

Prepared Oral Statement of
Commissioner Noah Joshua Phillips
Before the
House Committee on Energy and Commerce
Subcommittee on Consumer Protection and Commerce
“Oversight of the Federal Trade Commission Strengthening Protections for Americans’
Privacy and Data Security”
May 8, 2018

Chairwoman Schakowsky, Ranking Member McMorris-Rodgers, Chairman Pallone,
Ranking Member Walden, distinguished members of the Subcommittee, thank you for the
opportunity to appear before you today. I’m honored to be back here with my fellow
commissioners to highlight the important work that the FTC and its talented staff do on behalf
of American consumers.

I realize that one privacy is one of the main topics today. I look forward to answering
questions you may have about it. But, first, I want to highlight the important work that the FTC
has been doing in an area that is critical to all Americans—healthcare.

Americans are concerned about their healthcare. All of us spend more time than we
should trying to find a doctor who takes our insurance, shopping for the best prescription prices,
dealing with insurers, and so on. And, all too often, we pay more than we should, with the annual
cost of healthcare accounting for nearly 18% of annual GDP.

The FTC has focused on healthcare for decades. In my nomination process, I called for
this Commission to continue that essential work, and I’m pleased today to report that we have.

¹ Statista, U.S. National Health Expenditure as Percent of GDP from 1960 to (Feb 2019),
<https://www.statista.com/statistics/184968/us-national-health-expenditure-as-percent-of-gdp-since-1960/>

On the competition side, the Commission has been busy. Following the Supreme Court victory in the Actavis case², which subjected pay-for-delay settlements to antitrust scrutiny, we have worked hard to rid the market of this anticompetitive conduct. Pay settlements delay generic entry, preventing earlier consumer access to cheaper pharmaceuticals and forcing Americans to pay higher prices for the drugs they need. The Commission has obtained several orders prohibiting such settlements, including two this year that included the final remaining Actavis defendants³.

Just a few weeks ago, this Commission reached a decision in its case against the generic manufacturer Impax, which entered into a pay-for-delay settlement with Endo, a brand manufacturer. On a unanimous basis, we rendered the first FTC opinion on pay-for-delay settlements, banning Impax from engaging in this harmful conduct. I know that stopping anticompetitive conduct in pay-for-delay settlements has also been a focus of this Committee, and I appreciate the Chairman, Ranking Member, and Congressman Rush's support and recognition of this important issue.

This Commission is fighting anticompetitive conduct in court. We recently obtained a federal court judgment ordering AbbVie Inc. to pay nearly \$500 million in relief to consumers

² FTC v. Actavis, Inc., 570 U.S. 756 (2013).

³ See, e.g., FTC Press Release, Last Remaining Defendant Settles FTC Suit that Led to Landmark Supreme Court Ruling on Drug Company "Reverse Payment" (Feb. 28, 2019), <https://www.ftc.gov/news-events/press-releases/2019/02/last-mainingdefendant-settles-ftc-suit-led-landmark-supreme>; FTC Press Release, FTC Enters Global Settlement to R47.8 (and)12 (m)5.1 (ar)9.4 (k)4.2 (Supr)9.5 (e)4.2 (m)5.1 (e)4.2 (C)10.3 (our)9.4 (t)6.9 ()JTJ -4.r8

to victims⁷ We also recently brought charges against defendants who claimed that the “Nobetes” pill could treat diabetes even after the FDA and the FTC warned them that they needed scientific evidence, which they lacked.⁸ The list goes on.

We’re focused on protecting consumers suffering in the opioid crisis. The FTC Commission took action against two companies peddling opioids,⁹ and returning over \$210,000 to consumers in one case.¹⁰ Last year, the FTC worked closely with the FDA to identify and target companies making unproven representations for treating opioid addiction. Together our agencies posted warning letters to 11 marketers and distributors for illegally marketing products with unproven claims about the products’ ability to help in the treatment of opioid addiction and withdrawal.¹¹ Last October, Congress gave us authority to obtain civil penalties for unfair or deceptive acts or practices with respect to substance use disorder treatment services and products. This authority we intend to use.

⁷ FTC Press Release, FTC Returns Almost \$515,000 to Consumers Who Bought Deceptively Marketed “Amniotic Stem Cell Therapy” Between 2014 and 2017 (Apr. 30, 2019), <https://www.ftc.gov/news-events/press-releases/2019/04/ftc-returns-almost-515000-consumers-who-bought-deceptively>

⁸ FTC Press Release, “Nobetes” Dietary Supplement Marketers Settle FTC Complaint Alleging Unsubstantiated Health Claims, Illegal Billing Practices, and Deceptive Endorsement (Dec. 4, 2018), <https://www.ftc.gov/news-events/press-releases/2018/12/nobetes-dietary-supplement-marketers-settle-ftc-complaint> The order requires them to pay \$182,000 and prohibits the company and its officers from undertaking future deceptive practices.

As our work on the opioid crisis shows, the FTC leverages resources and partners with other agencies to maximize our impact. Working again with the FDA, last year we jointly issued 13 warning letters to companies marketing “e-liquids” used in e-cigarettes in packaging that resembled kid-friendly food products, such as juice boxes, candies, or cookies.¹² Kids yours, our goal is to protect kids

I hope this testimony has been helpful in showing how the FTC makes a daily impact in the lives of American consumers, both by protecting their wallets and their health.

Thank you and I look forward to your questions.

¹² FTC Press Release, FT r(vaet