

**Written Testimony of
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“Curbing COVID Cons: Warning Consumers about Pandemic Frauds, Scams, and Swindles”

**Senate Committee on Commerce, Science, and Transportation
Subcommittee on Consumer Protection, Product Safety, and Data Security**

April 27, 2021

Chair Blumenthal, Ranking Member Blackburn, and distinguished members of the subcommittee, I am pleased to testify before you today to discuss protecting consumers from COVID-19-related scams.¹

As the 1914 House Conference Report on the Federal Trade Commission Act put it in reference to unfair business practices, “[t]here is no limit to human inventiveness in this field.”² Our Washington courts have frequently repeated this quote in their decisions interpreting Washington’s Consumer Protection Act,³ and, more than 100 years later, the COVID-19 pandemic has underscored how incontrovertible this observation remains.

In Washington, as in many states, the Consumer Protection Division of the Attorney General’s Office houses a Consumer Resource Center that receives complaints from consumers about businesses that operate in Washington, and offers a voluntary complaint resolution process. Before the COVID pandemic, our office typically received approximately 17,000 to 18,000 consumer complaints each year. In 2020, the number of consumer complaints we received increased by 50%. Indeed, in the early months of the pandemic, our complaint volume

¹ Any opinions expressed in this written statement are mine and do not necessarily reflect those of the Washington Attorney General’s Office.

² H.R. Conf. Rep. No. 1142, 63d Cong., 2d Sess. 19 (1914).

³ Wash. Rev. Code § 19.86.

doubled. In response to this spike in complaint volume, the Attorney General initiated new processes to ensure that COVID-19-related complaints were reviewed immediately, and, where appropriate, acted upon as quickly as possible.

A significant portion of the COVID-19-related complaints we received related to price gouging or failure to refund fees paid for travel, events, or memberships affected by COVID restrictions, but I will focus my testimony today on COVID-19-related scams we have seen in Washington.

One area of particular concern for our office has been the marketing of unsubstantiated COVID-19 treatments. We have investigated a number of individuals and businesses engaging in this conduct, and used a combination of enforcement tools, including cease and desist notices, warning letters, and court filings in our efforts to protect Washington consumers.

For example, early in the pandemic, a Washington company began promoting a “virus destroying drink” to consumers. The company’s Chief Research Director stated in an email sent to Washington consumers “I think this drink is so incredibly promising for protection from this pandemic that I’m giving it to my pregnant wife and 19-month-old daughter daily . . . so be sure to click the link below to get the details.” The Attorney General sent a cease and desist notice to the company explaining that misrepresenting the health benefits of a product may violate Washington’s Consumer Protection Act and that the Attorney General would hold those who deceive the public with unproven or false statements regarding the effectiveness of COVID-19 treatments or preventative measure accountable during the emergency. The company discontinued its marketing and agreed with us that “any and all confusion around COVID-19 must be avoided.”

We also received complaints about an allergy clinic that advertised testing and treatments for COVID-19 on its website and on postcards sent to Washington consumers. Alongside these offers, the clinic identified “tips to help strengthen your immune system,” including various vitamins and supplements. We had an investigator call the clinic to inquire about the types of COVID-19 treatments offered, and the company representative who answered the phone responded that the clinic offered immune system boosting. We sent a warning letter to the clinic that explained that advertisements may violate our Consumer Protection Act if they represent that a product or service yields a health benefit without competent and reliable scientific evidence to substantiate those claims. The clinic stopped advertising COVID-19 treatment after receiving the letter.

We initiated an investigation into an individual who announced on Facebook that he had developed a COVID-19 vaccine and offered to vaccinate consumers for \$400 each. In the course of the investigation, he admitted that he had injected approximately 30 consumer with his product. The Attorney General filed a lawsuit against him in Washington Superior Court that resulted in a consent decree with injunctive terms enjoining him from marketing or selling any substance or product represented to have health benefits without sufficient scientific evidence to substantiate the claims. He was also required to provide full restitution to consumers for amounts they paid for the vaccine and pay civil penalties.

Another category of COVID-19-related complaints we received, especially early in the pandemic, involved businesses offering personal protective equipment for sale, but failing to deliver the products to consumers. In some cases, the businesses credibly explained that supply chain disruptions were preventing them from fulfilling orders in a timely manner. For example, an online seller of N95 masks explained, in response to a cease and desist notice we sent, that it

relied on drop shipping rather than physical inventory, and was caught off guard when the extreme surge in demand for N95 masks caused its supplier to be unable to fulfill its orders, and, in turn, its credit card payment processor to freeze its accounts. The company provided instructions to the Washington consumers who complained to request chargebacks to their credit cards.

Now that COVID-19 vaccines have become available, we are seeing an increasing number of vaccine-related scams. For example, we have become aware of blank or fraudulently completed vaccine cards bearing the Centers for Disease Control and Prevention logo being offered for sale on a number of online platforms. On April 1, 2021, 46 state Attorneys General signed a letter to Twitter, Shopify, and eBay expressing concern about the use of their platforms for the marketing and sale of fake COVID vaccine cards. The letter requested that the companies take immediate action to (1) monitor their platforms for ads or links marketing, selling, or otherwise indicating the availability of blank or fraudulently completed vaccine cards; (2) promptly take down ads or links identified through that monitoring; and (3) preserve records pertaining to any such ads or links. Each company responded with their commitment to prevent blank or fraudulently completed vaccine cards from being marketed or sold on their platforms.

We have also become aware of COVID-19 vaccine survey scams in which consumers who have been vaccinated receive a text or email asking them to complete a survey about the vaccine they received. The consumers are offered a free reward but asked to pay a nominal “shipping” fee. They are billed for the fee but never receive the reward. For example, a Washington consumer received a survey about the Moderna vaccine after he received that type of vaccine. The consumer was offered entry into an Apple iPad giveaway for a shipping payment

of \$19.99. The consumer was actually charged \$39.99 and ended up having to cancel his credit card.

Most recently, we have heard about portable COVID-19 testing operations not endorsed by local or state health departments. These operations have apparently set up testing tables in neighborhoods and parks, and even gone door-to-door to consumer homes. Our local public health officials have observed that the testers are not using appropriate personal protective equipment such as masks, face shields or gloves to protect consumers, are collecting and holding personal information insecurely, are falsely claiming to be “with public health,” and, despite signs offering free testing, use paperwork indicating in fine print that consumers could be billed.

Combatting consumer fraud requires vigilance and persistence. I expect that we will continue to see new COVID-19-related scams in Washington as the pandemic enters the next phase, and we will continue to use all of the tools at our disposal to protect our state’s consumers.

Because the subcommittee will address, in addition to COVID-19 scams, the FTC’s threatened Section 13(b) consumer redress authority in light of the Supreme Court’s ruling in *AMG Capital Management, LLC v. FTC*,⁴ I will briefly mention the importance of the restitution remedy for our state enforcement efforts.

The Washington Consumer Protection Act confers broad equitable power on our trial courts to fashion appropriate equitable remedies, including authorizing restitution of “moneys or property . . . which may have been acquired by means of any act . . . prohibited or declared to be unlawful” by the Act.⁵ Washington case law provides that restitution may be measured the

⁴ No. 19-508, 2021 WL 1566607 (U.S. Apr. 22, 2021).

⁵ Wash. Rev. Stat. 19.86.080(2).

defendant's unlawful gain.⁶ Thus, restitution "not only restores the property to the party but insures future compliance where it is assured a wrongdoer is compelled to restore illegal gains."⁷

Washington joined 28 other states and the District of Columbia in filing an amicus curiae brief in the *AMG Capital Management* case. The brief explained the states' interest in the FTC's authority to seek restitution under Section 13(b) of the Federal Trade Commission Act. The States and the District of Columbia explained that the states' enforcement efforts are fortified by having a strong federal partner in the FTC. Although each state authorizes its attorney general or other state agency to seek restitution to remedy anticompetitive, unfair, or deceptive practices, the states benefit from the FTC's independent authority to investigate and redress violations of federal law. The FTC's authority to seek restitution is a critical supplement to the states' efforts because it is able to efficiently obtain redress for consumers affected by unlawful activity that spans multiple states. As the amicus brief explained, without the FTC acting to obtain restitution for consumers nationwide, every state touched by an incident of cross-border wrongdoing would need to file suit or risk leaving victims uncompensated and wrongdoers inadequately deterred.

The combined efforts of federal and state regulators create a powerful deterrent effect. Restitution deters unlawful conduct because individuals and businesses are more likely to comply with the law if they face the possibility of being compelled to return their illegal gains.

Thank you for the opportunity to testify about these important issues, and I would be happy to answer your questions.

⁶ See, e.g., *State v. LG Electronics, Inc.*, 185 Wash. App. 123, 144 n.33, 340 P.3d 915 (2014), *aff'd*, 186 Wash.2d 1, 375 P.3d 636 (2016).

⁷ *State v. Ralph Williams' North West Chrysler Plymouth, Inc.*, 82 Wash.2d 265, 277, 510 P.2d 233 (1973)