer laws, such as giving the CFPB rulemaking and enforcement authority for the TILA, the CLA, and the EFTA. Under the Act, the FTC retained its authority to enforce the TILA and Regulation Z, the CLA and Regulation M, and the EFTA and Regulation E. In addition, the Act gave the Commission

¹ The TILA is at 15 U.S.C. § 1601 *et seq.*; the CFPB's Regulation Z is at 12 C.F.R. Part 1026; and the Federal Reserve Board's (Board's) Regulation Z is at 12 C.F.R. Part 226. The CLA is at 15 U.S.C. § 1667 *et seq.*; the CFPB's Regulation M is at 12 C.F.R. Part 1013; and the Board's Regulation M is at 12 C.F.R. Part 213. The EFTA is at 15 U.S.C. § 1693 *et seq.*; the CFPB's Regulation E is at 12 C.F.R. Part 1005; and the Board's Regulation E is at 12 C.F.R. Part 205. Our understanding is that your request encompasses the CLA, an amendment to the TILA.

² A copy of this letter is being provided to the Board's Division of Consumer and Community Affairs, in connection with its responsibility for some aspects of the Regulations after the transfer date of July 21, 2011. Among other things, the Board retained responsibility for implementing the Regulations with respect to certain motor vehicle dealers, under the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act or Act), Pub. L. 111-203, 124 Stat. 1376 (July 21, 2010). *See, e.g.*, Dodd-Frank Act, § 1029 and Subtitle H.

the authority to enforce any CFPB rules applicable to entities within the FTC's jurisdiction, which include most providers of financial services that are not banks, thrifts, or federal credit unions.³ In accordance with the memorandum of understanding that the Commission and the CFPB entered into in 2012 and reauthorized in 2015 and 2019, and consistent with the Dodd-Frank Act, the Commission has been coordinating certain law enforcement, rulemaking, and other activities with the CFPB.⁴

II. Regulation Z (the TILA) and Regulation M (the CLA)

In 2019, the Commission engaged in law enforcement; rulemaking, research and policy development; and consumer and business education – all relating to the topics covered by the TILA and Regulation Z and the CLA and Regulation M, including the advertisement, extension, and certain other aspects of consumer credit and leasing.⁵

A. Truth in Lending and Consumer Leasing: Enforcement Actions

In 2019, the Commission's law enforcement efforts against those who market or extend non-mortgage credit included actions involving automobile financing, payday loans, credit repair and debt relief, and financing of consumer electronics.

1. Automobiles (Credit and Leasing)

In 2019, the FTC continued its efforts to combat deceptive automobile dealer practices, engaging in ongoing litigation in a federal court action involving the TILA and Regulation Z (credit) and the CLA and Regulation M (leasing). In this federal court action, the FTC's complaint (previously reported on) alleged that a group of four auto dealers operating in Arizona and New Mexico, near the border of the Navajo Nation, engaged in a range of illegal activities including falsifying consumers' income and down payment information on vehicle financing

³ The FTC has authority to enforce the TILA and Regulation Z, the CLA and Regulation M, and the EFTA and Regulation E, as to entities for which Congress has not committed enforcement to some other government agency. See 15 U.S.C. § 1607(c) (the TILA and Regulation Z, and the CLA and Regulation M) and 15 U.S.C. § 1693o (the EFTA and Regulation E).

⁴ See FTC, *Memorandum of Understanding between the Consumer Financial Protection Bureau and the Federal Trade Commission*, Jan. 20, 2012, available at <https://www.ftc.gov/system/files/120123ftc-cfpb-mou.pdf>, and FTC, *Memorandum of Understanding between the Consumer Financial Protection Bureau and the Federal Trade Commission*, Mar. 6, 2015, available at https://www.ftc.gov/system/files/documents/cooperation_agreements/150312ftc-cfpb-mou.pdf. In 2019, the FTC and CFPB again reauthorized the MOU. See FTC, *Memorandum of Understanding between the Consumer Financial Protection Bureau and the Federal Trade Commission*, Feb. 25, 2019, available at https://www.ftc.gov/system/files/documents/cooperation_agreements/ftc-cfpb_mou_225_0.pdf. See also Dodd-Frank Act, § 1024.

⁵ Your letter also asks for specific data regarding compliance examinations, including the extent of compliance, number of entities examined, and compliance challenges experienced by entities subject to the FTC's jurisdiction. The Commission does not conduct compliance examinations or collect compliance-related data concerning the non-bank entities within its jurisdiction. As a result, this letter does not provide this information.

applications and contracts submitted to third-party financing companies, and misrepresenting important financial terms in vehicle advertisements.⁶ The complaint also charges Tate's Auto with violating the TILA and Regulation Z (credit) and the CLA and Regulation M (leases) by failing to disclose required terms in advertisements, including in online and social media.

2. Payday Lending (Credit)

In 2019, the U.S. Court of Appeals for the Ninth Circuit denied the petition for rehearing en banc by Scott Tucker and several of the corporate defendants, after the court's panel affirmed the record-setting \$1.3 billion district court judgment and order, previously reported on, that the FTC obtained against the defendants for violating the FTC Act and the TILA, for deceiving consumers across the country and illegally charging them undisclosed and inflated fees.⁷ In 2019, the FTC also filed its response to defendants' petition for a writ of certiorari to the U.S. Supreme Court.⁸ Litigation continues in this appellate matter.

3. Credit Repair and Debt Relief (Credit)

The FTC filed a complaint and obtained a temporary restraining order against Grand Teton Professionals, an alleged credit repair scheme that charged illegal upfront fees and falsely claimed to repair consumers' credit.⁹ The complaint alleged that defendants violated the FTC Act and several provisions of the Credit Repair Organizations Act, the Telemarketing Sales Rule, the Consumer Review Fairness Act, the TILA, and other laws.¹⁰ Under the terms of the temporary restraining order granted by the court, the company temporarily ceased operations and the defendants' assets are frozen.¹¹ The Commission also obtained stipulated preliminary injunctions against defendants, and in 2019, litigation was continuing in this matter.¹²

⁶ *FTC v. Tate's Auto Center of Winslow, Inc.*, No. 18-cv-08176 (D. Ariz. filed July 31, 2018), available at <https://www.ftc.gov/enforcement/cases-proceedings/162-3207/tates-auto-center>.

⁷ *FTC v. AMG Capital Management, LLC*, No. 16-17197 (9th Cir. June 20, 2019).

⁸ See Brief for the Respondent, *AMG Capital Management, LLC v. FTC*, No. 19-508 (Dec. 13, 2019), available at <https://www.supremecourt.gov/docket/docket.aspx?Search=&type=Docket>.

⁹ See FTC, Press Release, *FTC Stops Operators of Fake Credit Repair Scheme*, June 21, 2019, available at <https://www.ftc.gov/news-events/press-releases/2019/06/ftc-stops-operators-fake-credit-repair-scheme>.

¹⁰ *FTC v. Grand Teton Professionals*, No. 3:19-cv-00933 (D. Conn. filed June 17, 2019) available at <https://www.ftc.gov/enforcement/cases-proceedings/182-3168/grand-teton-professionals-llc>.

¹¹ See *id.* (D. Conn. June 18, 2019), available at <https://www.ftc.gov/enforcement/cases-proceedings/182-3168/grand-teton-professionals-llc>.

¹² See *supra* note 10 (stipulated preliminary injunction as to defendants Grand Teton Professionals, LLC, 99th Floor, LLC, Mait Mgmt. Inc., Demand Dynamics, LLC, Atomium Corps Inc., Startup Masters NJ Inc., First Incorp. Services Inc., Douglas Filter, and Marcio Andrade) (D. Conn. July 23, 2019), (stipulated preliminary injunction as to defendant Startup Masters NJ Inc.) (D. Conn. July 23, 2019).

The FTC filed complaints against operators of two similar student loan debt relief schemes, and a financing company that assisted them, for violations of the FTC Act, the Telemarketing Sales Rule and the TILA, and obtained stipulated permanent injunctions against the corporate defendants and its owners in one matter, and against the financing company in both matters.¹³ The complaints in both matters allege defendants charged illegal upfront fees that they led consumers to believe went towards consumers' student loans, falsely promised that their services would permanently lower or even eliminate consumers' loan payments or balances, and signed customers up for high-interest loans to pay the fees without making required disclosures.¹⁴ The complaints charged the financing company in both cases with failing to make, clearly and conspicuously, written disclosures required by the TILA for the closed-end financing, including the amount financed, finance charge, and total of payments.¹⁵ The stipulated permanent injunction with the settling student debt relief company bans these defendants from selling any type of debt relief products or services, making unsubstantiated claims about financial products and services, and making material misrepresentations about any other kind of product or service; it also imposes a \$4.2 million judgment (with all but \$156,000 suspended based on inability to pay).¹⁶ The stipulated permanent injunctions with the financing company in both matters require defendant to pay nearly \$28 million (with all but \$1 million suspended based on inability to pay), to relinquish its right to collect on any outstanding balances from current or former customers of both debt relief companies, and to notify these customers that it will not collect further payments from them; the financing company also must provide clear and conspicuous disclosures in writing before consumers sign an installment credit agreement,

¹³ See FTC, Press Release, *FTC Takes Action against Operators of Student Loan Debt Relief Schemes and the Financing Company that Assisted Them*, Sept. 12, 2019, available at <https://www.ftc.gov/news-events/press-releases/2019/09/ftc-takes-action-against-operators-student-loan-debt-relief>.

¹⁴ The complaint in one matter included charges by the State of Minnesota. See *FTC and State of Minnesota v. Manhattan Beach Venture, LLC*, No. 2:19-CV-7849 (C.D. Cal. filed Sept. 11, 2019), available at <https://www.ftc.gov/enforcement/cases-proceedings/172-3041/manhattan-beach-venture-llc-et-al>; see also *FTC v. Student Advocates Team, LLC*, No. 8:19-cv-1728 (C.D. Cal. filed Sept. 11, 2019), available at <https://www.ftc.gov/enforcement/cases-proceedings/172-3036/student-advocates-team-llc-et-al>.

¹⁵ See *id.*

¹⁶ *FTC v Manhattan Beach Venture, LLC*, No. 2:19-cv-7849 (C.D. Cal. Sept. 13, 2019) (stipulated order for permanent injunction, monetary relief and final judgment as to defendants Manhattan Beach Venture, LLC, Christopher E. Lyell, and Bradley K. Hansen), available at <https://www.ftc.gov/enforcement/cases-proceedings/172-3041/manhattan-beach-venture-llc-et-al>. The full judgment will become due if the defendants are found to have misrepresented their financial condition.

including the amount financed, finance charge, APR, and payment schedule, and fully comply with the TILA.¹⁷ Litigation in one matter is ongoing.¹⁸

4. Consumer Electronics Financing (Credit)

The Commission continued litigating in connection with a 2010 contempt order against BlueHippo Funding LLC, a consumer electronics retailer, for violating a prior FTC consent order.¹⁹ The consent order settled charges that the company had, among other things, violated the TILA and Regulation Z by failing to provide required written disclosures and account statements to consumers. In the contempt action, the FTC alleged that the company failed to provide advertised financing for computer purchases and did not order or ship the computers to purchasers in the promised timeframe. The district court for the Southern District of New York found BlueHippo Funding LLC, BlueHippo Capital LLC, and CEO and sole owner Rensin in contempt for operating a deceptive computer financing scheme in violation of the consent order, and entered judgment against BlueHippo and Rensin for \$13.4 million (the harm consumers suffered as a result of the scheme), and the appellate court affirmed the ruling for the FTC by the Southern District of New York.²⁰ In 2019, the federal district court for the Southern District of Florida affirmed a federal bankruptcy court's ruling that Rensin's debt was non-dischargeable and he could not use a bankruptcy filing to shield himself from complying with the district court order requiring him to pay compensatory damages for violating the 2008 FTC order.²¹

¹⁷ *FTC v. Manhattan Beach Venture, LLC*, No. 2:19-cv-7849 (C.D. Cal. Sept. 13, 2019) (stipulated order for permanent injunction, monetary relief and final judgment as to Equitable Acceptance Corp., *available at* <https://www.ftc.gov/enforcement/cases-proceedings/172-3041/manhattan-beach-venture-llc-et-al>, *FTC v. Student Advocates Team, LLC*, No. 8:19-cv-1728 (C.D. Cal. Sept. 12, 2019) (stipulated order for permanent injunction, monetary relief and final judgment as to Equitable Acceptance Corp.), *available at* <https://www.ftc.gov/enforcement/cases-proceedings/172-3036/student-advocates-team-llc-et-al>. The full judgment will become due if the defendant is found to have misrepresented its financial condition.

¹⁸ *See FTC v. Student Advocates Team, LLC*, No. 8:19-cv-1728 (C.D. Cal. filed Sept. 11, 2019), *available at* <https://www.ftc.gov/enforcement/cases-proceedings/172-3036/student-advocates-team-llc-et-al>.

¹⁹ *FTC v. BlueHippo Funding, LLC*, No. 1:08-cv-1819 (S.D.N.Y. July 27, 2010) (contempt order entered), *appeal docketed*, No. 11-374 (2d Cir. Feb. 1, 2011); (2d Cir. Feb. 12, 2014) (appellate order vacating district court ruling and remanding case).

²⁰ *FTC v. Rensin*, 687 Fed. App'x 3 (2d Cir. Apr. 12, 2017) (judgment), (2d Cir. June 5, 2017) (mandate).

²¹ *Rensin v. FTC*, No. 19-80001 (S.D. Fla. July 26, 2019). *See also Rensin v. FTC*, No. 17-1185 (Bankr. S.D. Fla. Dec. 14, 2018). In addition, the court of appeals for the Second Circuit vacated on other grounds two orders issued by the federal district court for the Southern District of New York; this ruling does not affect the original award of the \$13.4 million judgment. *FTC v. Rensin*, No 17-669 (2d Cir. June 26, 2019) (summary order), (2d Cir. Aug. 13, 2019) (mandate).

B. Truth in Lending and Consumer Leasing: Rulemaking, Research, and Policy Development

1. Automobiles (Credit)

In 2019, the FTC continued work on a qualitative study of consumers' experiences related to buying and financing automobiles at dealerships.²² The auto study, which includes in-depth consumer interviews and review of consumers' purchase and finance documents, is designed to assist the FTC by providing useful insights into consumer understanding of the automobile purchasing and financing process at dealerships, such as financing terms and additional products and services the dealer may have offered. Assessment and review of information pertaining to the study is currently continuing. While the results will not be generalizable to the U.S. population, the FTC believes that the study will offer meaningful information about the consumers' experience, and help focus FTC initiatives in this area, including regarding the FTC Act, the TILA, and the CLA.

2. Small Business Financing Forum (Credit)

In May 2019, the FTC hosted a forum on small business financing. The forum examined trends and consumer protection issues in the small business marketplace, including the recent proliferation of online loans and alternative financing products.²³ The forum brought together a variety of stakeholders to examine this industry, including the different types of products available to small businesses, the benefits of these products, and possible consumer protection concerns. The forum also examined how the FTC Act, the TILA, and other laws, and self-regulatory frameworks may apply or provide guidance to companies offering these products, and included discussion of the APR and TILA-like disclosures in this context.²⁴

²² For more information about the study, see FTC, Press Release, *FTC Announces Second Federal Register Notice on Proposed Study of Consumers' Experiences Buying and Financing Automobiles from Auto Dealers*, Sept. 13, 2016, available at <https://www.ftc.gov/news-events/press-releases/2016/09/ftc-announces-second-federal-register-notice-proposed-study>, reported on last year. In the Federal Register Notice linked in that release, the Commission noted it had brought more than 25 cases in the auto purchase and financing area since 2011, including those in a federal-state effort that yielded more than 200 actions for fraud, deception, and other illegal practices.

²³ See *Strictly Business: An FTC Forum on Small Business Financing* (May 8, 2019), available at <https://www.ftc.gov/news-events/events-calendar/strictly-business-ftc-forum-small-business-financing>. A webcast and event materials are available at that site.

²⁴ See *id.*, Transcript – Panel 1: Overview of the Small Business Financing Marketplace: Remarks of Gwendy Brown, Vice President of Research and Policy, Opportunity Fund, at 12, Scott Talbott, Senior Vice President of Government Affairs, Electronic Transactions Association, at 12-13, 17-18, Sam Taussig, Head of Global Policy, Kabbage, Inc., at 19; Transcript – Panel 3: Consumer Protection Risks and the Path Ahead: Remarks of Barbara J. Lipman, Project Manager, Division of Consumer and Community Affairs, Federal Reserve Board, at 48, Christin Spradley, Head of Policy and Senior Associate General Counsel, OnDeck, at 49-50, 54-55 (May 8, 2019).

3. Military (Credit and Leasing)

In 2019, the FTC’s Military Task Force, which includes a cross-section of agency representatives, continued work on military consumer protection issues.²⁵ The Task Force represents part of the agency’s collaborative effort to provide resources for military consumers and is aimed at identifying their needs and formulating initiatives to empower servicemembers, veterans, and their families, including through law enforcement actions. Additional information concerning FTC initiatives in 2019 to assist military consumers is included below.

a. ABA Legal Assistance for Military Personnel

The FTC staff worked with the American Bar Association’s Standing Committee on Legal Assistance for Military Personnel (“ABA LAMP” or “committee”). The FTC serves as a liaison to ABA LAMP, and staff coordinates on FTC initiatives to assist military consumers, and provides training to servicemembers’ and veterans’ representatives in conjunction with the committee on consumer financial issues, including the Military Lending Act and the DoD military lending rule, consumer credit and TILA-related matters, and consumer leasing and CLA-related matters.

b. Department of Defense Military Lending Task Force

The FTC staff also participated in an interagency group that coordinates with the DoD on issues pertaining to the MLA and DoD’s military lending rule implementing the MLA, which includes issues related to the TILA and other credit matters.²⁶

4. Common Ground Conferences

In September 2019, the FTC – together with the Minnesota Attorney General’s Office, Better Business Bureau of Minnesota and North Dakota, and Mid-Minnesota Legal Aid – hosted a Common Ground Conference, in Minneapolis, Minnesota.²⁷ At the event, FTC staff, state and federal consumer protection officials, legal services attorneys, and consumer advocates addressed a variety of issues facing Midwest consumers. Among other topics, participants discussed auto sales and financing including issues related to the TILA, such as false ads and undisclosed fees, and spotting scams.

²⁵ See FTC, *Military Task Force*, available at <https://www.ftc.gov/policy/advocacy/military-task-force>.

²⁶ The MLA requires the DoD to coordinate with several federal agencies, including the FTC, in prescribing regulations and not less than every two years thereafter. 10 U.S.C. § 987.

²⁷ See *Working Together to Protect Midwest Consumers: A Common Ground Conference* (Sept. 19, 2019), available at <https://www.ftc.gov/news-events/events-calendar/working-together-protect-midwest-consumers-common-ground-conference>.

In October 2019, the FTC and the Office of Virginia’s Attorney General hosted a Common Ground Conference, in the greater Richmond, Virginia area.²⁸ FTC staff, state consumer protection officials, and consumer advocates considered diverse issues impacting consumers in this region. These topics included credit and debt issues, such as those related to the TILA, that affect service members and their families, and student loan debt relief scams and resources, among others.

C. Truth in Lending and Consumer Leasing: Consumer and Business Education

1. Credit Repair and Debt Relief (Credit)

The Commission issued several blog posts discussing the FTC’s cases and other initiatives in the areas of credit repair and debt relief, noted above. For example, the FTC issued a blog post for businesses on the complaint filed in the Grand Teton case, discussing its unlawful practices such as failure to make required disclosures and provided guidance on dos and don’ts for credit repair businesses.²⁹

The FTC also posted a blog post informing businesses about the complaints and stipulated orders filed in the Manhattan Beach Venture and Student Advocates cases discussed above, against these two student loan debt relief schemes and their third-party financing company.³⁰ The blog post discussed, among other things, the companies’ false promises of debt reduction or loan forgiveness and locking consumers into high interest loans to pay the upfront fees without clearly disclosing – as required by the TILA – important information about the financing, such as the amount financed and finance charge. The Commission also posted a blog post for consumers on this case, discussing the high-interest, multi-year loans consumers took out from the finance company to cover fees, advising consumers they need not pay for help with student loans, and providing tips to avoid such scams.³¹

III. Regulation E (the EFTA)

In 2019, the FTC had twelve new or ongoing cases pertaining to the EFTA and Regulation E. The Commission also engaged in research and policy work and educational activities involving the EFTA and Regulation E.

²⁸ See *Protecting Virginia’s Consumers: A Common Ground Conference* (Oct. 30, 2019), available at <https://www.ftc.gov/news-events/events-calendar/protecting-virginias-consumers-common-ground-conference>.

²⁹ See Seena Gressin, *FTC says credit repair company en-CROA-ched on consumer rights*, FTC BUSINESS CENTER BUSINESS BLOG (June 28, 2019), <https://www.ftc.gov/news-events/blogs/business-blog/2019/06/ftc-says-credit-repair-company-en-croa-ched-consumer-rights>.

³⁰ See Lesley Fair, *FTC sues marketers of student loan “debt relief” – and financier who helped it happen*, FTC BUSINESS CENTER BUSINESS BLOG (Sept. 12, 2019), <https://www.ftc.gov/news-events/blogs/business-blog/2019/09/ftc-sues-marketers-student-loan-debt-relief-financier-who>.

³¹ See Lisa Lake, *Don’t pay for help with student loans*, FTC BUREAU OF CONSUMER PROTECTION BLOG (Sept. 12, 2019), <https://www.consumer.ftc.gov/blog/2019/09/dont-pay-help-student-loans>.

A. Electronic Fund Transfers: Enforcement Actions

1. Negative Option Cases

Nine of the Commission’s cases alleging violations of the EFTA and Regulation E arose in the context of “negative option” plans.³² These include plans where a consumer agrees to receive various goods or services from a company for a trial period at no charge or at a reduced price. The company also obtains, sometimes through misrepresentations, the consumer’s debit or credit card number. If the consumer does not cancel before the end of the trial period, the shipments of goods or provision of services continue, and the consumer incurs recurring charges. The EFTA and Regulation E prohibit companies from debiting consumers’ debit cards, or using other electronic fund transfers to debit their bank accounts, on a recurring basis without obtaining proper written authorization for preauthorized electronic fund transfers and without providing the consumer with a copy of the written authorization.

In 2019, the FTC filed a complaint in an action involving misleading negative option plans, and defendants agreed to a preliminary injunction temporarily barring defendants from misleading consumers about supposedly “free trial” offers, enrolling them in unwanted continuity plans, billing them without their authorization, and making it nearly impossible for them to cancel or get their money back, for an online subscription scam pitching at least eight different product lines, primarily cosmetics and dietary supplements.³³ The complaint alleged the defendants defrauded consumers nationwide out of more than \$35 million through illegal credit and debit card charges in violation of Section 5 of the FTC Act, the Restore Online Shoppers’ Confidence Act (ROSCA), and the EFTA.³⁴ Litigation continues in this matter.

In a second negative option case, the operators of a worldwide negative option scam agreed to settle charges that they deceptively advertised free trial offers and not only charged consumers full-price for the trial product (including skin creams, electronic cigarettes, and dietary supplements), but also enrolled them in expensive, ongoing continuity plans without their knowledge or consent.³⁵ The complaint charges unfair and deceptive practices under the FTC Act, and violations of the ROSCA and the EFTA. The court orders resolving the FTC’s

³² Negative option plans can involve the use of debit cards, credit cards, or both. The EFTA and Regulation E apply to debit cards; the TILA and Regulation Z apply to credit cards.

³³ See FTC, Press Release, *FTC Obtains Preliminary Injunction Halting Online Beauty Product Sellers’ Deceptive “Free Trial” Offers* (September 6, 2019), available at <https://www.ftc.gov/news-events/press-releases/2019/09/ftc-obtains-preliminary-injunction-halting-online-beauty-product>.

³⁴ See *FTC v. AH Media Group, LLC*, No. 19-cv-04022-JD (N.D. Cal. filed July 12, 2019), available at https://www.ftc.gov/system/files/documents/cases/ah_media_complaint.pdf, (stipulated preliminary injunction) (N.D. Cal. Aug. 28, 2019). The Commission also filed an amended complaint in this matter. See (N.D. Cal. filed Oct. 23, 2019) (first amended complaint).

³⁵ See FTC, Press Release, *Online Marketers Barred from Deceptive “Free Trial” Offers, Unauthorized Billing* (May 31, 2019), available at <https://www.ftc.gov/news-events/press-releases/2019/05/online-marketers-barred-deceptive-free-trial-offers-unauthorized>.

complaint bar the defendants from such illegal conduct and require them to turn over more than \$9 million in assets.³⁶ Among other things, the orders require the defendants to obtain consumers' express informed consent before making any electronic funds transfer and to provide the consumer with a copy of the written authorization.³⁷

In a third negative option case, the FTC obtained a settlement with the two principals and 12 corporate defendants of a multi-national internet marketing scam, where defendants marketed supposedly "free trial" offers for personal care products and dietary supplements online but charged consumers the full price of the products and enrolled them in negative option continuity plans without their consent.³⁸ The complaint (previously reported) charged the defendants with violations of the FTC Act, the EFTA, and the ROSCA. Under the two court orders, the Apex Capital defendants will be barred from the illegal conduct alleged in the FTC's complaint, and will surrender assets valued at likely more than \$3 million – and which may yield over \$6 million – depending on the sale of certain assets.³⁹ In 2019, the Commission filed an amended complaint in this matter, adding two defendants – a Latvian financial institution and payment processor and the company's CEO.⁴⁰ Litigation continued against these defendants in 2019.

³⁶ *FTC v. Triangle Media Corp.*, No. 18-cv-1388 (S.D. Cal. May 30, 2019) ([modified] stipulated order for permanent injunction and monetary judgment as to defendants Triangle Media Corp., Jasper Rain Marketing LLC, and Brian Phillips) (Triangle), (S.D. Cal. May 30, 2019) ([modified] stipulated order for permanent injunction and monetary judgment as to defendants Hardwire Interactive Inc., Global Northern Trading Ltd., and Devin Keer) (Hardwire), available at <https://www.ftc.gov/enforcement/cases-proceedings/172-3108/ftc-v-triangle-media-corporation>. The Triangle order imposes a \$48.1 million judgment, to be partially suspended upon their payment to the FTC of \$399,795 and relinquishment of any right to assets currently held by the court-appointed receiver; the Hardwire order imposes a \$123.1 million judgment to be partially suspended upon their payment to the FTC of over \$3 million and the court-appointed receiver will turn over more than \$5 million of defendants' assets. Under both orders, the full judgment will become due if the defendants are found to have misrepresented their financial condition.

³⁷ The FTC also prevailed in the defendants' appeal of the district court's order of preliminary injunction against the defendants, previously reported on. See *FTC v. Hardwire Interactive, Inc.*, No. 18-56161 (9th Cir. Mar. 19, 2019) (judgment), (9th Cir. May 13, 2019) (mandate).

³⁸ See FTC, Press Release, *Apex Capital Group Internet Marketers Settle FTC Allegations They Deceived Consumers With False Claims of "Free Trial" Offers and Unauthorized Continuity Plans*, Sept. 20, 2019, available at <https://www.ftc.gov/news-events/press-releases/2019/09/apex-capital-group-internet-marketers-settle-ftc-allegations-they>.

³⁹ *FTC v. Apex Capital Group, LLC*, No. 18-cv-09573 (C.D. Cal. Sept. 11, 2019) (stipulated order for permanent injunction and monetary judgment as to Phillip Peikos and 12 corporate defendants), (C.D. Cal. Sept. 11, 2019) (stipulated order for permanent injunction and monetary judgment as to David Barnett), available at <https://www.ftc.gov/enforcement/cases-proceedings/172-3189/apex-capital-group-llc>. The order against Peikos and 12 corporate defendants imposes a financial judgment of over \$60 million, which will be partially suspended after the defendants surrender their interests in substantially all of their assets; the order against Barnett imposes a financial judgment of over \$47 million, which will be partially suspended after he surrenders his interest in nearly \$1 million in liquid assets and certain personal assets. In both orders, the full judgment will become due if the defendants are found to have misrepresented their financial condition.

⁴⁰ See *FTC v. Apex Capital Group, LLC*, No. 18-cv-9573 (C.D. Cal. filed May 30, 2019) (first amended complaint for permanent injunction and other equitable relief), available at <https://www.ftc.gov/enforcement/cases-proceedings/172-3189/apex-capital-group-llc>.

In a fourth negative option case, the FTC obtained a settlement with one defendant in an action that was previously filed against Redwood Scientific, which alleged that defendants engaged in a scheme that used illegal robocalls to deceptively market dissolvable oral film strips as effective smoking cessation, weight-loss, and sexual-performance aids, and enrolled consumers in auto-ship continuity plans without their consent, in violation of the FTC Act, the EFTA, the Telemarketing Sale Rule, and the ROSCA.⁴¹ The settlement resolved the FTC’s charges against one defendant in this case, Danielle Cadiz, permanently banning her from all robocall activities, prohibiting a wide range of misleading or deceptive health-related claims, and requiring her to timely obtain written authorization signed or similarly authenticated by the consumer for any preauthorized electronic fund transfer from the consumer’s account before initiating the transfer and to provide the consumer with a copy of the valid written authorization.⁴² Litigation continues against the remaining defendants.

In a fifth negative option case, the FTC and the State of Maine filed a civil contempt action against two companies that market dietary supplements and enrolled consumers in auto-renewal plans and charged consumers’ debit cards without authorization in violation of the FTC Act and the EFTA, alleging they have continued to promote their products using unproven claims that they can treat and cure diseases, in violation of a 2018 FTC settlement order.⁴³ The agencies seek a civil contempt order barring defendants from the alleged conduct and awarding monetary relief.⁴⁴

In a sixth negative option case, in connection with orders that were previously filed, the FTC mailed 79,771 refund checks totaling over \$1.8 million to consumers who signed up for “risk-free” trial offers for skin care products, but were enrolled in negative option programs with recurring monthly charges, in violation of the FTC Act and the EFTA.⁴⁵

⁴¹ See FTC, Press Release, *FTC, Law Enforcement Partners Announce New Crackdown on Illegal Robocalls*, June 25, 2019, available at <https://www.ftc.gov/news-events/press-releases/2019/06/ftc-law-enforcement-partners-announce-new-crackdown-illegal>.

⁴² *FTC v. Cardiff*, No. 18-cv-02104 (C.D. Cal. May 16, 2019) (stipulated order for permanent injunction and monetary judgment as to defendant Danielle Cadiz), available at <https://www.ftc.gov/enforcement/cases-proceedings/172-3117-x190001/jason-cardiff-redwood-scientific-technologies-inc>. The \$18.2 million monetary judgement against Cadiz was suspended based on inability to pay. The full judgment will become due if the defendant is found to have misrepresented her financial condition.

⁴³ See FTC, Press Release, *FTC, State of Maine File Contempt Action against Dietary Supplement Marketers* (Dec. 18, 2019), available at <https://www.ftc.gov/news-events/press-releases/2019/12/ftc-state-maine-file-contempt-action-against-dietary-supplement>.

⁴⁴ *FTC and State of Maine v. Health Research Laboratories, LLC*, No. 17-cv-00467 (D. Me. filed Dec. 17, 2019), available at <https://www.ftc.gov/enforcement/cases-proceedings/152-3021/health-research-laboratories-llc>.

⁴⁵ See FTC, Press Release, *FTC Sending Refund Checks Totaling Over \$1.8 Million to Consumers Defrauded by “Risk-Free” Trial Offers for Skin Care Products* (Nov. 21, 2019), available at <https://www.ftc.gov/news-events/press-releases/2019/11/ftc-sending-refund-checks-totaling-over-18-million-consumers>. See also *FTC v.*

In a seventh negative option case, the FTC mailed 2,897 checks totaling more than \$113,000 to fully refund consumers who bought FlexiPrin, a deceptively marketed joint pain supplement, in connection with previously entered settlement orders the FTC obtained against the defendants, which the agency had charged with violations of the FTC Act and the EFTA.⁴⁶

In an eighth negative option case, related to an order previously filed, the FTC mailed 227,995 checks totaling more than \$6 million to consumers who purchased health products from defendants the FTC had alleged automatically enrolled consumers without their consent into negative option auto-ship programs, in violation of the FTC Act, the ROSCA and the EFTA.⁴⁷

Finally, the FTC mailed 1,951 refund checks totaling over \$321,000 to consumers who bought supposed weight-loss products marketed by LeanSpa, LLC – the second round of checks in this matter.⁴⁸ The FTC and the State of Connecticut previously sued the marketers, charging that they used fake websites to promote weight-loss products and made deceptive claims about their negative option plans. The LeanSpa marketers previously settled the complaint, and after the FTC mailed more than 23,000 checks totaling over \$3.7 million to consumers who bought LeanSpa products, money remained in the settlement fund. The Commission used a portion of this money to send postcards to consumers potentially affected by LeanSpa’s marketing practices, and received more than 2,000 responses, leading to the additional refunds mailed in 2019.

2. Other Cases

In 2019, the FTC filed a complaint and obtained a stipulated order with online lender, Avant, LLC, resolving charges that it engaged in deceptive and unfair loan servicing practices, such as imposing unauthorized charges on consumers’ accounts and unlawfully requiring

Bunzai Media Group, Inc., No 15-cv-04527 (C.D. Cal. June 27, 2018) available at <https://www.ftc.gov/enforcement/cases-proceedings/152-3067/bunzai-media-group-inc-auravie>.

⁴⁶ See FTC, Press Release, *FTC Refunds Consumers Who Bought FlexiPrin Joint Pain Supplement* (Aug. 22, 2019), available at <https://www.ftc.gov/news-events/press-releases/2019/08/ftc-refunds-consumers-who-bought-flexiprin-joint-pain-supplement>. This is the second refund distribution in this matter. The court previously entered stipulated final orders resolving charges by the FTC and State of Maine with all of the nine defendants engaged in violations of the FTC Act and the EFTA. See *FTC and State of Maine v. XXL Impressions LLC*, No. 17-cv-00067 (D. Me. Feb. 22, 2017), available at <https://www.ftc.gov/enforcement/cases-proceedings/152-3024-162-3033-162-3036/xxl-impressions-llc-j2-response-llp>.

⁴⁷ See FTC, Press Release, *FTC Returns More Than \$6 Million to Consumers Who Bought Deceptively Marketed Health Products from Tarr, Inc.* (Feb. 1, 2019), available at <https://www.ftc.gov/news-events/press-releases/2019/02/ftc-returns-more-6-million-consumers-who-bought-deceptively>. See also *FTC v. Tarr Inc.*, No. 17-cv-2024 (S.D. Cal. Nov. 14, 2017), available at <https://www.ftc.gov/enforcement/cases-proceedings/142-3236-x180001/tarr-inc>; see also *id.* (S.D. Cal. Nov. 27, 2017) (order granting joint motion to correct clerical omission).

⁴⁸ See FTC, Press Release, *FTC Sending Additional Refund Checks to Consumers Who Bought LeanSpa Products*, Dec. 16, 2019, available at <https://www.ftc.gov/news-events/press-releases/2019/12/ftc-sending-additional-refund-checks-consumers-who-bought-leanspa>.

consumers to consent to automatic payments from their bank accounts, in violation of the EFTA, the Telemarketing Sales Rule, and Section 5 of the FTC Act.⁴⁹ According to the complaint, the defendants falsely advertised they would accept payments by credit or debit cards when in fact it rejected these forms of payments. It also allegedly withdrew money from consumers' accounts without authorization, sometimes took consumers payments twice or more a month (including debiting one consumer's monthly payment 11 times in a single day), and unlawfully required consumers to consent to recurring automatic payments from their bank accounts as a condition of obtaining a loan.⁵⁰ The stipulated final order imposes a judgment of \$3.85 million, which will be returned to consumers harmed by Avant's unlawful practices.⁵¹ Avant is also prohibited from taking unauthorized payments, from making misrepresentations about its methods of payments, and from conditioning the extension of credit on preauthorized electronic fund transfers.

As described above, the FTC filed a complaint and obtained a temporary restraining order against Grand Teton Professionals, an alleged credit repair scheme.⁵² The complaint included charges that defendants violated the EFTA, by processing payments through electronic fund transfers from consumers' bank accounts without obtaining proper authorization. The Commission obtained a temporary restraining order and asset freeze against defendants, and preliminary injunctions. Litigation continued in this matter in 2019.

Also described above, the Commission continued litigating in connection with a 2010 contempt order against BlueHippo Funding LLC, a consumer electronics retailer, for violating a prior FTC consent order.⁵³ The FTC's underlying complaint against BlueHippo included allegations that the defendants conditioned the extension of credit on mandatory preauthorized transfers in violation of the EFTA, and the FTC's consent order prohibited the defendants from violating the EFTA and Regulation E. Litigation continues in the appellate matter.

B. Electronic Fund Transfers: Rulemaking, Research, and Policy Development

The FTC does not have rulemaking authority under the EFTA but in 2019 engaged in research and policy work that addressed EFTA-related issues.

The FTC worked with the DoD interagency group and with ABA LAMP as discussed above, on electronic funds transfer issues. Among other things, the FTC staff coordinated with

⁴⁹ See FTC, Press Release, *Online Lending Company Agrees to Settle FTC Charges It Engaged in Deceptive and Unfair Loan Servicing Practices*, Apr. 15, 2019, available at <https://www.ftc.gov/news-events/press-releases/2019/04/online-lending-company-agrees-settle-ftc-charges-it-engaged>.

⁵⁰ *FTC v. Avant, LLC*, No. 19-cv-02517 (N.D. Ill. filed Apr. 15, 2019), available at <https://www.ftc.gov/enforcement/cases-proceedings/162-3090/avant-llc>.

⁵¹ *Id.* (N.D. Ill. May 17, 2019) (stipulated order for permanent injunction and monetary judgment), available at <https://www.ftc.gov/enforcement/cases-proceedings/162-3090/avant-llc>.

⁵² See *supra* notes 9-12.

⁵³ See *supra* notes 19-21.

the DoD interagency group on issues related to preauthorized electronic fund transfers (EFTs) in the military lending rule. The FTC also provided input to ABA LAMP, and conducted trainings for judge advocates general and others in conjunction with ABA LAMP trainings, on EFTs, FTC cases in this area, and the EFTA requirements.

C. Electronic Fund Transfers: Consumer and Business Education

In 2019, the FTC issued a blog post for consumers about the AH Media case, providing guidance about negative option plans and “free” trial offers, with tips on how to avoid incurring recurrent debits to their accounts.⁵⁴ The Commission also issued a blog post for businesses about the Grand Teton case with points on avoiding the unlawful practices charged, discussed above.⁵⁵

The Commission also released a blog post for consumers about the FTC settlement with Avant, discussed above, describing how the company allegedly deceived consumers – including by make unauthorized charges on customers’ bank accounts and illegally requiring customers to agree to automatic payments from their bank accounts – and providing tips for online loan shopping.⁵⁶ The FTC also provided businesses with guidance on this settlement.⁵⁷ The business blog post addressed defendants’ conditioning the issuance of credit on preauthorized electronic fund transfers – or on remotely created checks, which are prohibited for telemarketers under the Telemarketing Sales Rule – and takeaways for industry.

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⁵⁴ See Lisa Lake, *Free trials and tribulations*, FTC BUREAU OF CONSUMER PROTECTION BLOG (Sept. 6, 2019), <https://www.consumer.ftc.gov/blog/2019/09/free-trials-and-tribulations>.

⁵⁵ See Seena Gressin, *FTC says credit repair company en-CROA-ched on consumer rights*, FTC BUSINESS CENTER BUSINESS BLOG (June 28, 2019), <https://www.ftc.gov/news-events/blogs/business-blog/2019/06/ftc-says-credit-repair-company-en-croa-ched-consumer-rights>.

⁵⁶ See Colleen Tressler, *Online lending company broke the law. FTC counts the ways*, FTC BUREAU OF CONSUMER PROTECTION BLOG (Apr. 15, 2019), <https://www.consumer.ftc.gov/blog/2019/04/online-lending-company-broke-law-ftc-counts-ways>.

⁵⁷ See Lesley Fair, *The Avant settlement: New financial platforms, established consumer protections*, FTC BUSINESS CENTER BUSINESS BLOG (Apr. 15, 2019), <https://www.ftc.gov/news-events/blogs/business-blog/2019/04/avant-settlement-new-financial-platforms-established>.

We hope that the information discussed above responds to your inquiry and will be useful in preparing the CFPB's Annual Report to Congress.⁵⁸ Should you need additional assistance, please contact me at (202) 326-2972, or Carole Reynolds at (202) 326-3230.

Sincerely,

Malini Mithal
Associate Director
Division of Financial Practices

⁵⁸ Your letter also requests information regarding compliance by credit card issuers with the Federal Trade Commission Act (FTC Act). The Commission does not have jurisdiction over banks or Federal credit unions, and in 2019, the Commission did not have enforcement or other activity regarding compliance with the FTC Act by nonbank credit card issuers over which it has jurisdiction.