

**PREPARED STATEMENT OF THE FEDERAL TRADE COMMISSION
STOPPING COVID-19 FRAUD AND PRICE GOUGING**

**Before the
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION
SUBCOMMITTEE ON CONSUMER PROTECTION, PRODUCT SAFETY, AND DATA
SECURITY
UNITED STATES SENATE**

WASHINGTON, D.C.

FEBRUARY 1, 2022

I. INTRODUCTION

Chairman Blumenthal, Ranking Member Blackburn, and Members of the Subcommittee, I am Samuel Levine, Director of the Bureau of Consumer Protection at the Federal Trade Commission (Commission or FTC).¹ I am pleased to appear before you today.

During the course of this pandemic, we have encountered disturbing trends and surging complaints as Americans are being targeted by predators large and small, with schemes including get-rich-quick opportunities, bogus cures, false promises of economic assistance, and counterfeit personal protective equipment (PPE). The Commission is taking a comprehensive approach to identifying and addressing COVID-related consumer frauds impacting American consumers and businesses. First, the FTC is engaged in law enforcement to halt and deter COVID-related deceptive claims. Second, we continue to collect and analyze data in our Consumer Sentinel Network to identify consumer fraud trends. Third, the FTC has continued its outreach and consumer education and is proactively using social media, video streaming conferences, and other methods to reach historically underserved communities and people in economically and geographically diverse communities. The Commission appreciates funds provided in the American Rescue Plan, which we have used to bolster our efforts to address the effects of the COVID-19 pandemic on American consumers.

The Commission recognizes that challenges remain in protecting consumers from fraud and abuse. Returning money to defrauded consumers has been a fundamental part of the FTC's consumer protection mission. However, the Supreme Court in *AMG Capital Mgmt., LLC v. FTC*, 141 S. Ct. 1341 (Apr. 2021) held that the FTC does not have the ability to obtain monetary relief

¹ This written statement presents the views of the Federal Trade Commission. The oral statements and responses to questions reflect my own views and do not necessarily reflect the views of the Commission or any Commissioner.

pursuant to Section 13(b) of the FTC Act. Amidst this devastating pandemic, restoring the FTC's ability to provide redress to wronged consumers is critical.

II. COMBATTING COVID-RELATED FRAUD

a. Detecting COVID-19 Scams

The FTC's Consumer Sentinel Network collects millions of reports from the public about fraud, identity theft, and other consumer problems, and makes them available to thousands of law enforcement users across the country. In the weeks following the first known cases of COVID-19 in the U.S., the FTC developed systems to track and alert the public to shifts in Sentinel reporting. On ftc.gov/exploredata, the FTC launched public dashboards showing aggregate Sentinel data on reports associated with COVID-19 by age, type of fraud, and geographic location, with figures that are updated daily. Since January 2020 and as of January 28, 2022, the FTC has received more than 292,000 such fraud reports, reflecting \$674 million in fraud losses.²

Ensuring that the experiences of all consumers are represented in Consumer Sentinel is critically important to the agency's work. To expand accessibility, the FTC launched a modernized reporting website, ReportFraud.ftc.gov, in October 2020. The updated site includes a COVID-19 banner, providing an easy way for consumers to report COVID-related issues. We are also grateful to more than 45 law enforcement partners, including 25 state Attorneys General, for contributing data to the Sentinel system. In 2021, the FTC increased the capacity of the Consumer Sentinel Network to learn about individual instances of fraud by adding the Social Security Administration as a data contributor. Sentinel received nearly 2.8 million reports of

² The figures reflect reports in Sentinel that specifically mention words related to the pandemic, such as COVID, stimulus, N95, and related terms. To provide the most relevant results, some subcategories are excluded. For more information, visit <https://public.tableau.com/profile/federal.trade.commission#!/vizhome/COVID-19andStimulusReports/Map>.

fraud in 2021, with consumers reporting a total dollar loss of \$5.9 billion and an individual median dollar loss of \$500.³

FTC staff monitors and analyzes Sentinel to identify every COVID-related fraud complaint to find potential law enforcement targets and witnesses, and to coordinate with federal, state, and local law enforcement partners. These reports have led to numerous law enforcement actions.

b. COVID-19 Law Enforcement Actions

Thanks in part to new authority granted by Congress, bad actors face severe consequences for committing COVID-related fraud. Deploying the Commission's new authority under the COVID-19 Consumer Protection Act of 2020⁴ (CCPA) and its other legal authorities, the Commission seeks emergency injunctions, asset freezes, and civil penalties of up to \$46,517 for each violation of the CCPA or other rules enforced by the agency as necessary to ensure that the public is protected.

Most recently, the FTC filed a lawsuit under the CCPA alleging that a Utah-based company claimed its nasal sprays provide four-hour protection against coronavirus and are “an effective solution to the pandemic.”⁵ A few months prior, we filed the first case under the CCPA against a chiropractor and his company who claimed their vitamin D and zinc supplements were scientifically proven to treat or prevent COVID-19, and that they were equally or more effective than vaccines.⁶ We pursued and obtained a stipulated preliminary injunction against these

³ In 2020, Sentinel received nearly 2.3 million fraud reports and consumers reported a total dollar loss of \$3.4 billion. <https://public.tableau.com/app/profile/federal.trade.commission/viz/ConsumerSentinel/Infographic>

⁴ Pub. L. No. 116-260, 134 Stat. 1182, Division FF, Title XIV, § 1401.

⁵ Complaint, *US v. Xlear, Inc.*, Case No. 2:21-cv-00640-RJS (D. Utah), available at https://www.ftc.gov/system/files/documents/cases/filed_complaint_xlear_v_jones_v.1.pdf.

⁶ Complaint, *US v. Nepute*, Case No. 4:21-cv-00437 (E.D. Mo.), available at https://www.ftc.gov/system/files/documents/cases/2023188eneputecomplaint_0.pdf.

defendants.⁷ In addition, the agency is seeking civil penalties under the CCPA against an online marketer that allegedly not only failed to deliver PPE within promised timeframes, but also falsely claimed that consumers would receive N95 respirators certified by the FDA or NIOSH while actually providing inferior cloth facemasks.⁸ In all three of these cases, which are still ongoing, we are using authority granted by Congress to pursue civil penalties and other relief. These actions are the latest in a long line of enforcement efforts that began early in the pandemic. Even before the enactment of the CCPA, the FTC used Section 5 to challenge deceptive health claims⁹ and illegal practices relating to sales of PPE¹⁰ and sanitizing products.¹¹

The FTC also has challenged schemes that exploited consumers' and small businesses' financial distress. Most recently, the Commission ruled against a company that deceived consumers with mailers that featured a likeness of the Great Seal of the United States and a mock

⁷ Preliminary Injunction, *US v. Nepute*, Case No. 4:21-cv-00437 (E.D. Mo.), available at https://www.ftc.gov/system/files/documents/cases/consent_order.pdf.

⁸ Complaint, *FTC v. Frank Romero dba Trend Deploy*, Case No. 5:21-cv-00343 (M.D. Fla.), available at https://www.ftc.gov/system/files/documents/cases/complaint_-_trend_deploy.pdf.

⁹ For example, the Commission sued a company that, even after receiving a warning from the FTC, allegedly deceptively advertised a \$23,000 treatment plan as a scientifically proven way to treat COVID-19, and recently settled with one defendant for over \$100,000. FTC Press Release, *FTC Sues California Marketer of \$23,000 COVID-19 "Treatment" Plan* (July 31, 2020), <https://www.ftc.gov/news-events/press-releases/2020/07/ftc-sues-california-marketer-23000-covid-19-treatment-plan>; Stipulated Order for Permanent Injunction and Monetary Judgment as to Defendant Stephen Meis, *FTC v. Golden Sunrise Nutraceutical, Inc.*, Case No. 1:20-cv-00540-DAD-SKO (E.D. Cal.), available at https://www.ftc.gov/system/files/documents/cases/052-gs_stipulated_order_for_permanent_injunction_and_monetary_judgment_as_to_defendant_stephen_meis.pdf.

¹⁰ See, e.g., Complaint, *FTC v. SuperGoodDeals.com, Inc.*, Case No. 20-cv-3027 (E.D.N.Y.), available at https://www.ftc.gov/system/files/documents/cases/202_3135_supergooddeals_-_complaint.pdf; Complaint, *FTC v. Am. Screening, LLC*, Case No. 4:20-cv-1021 (E.D. Mo.), available at https://www.ftc.gov/system/files/documents/cases/202_3158_american_screening_-_complaint.pdf; Complaint, *FTC v. Zaappaaz LLC*, Case No. 4:20-cv-02717 (S.D. Tex.), available at https://www.ftc.gov/system/files/documents/cases/202_3136_zaappaaz_-_complaint.pdf.

¹¹ See, e.g., Complaint, *FTC v. QYK Brands LLC*, Case No. 8:20-cv-01431-JLS-KES (C.D. Cal.), available at https://www.ftc.gov/system/files/documents/cases/202_3147_qyk_brands_-_complaint.pdf; Complaint, *FTC v. One or More Unknown Parties Deceiving Consumers Into Making Purchases Through: www.cleanyos.com et al.*, Case No. 5:20-cv-02494 (N.D. Ohio), available at https://www.ftc.gov/system/files/documents/cases/complaint_w-a_filed.pdf. The Commission obtained a federal court order that, while litigation proceeds, prohibits the defendants from making deceptive claims, suspends their deceptive websites, and bars them from using their websites to collect money from consumers. Preliminary Injunction, *FTC v. One or More Unknown Parties Deceiving Consumers Into Making Purchases Through: www.cleanyos.com et al.*, Case No. 5:20-cv-02494 (N.D. Ohio), available at https://www.ftc.gov/system/files/documents/cases/ftc_v_unknown_preliminary_injunction_with_att_a.pdf.

stimulus check and promised to get them federal COVID-19 stimulus benefits.¹² Rather than assisting consumers to obtain stimulus benefits, the mailers sought to lure consumers to auto sales events. The Commission Order banned the company and its owner from participating in advertising, marketing, promoting, distributing, or selling or leasing motor vehicles for 20 years.¹³ Early in the pandemic, the FTC alleged that a company falsely claimed to be an approved lender to induce struggling small businesses to submit applications for the Paycheck Protection Program, administered by the Small Business Administration (SBA). The FTC obtained a court order permanently barring the company from misrepresenting its ability to make or process SBA loans, as well as its affiliation with SBA.¹⁴ In addition, to protect consumers attempting to replace or supplement income during the pandemic, the Commission – along with 19 federal, state, and local partners – led a nationwide crackdown against scams making false promises of income and financial independence.¹⁵ As part of the crackdown, the Commission sued *Moda Latina*, which allegedly targeted Latina consumers with false earnings claims in Spanish language ads.¹⁶ An order resolving that case bans the defendants from selling or marketing opportunities to work from home and imposes a judgment of over \$7 million.¹⁷ In *National Web Design*, a work-from-home scam, the Commission alleged that the defendants

¹² Opinion of the Commission, *In re Traffic Jam Events, LLC*, Docket No. 9395 (FTC), available at https://www.ftc.gov/system/files/documents/cases/d09395_commission_opinion.pdf.

¹³ Final Order, *In re Traffic Jam Events, LLC*, Docket No. 9395 (FTC), available at https://www.ftc.gov/system/files/documents/cases/d09395_commission_final_order.pdf.

¹⁴ Stipulated Final Order, *FTC v. Ponte Investments, LLC*, Case No. 1:20-cv-00177 (D.R.I.), available at https://www.ftc.gov/system/files/documents/cases/x200042_ponte_inv_-_stipulated_final_order.pdf.

¹⁵ FTC Press Release, *As Scammers Leverage Pandemic Fears, FTC and Law Enforcement Partners Crack Down on Deceptive Income Schemes Nationwide* (Dec. 14, 2020), <https://www.ftc.gov/news-events/press-releases/2020/12/scammers-leverage-pandemic-fears-ftc-law-enforcement-partners>.

¹⁶ Complaint, *FTC v. Moda Latina BZ Inc.*, Case No. 2:20-cv-10832-FMO-SK (C.D. Cal), available at https://www.ftc.gov/system/files/documents/cases/001_complaint.pdf.

¹⁷ Order on Stipulation Re: Permanent Injunction and Monetary Judgment, *FTC v. Moda Latina BZ Inc.*, Case No. 2:20-cv-10832-FMO-SK (C.D. Cal. March 21, 2021), available at https://www.ftc.gov/system/files/documents/cases/056_order_on_stipulation_re_permanent_inj_and_monetary_judgment.pdf

blasted out millions of illegal robocalls and adjusted call messaging to capitalize on consumers who were concerned about the health risks of working outside the home during the pandemic.¹⁸ The order resolving the case bans defendants from robocalling and selling or marketing work-from-home opportunities and imposes a judgment of more than \$2 million.¹⁹ In an ongoing lawsuit against Raging Bull, the FTC has alleged that the defendants fraudulently marketed investment-related services that they claimed would enable people to make consistent profits and beat the market, and claimed that the pandemic was a great time to learn their trading techniques to make profits.²⁰ Instead, the FTC has alleged, consumers – including retirees, older adults, and immigrants – lost more than \$197 million to this scheme in only the last three years.

The Commission will remain vigilant in protecting the public from harms that stem directly and indirectly from the COVID-19 pandemic. The FTC is committed to tackling emerging threats, adjusting our strategies wherever necessary, and working in close coordination with our law enforcement partners at the local, state, and federal level.

c. COVID-19 Consumer Education and Outreach

The Commission has continued to buttress its law enforcement actions with consumer and business education. Aided by the American Rescue Plan funds, the FTC has increased its outreach to ethnic and immigrant communities, which have been targeted by COVID-19 scams. The FTC has actively engaged with ethnic and community media journalists nationwide to learn about issues affecting these communities. Later this month, the agency will place multilingual

¹⁸ Complaint, *FTC v. National Web Design, LLC*, Case No. 2:20-cv-00846 (D. Utah), available at https://www.ftc.gov/system/files/documents/cases/random_morris_complaint.pdf.

¹⁹ Order Granting Stipulated Motion for Permanent Injunction and Monetary Judgment, *FTC v. National Web Design, LLC*, Case No. 2:20-cv-00846 (D. Utah), available at https://www.ftc.gov/system/files/documents/cases/38_-_permanent_injunction_and_monetary_judgment.pdf.

²⁰ Amended Complaint, *FTC v. RagingBull.com, LLC*, Case No. 1:20-cv-03538-GLR (D. Md.), available at https://www.ftc.gov/system/files/documents/cases/ragingbull.com_-_amended_complaint_for_permanent_injunction_and_other_equitable_relief.pdf.

anti-fraud messaging into targeted print and radio markets. This messaging will reach Asian-American, Black, Latino, and Tribal communities on topics that include scams related to COVID-19 and other topics. The FTC also has used new methods to reach people in economically and geographically diverse communities. For example, the FTC conducted national radio media tours with the National Association of Attorneys General (NAAG) focused on scams related to vaccine passports and certificates, travel, vaccine lotteries and giveaways, and other topics. Segments of the recorded interview were heard more than 7.6 million times over a seven-week period. Similarly, in November 2021, the FTC and NAAG partnered on a national radio tour that focused on consumer finances and resiliency – segments of which were heard more than 9 million times over five weeks. The FTC also mailed post cards to nearly a quarter of a million people in communities with low broadband access and delivered letters to community health professionals in 5,000 rural and urban clinics to help people avoid COVID-related fraud.

We have also hosted and participated in national and local events with partners to reach a variety of audiences, including older consumers, ethnic and community media, housing organizations, re-entry groups, library patrons, and the military community. For example, in June 2021, the FTC partnered with Connecticut’s Department of Consumer Protection to brief the media and public about the FTC’s newly-launched Community Advocate Center Program. This initiative provides a new way for organizations that provide free and low-cost legal services to report fraud and other illegal business practices directly to the FTC on behalf of their clients – a critical new resource in fighting COVID and other fraud. These kinds of initiatives and outreach events are the result of strong relationships built through regular collaboration and communication. FTC staff also participate on monthly consumer fraud task forces or roundtables in Hawaii, Indiana, Kansas, Minnesota, Missouri, South Dakota, and Wisconsin and hold

additional quarterly calls with consumer protection staff in Hawaii and Utah to remain abreast of consumer fraud trends and developments in those states.

Finally, the Commission has been issuing timely alerts to warn consumers and the business community about a wide range of evolving COVID-related frauds since the beginning of the pandemic. To date, the FTC has issued more than 180 relevant consumer and business alerts on topics including free testing kits and testing scams, vaccine verification methods, economic impact payments, health claims, online shopping, privacy in a virtual environment, contact tracing, government imposter scams, and job scams. In addition to posting these materials on its public website, the FTC proactively sends its alerts, in English and Spanish, to more than 500,000 email subscribers, which include consumers, businesses, partners, and the media. In turn, many of these subscribers share the information with their communities, greatly expanding the reach of the agency's message and resulting in media pick-up at the national, regional, and local levels.

III. MARKET-WIDE INITIATIVES TO PROTECT CONSUMERS

In addition to pursuing enforcement and consumer education, the Commission is deploying new tools and reviving old ones to try to address emerging trends that threaten consumers. The consumer fraud problems reported to the FTC every year help the agency not only identify specific law enforcement targets, but more broadly understand emerging trends in the marketplace, particularly problems causing substantial consumer financial losses.

The pandemic required many work, school, recreation, and social activities to transition from in-person to online. Reports in Sentinel show that scammers have been quick to take advantage of these changes, resulting in record reports of financial losses. These broad shifts

include soaring number of reports about business imposters,²¹ undelivered merchandise,²² and substantial losses stemming from online shopping.²³ Cryptocurrency investment scam reports have also risen sharply during the pandemic,²⁴ and in fact, reports about income scams of all sorts increased sharply during the pandemic.²⁵ Work-from-home scams, fake check scams that start with an email, or deceptive online trading offers proliferated during the pandemic.²⁶ Fraud reports about medical treatments more than doubled over the course of the pandemic, and the fraction of these that related to COVID also increased substantially in the last year.²⁷

Scammers have reportedly increased their use of social media to target consumers.²⁸ More than one in four people who reported losing money to a scam in 2021 said that the scam started with a contact on social media. What's more, these reports have increased nineteen-fold since 2017.²⁹ The Commission has been examining these issues. In December 2020, the Commission ordered social media and video streaming companies to provide data on how they collect, use, and present personal information, their advertising and user engagement practices, whether they apply algorithms or data analytics to personal information, and how their practices

²¹ The FTC received 106,727 business imposter reports in 2019, and 394,743 in 2021. FTC Consumer Sentinel Data (on file with the FTC).

²² Emma Fletcher, *Pandemic Purchases Lead to Record Reports of Unreceived Goods*, FTC Consumer Protection Data Spotlight (Jul 1, 2020), available at <https://www.ftc.gov/news-events/blogs/data-spotlight/archive/202007>.

²³ Emma Fletcher, *Amazon tops list of impersonated businesses*, FTC Consumer Protection Data Spotlight (Oct. 20, 2021), available at <https://www.ftc.gov/news-events/blogs/data-spotlight/2021/10/amazon-tops-list-impersonated-businesses>.

²⁴ Emma Fletcher, *Cryptocurrency Buzz Drives Record Investment Scam Losses*, FTC Consumer Protection Data Spotlight (May 17, 2021), available at <https://www.ftc.gov/news-events/blogs/data-spotlight/2021/05/cryptocurrency-buzz-drives-record-investment-scam-losses>.

²⁵ FTC Consumer Sentinel Data (current through Jan. 28, 2022) (on file with the FTC) .

²⁶ Emma Fletcher, *Income Scams: Big Promises, Big Losses*, FTC Consumer Protection Data Spotlight (Dec. 10, 2020), available at <https://www.ftc.gov/news-events/blogs/data-spotlight/2020/12/income-scams-big-promises-big-losses>.

²⁷ FTC Consumer Sentinel Data (on file with the FTC) (based on reports about health care issues, such as medical treatments and cures, drug-OTC/prescription, and dietary supplements/herbal remedies).

²⁸ Emma Fletcher, *Social Media A Gold Mine for Scammers in 2021*, FTC Consumer Protection Data Spotlight (Jan. 25, 2022), available at <https://www.ftc.gov/news-events/blogs/data-spotlight/2022/01/social-media-gold-mine-scammers-2021>.

²⁹ *Id.*

affect children and teens.³⁰ This study may provide critical information on the business practices at issue.

a. Impersonator Fraud

For years, scammers have falsely claimed that they are calling from the IRS, the Social Security Administration, or other offices or businesses to steal data and money from hard-working Americans. Consumer financial losses to business imposter scams are substantial, topping \$451 million in 2021 alone.³¹ In fact, business imposter reports from consumers more than tripled between 2019 and 2021, and were largely driven by scammers pretending to be an online retailer, like Amazon.³² Government imposter scams – a perennial top category of fraud – have similarly capitalized on the pandemic.³³ Impersonators use all methods of communication to trick their targets into trusting that they are the government or an established business and then trade on this trust to steal their identity or money.

The Commission is considering deploying its rulemaking authority to prohibit these impersonation frauds. In December, the agency launched an advanced notice of proposed rulemaking to combat government and business impersonation fraud.³⁴ If a rule is ultimately promulgated, it would enable the Commission to seek refunds for consumers under its Section 19

³⁰ FTC Press Release, *FTC Issues Orders to Nine Social Media and Video Streaming Services Seeking Data About How They Collect, Use, and Present Information* (Dec. 14, 2020), available at <https://www.ftc.gov/news-events/press-releases/2020/12/ftc-issues-orders-nine-social-media-video-streaming-services>. Commissioner Phillips dissented, *Dissenting Statement of Commissioner Noah Joshua Phillips Social Media Service Providers Privacy 6(b)* (Dec. 14, 2020), available at https://www.ftc.gov/system/files/documents/public_statements/1584154/dissenting_statement_of_commissioner_noah_joshua_phillips_regarding_social_media_and_video_streaming.pdf.

³¹ FTC Consumer Sentinel Data (on file with the FTC).

³² FTC Consumer Sentinel Data (on file with the FTC).

³³ See Trade Regulation Rule on Impersonation of Government and Businesses, 86 Fed. Reg. 72901, 72902 (Dec. 23, 2021) (“Since the pandemic began, COVID-specific scam reports have included 12,491 complaints of government impersonation and 8,794 complaints of business impersonation.”), available at <https://www.federalregister.gov/documents/2021/12/23/2021-27731/trade-regulation-rule-on-impersonation-of-government-and-businesses>.

³⁴ FTC Press Release, *FTC Launches Rulemaking to Combat Sharp Spike in Impersonation Fraud* (Dec. 16, 2021), available at <https://www.ftc.gov/news-events/press-releases/2021/12/ftc-launches-rulemaking-combat-sharp-spike-impersonation-fraud>.

authority, in addition to civil penalties. The FTC will continue to use all of its tools, including any new tools granted by Congress, to protect consumers and ensure a fair marketplace.

b. False Educational and Earnings Claims

As noted above, scams promising income have proliferated during the pandemic.³⁵ The economic disruption caused by the pandemic led many consumers to pursue new opportunities to earn a living, including through multilevel marketers, “gig” employers, and vocational schools. Unfortunately, bad actors are preying on Americans’ economic insecurity by making false claims about the income they can earn from jobs, and the training and opportunities they can receive from vocational schools. Consumers who are lured into these schemes can be driven deeply into debt and can be deprived of better opportunities.³⁶

The Commission has long worked to protect consumers from deception in this area, but this is becoming more challenging. For example, this past November, the FTC returned nearly \$60 million to more than 140,000 Amazon Flex drivers who allegedly had their tips deceptively withheld.³⁷ Achieving similar results in future cases could be hindered by the Supreme Court’s decision in *AMG*.

³⁵ Emma Fletcher, *Income Scams: Big Promises, Big Losses*, FTC Consumer Protection Data Spotlight (Dec. 10, 2020), available at <https://www.ftc.gov/news-events/blogs/data-spotlight/2020/12/income-scams-big-promises-big-losses>.

³⁶ See, e.g., *Quarterly Report on Household Debt and Credit*, Federal Reserve Bank of New York (Nov. 2021) (showing that student loan debt accounted for approximately 10% of total household debt in the third quarter of 2021), available at https://www.newyorkfed.org/medialibrary/interactives/householdcredit/data/pdf/HHDC_2021Q3.pdf; see also *COVID-19 Adds to Economic Hardship of Those Most Likely to Have Student Loans*, U.S. Census Bureau (Aug. 18, 2021) (stating that “student loans are among the largest contributors to household debt”), available at <https://www.census.gov/library/stories/2021/08/student-debt-weighed-heavily-on-millions-even-before-pandemic.html>.

³⁷ Decision and Order, *FTC v. Amazon.com, Inc.*, Docket No.C-4746 (requiring Amazon to return all of the money it allegedly withheld from drivers deceptively), available at <https://www.ftc.gov/system/files/documents/cases/1923123c4746amazonflexorder1.pdf>. See also Stipulated Order, *FTC v. University of Phoenix, Inc.*, Case No. 2:19-cv-05772 (D. AZ) (requiring the University of Phoenix and its parent company to pay \$191 million to resolve allegations that they deceptively touted job opportunities), available at https://www.ftc.gov/system/files/documents/cases/de_15_stipulated_order_for_permanent_injunction_and_monetar

The Commission has also launched an initiative to use its Penalty Offense Authority to deter unfair and deceptive practices on a market-wide basis and to protect consumers from scams that prey on economic precarity.³⁸ This past October, the Commission sent Notice of Penalty Offenses³⁹ to more than 1,100 businesses regarding deceptive or misleading earnings claims and fake reviews and other misleading endorsements,⁴⁰ and to 70 for-profit colleges regarding deceptive or misleading job and earning prospects.⁴¹ The goal of putting these industries on notice is to deter wrongful conduct by triggering the possibility of civil penalties.

c. Deceptive Health Claims

Fraud reports about medical treatments more than doubled during the course of the pandemic, and in the last year, those related to COVID increased persistently.⁴² Market-wide deterrence is especially important with respect to deceptive health claims, which can lead consumers to turn to bogus cures and forgo legitimate treatments. To achieve this deterrence, the Commission is placing market actors on notice that they can face stiff civil penalties if they cheat consumers with false claims.

[y_judgment.pdf](#); Stipulated Order, *FTC v. Career Education Corp.*, Case No. 1:19-cv-05739 (E.D. Ill) (providing \$30 million in redress to consumers deceived by post-secondary and vocational schools' use of alleged deceptive lead generators), available at https://www.ftc.gov/system/files/documents/cases/de_11_-_stipulated_order_for_permanent_injunction.pdf.

³⁸ The Penalty Offense Authority empowers the Commission to seek civil penalties of up to \$46,517 per violation from a company if it knowingly engages in acts or practices that the Commission has determined to be unfair or deceptive in a prior administrative order, other than a consent. 15 U.S.C. § 45(m)(1)(B). To trigger this authority, the FTC can send a company a Notice of Penalty Offenses outlining conduct that the Commission has determined is unlawful.

³⁹ The agency also sent Notices of Penalty Offenses to more than 700 advertisers and consumer product companies regarding fake reviews and other misleading endorsements. FTC Press Release, *FTC Puts Hundreds of Businesses on Notice about Fake Reviews and Other Misleading Endorsements* (Oct. 13, 2021), available at <https://www.ftc.gov/news-events/press-releases/2021/10/ftc-puts-hundreds-businesses-notice-about-fake-reviews-other>.

⁴⁰ FTC Press Release, *FTC Puts Businesses on Notice that False Money-Making Claims Could Lead to Big Penalties* (Oct. 26, 2021), available at <https://www.ftc.gov/news-events/press-releases/2021/10/ftc-puts-businesses-notice-false-money-making-claims-could-lead>.

⁴¹ FTC Press Release, *FTC Targets False Claims by For-Profit Colleges* Oct. 6, 2021), available at <https://www.ftc.gov/news-events/press-releases/2021/10/ftc-targets-false-claims-profit-colleges>.

⁴² See note 27.

Starting in March 2020, the FTC launched a campaign to challenge companies' deceptive COVID-19 claims – directing the companies to cure violations and pursuing enforcement actions if problematic claims were not quickly removed. To date, the FTC has issued more than 425 cease and desist demands, many in conjunction with the Food and Drug Administration (FDA), to sellers and marketers that claimed that their products could treat or prevent COVID-19.⁴³ Twenty of those cease and desist demands were directed to multi-level marketing companies (MLMs) regarding deceptive earnings claims and COVID-19 prevention or treatment claims made by the MLM or its business opportunity participants.⁴⁴ The agency also issued cease and desist demands with the SBA regarding small business relief⁴⁵ and joint demand letters with the Federal Communications Commission (FCC) to Voice Over Internet Protocol service providers and others who may have been “assisting and facilitating” illegal telemarketing calls, including calls making fraudulent offers of COVID-19 home testing kits.⁴⁶ These cease and desist demands

⁴³ Copies of all of the FTC's COVID-19 related cease and desist demands are available here:

<https://www.ftc.gov/coronavirus/enforcement/warning-letters>.

⁴⁴ See 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), available at <https://www.ftc.gov/news-events/press-releases/2020/04/ftc-sends-warning-letters-multi-level-marketers-regarding-health>; Press Release, *FTC Sends Second Round of Warning Letters to Multi-Level Marketers Regarding Coronavirus Related Health and Earnings Claims* (June 5, 2020), available at <https://www.ftc.gov/news-events/press-releases/2020/06/second-round-warning-letters-to-mlms-regarding-coronavirus>; Press Release, *With Omicron Variant on the Rise, FTC Orders More Marketers to Stop Falsely Claiming Their Products Can Effectively Prevent or Treat COVID-19* (Jan. 19, 2022), available at <https://www.ftc.gov/news-events/press-releases/2022/01/omicron-variant-rise-ftc-orders-more-marketers-stop-falsely>.

⁴⁵ 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), available at <https://www.ftc.gov/news-events/press-releases/2020/05/ftc-sba-warn-operator-sbacom-lead-generator-lendio-stop>; Press Release, *FTC and SBA Warn Six Companies to Stop Potentially Misleading Marketing Aimed at Small Businesses Seeking Coronavirus Relief Loans* (June 24, 2020), available at <https://www.ftc.gov/news-events/press-releases/2020/06/ftc-sba-warn-six-companies-stop-potentially-misleading-marketing>.

⁴⁶ 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), available at <https://www.ftc.gov/news-events/press-releases/2020/04/ftc-fcc-send-joint-letters-voip-service-providers-warning-against>; FTC Press Release, *FTC and FCC Send Joint Letters to Additional VoIP Providers Warning against 'Routing and Transmitting' Illegal Coronavirus-related Robocalls* (May 20, 2020), available at <https://www.ftc.gov/news-events/press-releases/2020/05/ftc-fcc-send-joint-letters-additional-voip-providers-warning>. The FTC also independently sent letters to nine VoIP service providers in March 2020 regarding illegal calls regarding COVID. FTC Press Release, *FTC Warns Nine VoIP Service Providers and Other Companies against 'Assisting and Facilitating' Illegal*

lay the groundwork for ensuring that bad actors can face civil penalties of \$46,517 and other relief under the CCPA, the Commission’s Penalty Offense Authority, and other laws.⁴⁷ These demands can be issued quickly, distributed broadly, and monitored closely.

In response to these cease and desist demands, the vast majority of recipients take down their claims. This allows the Commission to preserve its scarce law enforcement resources to pursue the most hardened scammers, and to seek every remedy available to halt their wrongdoing, ban them from further abuses, and make them pay.

IV. LEGAL CHALLENGES

Returning money to consumers harmed by scammers has been a cornerstone of the FTC’s law enforcement actions. In fiscal year 2021, FTC law enforcement actions resulted in more than \$403 million in redress to harmed consumers.⁴⁸ These payments help ensure that consumers can be compensated for their losses, and that wrongdoers cannot pocket their illegal gains. And these payments are especially critical during this pandemic. In *AMG Capital Mgmt., LLC v. FTC*, 141 S. Ct. 1341 (Apr. 2021), the Supreme Court held that the Commission cannot obtain monetary relief pursuant to Section 13(b) of the FTC Act. The Commission requests legislation to restore its ability to return money to consumers harmed by illegal conduct.

Coronavirus-related Telemarketing Calls (March 27, 2020), available at <https://www.ftc.gov/news-events/press-releases/2020/03/ftc-warns-nine-voip-service-providers-other-companies-against>.

⁴⁷ In coordination with FDA, the FTC has issued cease and desist demands pursuant to the FTC’s Penalty Offense Authority on other health fraud such as diabetes and infertility. *See, e.g.*, FTC Press Release, *FTC Sends Cease and Desist Demands to 10 Companies Suspected of Making Diabetes Treatment Claims without the Required Scientific Evidence* (Sept. 9, 2021), available at <https://www.ftc.gov/news-events/press-releases/2021/09/ftc-sends-cease-desist-demands-10-companies-suspected-making>; FTC Press Release, Federal Trade Commission, *FDA Warn Five Companies That May Be Illegally Selling Dietary Supplements Claiming to Treat Infertility* (May 26, 2021), available at <https://www.ftc.gov/news-events/press-releases/2021/05/federal-trade-commission-fda-warn-five-companies-may-be-illegally>.

⁴⁸ For more information visit https://public.tableau.com/app/profile/federal.trade.commission/viz/Refunds_15797958402020/RefundsbyDate

V. CONCLUSION

For nearly two years, the Commission has worked tirelessly to stop bad actors from exploiting the pandemic. But the Commission's work is far from over. COVID-related scams are likely to persist as the country continues to grapple with this pandemic. Combatting these scams remain a top priority for the Commission, and we will use every weapon in our arsenal to do so.

We look forward to continuing to work with the Subcommittee and Congress, and I am happy to answer your questions.