

**PREPARED STATEMENT OF THE  
FEDERAL TRADE COMMISSION:  
OVERSIGHT OF THE FEDERAL TRADE COMMISSION**

**Before the  
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION  
SUBCOMMITTEE ON MANUFACTURING, TRADE, AND  
CONSUMER PROTECTION  
UNITED STATES SENATE**

**WASHINGTON, DC**

**JULY 21, 2020**

## I. INTRODUCTION

Chairman Moran, Ranking Member Blumenthal, and members of the Subcommittee, I am Andrew Smith, Director of the Federal Trade Commission's ("FTC" or "Commission") Bureau of Consumer Protection. I am pleased to appear before you today to discuss consumer protection issues arising from the COVID-19 pandemic.<sup>1</sup>

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.<sup>2</sup> 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.

On March 13, 2020, the President declared a national emergency in response to the global outbreak of the "Coronavirus Disease 2019" ("COVID-19" or "coronavirus").<sup>3</sup> The FTC has worked aggressively to combat consumer protection issues arising from the COVID-19 pandemic. In late March, Chairman Joseph Simons stated that the FTC would "not tolerate businesses seeking to take advantage of consumers' concerns and fears regarding [the] coronavirus disease, exigent circumstances, or financial distress."<sup>4</sup> And we have not.

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<sup>1</sup> This written statement presents the views of the Federal Trade Commission. My oral statement and responses to questions are my own and do not necessarily reflect the views of the Commission or any Commissioner.

<sup>2</sup> 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* <https://www.ftc.gov/enforcement/statutes>.

<sup>3</sup> President Donald J. Trump, *Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19)* (Mar. 13, 2020), available at <https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/>.

<sup>4</sup> FTC Press Release, *FTC Chairman Joe Simons Outlines the Agency's Approach to Safeguarding Consumers During the Coronavirus Pandemic* (Mar. 26, 2020), <https://www.ftc.gov/news-events/press-releases/2020/03/ftc-chairman-joe-simons-outlines-agencys-approach-safeguarding>.

To date, the FTC has received over 131,419 consumer complaints relating to COVID-19, including complaints about the government's economic impact payments, or so-called stimulus checks.<sup>5</sup> In addition, the FTC is monitoring the marketplace for unsubstantiated health claims, robocalls, privacy and data security concerns, sham charities, online shopping fraud, phishing scams, work at home scams, credit scams, and fake mortgage and student loan relief schemes. This also includes monitoring of a variety of other scams related to the economic fallout from the COVID-19 pandemic, including government imposters attempting to scam consumers out of their stimulus checks.

While the FTC has quickly pivoted to address aggressively the myriad of COVID-related scams, the agency has continued its extensive consumer protection work. Since early March, the FTC has distributed \$40 million in redress<sup>6</sup> in more than 10 cases. In addition, our partners at the Department of Justice distributed another \$153 million from our multi-agency settlement with Western Union.<sup>7</sup> We have published rulemaking notices,<sup>8</sup> workshop reports,<sup>9</sup> reports to Congress,<sup>10</sup> data spotlights,<sup>11</sup> and the new

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<sup>5</sup> See FTC, *FTC COVID-19 and Stimulus Reports: Consumer Sentinel Network Reports*, <https://public.tableau.com/profile/federal.trade.commission#!/vizhome/COVID-19andStimulusReports/Map> (last visited July 6, 2020).

<sup>6</sup> In fact, between July 1, 2018 and December 31, 2019, FTC actions resulted in \$1.2 billion in refunds to consumers, including \$542.9 million in refunds the FTC sent to consumers and the remainder sent through self-administered redress programs. Of the \$556.9 million the FTC disbursed during that time, more than 97% ended up in consumers' pockets, with 1.6% spent on administrative costs and less than 1% sent to the U.S. Treasury (either because a refund program was not feasible or because there was money left over after the refund program was complete). See FTC, *Data on Refunds to Consumers*, <https://www.ftc.gov/enforcement/cases-proceedings/refunds/data-refunds-consumers> (last visited July 6, 2020).

<sup>7</sup> See FTC Press Release, *First Round of Refunds Totaling \$153 Million Sent to Consumers As a Result of Multi-Agency Case Against Western Union* (Mar. 10, 2020), <https://www.ftc.gov/news-events/press-releases/2020/03/first-round-refunds-totaling-153-million-sent-consumers-result>.

<sup>8</sup> See FTC Press Release, *FTC Announces Final Amendments to the Agency's Contact Lens Rule* (June 23, 2020), <https://www.ftc.gov/news-events/press-releases/2020/06/ftc-announces-final-amendments-agencys-contact-lens-rule>; FTC Press Release, *FTC Seeks Public Comment on Proposed Repeal of the Care Labeling Rule* (June 22, 2020), <https://www.ftc.gov/news-events/press-releases/2020/06/ftc-seeks-public-comment-proposed-repeal-care-labeling-rule>; FTC Press Release, *FTC Issues Staff Report on Made in the USA Workshop, Seeks Comment on Related Proposed Rulemaking for Labeling Rule* (June 22, 2020), <https://www.ftc.gov/news-events/press-releases/2020/06/ftc-issues-staff-report-on-made-in-usa-workshop>; FTC Press Release, *FTC Seeks Comment as Part of Review of Health Breach Notification Rule* (May 8, 2020), <https://www.ftc.gov/news-events/press-releases/2020/05/ftc-seeks-comment-part-review-health-breach-notification-rule>; FTC Press Release, *FTC Seeks Comments on Proposed Changes to the Energy Labeling Rule* (Mar. 27, 2020), <https://www.ftc.gov/news-events/press-releases/2020/03/ftc-seeks-comments-proposed-changes-energy-labeling-rule>.

<sup>9</sup> See FTC Press Release, *FTC Issues Staff Report on Made in the USA Workshop, Seeks Comment on Related Proposed Rulemaking for Labeling Rule* (June 22, 2020), <https://www.ftc.gov/news-events/press-releases/2020/06/ftc-issues-staff-report-on-made-in-usa-workshop>; FTC Press Release, *FTC Staff Perspective*

econsumer.gov interactive dashboards.<sup>12</sup> The FTC also has announced complaints or settlements in more than 30 law enforcement matters, including settlements that will return more than \$225 million to consumers,<sup>13</sup> privacy cases,<sup>14</sup> national advertising cases,<sup>15</sup> fraud cases,<sup>16</sup> payment processor cases,<sup>17</sup>

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*Recaps Online Events Tickets Workshop* (May 7, 2020), <https://www.ftc.gov/news-events/press-releases/2020/05/ftc-staff-perspective-recaps-online-event-tickets-workshop>.

<sup>10</sup> See FTC Press Release, *FTC Updates Congress on Efforts to Educate Consumers about Their FCRA Rights* (May 5, 2020), <https://www.ftc.gov/news-events/press-releases/2020/05/ftc-updates-congress-efforts-educate-consumers-about-their-fcra>; FTC Press Release, *FTC Sends Report to Congress on Retailers' Shipping Policies* (Apr. 17, 2020), <https://www.ftc.gov/news-events/press-releases/2020/04/ftc-sends-report-congress-retailers-shipping-policies>. See also FTC Press Release, *FTC Staff Provides Annual Letter to CFPB On Fair Debt Collection Practices Act Activities* (Mar. 20, 2020), <https://www.ftc.gov/news-events/press-releases/2020/03/ftc-staff-provides-annual-letter-cfpb-fair-debt-collection> (providing information to CFPB for Congressional Report).

<sup>11</sup> See FTC Press Release, *Active Duty Servicemembers are More Likely to Report Identity Theft than Other Adults, New FTC Data Shows* (May 21, 2020), <https://www.ftc.gov/news-events/press-releases/2020/05/active-duty-servicemembers-are-more-likely-report-identity-theft>.

<sup>12</sup> See generally <https://econsumer.gov>.

<sup>13</sup> See FTC Press Release, *Worldwide Payment Processor and Payments Industry Executive to Pay \$40.2 Million to Settle FTC Charges of Assisting Fraudulent Schemes and Credit Card Laundering* (May 19, 2020), <https://www.ftc.gov/news-events/press-releases/2020/05/worldwide-payment-processor-payments-industry-executive-pay-402>; FTC Press Release, *FTC Halts Online Subscription Scheme that Deceived People with "Free Trial Offers"* (May 8, 2020), <https://www.ftc.gov/news-events/press-releases/2020/05/ftc-halts-online-subscription-scheme-deceived-people-free-trial>; FTC Press Release, *Fashion Nova Will Pay \$9.3 Million for Consumer Refunds To Settle FTC Charges It Violated Rules On Shipping, Refunds* (Apr. 21, 2020), <https://www.ftc.gov/news-events/press-releases/2020/04/fashion-nova-will-pay-93-million-consumer-refunds-settle-ftc>; FTC Press Release, *Rent-To-Own Payment Plan Company Progressive Leasing Will Pay \$175 Million to Settle FTC Charges It Deceived Consumers About Pricing* (Apr. 20, 2020), <https://www.ftc.gov/news-events/press-releases/2020/04/rent-to-own-payment-plan-company-progressive-leasing-will-pay-175>; FTC Press Release, *Student Loan Debt Relief Companies Agree to Settle FTC Charges They Falsely Promised to Lower or Eliminate Consumers' Student Loans* (Mar. 30, 2020), <https://www.ftc.gov/news-events/press-releases/2020/03/student-loan-debt-relief-companies-agree-settle-ftc-charges-they>.

<sup>14</sup> See FTC Press Release, *Swiss Digital Game Developer Settles FTC Allegations that it Falsely Claimed it was a Member of COPPA Safe Harbor Program* (May 19, 2020), <https://www.ftc.gov/news-events/press-releases/2020/05/swiss-digital-game-developer-settles-ftc-allegations-it-falsely>; FTC Press Release, *Medical Diagnostic Device Maker Settles Allegations that it Misled Consumers about its Participation in the EU-U.S. Privacy Shield* (Mar. 30, 2020), <https://www.ftc.gov/news-events/press-releases/2020/03/medical-diagnostic-device-maker-settles-allegations-it-misled>.

<sup>15</sup> See FTC Press Release, *Williams-Sonoma, Inc. Settles with FTC, Agrees to Stop Making Overly Broad and Misleading "Made in USA" Claims about Houseware and Furniture Products* (Mar. 30, 2020), <https://www.ftc.gov/news-events/press-releases/2020/03/williams-sonoma-inc-settles-ftc-agrees-stop-making-overly-broad>; FTC Press Release, *FTC Acts to Stop False and Unsubstantiated Claims for Wagner OEX Brake Pads* (Mar. 25, 2020), <https://www.ftc.gov/news-events/press-releases/2020/03/ftc-acts-stop-false-unsubstantiated-claims-wagner-oex-brake-pads>.

<sup>16</sup> See FTC Press Release, *Operators of Business Coaching Scheme Will Pay At Least \$1.2 Million to Settle FTC Charges They Deceived Consumers Starting New Internet-based Businesses* (May 13, 2020), <https://www.ftc.gov/news-events/press-releases/2020/05/operators-business-coaching-scheme-will-pay-least-12-million>; FTC Press Release, *FTC Files Complaint Alleging Telemarketers and Debt Collectors Worked Together to Bilk Organizations for Subscriptions and Books They Never Ordered* (May 13, 2020), <https://www.ftc.gov/news-events/press-releases/2020/05/ftc-files-complaint-alleging-telemarketers-debt-collectors-worked>; FTC Press Release, *FTC Halts Online Subscription Scheme that Deceived People with "Free Trial" Offers* (May 8, 2020), <https://www.ftc.gov/news-events/press-releases/2020/05/ftc-halts-online-subscription-scheme-deceived-people-free>.

financial services cases,<sup>18</sup> rule violations,<sup>19</sup> civil penalty cases,<sup>20</sup> a data security case,<sup>21</sup> health advertising cases,<sup>22</sup> and our first fair lending case in 10 years.<sup>23</sup> This is all to say that the Commission's extensive

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[trial](https://www.ftc.gov/news-events/press-releases/2020/04/ftc-obtains-preliminary-injunction-against-investor-training); FTC Press Release, *FTC Obtains Preliminary Injunction Against Investor Training Scheme Online Trading Academy* (Apr. 7, 2020), <https://www.ftc.gov/news-events/press-releases/2020/04/ftc-obtains-preliminary-injunction-against-investor-training>; FTC Press Release, *Affiliate Marketers to Pay More Than \$4 Million to Settle Charges that They Promoted a Fraudulent Business Coaching and Investment Scheme* (Mar. 5, 2020), <https://www.ftc.gov/news-events/press-releases/2020/03/affiliate-marketers-pay-more-4-million-settle-charges-they>.

<sup>17</sup> See FTC Press Release, *Rogue Payment Processor that Helped Perpetuate Multiple Scams Is Banned from the Payment Processing Business Under FTC Settlement* (June 9, 2020), <https://www.ftc.gov/news-events/press-releases/2020/06/rogue-payment-processor-helped-perpetuate-multiple-scams-banned>; FTC Press Release, *Payment Processor for MOBE Business Coaching Scheme Settles FTC Charges* (June 1, 2020), <https://www.ftc.gov/news-events/press-releases/2020/06/payment-processor-mobe-business-coaching-scheme-settles-ftc>; FTC Press Release, *Worldwide Payment Processor and Payments Industry Executive to Pay \$40.2 Million to Settle FTC Charges of Assisting Fraudulent Schemes and Credit Card Laundering* (May 19, 2020), <https://www.ftc.gov/news-events/press-releases/2020/05/worldwide-payment-processor-payments-industry-executive-pay-402>; FTC Press Release, *Credit Card Launderer for Tech Support Scams to Pay \$6.75 Million to Settle FTC Charges* (Apr. 22, 2020), <https://www.ftc.gov/news-events/press-releases/2020/04/credit-card-launderer-tech-support-scams-pay-675-million-settle>.

<sup>18</sup> See FTC Press Release, *FTC Halts Deceptive Payday Lender That Took Millions From Consumers' Accounts Without Authorization* (May 22, 2020), <https://www.ftc.gov/news-events/press-releases/2020/05/ftc-halts-deceptive-payday-lender-took-millions-consumers>; FTC Press Release, *Student Loan Debt Relief Companies Agree to Settle FTC Charges They Falsely Promised to Lower or Eliminate Consumers' Student Loans* (Mar. 30, 2020), <https://www.ftc.gov/news-events/press-releases/2020/03/student-loan-debt-relief-companies-agree-settle-ftc-charges-they>; FTC Press Release, *Health Center, Inc. Settles FTC Allegations That It Targeted Older Consumers With Deceptive Claims for Health and Wellness Products* (Mar. 19, 2020), <https://www.ftc.gov/news-events/press-releases/2020/03/health-center-inc-settles-ftc-allegations-it-targeted-older>; FTC Press Release, *Credit Repair Company Settles FTC Charges It Deceived Consumers By Telling Them "Piggybacking" on Others' Credit Could Boost Scores* (Mar. 9, 2020), <https://www.ftc.gov/news-events/press-releases/2020/03/credit-repair-company-settles-ftc-charges-it-deceived-consumers>.

<sup>19</sup> See FTC Press Release, *Developer of Apps Popular with Children Agrees to Settle FTC Allegations It Illegally Collected Kids' Data without Parental Consent* (June 4, 2020), <https://www.ftc.gov/news-events/press-releases/2020/06/developer-apps-popular-children-agrees-settle-ftc-allegations-it>; FTC Press Release, *Auto Dealership Bronx Honda, General Manager to Pay \$1.5 Million to Settle FTC Charges They Discriminated Against African-American, Hispanic Car Buyers* (May 27, 2020), <https://www.ftc.gov/news-events/press-releases/2020/05/bronx-honda-to-pay-over-1-million-to-settle-charges>; FTC Press Release, *Credit Card Launderer for Tech Support Scams to Pay \$6.75 Million to Settle FTC Charges* (Apr. 22, 2020), <https://www.ftc.gov/news-events/press-releases/2020/04/credit-card-launderer-tech-support-scams-pay-675-million-settle>; FTC Press Release, *Fashion Nova Will Pay \$9.3 Million for Consumer Refunds To Settle FTC Charges It Violated Rules on Shipping, Refunds* (Apr. 21, 2020), <https://www.ftc.gov/news-events/press-releases/2020/04/fashion-nova-will-pay-93-million-consumer-refunds-settle-ftc>; FTC Press Release, *Student Loan Debt Relief Companies Agree to Settle FTC Charges They Falsely Promised to Lower or Eliminate Consumers' Student Loans* (Mar. 30, 2020), <https://www.ftc.gov/news-events/press-releases/2020/03/student-loan-debt-relief-companies-agree-settle-ftc-charges-they>; FTC Press Release, *Credit Repair Company Settles FTC Charges It Deceived Consumers By Telling Them "Piggybacking" on Others' Credit Could Boost Scores* (Mar. 9, 2020), <https://www.ftc.gov/news-events/press-releases/2020/03/credit-repair-company-settles-ftc-charges-it-deceived-consumers>.

<sup>20</sup> See FTC Press Release, *Developer of Apps Popular with Children Agrees to Settle FTC Allegations It Illegally Collected Kids' Data without Parental Consent* (June 4, 2020), <https://www.ftc.gov/news-events/press-releases/2020/06/developer-apps-popular-children-agrees-settle-ftc-allegations-it>; FTC Press Release, *FTC Reaches Settlement with Kohl's over Allegations it Failed to Provide Victims with Information Related to Identity Theft* (June 10, 2020), <https://www.ftc.gov/news-events/press-releases/2020/06/ftc-reaches-settlement-kohls-over-allegations-it-failed-provide>.

COVID-related work has not taken the Commission’s attention away from its continued dedication to American consumers and the non-COVID-related hardships they are facing.

As always, the FTC appreciates your support of our consumer protection mission. An essential part of that mission is getting back to consumers money wrongly taken from them. Unfortunately, our ability to do so has been threatened or curtailed by recent judicial decisions, making it harder for the FTC to get consumer redress, including in coronavirus-related scam cases. We therefore respectfully request that Congress clarify the agency’s statutory authority to obtain complete consumer redress under Section 13(b) of the FTC Act. Section 13(b) says the FTC can seek “permanent injunctions,” and for decades, courts interpreted that language to mean that the FTC could secure equitable monetary remedies, including restitution to consumers and disgorgement of ill-gotten gains. One recent decision from the Seventh Circuit held that Section 13(b) was limited to injunctions and so did not allow monetary remedies at all.<sup>24</sup> The Supreme Court has agreed to hear that case and another case, from the Ninth Circuit, that ruled we are entitled to monetary equitable relief.<sup>25</sup> We expect the Court to resolve this issue by next

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

<sup>22</sup> See FTC Press Release, *FTC Puts an End to Deceptive Advertising of Light Therapy Device* (June 25, 2020), <https://www.ftc.gov/news-events/press-releases/2020/06/ftc-puts-end-deceptive-advertising-light-therapy-device>; FTC Press Release, *FTC Takes Action to Stop Direct Mail Pill Marketers’ Unproven Health Claims* (Apr. 20, 2020), <https://www.ftc.gov/news-events/press-releases/2020/04/ftc-takes-action-stop-direct-mail-pill-marketers-unproven-health>; FTC Press Release, *FTC Halts Bogus Claims about “Miracle” Supplement for Older Adults* (Apr. 16, 2020), <https://www.ftc.gov/news-events/press-releases/2020/04/ftc-halts-bogus-claims-about-miracle-supplement-older-adults>; FTC Press Release, *Health Center, Inc. Settles FTC Allegations That It Targeted Older Consumers With Deceptive Claims for Health and Wellness Products* (Mar. 19, 2020), <https://www.ftc.gov/news-events/press-releases/2020/03/health-center-inc-settles-ftc-allegations-it-targeted-older>; FTC Press Release, *Tea Marketer Misled Consumers, Didn’t Adequately Disclose Payments to Well-Known Influencers, FTC Alleges* (Mar. 6, 2020), <https://www.ftc.gov/news-events/press-releases/2020/03/tea-marketer-misled-consumers-didnt-adequately-disclose-payments>; FTC Press Release, *Marketers of Pain Relief Device Settle FTC False Advertising Complaint* (Mar. 4, 2020), <https://www.ftc.gov/news-events/press-releases/2020/03/marketers-pain-relief-device-settle-ftc-false-advertising>.

<sup>23</sup> See FTC Press Release, *Auto Dealership Bronx Honda, General Manager to Pay \$1.5 Million to Settle FTC Charges They Discriminated Against African-American, Hispanic Car Buyers* (May 27, 2020), <https://www.ftc.gov/news-events/press-releases/2020/05/bronx-honda-to-pay-over-1-million-to-settle-charges>.

<sup>24</sup> See *Fed. Trade Comm’n v. Credit Bureau Ctr., LLC*, 937 F.3d 764 (7th Cir. 2019).

<sup>25</sup> *Fed. Trade Comm’n v. Credit Bureau Ctr., LLC*, 937 F.3d 764 (7th Cir. 2019), *cert. granted*, No. 19-825 (July 9, 2020); *AMG Cap. Mgmt., LLC v. Fed. Trade Comm’n*, 910 F.3d 417 (9th Cir. 2018), *cert. granted*, No. 19-508 (July 9, 2020).

summer. A decision last year from the Third Circuit held that the FTC could bring cases under Section 13(b) only if the illegal acts were ongoing or impending, limiting our ability to pursue past illegality.<sup>26</sup> And the Supreme Court's recent *Liu* decision may place limitations on the amount of money we can obtain from wrongdoers and ultimately return to consumers.<sup>27</sup> In short, our ability to get full redress for consumers is in peril. Congress should act now to preserve the FTC's ability to restore to consumers money they lose to scammers and fraudsters.

In addition, the Commission's primary source of legal authority in the privacy and data security space is Section 5 of the FTC Act, which prohibits deceptive or unfair commercial practices.<sup>28</sup> Section 5, however, is not without its limitations. For example, Section 5 does not allow the Commission to seek civil penalties for the first offense. It also excludes non-profits and common carriers from the Commission's authority, even when the acts or practices of these market participants have serious implications for consumer privacy and data security. To better equip the Commission to meet its statutory mission to protect consumers, we urge Congress to enact privacy and data security legislation, enforceable by the FTC, which grants the agency civil penalty authority, targeted Administrative Procedure Act rulemaking authority, and jurisdiction over non-profits and common carriers.<sup>29</sup>

## II. COVID-19 HEALTH FRAUDS

It is often the case that, following reports of a health scare, deceptive advertising or marketing touting "miracle cures" quickly emerge. The COVID-19 pandemic has put this cause and effect scenario

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<sup>26</sup> See *Fed. Trade Comm'n v. Shire ViroPharma, Inc.*, 917 F.3d 147 (3rd Cir. 2019).

<sup>27</sup> See *Liu v. Sec. Exch. Comm'n*, 140 S.Ct. 1936 (2020).

<sup>28</sup> 15 U.S.C. § 45. The Commission also enforces sector-specific statutes containing privacy and data security provisions, such as the Gramm-Leach-Bliley Act ("GLB Act"), Pub. L. No. 106-102, 113 Stat. 1338 (1999) (codified as amended in scattered sections of 12 and 15 U.S.C.), and the Children's Online Privacy Protection Act ("COPPA"), 15 U.S.C. §§ 6501-6506.

<sup>29</sup> Commissioner Phillips supports congressional efforts to consider consumer data privacy legislation. He believes legislation should be based on harms that Congress agrees warrant a remedy, and that tools like penalties and rulemaking should be calibrated carefully to address those harms. Commissioner Phillips believes Congress should also give appropriate consideration to the trade-offs involved in new regulation, and, with regard to rulemaking, reserve to itself fundamental value judgments appropriately made by the legislature. Finally, Commissioner Phillips believes data security legislation is a critical step Congress should also take to protect consumer privacy.

into overdrive. Although some of these supposed “treatments” seem facially preposterous, it is not uncommon for consumers in distress to be willing to try (and spend) anything in the hopes that it will protect them or their families from sickness or death.

Given the breadth of false treatment claims we have seen regarding COVID-19, the FTC determined that the fastest way to get these false treatment claims taken down is to pursue a rigorous warning letter program. To date, the FTC and the Food and Drug Administration (“FDA”) have issued 65 joint warning letters to marketers regarding claims that their products will treat, cure, or prevent COVID-19, and there are additional joint warning letters in the pipeline.<sup>30</sup> The FTC also has issued its own 190 warning letters to additional marketers.<sup>31</sup> The letters warn recipients that their conduct is likely to be unlawful, that they could face serious legal consequences if they do not immediately stop, and require a response to the FTC within 48 hours. Overwhelmingly, companies that have received FTC warning letters these past few months have taken quick steps to correct their problematic claims. As a result, warning letters are frequently the most rapid and efficient means to address the problem. However, when a warning letter does not work, or is not appropriate given the conduct at issue, the FTC has pursued law enforcement.

The FTC’s action against Marc Ching, doing business as Whole Leaf Organics, is one example.<sup>32</sup> Mr. Ching had previously received a letter from the FDA warning him that he was making unapproved drug claims by claiming that his cannabidiol (“CBD”) products were intended for use in the treatment or prevention of diseases. Not only did Mr. Ching fail to remove the unapproved CBD claims from his website, he *added* COVID-19 claims for a Vitamin C and herbal extracts product during the pandemic.<sup>33</sup>

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<sup>30</sup> See generally <https://www.ftc.gov/coronavirus/enforcement/warning-letters>.

<sup>31</sup> *Id.* The FTC issues its own warning letters to entities selling products that are outside the FDA’s jurisdiction.

<sup>32</sup> *U.S. v. Marc Ching*, No. 2:20-cv-03775 (C.D. Cal. 2020), <https://www.ftc.gov/enforcement/cases-proceedings/202-3110/whole-leaf-organics>; *Marc Ching*, No. D9394 (administrative complaint filed Apr. 27, 2020), <https://www.ftc.gov/enforcement/cases-proceedings/202-3110/marc-ching-matter>.

<sup>33</sup> Mr. Ching sold a supplement, called “Thrive,” and advertised that it was “the perfect way to strengthen your immunity against pathogens like, “**COVID-19,**” **THE CORONAVIRUS.**” (Emphasis in original). *Marc Ching*, No. D9394 (administrative complaint, Exhibit A), [https://www.ftc.gov/system/files/documents/cases/d09394\\_administrative\\_part\\_iii\\_complaint.pdf](https://www.ftc.gov/system/files/documents/cases/d09394_administrative_part_iii_complaint.pdf).



We knew that with these facts, a warning letter was not appropriate. On April 22, the FTC issued an administrative complaint alleging that Mr. Ching deceptively advertised a supplement as a clinically-proven immunity booster that prevents and treats COVID-19.<sup>34</sup> Two days later, the FTC filed a federal complaint seeking preliminary relief containing the same allegations about Mr. Ching's health claims. By April 26, Mr. Ching had agreed to the federal preliminary order, barring him from claiming that his products were effective at treating, preventing, or reducing the risk of COVID-19 for the duration of the administrative proceeding. Mr. Ching subsequently agreed to settle the administrative case with an order barring his false and unsubstantiated health claims, and requiring him to send written notices to customers and retailers that his products would not treat, prevent, or reduce the risk of COVID-19, or prevent or treat cancer, and inform them of his settlement with the Commission.<sup>35</sup>

### III. MULTI-LEVEL MARKETING COMPANIES

The FTC also has issued warning letters to major multi-level marketing companies ("MLMs") regarding COVID-19 prevention or treatment claims made by the MLM and/or its business opportunity participants.<sup>36</sup> In addition to warning the MLMs regarding the prevention or treatment claims, we also warned them that they are responsible for their earnings claims as well as earnings claims made by their business opportunity participants and representatives.<sup>37</sup>

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<sup>34</sup> The complaint also alleged that Mr. Ching deceptively advertised that his CBD products would prevent and treat cancer, and that clinical studies established the efficacy of these products. *Id.*

<sup>35</sup> FTC Press Release, *FTC Order Stops the Marketer of "Thrive" Supplement from Making Baseless Claims It Can Treat, Prevent, or Reduce the Risks from COVID-19* (July 10, 2020), <https://www.ftc.gov/news-events/press-releases/2020/07/ftc-order-stops-marketer-thrive-supplement-making-baseless-claims>.

<sup>36</sup> See FTC Press Release, *FTC Sends Second Round of Warning Letters to Multi-Level Marketers Regarding Coronavirus Related Health and Earnings Claims* (June 5, 2020), <https://www.ftc.gov/news-events/press-releases/2020/06/second-round-warning-letters-to-mlms-regarding-coronavirus> (letters to Isagenix International LLC, The Juice Plus+ Company, Youngevity International, Inc., Vivri USA, LLC, and Plexus Worldwide, LLC included health claims); FTC Press Release, *FTC Sends Warning Letters to Multi-Level Marketers Regarding Health and Earnings Claims They or Their Participants are Making Related to Coronavirus* (Apr. 24, 2020), <https://www.ftc.gov/news-events/press-releases/2020/04/ftc-sends-warning-letters-multi-level-marketers-regarding-health> (letters to doTERRA International, Inc., Pruvit Ventures, Inc., Total Life Changes, LLC, Tranont, Modere, Inc., Arbonne International, LLC, and Zurvita, Inc. included health claims).

<sup>37</sup> See also FTC, *Business Guidance Concerning Multi-Level Marketing* (Jan. 2018), <https://www.ftc.gov/tips-advice/business-center/guidance/business-guidance-concerning-multi-level-marketing>.

To date, the FTC has sent 12 warning letters to MLMs regarding prevention or treatment claims, earning claims, or both, made by the MLMs themselves,<sup>38</sup> or by business opportunity representatives or participants on their behalf.<sup>39</sup> Telling a consumer that by joining an MLM business venture they can earn a certain amount of money in a month, or obtain “financial freedom,” when it is unlikely they can do so, is unlawful. The need to address such claims is pressing because consumers are facing extreme economic and employment uncertainty due to the COVID-19 pandemic. The FTC’s warning letters make it clear that misrepresenting a consumer’s potential earnings will not be tolerated.

#### **IV. COVID-19 FINANCIAL VULNERABILITY FRAUDS**

Alongside the health concerns presented by COVID-19, many consumers are facing substantial economic and financial hardships because of the pandemic. These are also dire times for small businesses. The FTC has been on the lookout for frauds targeting financially vulnerable consumers and small businesses, and is pursuing warning letters and law enforcement to protect them from further financial harm.

Millions of American consumers lost their jobs because of the pandemic. With families to support, many consumers are seeking alternative ways to make money. In addition to the MLM effort outlined above, we have redoubled our efforts to identify scam business opportunities that look better than they are.

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<sup>38</sup> FTC Press Release, *FTC Sends Warning Letters to Multi-Level Marketers Regarding Health and Earnings Claims They or Their Participants are Making Related to Coronavirus* (Apr. 24, 2020), <https://www.ftc.gov/news-events/press-releases/2020/04/ftc-sends-warning-letters-multi-level-marketers-regarding-health> (letter to It Works Marketing, Inc.).

<sup>39</sup> See FTC Press Release, *FTC Sends Second Round of Warning Letters to Multi-Level Marketers Regarding Coronavirus Related Health and Earnings Claims* (June 5, 2020), <https://www.ftc.gov/news-events/press-releases/2020/06/second-round-warning-letters-to-mlms-regarding-coronavirus> (letters to Isagenix International LLC, The Juice Plus+ Company, and Melaleuca, Inc. included earnings claims); FTC Press Release, *FTC Sends Warning Letters to Multi-Level Marketers Regarding Health and Earnings Claims They or Their Participants are Making Related to Coronavirus* (Apr. 24, 2020), <https://www.ftc.gov/news-events/press-releases/2020/04/ftc-sends-warning-letters-multi-level-marketers-regarding-health> (letters to doTERRA International, Inc., Pruvit Ventures, Inc., Total Life Changes, LLC, Tranont, Modere, Inc., Arbonne International, LLC, IDLife, LLC, and Rodan & Fields, LLC included earnings claims).

The FTC also recognizes that the financial hardships caused by the pandemic are not just limited to consumers. Small businesses have sought out relief and loans through the Paycheck Protection Program (PPP) or other programs authorized by the Coronavirus Aid, Relief, and Economic Security (CARES) Act.<sup>40</sup> To date, the FTC and the Small Business Administration (“SBA”) have issued 8 warning letters to companies making claims that could lead consumers and small businesses to believe these companies are somehow affiliated with the SBA, that consumers and small businesses could get PPP loans by applying on their website, or otherwise misleading small business about federal loans or other temporary small business relief.<sup>41</sup> As with deceptive health claims, the FTC believes that the fastest way to take down these false claims is by issuing warning letters. However, as always, in some cases, the FTC will pursue law enforcement. For example, on April 17, 2020, the FTC filed a complaint against one such company that was posing as an approved PPP lender.<sup>42</sup> The FTC will continue to monitor the marketplace and will take action where appropriate to combat such frauds.

## V. ONLINE SHOPPING FRAUD

“Online shopping” has recently become the leading source of coronavirus-related consumer complaints in our Consumer Sentinel database.<sup>43</sup> These complaints are, in part, about merchants that offer for sale masks, personal protective equipment, and related products, but then do not ship the products, fail to meet their delivery promises, or ship products other than those advertised, and fail to provide refunds to consumers. We recently brought an expedited enforcement action—in conjunction with criminal

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<sup>40</sup> P.L. 116-136.

<sup>41</sup> See FTC Press Release, *FTC and SBA Warn Six Companies to Stop Potentially Misleading Marketing Aimed at Small Businesses Seeking Coronavirus Relief Loans* (June 24, 2020), <https://edit.ftc.gov/news-events/press-releases/2020/06/ftc-sba-warn-six-companies-stop-potentially-misleading-marketing>; FTC Press Release, *FTC and SBA Warn Operator of SBA.com and Lead Generator Lendio to Stop Potentially Misleading Coronavirus Relief Loan Marketing* (May 18, 2020), <https://www.ftc.gov/news-events/press-releases/2020/05/ftc-sba-warn-operator-sbacom-lead-generator-lendio-stop>.

<sup>42</sup> *FTC v. Ponte Investments, LLC*, No. 1:20-cv-00177 (D.R.I. Apr. 17, 2020),

<https://www.ftc.gov/enforcement/cases-proceedings/202-3115/ponte-investments-llc>.

<sup>43</sup> See FTC Consumer Sentinel Network Reports, *FTC COVID-19 and Stimulus Reports*, <https://public.tableau.com/profile/federal.trade.commission#!/vizhome/COVID-19andStimulusReports/Map> (last visited July 6, 2020).

authorities who executed a search warrant at the same time<sup>44</sup>—and are seeking additional actions where it would be appropriate to combat such frauds in conjunction with criminal authorities. Working together with criminal authorities, we can get effective injunctive relief and compliance monitoring quickly.

## VI. COVID-19 SPOOFING/IMPOSTER SCAMS

Aside from scams targeting health and financial vulnerabilities caused by the pandemic, the FTC has responded to other coronavirus-related fraudulent behavior.

The FTC has issued warning letters to 15 Voice over Internet Protocol (VoIP) service providers and other companies, warning them that “assisting and facilitating” illegal telemarketing or robocalls related to the COVID-19 pandemic is against the law.<sup>45</sup> The Federal Communications Commission joined the FTC on 6 of these warning letters.<sup>46</sup> Many of these calls prey upon consumers’ fear of the virus to perpetrate scams or sow disinformation. The letters stress that combatting illegal telemarketing and robocalls is a top priority of the Commission.<sup>47</sup>

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<sup>44</sup> FTC Press Release, *FTC Takes Action against Marketer That Falsely Promised Consumers Next Day Shipping of Facemasks and Other Personal Protective Equipment* (July 8, 2020), <https://www.ftc.gov/news-events/press-releases/2020/07/ftc-takes-action-against-marketer-that-falsely-promised-next-day-shipping>.

<sup>45</sup> FTC Press Release, *FTC and FCC Sent Joint Letters to Additional VoIP Providers Warning against ‘Routing and Transmitting’ Illegal Coronavirus-related Robocalls* (May 20, 2020), <https://www.ftc.gov/news-events/press-releases/2020/05/ftc-fcc-send-joint-letters-additional-voip-providers-warning>; FTC Press Release, *FTC and FCC Send Joint Letters to VoIP Service Providers Warning against ‘Routing and Transmitting’ Illegal Coronavirus-related Robocalls* (Apr. 3, 2020), <https://www.ftc.gov/news-events/press-releases/2020/04/ftc-fcc-send-joint-letters-voip-service-providers-warning-against>; FTC Press Release, *FTC Warns Nine VoIP Service Providers and Other Companies against ‘Assisting and Facilitating’ Illegal Coronavirus-related Telemarketing Calls* (Mar. 27, 2020), <https://www.ftc.gov/news-events/press-releases/2020/03/ftc-warns-nine-voip-service-providers-other-companies-against>.

<sup>46</sup> FTC Press Release, *FTC and FCC Sent Joint Letters to Additional VoIP Providers Warning against ‘Routing and Transmitting’ Illegal Coronavirus-related Robocalls* (May 20, 2020), <https://www.ftc.gov/news-events/press-releases/2020/05/ftc-fcc-send-joint-letters-additional-voip-providers-warning>; FTC Press Release, *FTC and FCC Send Joint Letters to VoIP Service Providers Warning against ‘Routing and Transmitting’ Illegal Coronavirus-related Robocalls* (Apr. 3, 2020), <https://www.ftc.gov/news-events/press-releases/2020/04/ftc-fcc-send-joint-letters-voip-service-providers-warning-against>.

<sup>47</sup> While there were likely many factors—including more aggressive blocking by phone companies and warning letters from the FTC and others—the FTC has seen a sharp drop in the number of robocall complaints since bringing a case against a large VoIP provider for facilitating illegal robocalls in December 2019. See FTC Press Release, *Court Halts Operations of VoIP Service Provider after the FTC and Ohio Alleged that It Helped Promote Credit Card Interest Reduction Scheme* (Dec. 5, 2019), <https://www.ftc.gov/news-events/press-releases/2019/12/court-halts-operations-voip-service-provider-after-ftc-ohio>.

The agency will continue to review complaints and monitor the marketplace to keep abreast of evolving scams and make sure that consumers have the most up-to-date information and advice possible.

## VII. COVID-19 CONSUMER EDUCATION AND OUTREACH

The FTC has worked aggressively to educate consumers of all ages about coronavirus-related scams from the onset of this crisis. FTC staff across the Bureau of Consumer Protection (including the eight regional offices) conduct national and local outreach with partners to reach a variety of audiences, including older consumers, ethnic media, housing organizations, and re-entry groups by using webinars, tele-town halls, Twitter chats, Facebook Live events, as well as interviews with local and national media. During the pandemic, FTC staff have participated in hundreds of virtual webinars, presentations, and interviews—in English, Spanish, and Mandarin.<sup>48</sup>

On February 10, the FTC issued its first consumer alert warning about the potential scams that come with widespread health concerns like the COVID-19 pandemic.<sup>49</sup> The FTC also developed a multi-media campaign, complete with a dedicated website in response to the COVID-19 pandemic.<sup>50</sup> This page contains a library of more than 96 consumer and business posts and scam alerts on topics ranging from stimulus payments and health claims to charity fraud, government imposter scams, and misinformation and rumors.<sup>51</sup> The FTC's coronavirus webpage also includes a free one-page infographic that other organizations can share with consumers.<sup>52</sup> FTC staff regularly updates the page, linking to related consumer and business alerts, law enforcement actions, consumer report data, and other details about the

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<sup>48</sup> One AARP tele-town hall that the FTC participated in received more than 852,000 views just 4 days after posting the video. See AARP, *AARP's March 19 Coronavirus Tele-Town Hall* (Mar. 21, 2020), <https://www.aarp.org/podcasts/take-on-today/info-2020/coronavirus-town-hall-3-20.html>.

<sup>49</sup> FTC Consumer Alert, *Coronavirus scammers follow headlines* (Feb. 10, 2020), <https://www.consumer.ftc.gov/blog/2020/02/coronavirus-scammers-follow-headlines>.

<sup>50</sup> See [ftc.gov/coronavirus](https://www.ftc.gov/coronavirus).

<sup>51</sup> For example, the FTC issued a consumer alert following reports that nursing homes and assisted living facilities were illegally taking residents' stimulus payments. See FTC Consumer Alert, *Did a nursing home or assisted living facility take your stimulus check?* (May 15, 2020), <https://www.consumer.ftc.gov/blog/2020/05/did-nursing-home-or-assisted-living-facility-take-your-stimulus-check>.

<sup>52</sup> A pdf of the infographic can be downloaded here: [https://www.consumer.ftc.gov/sites/www.consumer.ftc.gov/files/keep\\_calm\\_infographic\\_en\\_508.pdf](https://www.consumer.ftc.gov/sites/www.consumer.ftc.gov/files/keep_calm_infographic_en_508.pdf).

FTC’s efforts to combat coronavirus-related scams and educate consumers. More than 365,000 businesses and consumers receive FTC alerts.<sup>53</sup> All resources on the FTC’s website are free for consumers and organizations—including any member of Congress—to access, use, and share. In addition to our own social media activity, we encourage consumers to share the materials through social media and organizations to co-brand our materials and share them with their audiences.<sup>54</sup>

The FTC also has provided outreach specifically on privacy during the coronavirus pandemic, a concern of many businesses and consumers as the pandemic has shifted the workplace from traditional office spaces to consumers’ homes. For example, the FTC has provided privacy and online security tips to consumers and businesses who have transitioned from working at an office to working from home.<sup>55</sup> The FTC also has provided information on contact tracing so that consumers do not divulge their sensitive personal information (such as financial information) to fake contact tracers, while emphasizing the importance of cooperating with legitimate contact tracers.<sup>56</sup> The pandemic has led to an increased reliance on technology to stay connected, and the Commission is staying abreast of privacy or data security issues that may arise so that consumers and businesses can better protect themselves in this increasingly virtual world.<sup>57</sup>

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<sup>53</sup> Moreover, the FTC’s COVID-related blog post about fake checks from the government has received over 1.5 million views. See FTC Consumer Alert, *Checks from the government* (Mar. 18, 2020), <https://www.consumer.ftc.gov/blog/2020/03/checks-government>.

<sup>54</sup> Various national organizations, including the National Association for the Advancement of Colored People, have worked with the FTC to co-brand COVID-19 scam infographics.

<sup>55</sup> FTC Business Alert, *Video Conferencing: 10 privacy tips for our business* (Apr. 16, 2020), <https://www.ftc.gov/news-events/blogs/business-blog/2020/04/video-conferencing-10-privacy-tips-your-business>; FTC Consumer Alert, *Online security tips for working from home* (Mar. 18, 2020), <https://www.consumer.ftc.gov/blog/2020/03/online-security-tips-working-home>.

<sup>56</sup> FTC Consumer Alert, *Help COVID-19 contact tracers, not scammers* (June 25, 2020), <https://www.consumer.ftc.gov/blog/2020/06/help-covid-19-contact-tracers-not-scammers>; FTC Consumer Alert, *COVID-19 contact tracing text message scams* (May 19, 2020), <https://www.consumer.ftc.gov/blog/2020/05/covid-19-contact-tracing-text-message-scams>.

<sup>57</sup> See also FTC Business Alert, *COPPA Guidance for Ed Tech Companies and Schools during the Coronavirus* (Apr. 9, 2020), [https://www.ftc.gov/news-events/blogs/business-blog/2020/04/coppa-guidance-ed-tech-companies-schools-during-coronavirus?utm\\_source=govdelivery](https://www.ftc.gov/news-events/blogs/business-blog/2020/04/coppa-guidance-ed-tech-companies-schools-during-coronavirus?utm_source=govdelivery).

## **VIII. CONCLUSION**

The Commission appreciates Congress's confidence in the FTC's ability to protect consumers, especially with the unique challenges presented by the current COVID-19 pandemic. Through our enforcement, education, and policy efforts, we will continue to ensure that your confidence is well placed. We look forward to continuing to work with the Subcommittee and Congress.