

April 21, 2022

Chair Lina M. Khan
Commissioner Noah Joshua Phillips
Commissioner Rebecca Kelly Slaughter
Commissioner Christine S. Wilson
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

Re: *In re CafePress*, File No. 1923209

Dear Chair Khan and Commissioners Phillips, Slaughter, and Wilson,

By notice published on March 21, 2022, the Federal Trade Commission (“FTC”) has announced its provisional acceptance of agreements containing consent orders from Residual Pumpkin Entity, LLC (“Residual Pumpkin”), formerly d/b/a CafePress, and PlanetArt, LLC (“PlanetArt”), d/b/a CafePress,¹ that would settle alleged violations of federal law.² The FTC’s proposed consent orders with Residual Pumpkin and PlanetArt (“Consent Orders”)³ follow the FTC’s complaint alleging that the data security and privacy practices of CafePress, Residual Pumpkin, and PlanetArt violated Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. § 45(a).⁴

The Electronic Privacy Information Center (“EPIC”) submits this letter in support of the proposed Consent Orders. EPIC is a public interest research center in Washington, D.C. established in 1994 to focus on public attention on emerging civil liberties issues and to protect privacy, the First Amendment, and constitutional values. EPIC has a particular interest in data protection and has played a leading role in developing the authority of the FTC to address

¹ Residual Pumpkin owned CafePress until September 2020 when it sold CafePress to PlanetArt. CafePress; Analysis of Proposed Consent Orders To Aid Public Comment, 87 Fed. Reg. 16,187 (Mar. 22, 2022), <https://www.federalregister.gov/documents/2022/03/22/2022-06022/cafepress-analysis-of-proposed-consent-orders-to-aid-public-comment> [hereinafter Federal Register Notice].

² *Id.*

³ Residual Pumpkin Agreement Containing Consent Order, *In re Residual Pumpkin Entity, LLC, formerly d/b/a CafePress, and PlanetArt, LLC, a limited liability company, d/b/a CafePress*, FTC File No. 1923209 (Mar. 21, 2022),

https://www.ftc.gov/system/files/ftc_gov/pdf/Residual%20Pumpkin%20Agreement%20Containing%20Consent%20Order.pdf; PlanetArt Agreement Containing Consent Order, *In re Residual Pumpkin Entity, LLC, formerly d/b/a CafePress, and PlanetArt, LLC, a limited liability company, d/b/a CafePress*, FTC File No. 1923209, https://www.ftc.gov/system/files/ftc_gov/pdf/PlanetArt%20Agreement%20to%20Containing%20Consent%20Order_0.pdf.

⁴ Complaint, *In the Matter of Residual Pumpkin Entity, LLC, formerly d/b/a CafePress, and PlanetArt, LLC, a limited liability company, d/b/a CafePress*, FTC File No. 1923209, (Mar. 15, 2022), https://www.ftc.gov/system/files/ftc_gov/pdf/CafePress-Complaint_0.pdf [hereinafter Complaint].

emerging privacy issues and to safeguard the privacy rights of consumers.⁵ EPIC routinely files comments in response to proposed FTC consent orders and complaints regarding business practices that violate privacy rights.⁶

EPIC commends the Commission for using its authority to investigate and take enforcement action against companies like CafePress engaged in unfair and deceptive data practices. We believe the CafePress case highlights the need for the FTC to ensure that the privacy safeguards and obligations reflected in the Consent Orders are applied market-wide to protect the privacy of all individuals, regardless of which company collects, uses, or retains their personal information.

First, the Commission's CafePress enforcement actions underscore the importance of requiring firms to promptly disclose data breaches to affected customers and the Commission. As the Complaint notes, "Residual Pumpkin's failure to respond adequately to multiple reports of a security breach led to an unreasonable delay in notifying consumers that their information was exposed and increased the likelihood that those consumers would become victims of identity theft and fraud."⁷ Accordingly, the Consent Orders require Residual Pumpkin and PlanetArt to submit a report to the Commission within 30 days of any incident in which customer information is accessed or acquired without authorization, including descriptions of facts relating to the incident, its causes, and the steps that the company has taken to remediate the incident and protect personal information from further exposure.⁸ Consumers cannot understand whether their data is at risk when firms fail to provide timely notice of a breach. EPIC, in its recent comments supporting the Commission's proposed amendments to the Standards for Safeguarding Customer

⁵ See EPIC, *What the FTC Could Be Doing (But Isn't) To Protect Privacy: The FTC's Unused Authorities* (June 2021), <https://epic.org/privacy/consumer/EPIC-FTC-Unused-Authorities-Report-June2021.pdf>.

⁶ See, e.g., Comments of EPIC, *In re Matter of Support King, LLC (SpyFone.com)* (Oct. 8, 2021), <https://archive.epic.org/apa/comments/In-re-SpyFone-Order-EPIC-comment-100821.pdf>; Comments of EPIC et al., *In re Zoom Video Communications, Inc.* (Dec. 14, 2020), <https://epic.org/apa/comments/EPIC-FTC-Zoom-Dec2020.pdf>; Complaint of EPIC, *In re Online Test Proctoring Companies* (Dec. 9, 2020), <https://epic.org/privacy/dccppa/online-test-proctoring/EPIC-complaint-in-re-online-test-proctoring-companies-12-09-20.pdf>; Complaint of EPIC, *In re Airbnb* (Feb. 26, 2020), https://epic.org/privacy/ftc/airbnb/EPIC_FTC_Airbnb_Complaint_Feb2020.pdf; Petition of EPIC, *In re Petition for Rulemaking Concerning Use of Artificial Intelligence in Commerce* (Feb. 3, 2020), <https://epic.org/privacy/ftc/ai/epic-ai-rulemaking-petition/>; Complaint of EPIC, *In re HireVue* (Nov. 6, 2019), https://epic.org/privacy/ftc/hirevue/EPIC_FTC_HireVue_Complaint.pdf; Comments of EPIC, *In re Unrollme, Inc.*, FTC File No. 1723139 (Sept. 19, 2019), <https://epic.org/apa/comments/EPIC-FTC-Unrollme-Sept2019.pdf>; Comments of EPIC, *In re Aleksandr Kogan and Alexander Nix*, FTC File Nos. 1823106 & 1823107 (Sept. 3, 2019), <https://epic.org/apa/comments/EPIC-FTC-CambridgeAnalytica-Sept2019.pdf>; EPIC, Comments on Standards for Safeguarding Customer Information (Aug. 1, 2019), <https://epic.org/apa/comments/EPIC-FTC-Safeguards-Aug2019.pdf>; Complaint of EPIC, *In re Zoom Video Commc'ns, Inc.* (July 11, 2019), <https://epic.org/privacy/ftc/zoomEPIC-FTC-Complaint-In-re-Zoom-7-19.pdf>.

⁷ Complaint ¶ 35.

⁸ Residual Pumpkin Decision and Order 7–8, *In re Residual Pumpkin Entity, LLC, formerly d/b/a CafePress, and PlanetArt, LLC, a limited liability company, d/b/a CafePress*, FTC File No. 1923209 (Mar. 21, 2022), https://www.ftc.gov/system/files/ftc_gov/pdf/Residual%20Pumpkin%20Agreement%20Containing%20Consent%20Order.pdf.

Information (“Safeguards Rule”),⁹ urged the Commission to require covered entities to notify affected consumers and the Commission of all security incidents that implicate personal information of 1,000 or more, regardless of whether institutions believe data misuse is likely.¹⁰ The CafePress Consent Orders exemplify the kind of reporting necessary by financial and other institutions to adequately inform the Commission and affected users when personal data is at risk.

Second, the CafePress Consent Orders demonstrate why a trade regulation rulemaking would be such a powerful mechanism to curb data protection violations. The proposed Residual Pumpkin Consent Order requires Residual Pumpkin to pay a \$500,000 penalty to the Commission. Financial penalties—particularly when combined with mandated changes in business practices—are a key means of deterring abusive data practices and ensuring the disgorgement of ill-gotten gains. A rulemaking on commercial data practices would enable the Commission to exercise its penalty authority far more broadly and efficiently. As EPIC explained in its report *What the FTC Could Be Doing (But Isn't) To Protect Privacy*, such a rulemaking would unlock the Commission’s authority “to seek penalties against a party that has engaged in conduct that it knows the Commission has determined to be unlawful”—without the need to agree to an individualized consent order for a party’s first offense.¹¹ Former Commissioner Rohit Chopra and Bureau of Consumer Protection Director Samuel Levine have identified key advantages for using the Commission’s civil penalty authority, including its strong deterrent effect against wrongdoing¹² and the fact that such authority—unlike section 13(b) of the FTC Act¹³—is “beyond dispute.”¹⁴ EPIC urges the Commission to enable similar enforcement actions at a far greater scale by using its trade regulation rulemaking authority to define and prohibit privacy harms on a market-wide basis.¹⁵

Finally, the CafePress Consent Orders highlights the particular need for the Commission to enact a data minimization rule under its trade regulation authority. Such a rule would provide clear guidance to firms as to how they may collect and maintain personal information. The Commission should use its technical expertise and unique authority to establish baseline data

⁹ EPIC, Comments of the Electronic Privacy Information Center to the Federal Trade Commission on Standards for Safeguarding Customer Information (Feb. 7, 2022), <https://epic.org/wp-content/uploads/2022/02/EPIC-FTC-Safeguards-Reporting-EPIC-comments-22-02-07.pdf>.

¹⁰ *Id.* at 4.

¹¹ EPIC, *supra* note 5, at 6; *see also* 15 U.S.C. § 45(m)(1).

¹² Rohit Chopra & Samuel A.A. Levine, *The Case for Resurrecting the FTC Act's Penalty Offense Authority*, 26-27. (Oct. 29, 2020), 169 U. Pa. L. Rev. (forthcoming), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3721256.

¹³ *AMG Cap. Mgmt., LLC v. Fed. Trade Comm'n*, 141 S. Ct. 1341 (2021).

¹⁴ *Id.* at 29–30.

¹⁵ *See* Coalition Letter from EPIC et al. to Fed. Trade Comm’n (Oct. 27, 2021), <https://www.freepress.net/sites/default/files/2021-10/Letter-to-FTC-on-Privacy-Rulemaking-10-27-2021.pdf>; Coalition Letter from EPIC et al. to Fed. Trade Comm’n (Aug. 4, 2021), <https://publicknowledge.org/policy/public-interest-group-ftc-privacy-letter/>; *RIN: 3084-AB69*, Office of Info. & Reg. Affs. (Dec. 10, 2021), <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202110&RIN=3084-AB69> (“The Commission is considering initiating a rulemaking under section 18 of the FTC Act to curb lax security practices, limit privacy abuses, and ensure that algorithmic decision-making does not result in unlawful discrimination.”).

protection standards and protect consumers' personal information. EPIC and Consumer Reports' recent white paper urged the Commission to, among other things, prohibit all secondary data uses with limited exceptions, adopt data privacy obligations for primary use of data, and establish access, correction, portability, and deletion rights for consumers.¹⁶ A data minimization rule would more clearly establish companies' obligations for the collection and use of personal information and give the Commission greater power to penalize companies that breach those obligations.

EPIC urges the Commission to finalize the proposed Consent Orders. EPIC also urges the Commission to build on its CafePress enforcement actions by using its power to require prompt reporting of data breach incidents, to unlock enforcement authority against companies that abuse personal data by conducting a privacy rulemaking, and to establish clear data minimization rules.

Sincerely,

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¹⁶ Consumer Reports & EPIC, *How the FTC Can Mandate Data Minimization Through a Section 5 Unfairness Rulemaking* (Jan. 26, 2022), https://epic.org/wp-content/uploads/2022/01/CR_Epic_FTCDDataMinimization_012522_VF_.pdf.