

Congress of the United States  
Washington, DC 20510

May 13, 2022

Chair Lina M. Khan  
Federal Trade Commission  
600 Pennsylvania Avenue, NW  
Washington, DC 20580

Dear Chair Khan,

We write today to express alarm and concern about reports of scams and price gouging targeting parents in search of infant formula across the country. We call on the Federal Trade Commission (FTC) to investigate and take action against any scams and fraud preying on shortages of formula that have made it harder for parents to care for their infants.

On February 17, 2022 the Food and Drug Administration (FDA) took action to recall Abbott's Similac, Alimentum, and EleCare infant formulas due to apparent bacteria growth at the company's plant that resulted in infant deaths and illnesses.<sup>1</sup> Approximately three in four babies are given formula in the first six months of their life<sup>2</sup>, and approximately one in five receive formula in just their first two days of life.<sup>3</sup> For some infants, the nutrition support provided by certain formulas, like EleCare, is essential—infants with medically complex needs may rely on prescribed formulas due to allergies, feeding tubes, or nutritional deficiencies.<sup>4</sup>

Formula supply was already limited due to global supply chain disruptions, but since the recall in February, formula access has further declined to alarmingly low levels: in March, 29% of formula inventory was out of stock, and by May that number had climbed to 40%<sup>5</sup>; some metro areas have seen much higher rates.<sup>6</sup> Not only has supply of the recalled formulas—Similac, Alimentum, and EleCare—dropped, but other brands have seen availability disruptions as families have flocked to purchase the remaining stock. Families are feeling the impact. Caregivers have described traveling to Target, Walmart, CVS, and other stores in search of formula, only to come up empty handed—forced to go without for a day, or more. If they can find the formula that their child relies on, they are often limited in the number of products they

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<sup>1</sup> "Powdered Infant Formula Recall: What to Know," U.S. Food and Drug Administration, last modified April 29, 2022, <https://www.fda.gov/consumers/powdered-infant-formula-recall-what-know>.

<sup>2</sup> Centers for Disease Control and Prevention, "Breastfeeding Report Card United States, 2020," <https://www.cdc.gov/breastfeeding/pdf/2020-Breastfeeding-Report-Card-H.pdf> (accessed May 11, 2022).

<sup>3</sup> CDC, "Breastfeeding Report Card."

<sup>4</sup> Parija Kavilanz, "Baby Formula Shortage has Some Families Scrambling," *CNN* February 8, 2022, <https://www.cnn.com/2022/02/08/business/baby-formula-shortages/index.html>.

<sup>5</sup> Kavilanz, "Baby Formula Shortage."

<sup>6</sup> Ryan Nickerson, "As Houston's Baby Formula Shortage Worsens, Parents Scramble to Find Food for Newborns," *Houston Chronicle* (Houston, TX), May 10, 2022, <https://www.houstonchronicle.com/news/houston-texas/trending/amp/baby-formula-shortage-17133468.php>.

can purchase. As a result, some parents have even resorted to diluting formula to make it last longer, which doctors warn can have extremely dangerous health repercussions for infants.<sup>7</sup>

These circumstances have created the perfect conditions for predators to take advantage of desperate caregivers through scams, outright fraud, and other schemes to exploit high prices. In North Carolina, there have been reports of individuals claiming to be representatives of the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) coming to doorsteps asking for recalled formula in exchange for a “refund”—these scammers then take the formula and apply for the refund themselves, preventing families from getting the reimbursement they are entitled to. Furthermore, online marketplaces could serve as a safe haven for scammers, offering them the opportunity to tamper with formula, fail to deliver products, or sell fraudulent formula.<sup>8</sup> One mother in North Carolina reported being scammed out of \$200 after “purchasing” formula on Facebook Marketplace.<sup>9</sup> The FDA has warned caregivers about the risks associated with purchasing and using counterfeit infant formulas, but this is not enough.<sup>10</sup>

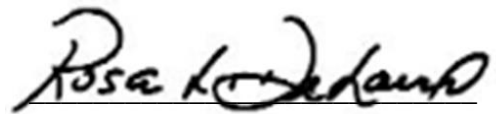
In addition to fraud, some families, including some in Connecticut, have reported egregious instances of price gouging online, particularly on online marketplaces where they have turned in their search. One search on eBay revealed a 3-pack of Similac that normally sells for \$130 being sold for \$238<sup>11</sup>, and other retailers are marking up a can of formula from \$30 to \$80. Raising an infant is a stressful enough experience without wondering whether or not you will be able to find—or afford—the food your child desperately needs to grow, thrive, and stay healthy.

We strongly urge the FTC to monitor this matter and investigate any reports of scams or fraud related to formula shortages to hold bad actors accountable. The FTC should also work with the FDA and state Attorneys General to ensure that the public has information about any fraud or price gouging schemes related to formulas. Finally, we respectfully request a staff-level briefing to discuss the work FTC is doing specifically related to infant formula. These shortages of critical concern to families in Connecticut and across the country, and we must work quickly to ensure that all infants have access to the nutrition they need.

Sincerely,



RICHARD BLUMENTHAL  
United States Senate



ROSA DELAURO  
Member of Congress

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<sup>7</sup> Jacob Knutson, “Families Struggle to Find Baby Formula as Shortage Intensifies,” *Axios*, April 29, 2022, <https://www.axios.com/2022/04/29/families-struggle-baby-formula-shortage>.

<sup>8</sup> New Jersey Attorney General Josh Stein, “Consumer Alert: Watch Out for Scammers Targeting WIC Participants,” press release, March 10, 2022, <https://ncdoj.gov/consumer-alert-watch-out-for-scammers-targeting-wic-participants/>.

<sup>9</sup> Jordan Brown, “Piedmont Triad Parents Frustrated by Empty Formula Shelves,” *Fox8* (High Point, NC), May 3, 2022, <https://myfox8.com/news/north-carolina/piedmont-triad/piedmont-triad-parents-frustrated-by-empty-formula-shelves/>.

<sup>10</sup> “Questions & Answers for Consumers Concerning Infant Formula,” U.S. Food and Drug Administration, last modified March 7, 2018, <https://www.fda.gov/food/people-risk-foodborne-illness/questions-answers-consumers-concerning-infant-formula#10>.

<sup>11</sup> Amber Diaz, “Baby Formula Shortage Forces Connecticut Mothers to Go to the Extreme,” *NBC Connecticut* (West Hartford, CT), April 27, 2022, <https://www.nbcconnecticut.com/news/local/baby-formula-shortage-forces-mothers-to-go-to-the-extreme/2771731/>.