

# RAÚL R. LABRADOR ATTORNEY GENERAL STATE OF IDAHO



## 2022 ANNUAL REPORT

### CONSUMER PROTECTION, COMPETITION, CHARITIES, TELEPHONE SOLICITATIONS, AND TOBACCO ENFORCEMENT



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# Annual Highlights

## Consumer Complaints and Contacts

*Top Complaint Category*    *Construction & Contractors*    *All Contacts Received*    12,255

*Complaints Filed*                    1,429    *Complaints Mediated*            1,006

## Accomplishments

- Concluded **19 enforcement actions** concerning various consumer protection issues including construction, health care, privacy, and telephone solicitations.
- Responded to over **9,382 telephone calls and emails** from the public.
- Continued defending Idaho's tobacco **Master Settlement Agreement (MSA)** payments.

## Recovered Money and Payments Received

- Recovered **\$14,604,464 in consumer restitution**—\$13.60 for each taxpayer dollar appropriated for consumer operations in 2022 (\$1,074,012).
- Recovered and deposited into the consumer protection account **\$6,096,297 in civil penalties, fees, and costs**.
- Received **\$9,910,727 for opioid abatement**.
- **Transferred \$2,104,731** in unspent consumer protection account funds to the general fund.
- Received **\$22,214,789 in payments** pursuant to the MSA. Since the MSA was finalized in 1998, tobacco companies have paid \$564,341,389 to Idaho.

# Idaho Laws Enforced

## Consumer Protection & Competition Laws and Rules

Idaho Competition Act	Title 48, Chapter 1
Idaho Consumer Protection Act	Title 48, Chapter 6
Idaho Rules of Consumer Protection	IDAPA 04.02.01.000
New Motor Vehicle Warranties Law (Lemon Law)	Title 48, Chapter 9
Health Related Cash Discount Cards Law	Title 48, Chapter 16
Bad Faith Assertions of Patent Infringement Law	Title 48, Chapter 17
Residential Solar Energy System Disclosure Act	Title 48, Chapter 18
Pyramid Promotional Schemes Law	Idaho Code § 18-3101
Loan Broker Law	Title 26, Chapter 25
Security Breach Law	Title 28, Chapter 51
Credit Report Protection Act	Title 28, Chapter 52
Service Repair Contracts & Legal Expense Plans Laws	Idaho Code §§ 41-114A & B
General Contractor Disclosure Law	Idaho Code § 45-525
Home Loan Modification Review Notice Law	Idaho Code § 45-1506C
Idaho Consumer Foreclosure Protection Act	Title 45, Chapter 16

## Charitable Solicitation and Charitable Trust Laws

Prudent Management of Institutional Funds Act	Title 33, Chapter 50
Idaho Charitable Solicitation Act	Title 48, Chapter 12
Idaho Nonprofit Hospital Sale or Conversion Act	Title 48, Chapter 15
Idaho Charitable Assets Protection Act	Title 48, Chapter 19
Supervision of Charitable Trust Assets Law	Idaho Code § 67-1401(5)
Modification/Termination of Charitable Trusts Law	Idaho Code § 68-1204

## Telephone Solicitation, Registration, and Pay-Per-Call Laws

Idaho Telephone Solicitation Act	Title 48, Chapter 10
Idaho Pay-Per-Telephone Call Act	Title 48, Chapter 11

## Tobacco Laws and Rules

Prevention of Minors' Access to Tobacco Act	Title 39, Chapter 57
Tobacco Master Settlement Agreement Act	Title 39, Chapter 78
Idaho Tobacco Master Settlement Agreement Complementary Act	Title 39, Chapter 84
Idaho Tobacco Master Settlement Agreement Complementary Rule	IDAPA 04.20.01.000
Reduced Cigarette Ignition Propensity & Firefighter Protection Act	Title 39, Chapter 89
Prevent All Cigarette Trafficking Act of 2009 (PACT Act)	15 U.S.C. §§ 375-378

# Enforcement Activities

## CONSUMER PROTECTION DIVISION ACTIVITIES

Enforcement of Idaho's consumer laws protects and promotes a free and competitive marketplace and ensures a level playing field for all businesses. A marketplace unfettered by false, deceptive, and misleading practices and void of unreasonable restraints of trade yields the best allocation of Idaho's economic resources, the lowest prices, the highest quality, and the greatest innovative and material progress.

The Attorney General, acting on behalf of the state of Idaho and pursuant to his authority under the Idaho Consumer Protection Act, initiated and concluded several noteworthy enforcement actions in 2022. This section summarizes the office's consumer protection settlements and actions during the past year.

### GENERAL CONSUMER PROTECTION MATTERS

#### **Eli B. Karabell**

The Attorney General obtained a judgment in **February 2022** against Eli B. Karabell, a purported political consultant from Missouri who sent a \$480 million invoice to Idaho Senator Mark Harris. The invoice was for services Karabell never provided and Harris never requested. The judgment, which concludes the Attorney General's 2021 lawsuit against Karabell, permanently prohibits Karabell from doing business in Idaho.

#### **Laura and James Aylor, d/b/a Boise Holistic Health and Weight Loss**

The owners of Boise Holistic Health and Weight Loss entered into a settlement with the Attorney General in **February 2022** to address the business's advertising practices. The investigation of the business revealed the business's website misrepresented the treatment benefits and limitations of the ZYTO health scan, N.A.E.T. allergy elimination, and the NutriMost weight loss program. Laura and James Aylor agreed to remove all misleading advertising and to include clear and conspicuous disclosures regarding their healthcare treatments.

## **Intuit, Inc.**

In a **May 2022** multistate settlement with Intuit, Inc., the owner of TurboTax, the Attorney General secured approximately \$843,000 for 27,237 Idahoans. Intuit sent checks for about \$30 each to consumers and suspended TurboTax's "free, free, free" ad campaign that lured customers with promises of free tax preparation services, only to deceive them into paying for services.

The multistate investigation found that Intuit engaged in deceptive and unfair trade practices that limited consumers' participation in the IRS Free File Program. The company used confusingly similar names for both its IRS Free File product and its commercial "freemium" product. Intuit bid on paid search advertisements to direct consumers who were looking for the IRS Free File product to the TurboTax "freemium" product instead. Intuit also purposefully blocked its IRS Free File landing page from search engine results during the 2019 tax filing season, effectively shutting out eligible taxpayers from filing their taxes for free. Moreover, TurboTax's website included a "Products and Pricing" page that stated it would "recommend the right tax solution," but never displayed or recommended the IRS Free File program, even when consumers were eligible for the free product.

The settlement requires Intuit to reform its business practices by (a) refraining from making misrepresentations in connection with promoting or offering any online tax preparation products; (b) enhancing disclosures in its advertising and marketing of free products; (c) designing its products to better inform users whether they will be eligible to file their taxes for free; and (d) refraining from requiring consumers to start their tax filing over if they exit one of Intuit's paid products to use a free product instead.

## **NAA Partners, LLC**

The Attorney General announced a settlement with Coeur d'Alene contractor Alexander Welstad and his company NAA Partners in **May 2022**. The settlement permanently prohibits Welstad from advertising or providing construction services in the state.

Welstad was the sole owner and operator of NAA Partners, which advertised as Mammoth Pole Builders in Idaho, Washington, and Montana. According to Welstad's advertising, he built quality pole barns and other buildings. Customers reported to the Attorney General that Welstad accepted customers' payments for construction

services he never provided or provided only in part. Customers who received partially constructed buildings complained the buildings had material defects.

The settlement imposes \$55,000 in civil penalties and \$2,000 in attorney's fees if Welstad violates the settlement's terms. Welstad also agreed to pay restitution to his customers.

### **Kayla Chappa, d/b/a Sunny Side Spas**

Kayla Chappa, the owner of Sunny Side Spas, entered into a settlement with the Attorney General in **June 2022**. The settlement resolves allegations that Chappa accepted consumers' payments for repair services she never provided or provided only in part. Chappa agreed to pay consumer restitution of \$5,285.90 and \$1,000 to reimburse the Attorney General for his investigative costs and fees.

### **Harris Jewelry**

In **July 2022**, the Attorney General joined a \$34.2 million multistate settlement with Harris Jewelry, a New York-based jewelry company that defrauded thousands of U.S. servicemembers and veterans. The multistate investigation revealed that Harris Jewelry used deceptive marketing tactics to lure active duty servicemembers to their financing program, falsely claiming that the program would improve servicemembers' credit scores. Servicemembers were tricked into obtaining high-interest loans on overpriced, poor-quality jewelry that saddled them with thousands of dollars of debt and worsened their credit.

The settlement requires Harris Jewelry to refund tens of thousands of servicemembers for warranties they were tricked into purchasing, stop collecting millions of dollars of debt, and correct bad credit scores. In Idaho, 107 servicemembers are eligible to receive approximately \$59,700 in restitution and/or debt forgiveness. Harris Jewelry also paid \$50,000 to reimburse the Attorney General for his investigative costs and fees.

### **Navient Solutions, LLC**

The Attorney General and Navient Solutions, LLC, one of the nation's largest student loan servicers, finalized a settlement in **August 2022** that provides \$3,972,316 in student loan debt relief to more than 170 Idaho borrowers.

The settlement arose from concerns that Navient steered borrowers struggling to make payments on their loans towards high interest forbearances that added significant additional long-term debt. The company also issued subprime private loans to students who attended for-profit colleges with low graduation rates. The practices resulted in students often incurring substantial debts they were never likely to repay.

In addition to providing student loan debt relief, the settlement requires Navient to change its business practices, including (a) providing borrowers information about repayment plans, (b) processing payments quickly and accurately, and (c) training specialists who advise distressed borrowers about alternative repayment options.

### **Eric J. Biebuyck, d/b/a Four Seasons Window & Blind Cleaning**

The Attorney General sued Eric Biebuyck, a window cleaner, for multiple violations of the Idaho Consumer Protection Act and, in **October 2022**, obtained a judgment against him. The judgment prohibits Biebuyck from engaging in any trade or commerce that involves window or blind cleaning services, Christmas light installation services, or other services in Idaho. Biebuyck also was ordered to pay \$31,978.75 to the Attorney General.

### **Shavrer Lateral Water Users Association, Inc.**

Following an investigation into complaints that Shavrer Lateral Water Users Association was collecting unlawful fees from its water users, the Attorney General obtained a settlement with the Association. The **October 2022** settlement prohibits the Association from charging or collecting unauthorized fees, costs, penalties, or interest and requires the Association to itemize its water assessments. The Association agreed to withdraw or cancel any liens or judgments based on its collection of unauthorized fees.

### **Jon A. Galane, d/b/a Tantra Energy Arts Center Hypnosis**

In **November 2022**, the Attorney General resolved an investigation into allegations that Jon A. Galane, d/b/a Tantra Energy Arts Center Hypnosis, misrepresented the benefits of his HypTantra Methodology for Sexual Trauma Release. Galane advertised on his website that his hypnosis therapy was patented and produced results faster than traditional therapy. The treatment method, however, was not patented and Galane had no evidence to substantiate his claims about the method's

effectiveness. Mr. Galane agreed to stop advertising HypTantra Methodology for Sexual Trauma Release and paid \$1,500 to reimburse the Attorney General for his investigative costs and fees.

## Google LLC

In **December 2022**, the Ada County District Court approved a nationwide settlement between the Attorney General and Google LLC concerning its location tracking practices. Idaho received \$4.9 million from the settlement.

Location data is a key part of Google's digital advertising business. Google uses the personal and behavioral data it collects to build detailed user profiles and target ads on behalf of its advertising customers. Location data is among the most sensitive and valuable personal information Google collects. Even a limited amount of location data can expose a person's identity and routines and can be used to infer personal details. Attorneys general opened an investigation following publication of an *Associated Press* article that discussed two Google account settings: Location History and Web & App Activity. Location History is "off" unless a user turns on the setting. But Web & App Activity, a separate account setting, is automatically "on" when users—including all Android users—set up a Google account.

Attorneys general found that Google allegedly misled consumers about the scope of the Location History setting and the existence of the Web & App Activity setting. Additionally, Google misrepresented the extent that consumers could limit Google's location tracking by adjusting their account and device settings.

The settlement requires Google to be more transparent with consumers about its practices and to: (a) show additional information to users whenever they turn a location-related account setting "on" or "off;" (b) make key information about location tracking unavoidable for users (i.e., not hidden); (c) give users detailed information about the types of location data Google collects and how it's used at an enhanced "Location Technologies" webpage; (d) limit its use and storage of certain types of location information; and (e) develop account controls that are more user-friendly.

## Northwest Construction & Remodeling LLC

Kristian Stewart, the owner of Northwest Construction & Remodeling LLC, entered into a settlement with the Attorney General in **December 2022**. The settlement stems from allegations that Stewart accepted large deposits for construction work he failed



to complete. Stewart is prohibited from owning or operating a construction business in Idaho and must pay restitution to damaged consumers.

## **JUUL Labs Inc.**

In **December 2022**, the Attorney General, along with 33 other states and territories, finalized a \$438.5 million settlement with JUUL Labs, Inc., resolving a multistate investigation into the e-cigarette manufacturer's marketing and sales practices. The settlement requires JUUL to comply with a series of strict injunctive terms that limit the company's advertising and sales practices. As part of the agreement, Idaho will receive several multi-year incremental payments totaling between \$7.8 and \$8.5 million.

The two-year multistate investigation revealed that JUUL willfully engaged in an advertising campaign that appealed to youth, even though its e-cigarettes are both illegal for them to purchase and are unhealthy for youth to use. JUUL relentlessly marketed to underage users with launch parties, advertisements using young and trendy-looking models, social media posts, and free samples. The company manipulated the chemical composition of its product to make the vapor less harsh on the throats of the young and inexperienced users and, to preserve its young customer base, JUUL relied on age verification techniques that it knew were ineffective.

JUUL's original packaging, which was misleading, failed to clearly disclose that the e-cigarettes contained nicotine and consumers were misled to believe that consuming one JUUL pod was the equivalent of smoking one pack of combustible cigarettes. The company also misrepresented that its product was a smoking cessation device without FDA approval to make such claims.

As part of the settlement, JUUL has agreed to refrain from:

- marketing to youth through cartoons and the use of persons under age 35.
- funding education programs.
- selling product flavors not approved by FDA.
- allowing access to websites without age verification on the landing page.
- making misleading representations about nicotine content.
- advertising directly to consumers unless age-verified and advertising on billboards or public transportation.
- giving out free samples.

The agreement also covers sales and distribution restrictions, including where the product may be displayed or accessed in stores, as well as online sales limits, retail sales limits, age verification on all sales, and a retail compliance check protocol.

## **OPIOID SETTLEMENTS**

In 2019, following a three-year investigation into the manufacturing and sale of opioid pharmaceuticals, the Attorney General filed two consumer protection lawsuits. The first lawsuit involves manufacturers Johnson & Johnson, Teva Pharmaceuticals USA, Inc., Endo International PLC, Mallinckrodt PLC, and distributors McKesson Corporation, Cardinal Health, Inc., and Amerisource Bergen Drug Corporation. The second lawsuit involves manufacturer Purdue Pharma L.P. and the Sackler Family who served on Purdue Pharma's board of directors. Detailed information regarding the Attorney General's complaints and settlements is available on the Attorney General's website.

### Manufacturers & Distributors

**Johnson & Johnson and Distributors.** In May 2022, the Attorney General's settlement with Johnson & Johnson, McKesson Corporation, Cardinal Health, Inc., and Amerisource Bergen Drug Corporation was finalized for \$124,940,106.17 (\$119,896,644.28 is for opioid abatement) and will be paid over time. To date, the state has received \$12 million.

**Teva Pharmaceuticals USA.** Litigation is pending and under court-ordered mediation. A tentative settlement was reached with the states for approximately \$5 billion. Idaho's share has not yet been determined but should be about \$25 million. The settlement structure resembles the structure of the Johnson & Johnson and Distributors Settlement.

**Endo International.** The company filed for bankruptcy with a proposed bankruptcy plan that releases opioid claims and results in \$450 million paid to the states and local governments over 10 years. Idaho's share is presently undetermined but should be around \$25 million.

**Mallinckrodt.** The company filed bankruptcy and a bankruptcy plan was approved in February 2022. The plan includes an estimated \$5.1 million for Idaho opioid abatement.

**McKinsey & Co.** The settlement with the company was finalized in February 2021 with a payment of \$2,894,912.03 to Idaho.

**Purdue Pharma and the Sackler Family.** Idaho's claims against Purdue Pharma and members of the Sackler family have been embroiled in bankruptcy litigation. The present bankruptcy plan, which releases opioid claims against the company and the Sackler Family, is pending on appeal. Idaho signed on to the bankruptcy plan, which would provide states with at least \$4.3 billion, and is not part of the appeal. The final distribution amount is unknown currently, but Idaho's share, if the bankruptcy plan is upheld, would be about \$22 million.

### Retail Pharmacies

**CVS Health Corporation, Walgreens Co., & Walmart Co.** Tentative settlements have been reached with these companies for approximately \$5 billion each from CVS and Walgreens and \$3 billion from Walmart Co. Idaho's share is currently undetermined but should be approximately \$65 million. The structure of the settlement resembles the structure of the Johnson & Johnson and Distributors Settlement.

## **SECURITY BREACHES**

### **Carnival Corporation**

The Attorney General joined a \$1.25 million multistate settlement in **July 2022** involving Florida-based Carnival Cruise Line. The settlement stems from a 2019 data breach that involved the personal information of approximately 180,000 Carnival employees and customers nationwide. Idaho received \$13,088 from the settlement.

In March 2020, Carnival publicly reported a data breach in which an unauthorized individual gained access to certain Carnival employee e-mail accounts. The breach included names, addresses, passport numbers, driver's license numbers, payment card information, health information, and a relatively small number of Social Security numbers. The breach affected 956 Idaho residents.

Breach notifications sent to attorneys general offices stated that Carnival first became aware of suspicious email activity in May 2019 – approximately 10 months before Carnival reported the breach. A multistate investigation ensued, focusing on Carnival's email security practices and compliance with state breach notification statutes.

Under the settlement, Carnival agreed to implement practices and policies to strengthen its email security and breach response practices going forward.

## **Experian Information Solutions, Inc., T-Mobile USA, Inc., and Experian Data Corp**

In **November 2022**, the Attorney General joined two multistate settlements with Experian concerning data breaches in 2012 and 2015 that compromised personal information of millions of consumers nationwide. The 2015 breach impacted 54,645 Idaho residents. The multistate group obtained a separate settlement with T-Mobile in connection with the 2015 Experian breach that impacted more than 15 million individuals who submitted credit applications to T-Mobile.

Under the settlements, the companies agreed to improve their data security practices and to pay the states more than \$16 million. Idaho received \$172,000.

The settlement requires Experian to strengthen its due diligence and data security practices going forward. Experian is prohibited from misrepresenting to its clients the extent to which it protects the privacy and security of personal information.

T-Mobile agreed to detailed vendor management provisions designed to strengthen its vendor oversight going forward. Those provisions include (a) implementation of a Vendor Risk Management Program, (b) maintenance of a T-Mobile vendor contract inventory, including vendor criticality ratings based on the nature and type of information that the vendor receives or maintains, (c) imposition of contractual data security requirements on T-Mobile's vendors and sub-vendors, including related to segmentation, passwords, encryption keys, and patching, and, among other things, (d) appropriate action in response to vendor non-compliance, up to contract termination.

Concurrently with the 2015 data breach settlements, Experian paid an additional \$1 million to resolve a separate multistate investigation into another Experian-owned company—Experian Data Corp. (“EDC”)— in connection with EDC's failure to prevent or provide notice of a 2012 data breach that occurred when an identity thief, posing as a private investigator, was given access to sensitive personal information stored in EDC's commercial databases. Under that resolution, EDC agrees to strengthen its vetting and oversight of third parties that are allowed access to personal information, investigate and report data security incidents to the attorneys

general, and maintain a “Red Flags” program to detect and respond to potential identity theft.

## CHARITABLE ASSET ACTIVITIES

The Attorney General enforces the Idaho Charitable Solicitations Act and the Idaho Charitable Assets Protection Act (ICAPA), which became effective on July 1, 2020. ICAPA prohibits a person from knowingly using charitable assets for personal purposes or in a way that contradicts the organization’s charitable purpose or the donor’s intent. The law also requires charitable organizations to give written notice to the Attorney General at least 30 days before the organization dissolves, converts to a noncharitable entity, or terminates and distributes its charitable assets. To enforce ICAPA, the Attorney General may initiate investigations, file lawsuits, and enter into settlement agreements.

Detailed FAQs about ICAPA are available on the Attorney General’s website, as is an online form that charitable organizations may use to notify the office about the organization’s plan to dissolve, convert to a noncharitable entity, or terminate and distribute its charitable assets. Questions about ICAPA may be directed to the Consumer Protection Division via telephone or email at [consumer\\_cg@ag.idaho.gov](mailto:consumer_cg@ag.idaho.gov).

In 2022, the Consumer Protection Division reviewed three notices from charitable organizations reporting their intent to terminate and distribute their charitable assets. The Attorney General did not object to any of the proposed terminations/distributions.

## TELEPHONE SOLICITATION ACTIVITIES

Recognizing the potential for abuse that is inherent in telephone sales, the Legislature enacted the Idaho Telephone Solicitation Act (ITSA), title 48, chapter 10, Idaho Code, in 1992. The ITSA safeguards the public against deceit and financial hardship, encourages competition and fair dealing among the telemarketing industry, and prohibits telemarketers from using representations that have the tendency or capacity to mislead purchasers.

Idaho’s Do Not Call law, which established the state’s “no telephone solicitation contact list,” predates the National Do Not Call Registry and subjects violators to civil penalties of up to \$5,000 per violation. When the National Do Not Call Registry was created in 2004, all Idaho numbers registered on the Idaho-only list were transferred

to the National Registry. The Federal Trade Commission last reported the National Do Not Call Registry contains 1,278,362 active Idaho telephone numbers.

The Consumer Protection Division received 102 emails from consumers who reported receiving unwanted telephone calls. Almost all reported calls came from callers who are not “telephone solicitors” under the ITSA’s definition. Such callers include appointment setters, debt collectors, survey companies, charities, and persons engaged in criminal conduct (e.g., government imposter scams, illegal lotteries/sweepstakes, grandparent scams).

Because it manages the Do Not Call Registry, the Federal Trade Commission receives the bulk of consumers’ telephone call complaints. In its most recent Do Not Call report, the Commission reported it received 14,193 complaints from Idahoans regarding unwanted calls or 809 complaints per 100,000 people.<sup>1</sup> This number ranks Idaho as 27<sup>th</sup> in the nation for total complaints filed in 2022. It is significant to note that over 1,400 of these complaints concerned imposter scams, not deceptive telephone solicitations or Do No Call Registry violations. Of the “call types” reported, 9,571 were robocalls, and 3,135 were live callers.

In addition to prohibiting telephone solicitors from calling numbers on the National Do Not Call Registry, the Idaho Telephone Solicitation Act requires telephone solicitors to register with the Attorney General’s Consumer Protection Division before they begin soliciting in Idaho. In 2022, the Consumer Protection Division processed 21 telephone solicitor registrations. Eighteen telephone solicitors presently are registered to telephone solicit in Idaho.

## **Robocall Task Force**

Idaho joined a nationwide Anti-Robocall Litigation Task Force of 50 attorneys general to investigate and take legal action against the telecommunications companies responsible for bringing a majority of foreign robocalls into the U.S. The Task Force’s goal is to cut down on illegal robocalls.

According to the National Consumer Law Center and Electronic Privacy Information Center, more than 33 million scam robocalls are made to Americans every day. Most originate overseas. The Task Force is focused on shutting down providers who profit from this illegal scam traffic and refuse to take steps to mitigate these calls.

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<sup>1</sup> Federal Trade Commission, National Do Not Call Registry Data Book FY 2022 (Oct. 2022).

The Task Force has issued civil investigative demands to 20 gateway providers and other entities allegedly responsible for a majority of foreign robocall traffic. Gateway providers that bring foreign traffic into the U.S. telephone network have a responsibility to ensure the traffic is legal, but these providers are not taking sufficient action to stop robocall traffic. The Task Force focuses on the bad actors throughout the telecommunications industry to help reduce the number robocalls and benefit the companies that are following the rules.

## **National Compliance Service LLC**

National Compliance Service, LLC, a transportation compliance company, agreed to close after entering into a settlement with the Attorney General in **January 2022**. The Attorney General alleged the company failed to register as a telephone solicitor and misrepresented to consumers that they had to purchase transportation compliance services.

Victor H. Valle, the owner of National Compliance Service is banned from opening a similar telemarketing business in Idaho. If Valle violates the settlement, he must pay the restitution he owes to consumers, as well as \$44,000 in civil penalties and attorney's fees.

## **TOBACCO ENFORCEMENT**

The Attorney General enforces Idaho's Tobacco Master Settlement Agreement (MSA), Tobacco Master Settlement Agreement Complementary, Prevention of Minors' Access to Tobacco, and Reduced Cigarette Ignition Propensity Acts. Enforcement of these laws includes prosecuting violators and defending the laws against constitutional challenges in state and federal court actions.

Each year the tobacco industry makes a payment to the state to help it cover costs related to treating tobacco-related illnesses. In 2022 the tobacco industry paid \$22,214,789 to Idaho. Since the MSA was entered into in 1998, Idaho has received payments totaling \$564,341,389.

Under Idaho's tobacco sales laws, the Office of the Attorney General maintains and administers a directory of tobacco manufacturers and brands (Idaho Directory) that follow Idaho law. The Idaho Directory is available to the public on the tobacco webpage of the Attorney General's website. Currently, there are 23 certified tobacco manufacturers, including 108 certified tobacco brands, on the Idaho Directory. In the past year, the Attorney General reviewed 25 certifications from tobacco product

manufacturers seeking to add or remove brand families to the Idaho Directory and disseminated five notices regarding changes and updates to the Idaho Directory. Additionally, the Attorney General reviewed 76 quarterly and annual escrow certifications from tobacco manufacturers and more than 518 monthly and quarterly reports from Idaho-permitted cigarette wholesalers and tobacco distributors detailing shipments and sales of cigarettes and roll-your-own tobacco in Idaho.

The Attorney General continues to litigate with the tobacco industry over the state's enforcement of certain Idaho tobacco laws. Tobacco companies who are parties to the state's MSA have disputed Idaho's diligence in the enforcement of its Master Settlement Agreement Act (MSA Act) in certain years and, as a result, are seeking to eliminate potentially tens of millions of dollars of Idaho's MSA payments used to fund Idaho public health endeavors.

### **2004 Diligent Enforcement Arbitration**

Discovery and pre-trial motion practice concerning the sales year 2004 commenced in 2016. A two-week multistate hearing was held in 2017, and Idaho's state-specific evidentiary hearing was held in early 2018. A three-judge arbitration panel ruled in September 2021, finding that the Attorney General diligently enforced the provisions of the state's MSA Act in 2004. In July 2022, the panel issued its final award with respect to Idaho. The Division petitioned the Idaho MSA Court to confirm this award, which was granted. The effect of this arbitration win is to protect millions of Idaho MSA dollars from needing to be returned to the tobacco companies.

### **2005-2007 Diligent Enforcement Arbitration**

A similar dispute covering the sales years 2005 to 2007 began in 2020. In July 2022, the parties presented evidence and arguments before a three-judge panel on issues common to the disputes between the tobacco companies and the arbitrating states.

Dates for state-specific hearings are being selected, with Idaho's hearing likely to occur in 2024. In December 2022, Idaho argued before the panel a motion for partial summary judgment related to the scope of the arbitration.

The resolution of the 2005-2007 arbitration will not necessarily end the tobacco companies' efforts to reduce or eliminate future Idaho MSA payments. Rather, the tobacco companies appear intent on advancing new challenges to Idaho's receipt of its MSA payments, making further litigation with the tobacco companies inevitable.



## UPDATES AND PENDING MATTERS

### **Generic Drugs Multistate Investigation and Litigation**

The Attorney General joined three multistate antitrust lawsuits consolidated in multidistrict litigation in the United States District Court for the Eastern District of Pennsylvania that involve generic drug manufacturers, current and former employees of generic drug companies, and over 200 different generic drugs. The lawsuits, which began in 2016, allege defendants conspired to enter into illegal price fixing and market allocation agreements for generic drugs.

Defendants' conspiracies were part of a broad, overarching industry code of conduct that enabled the defendant manufacturers to divide the market for specific generic drugs according to an established, agreed-upon understanding for assigning each competitor their "fair share" of the market.

Defendants coordinated their schemes through direct interaction with their competitors at industry trade shows, customer conferences, and other events, as well as through direct email, phone, and text message communications. This unlawful conduct has caused artificially increased prices for generic drugs reimbursed by taxpayer-funded federal and state healthcare programs, such as Medicaid, raised the coverage costs for employer-sponsored health plans and the out-of-pocket costs for consumers, and caused significant, harmful, and continuing effects to the country's healthcare system.

### **Facebook, Inc. (Meta Platforms, Inc.), Multistate Litigation**

In October 2019, the Office of the Attorney General joined a multistate investigation of Facebook, Inc., n/k/a Meta Platforms, Inc., ("Facebook") concerning allegations that Facebook engaged in several anticompetitive business practices. The investigation concerned Facebook's acquisition of rival businesses (e.g., Instagram and WhatsApp) to reduce competition and consumer choice, as well as allegations that Facebook reduced access to third-party developers and engaged in "catch and kill" acquisitions.

At the conclusion of the multistate group's investigation, the states filed an antitrust lawsuit against Facebook in tandem with the Federal Trade Commission's lawsuit. The states' lawsuit, filed in federal district court for the District of Columbia in December 2020 (*New York v. Facebook, Inc.*, No. 20-cv- 3589), was dismissed in June

2021 based on laches. The states appealed the dismissal to the U.S. Court of Appeals for the D.C. Circuit (USCA Case No. 21-7078) where a decision is pending.

## **Bad Faith Patent Assertions of Patent Infringement Federal Litigation**

In September 2022, the Attorney General intervened in two federal lawsuits that challenge the constitutionality of Idaho's Bad Faith Assertions of Patent Infringement Act—*Katana Silicon Technologies LLC v. Micron Technology, Inc.*, et al., 1:22-cv-282-DCN (D. Idaho), and *Micron Technology, Inc., et al., v. Longhorn IP, LLC*, 1:22-cv-273-DCN (D. Idaho). Katana Silicon Technologies and Longhorn IP claim that federal patent law preempts Idaho's Act and contravenes federal law. Decisions from district courts in states with laws like Idaho's Act have upheld the laws' constitutionality. A hearing was held in January 2023 to address motions on the issues and a decision is pending.

## **Google, LLC, Multistate Litigation**

The Attorney General joined three multistate antitrust lawsuits against Google, LLC. Two lawsuits were filed in December 2020 and a third lawsuit was filed in July 2021. The three lawsuits are ongoing and present unique allegations of anticompetitive conduct that constitute multiple violations of Section 2 of the Sherman Act, 15 U.S.C. § 2, and sections of the Idaho Competition Act.

- ***Search Engine Lawsuit***

Filed in December 2020 in the U.S. District Court for the District of Columbia, the multistate search engine lawsuit alleges that Google unlawfully restrains trade and maintains monopolies in markets that include general search services, general search text advertising, and general search advertising. The case was consolidated with a similar lawsuit the United States Department of Justice and other states filed.

By bringing the lawsuit, attorneys general seek to end Google's unlawful monopoly of internet search services, including search advertising and search text advertising. Presently, the parties are engaged in fact discovery. Trial is scheduled for September 2023.

- ***Ad Tech Lawsuit***

The multistate ad tech lawsuit was filed in July 2021 in the U.S. District Court for the Eastern District of Texas and subsequently transferred to a multidistrict

litigation in the U.S. District Court for the Southern District of New York. The lawsuit alleges that Google monopolized or attempted to monopolize products and services used by advertisers and publishers in online-display advertising. These anticompetitive and deceptive practices diminish publishers' ability to monetize content, increase advertisers' costs to advertise, and directly harm consumers. Factual discovery is ongoing.

- ***In-App Payments Lawsuit***

The Attorney General also is a member of the in-app payments multistate lawsuit that was filed in July 2021 in the U.S. District Court for the Northern District of California. The lawsuit alleges, among other things, that Google unlawfully tied app developers' use of the Google Play Store to the company's in-app payment system. By requiring developers to use its payment system, Google inhibits competition with other app marketplaces, stifles innovation, and harms consumers. Trial for this case is scheduled to begin in mid-2023.

## **Indivior, Inc., Multistate Litigation**

In 2016, the Attorney General and 42 states filed a lawsuit against Indivior, Inc., the manufacturer of Suboxone, a drug prescribed to treat opioid addiction. Suboxone comes in tablet form and as a sublingual film.

The lawsuit, filed in the U.S. District Court for the Eastern District of Pennsylvania (*State of Wisconsin, et al v. Indivior, Inc., et al*, 2:13-md- 02445-MSG (E.D. Pa.)), alleges Indivior engaged in a "product hopping" scheme to maintain its monopoly over Suboxone. Knowing its pill patent was set to expire, Indivior allegedly reformulated Suboxone from a tablet version to a film version and encouraged doctors to switch by creating false pediatric safety concerns regarding the tablet version and raising the price of its tablet version while lowering the price of the film version to convert the market. Further, the states allege that Indivior engaged in other wrongful conduct to force the switch over from the tablet form to the film form.

Given that approximately 1.9 million Americans suffer from opioid addiction, including thousands of Idahoans, the seriousness of Indivior's alleged wrongdoing is underscored by the fact that it was willing to convert its patient market to a new formulation simply to make money off these patients and unlawfully abuse its monopoly power.

Discovery is now complete, and the federal district court has largely denied the defendants' motion for summary judgment. Trial is scheduled for 2023.

# Consumer Education and Outreach

Public awareness and education remain the best defenses against consumer fraud. Providing Idaho's consumers with timely, accurate information about their rights under Idaho's consumer laws and warning consumers about pervasive scams encourage Idahoans to maintain their personal and financial vigilance. Educated consumers are better equipped to monitor and judge a business's practices, thereby promoting a more compliant and competitive marketplace.

Consumer information is provided through the Attorney General's website, social media, public service announcements, pamphlets and consumer tip sheets, consumer alerts, and public speaking engagements. The Attorney General's educational and outreach efforts do not use tax dollars. Civil penalty payments and reimbursements for the Attorney General's fees and investigative costs are deposited into the consumer protection account. Funds from this account, pursuant to legislative appropriation, pay for the Attorney General's educational activities.

## COMMUNITY EDUCATION ACTIVITIES

Each year the Attorney General and the Consumer Protection Division's attorneys and consumer specialists give educational presentations to Idaho's consumers, businesses, organizations, and agencies. The Division provides Idahoans with timely and accurate information about their rights under Idaho's consumer laws and educates them about scams, fraud, and deceptive business practices. This year, the Consumer Protection Division's outreach efforts impacted communities statewide, reaching more than 1,300 individuals.

COVID-19 continued to affect the Consumer Protection Division's ability to visit Idaho's communities in person. However, the Division staff ensured consumers still received vital educational information. The Division released consumer alerts this year concerning property tax scams, solar installations, and summer paving scams and wrote Twitter posts throughout 2022 to share consumer protection tips and scam

warnings. Additionally, the Division published a new consumer protection manual for older adults, which is available to read and download from the Attorney General's website.

The Consumer Protection Division works cooperatively with organizations to support Idaho's consumer protection and education community. These include the Idaho Scam Jam Alliance, Idaho Financial Literacy Coalition, and Justice Alliance for Vulnerable Adults. During 2022, the Division also partnered with the Better Business Bureau, Boise Police Department, Federal Trade Commission, and Senior Medicare Patrol to provide virtual consumer education presentations.



# Public Contacts

Each year, the Consumer Protection Division has thousands of contacts with the public, the media, other government agencies, and law enforcement. The Division logs each of these contacts so it can:

- identify patterns of law violations,
- evaluate areas where additional resources are required,
- account for the Division’s annual budgetary expenditures, and
- report the data to the public.

In 2022 the Consumer Protection Division processed **12,255 public contacts**. The table below summarizes the variety of contact types we received.

CONTACT TYPE	No. RECEIVED
<b>Bankruptcy Filings</b> <i>(initial notices filed in business bankruptcies)</i>	93
<b>Charitable Trust Accountings</b> <i>(trustees’ quarterly statements)</i>	50
<b>Class Action Notices</b> <i>(private lawsuit settlements)</i>	481
<b>Consumer Complaints</b> <i>(mediated &amp; non-mediated complaints)</i>	1,429
<b>Email Inquiries</b> <i>(consumer protection-related questions &amp; requests)</i>	663
<b>FYIs</b> <i>(complaints received for informational purposes only)</i>	152
<b>I.C. § 48-1907 Notices</b> <i>(ICAPA charitable conversion &amp; dissolution forms)</i>	3
<b>IRS Form 990-PF Returns</b> <i>(annual Idaho foundation filings)</i>	223
<b>Other Written Correspondence</b> <i>(miscellaneous general contacts)</i>	192
<b>Public Record Requests</b> <i>(requests for copies of public documents)</i>	91
<b>Security Breach Notices</b> <i>(reports of government and business data breaches)</i>	27
<b>Telemarketing Registration Applications</b> <i>(new &amp; annual applications)</i>	21
<b>Telephone Calls</b> <i>(inquiries and information requests)</i>	8,719
<b>Telephone Solicitation Complaints</b> <i>(do-not-call &amp; criminal issues)</i>	102
<b>Unsolicited Fax Complaints</b> <i>(unwanted commercial fax ads)</i>	9
<b>GRAND TOTAL 2022 PUBLIC CONTACTS:</b>	<b>12,255</b>

# Consumer Complaint Data

The Attorney General's Consumer Protection Division accepts written complaints from consumers who wish to report an alleged violation of a law the Attorney General enforces. In, 2022 the Division received **1,429 consumer complaints**.

## Complaint Review Procedure

The Division's consumer specialists process and review all incoming complaints. If a complaint is appropriate for the Division's informal dispute resolution program, the complaint is sent to the identified business with a request for a written response. The assigned consumer specialist reviews the business's response and determines what further action, if any, is appropriate. Most businesses understand the benefits of addressing their customers' concerns and voluntarily respond to complaints.

Not every complaint is appropriate for the Division's mediation process. Such complaints include those involving businesses licensed by government agencies or boards (e.g., the Idaho Department of Finance or Idaho State Bar) or complaints involving issues beyond the Division's scope of authority (e.g., criminal matters). When appropriate, the Division refers complaints to other agencies or organizations that may be able to assist the consumer.

The Division reviews every complaint it receives and categorizes each complaint into one of over 140 categories that best reflects the subject of the allegations. In some instances, a complaint is subcategorized into an even more specific topic, such as a type of good or service (e.g., household appliances or consignment services). By categorizing incoming complaints and analyzing trends, the Division can better determine where to focus its limited enforcement resources.

Of the 1,429 complaints the Consumer Protection Division received in 2022, 1,006 of the complaints were forwarded to businesses or individuals as part of the Division's dispute resolution process. The remaining 423 complaints were filed as "complaints," but were not appropriate for the Division's mediation process.

The Consumer Protection Division also receives "FYIs" from consumers. "FYIs" are like consumer complaints but are not forwarded to businesses or individuals at the consumer's request. In 2022, the Consumer Protection Division received 152 FYIs.

## Top 10 Complaint Categories

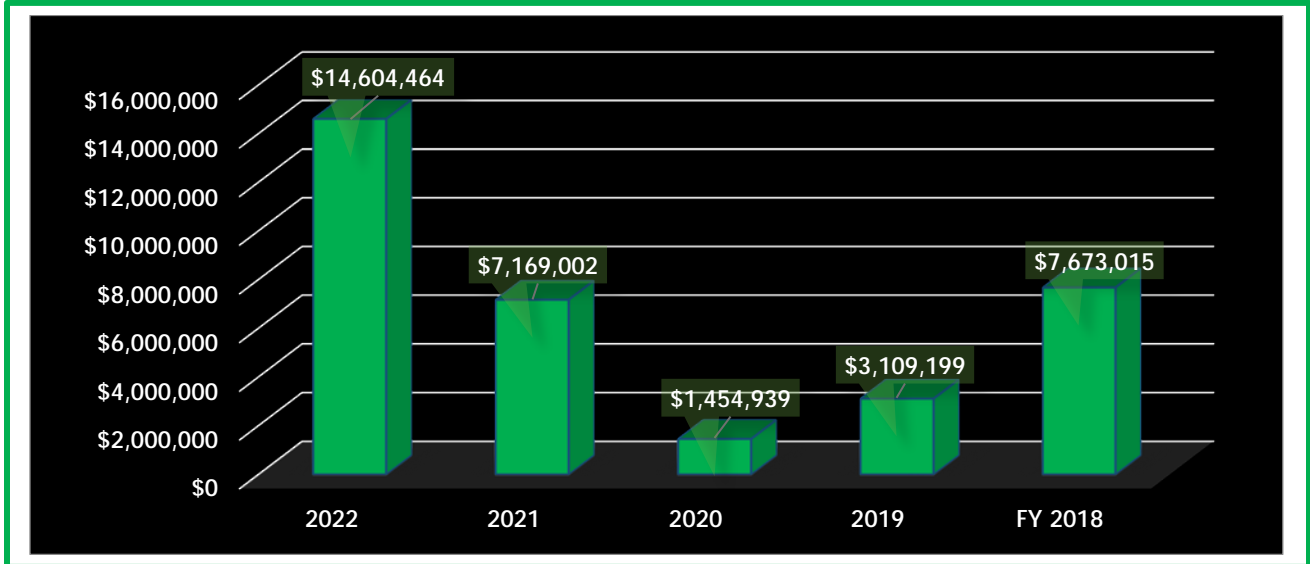
For comparison purposes each year, the Consumer Protection Division publishes the top 10 categories in which it classified most of the year's complaints. The following table summarizes our 2022 complaint data compared to that of 2021. The category numbers include both mediated and unmediated complaints.

<b>TOP 10 COMPLAINT CATEGORIES</b>			
<b>RANK</b>	<b>COMPLAINT CATEGORY</b>	<b>2022 TOTAL</b>	<b>2021 TOTAL</b>
1	<b>CONSTRUCTION &amp; CONTRACTORS</b> NEW CONSTRUCTION, REMODELS, & LANDSCAPING	188	89
2	<b>MOTOR VEHICLES</b> ADVERTISING, SALES, & REPAIRS	178	144
3	<b>LANDLORD &amp; TENANT ISSUES</b> LEASES, REPAIRS, & SECURITY DEPOSITS	64	61
4	<b>BANKING SERVICES</b> ACCOUNTS, CREDIT CARDS, & MONEY TRANSFERS	42	35
5	<b>CELLULAR PHONES &amp; SERVICES</b> ADVERTISING, BILLING, & SALES	37	28
6	<b>HOUSEHOLD APPLIANCES &amp; FIXTURES</b> EXTENDED SERVICE CONTRACTS, PURCHASES, & REPAIRS	36	56
7 (TIE)	<b>DEBT COLLECTORS &amp; COLLECTION ISSUES</b> 1 <sup>ST</sup> AND 3 <sup>RD</sup> PARTY COLLECTION ACTIVITIES	32	NOT RANKED
	<b>HEALTH CARE: MEDICAL/DENTAL/OPTICAL</b> BILLING, PRICE DISCLOSURES, & TREATMENTS	32	35
8	<b>INTERNET SERVICE PROVIDERS</b> BROADBAND, CABLE, & FIBER	29	34
9	<b>MAGAZINE &amp; NEWSPAPER SUBSCRIPTIONS</b> ADVERTISING, BILLING, & SALES	27	NOT RANKED
10	<b>TRAVEL &amp; VACATIONS</b> ADVERTISING, BILLING, & SALES	26	NOT RANKED
	<b>ALL OTHER COMPLAINT CATEGORIES</b> OVER 100 OTHER ISSUES/OCCUPATIONS	738	683
	<b>TOTAL COMPLAINTS RECEIVED</b>	<b>1,429</b>	<b>1,165</b>

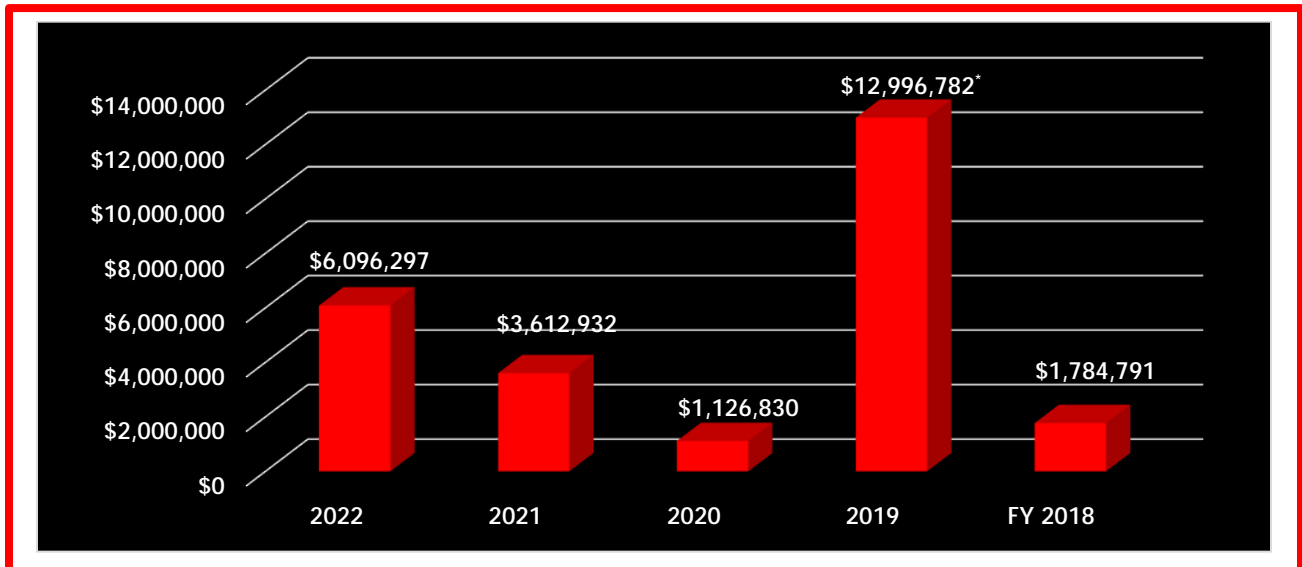


# FIVE-YEAR COMPARISON CHARTS

## Consumer Restitution Recovered



## Civil Penalties, Attorney's Fees, & Costs Recovered



\*In 2019, the Attorney General's Office received several large multimillion dollar payments through various settlement actions.

## CONSUMER PROTECTION NUMBERS: FIVE YEARS AT A GLANCE

ACTIVITY	2022	2021	2020	2019	FY 2018
Complaints Received	1,429	1,165	1,235	1,179	1,223
Other Consumer Contacts	12,255	11,399	12,105	13,847	13,036
Consumer Dollars Lost	\$3,622,745	\$1,396,032	\$606,974	\$900,753	\$2,860,225
Consumer Dollars Recovered	\$14,604,464	\$7,169,002	\$1,454,939	\$3,109,199	\$7,673,015
Penalties & Costs Recovered	\$6,096,297	\$3,612,932	\$1,126,830	\$12,996,762	\$1,784,791
Enforcement Actions	19	12	14	18	12
Registered Telemarketers	18	15	16	15	15

For more information about this report, to file a consumer complaint, or to request a consumer education presentation, please:

<b>VISIT:</b>	Consumer Protection Division 954 W. Jefferson St., 2 <sup>nd</sup> Floor Boise, ID 83702
<b>WRITE:</b>	Consumer Protection Division P.O. Box 83720 Boise, ID 83720-0010
<b>CALL:</b>	(208) 334-2424 (or) (800) 432-3545 (toll free in Idaho)
<b>EMAIL:</b>	<a href="mailto:consumer_protection@ag.idaho.gov">consumer_protection@ag.idaho.gov</a> <a href="http://www.ag.idaho.gov">www.ag.idaho.gov</a>

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