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"
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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, and 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.[1]

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 2019* (Feb. 2019), https://www.statista.com/statistics/184968/us-health-expenditure-as-percent-of-gdp-since-1960/.

On the competition side, the Commission has been busy. Following the FTC's Supreme Court victory in the *Actavis* case,[2] which subjected pay-for-delay settlements to antitrust scrutiny, we have worked hard to rid the market of this anticompetitive conduct. Pay-for-delay 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* defendants.[3]

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 post-*Actavis*, 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 Payments"* (Feb. 28, 2019), https://www.ftc.gov/news-events/press-releases/2019/02/last-remaining-defendant-settles-ftc-suit-led-landmark-supreme; FTC Press Release, *FTC Enters Global Settlement to Resolve Reverse-Payment Charges against Teva* (Feb. 19, 2019), https://www.ftc.gov/news-events/press-releases/2019/02/ftc-enters-global-settlement-resolve-reverse-payment-charges; *see also* Joint Motion for Entry of Stipulated Order for Permanent Injunction, *FTC v. Allergan plc*, No. 17-cv-00312 (N.D. Cal. Jan. 23, 2017), https://www.ftc.gov/enforcement/cases-proceedings/141-0004/allergan-plc-watson-laboratories-inc-et-al; Stipulated Order for Permanent Injunction, *FTC v. Teikoku Pharma USA, Inc.*, No. 16-cv-01440 (E.D. Pa. Mar. 30, 2016), https://www.ftc.gov/enforcement/cases-proceedings/141-0004/endo-pharmaceuticals-impax-labs.

overcharged for AndroGel, as a result of AbbVie's anticompetitive manipulation of our civil justice system.[4] And, just weeks ago, we sued Surescripts, a monopolist we alleged employed illegal vertical and horizontal restraints to maintain its monopolies over two "e-prescribe" markets.[5] In addition to targeting the cost of healthcare, this case addresses important competition issues like two-sided markets, network effects, and innovation harms.

Our consumer protection work on healthcare also provides results to consumers, who too often get duped into buying bogus products and services, sometimes even foregoing needed care. Stopping deceptive health claims, providing guidance to businesses, and educating consumers continue to be top priorities of the Commission.

Last month, the FTC settled with defendants charged with deceptively marketing "cognitive improvement" supplements using sham news websites that touted non-existent clinical studies and fake consumer and celebrity endorsements.[6] Our action stopped the scam, which reaped over $14 million from unsuspecting consumers. The FTC also recently cracked down on deceptively advertised "amniotic stem cell therapy", which its promoters claimed could treat serious diseases, including Parkinson's disease, macular degeneration, cerebral palsy, multiple sclerosis, and heart attacks. The FTC just mailed checks—over half a million dollars—

[4] FTC v. Abbvie Inc., 329 F. Supp. 3d 98 (E.D. Pa. 2018).
[5] FTC Press Release, *FTC Charges Surescripts with Illegal Monopolization of E-Prescription Markets* (Apr. 24, 2019), https://www.ftc.gov/news-events/press-releases/2019/04/ftc-charges-surescripts-illegal-monopolization-e-prescription.
[6] FTC Press Release, *Geniux Dietary Supplement Sellers Barred from Unsupported Cognitive Improvement Claims* (Apr. 10, 2019), https://www.ftc.gov/news-events/press-releases/2019/04/geniux-dietary-supplement-sellers-barred-unsupported-cognitive.

to victims.[7] We also recently brought charges against defendants who claimed that their "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 Commission took action against two companies peddling cures,[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. That is an authority we intend to use.

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[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 Endorsements* (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.

[9] FTC Press Release, *FTC Action Stops Unsupported Claims for Opiate Withdrawal Treatments* (May 4, 2017), https://www.ftc.gov/news-events/press-releases/2017/05/ftc-action-stops-unsupported-claims-opiate-withdrawal-treatments.

[10] FTC Press Release, *FTC Sending Refund Checks Totaling More Than $210,000 to Consumers Who Bought Elimidrol 'Opiate Withdrawal' Product* (Sep. 28, 2017), https://www.ftc.gov/news-events/press-releases/2017/09/ftc-sending-refund-checks-totaling-more-210000-consumers-who.

[11] In addition, the Commission, in coordination with the Substance Abuse and Mental Health Services Administration (SAMHSA) of the U.S. Department of Health and Human Services (HHS), issued a fact sheet to help consumers get real help for opioid addiction or withdrawal, while avoiding products that promise but do not deliver help. FTC Consumer Information, *Getting the Right Help for Opioid Dependence or Withdrawal* (Jan. 2018), https://www.consumer.ftc.gov/articles/0223-getting-right-help-opioid-dependence-or-withdrawal.

As our work on the opioid crisis shows, the FTC leverages our 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] Like 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, *FTC, FDA Take Action Against Companies Marketing E-liquids That Resemble Children's Juice Boxes, Candies, and Cookies* (May 1, 2018), https://www.ftc.gov/news-events/press-releases/2018/05/ftc-fda-take-action-against-companies-marketing-e-liquids.