

Concurring Statement of Commissioner Christine S. Wilson

R360 LLC

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The Commission today announces its first case under the Opioid Addiction Recovery Fraud Prevention Act (“OARFPA”). Careful observers will note, however, that this settlement agreement was executed on November 23, 2020 by counsel for defendants. In other words, the announcement of this settlement was delayed by nearly 18 months. Why?

In my inaugural Congressional hearing as a Commissioner, I highlighted the important work of the FTC in the health care area.¹ It rightly has been a longstanding priority for the agency in both its antitrust and consumer protection missions, because health care issues have a daily and frequently significant impact on consumers, their families, and their wallets. In that testimony, I also highlighted the ongoing opioid epidemic and thanked Congress for passing OARFPA, which strengthens the Commission’s ability to halt the use of deception by companies that sell substance use disorder treatments and services.

For these reasons, I am pleased that the Commission is announcing a settlement with Steven Doumar and R360 LLC for violations of OARFPA and Section 5 of the FTC Act. Today’s settlement resolves allegations that the R360 Network and its sole director, owner, and employee, Steven Doumar, falsely claimed that the company could help individuals identify the best treatment centers for their substance use disorders from a network of facilities evaluated against rigorous, objective criteria. Stated simply, the complaint alleges that defendants lied about being a literal lifeline for individuals struggling with addiction. Those defendants appropriately chose to resolve the matter with the FTC – 18 months ago.

Readers rightly will be curious about the *cause* of the lengthy delay. What developments prompted this consent, the first under OARFPA, to be moved to the back burner for almost 18 months? Did it fall victim to the Progressive movement’s habit of second-guessing staff’s excellent work?² Was it lost in the shuffle as new leadership prioritized the repeal of long-standing bipartisan policies³ and planning for a tidal wave of rulemakings?⁴ Although I cannot discuss the non-public aspects of this case, I can observe that the delay of nearly one and a half years does not appear to have resulted in any new defendants, injunctive relief, or financial redress.

Readers appropriately may wonder about the *impact* of this delay. Recent reports indicate that 2021 was the worst year on record for fatal overdoses – more than 80,000 people died using opioids.⁵ Would a timelier announcement of this case have ended the opioid crisis? No. But I have no doubt that it would have resulted in important market deterrence during a year when consumers most needed it. This case makes clear that companies must avoid deceptively marketing substance abuse treatment options as our neighbors, friends, and family engage in the daunting task of seeking help. But this message went undelivered for almost 18 months.

Finally, readers may ponder whether other important cases similarly are being delayed.⁶ What other cases have been deprioritized by current leadership? What other unlawful conduct is going unannounced, and therefore undeterred? What other culpable companies are escaping

accountability? What other groups of consumers are suffering harms that could be prevented by swift enforcement actions?

Statistics imply that at least some of these delays *are* occurring. After all, FTC enforcement actions plummeted by more than 60 percent from the last year of President Trump’s administration to the first year of President Biden’s administration. For the consumer protection mission, one analysis found there were 79 actions in 2020 but only 31 in 2021.⁷ A similar shortfall occurred in the antitrust mission.⁸ But we know that our dedicated and diligent staff did not become 50 percent less productive. So where are the cases?⁹

To be clear, I am not leveling criticism at our seasoned staff, who work tirelessly on investigations to secure outstanding outcomes for American consumers and businesses. Staff fulfilled that mission here, obtaining an excellent settlement following a thorough investigation. Instead, the questions raised in this statement are directed to the leadership of the agency, those who will be held accountable for effectively using our scarce resources and fulfilling our mission of protecting consumers.

While I appreciate that this settlement finally has been announced, I hope that future Commissions appreciate the imperative to act swiftly on deceptive addiction treatment marketing rather than unnecessarily delaying actions that could salvage lifelines for desperate consumers.

¹ Oral Statement of Commissioner Christine S. Wilson, FTC, Before the Committee on Commerce, Science, and Transportation (Nov. 27, 2018), https://www.ftc.gov/system/files/documents/public_statements/1423835/p180101_commission_testimony_re_oversight_senate_11272018_0.pdf

² During the Trump administration, my Democrat colleagues regularly second-guessed the investigations and recommendations of staff. *See* Remarks of Christine S. Wilson, Commissioner, Fed. Trade Comm’n, at the Mercatus Antitrust Forum: One Year of Biden Antitrust, *Governing is Hard: Antitrust Enforcement in the First Year of the Biden Administration* (Jan 26, 2022), https://www.ftc.gov/system/files/documents/public_statements/1600479/governing_is_hard_antitrust_enforcement_in_the_first_year_of_the_biden_administration_0.pdf. *See, e.g.*, Dissenting Statement of Commissioner Rohit Chopra Regarding Zoom Video Communications, Inc. (Feb. 1, 2021), https://www.ftc.gov/system/files/documents/public_statements/1586865/20210129_final_chopra_zoom_statement_0.pdf (asserting that the final order is “weak,” provides “no money” and that the injunctive relief constitutes “paperwork requirements” with no real accountability); Statement of Commissioner Rohit Chopra regarding Midwest Recovery Systems (Nov. 30, 2020), https://www.ftc.gov/system/files/documents/public_statements/1583802/chopra_statement_for_midwest_recovery_systems.pdf (arguing that even though the Commission obtained a monetary settlement it was insufficient to make consumers whole); Statement of Commissioner Rohit Chopra Joined by Commissioner Rebecca Kelly Slaughter in the Matter of Sunday Riley (Oct. 21, 2019), https://www.ftc.gov/system/files/documents/public_statements/1550127/192_3008_final_rc_statement_on_sunday_riley.pdf (asserting that the “no money, no fault” settlement is “unlikely to deter future wrongdoers” and “sends the wrong message to the marketplace”); Statement of Commissioner Rohit Chopra in the Matters of Nectar Sleep, Sandpiper/Pipergear USA and Patriot Puck (Sept. 12, 2018), https://www.ftc.gov/system/files/documents/public_statements/1407380/rchopra_musa_statement-sept_12.pdf (arguing that no-money, no fault settlements for deceptive Made in USA claims were inadequate); Statement of Commissioner Rohit Chopra in the Matter of Aromaflage (Sept. 27, 2018), https://www.ftc.gov/system/files/documents/public_statements/1413088/162_3234_c4655_-_aromaflage_rc_statement_9-27-18.pdf (asserting that a settlement with no redress for consumers or disgorgement of profits is too lenient).

³ Statement of the Commission on Use of Prior Approval Provisions in Merger Orders (Oct. 25, 2021), https://www.ftc.gov/system/files/documents/public_statements/1597894/p859900priorapprovalstatement.pdf; Statement of Chair Lina M. Khan Joined by Commissioner Rohit Chopra and Commissioner Rebecca Kelly Slaughter on the Withdrawal of the Statement of Enforcement Principles Regarding “Unfair Methods of Competition” Under Section 5 of the FTC Act (July 1, 2021), https://www.ftc.gov/system/files/documents/public_statements/1591498/final_statement_of_chair_khan_joined_by_rc_and_rks_on_section_5_0.pdf; Statement of Chair Lina M. Khan, Commissioner Rohit Chopra, and Commissioner Rebecca Kelly Slaughter on the Withdrawal of the Vertical Merger Guidelines, File No. P810034 (September 15, 2021), https://www.ftc.gov/system/files/documents/public_statements/1596396/statement_of_chair_lina_m_khan_commissioner_rohit_chopra_and_commissioner_rebecca_kelly_slaughter_on.pdf.

⁴ See Oral Remarks of Commissioner Christine S. Wilson, Open Commission Meeting on Dec. 16, 2021, Advance Notice of Proposed Rulemaking to Combat Government and Business Impersonation Fraud (Dec. 16, 2021) (discussing the planned Rule-a-Palooza); FED. TRADE COMM’N, Semiannual Regulatory Agenda (Dec. 10, 2021), https://www.reginfo.gov/public/jsp/eAgenda/StaticContent/202110/Preamble_3084_FTC.pdf; FED. TRADE COMM’N, Statement of Regulatory Priorities (Dec. 10, 2021), https://www.reginfo.gov/public/jsp/eAgenda/StaticContent/202110/Statement_3084_FTC.pdf; FED. TRADE COMM’N, Agency Rule List - Fall 2021 Federal Trade Commission, https://www.reginfo.gov/public/do/eAgendaMain?operation=OPERATION_GET_AGENCY_RULE_LIST¤tPub=true&agencyCode=&showStage=active&agencyCd=3084&csrf_token=725F7489E8CE63966A90F47AA96F620D4FF82CF1F33A4B6C36F2FB5309BADA7630A0704DC44C40E535F019F69D2683CDDF58; see also Statement of the Commission Regarding Adoption of Revised Section 18 Rulemaking Procedures (July 9, 2021), https://www.ftc.gov/system/files/documents/public_statements/1591786/p210100commnstmtsec18rulesofpractice.pdf (announcing changes to the Section 18 Rules of Practice); 86 Fed. Reg. 38542 (July 22, 2021), <https://www.federalregister.gov/documents/2021/07/22/2021-15313/revisions-to-rules-of-practice>; Dissenting Statement of Commissioner Christine S. Wilson on the Open Commission Meeting of July 1, 2021 at 9 (July 1, 2021), https://www.ftc.gov/system/files/documents/public_statements/1591554/p210100wilsoncommnmeetingdissent.pdf; Dissenting Statement of Commissioners Christine S. Wilson and Noah Joshua Phillips Regarding the Commission Statement On the Adoption of Revised Section 18 Rulemaking Procedures (July 9, 2021), https://www.ftc.gov/system/files/documents/public_statements/1591702/p210100_wilsonphillips_joint_statement_of_rules_of_practice.pdf (dissenting on the grounds that these changes bulldozed existing procedural safeguards that ensured objectivity and vibrant input from all stakeholders).

⁵ See Meryl Kornfield, “U.S. surpasses record 100,000 overdose deaths in 2021,” WASHINGTON POST (May 11, 2022); <https://www.washingtonpost.com/health/2022/05/11/drug-overdose-deaths-cdc-numbers/> (stating that more Americans died of drug overdoses in 2021 than in any previous year; 80,000 overdosed on opioids and another 20,000+ overdosed on other substances); see also *Opioid Overdose Death Rates: 1999–2019*, NAT’L CTR. FOR DRUG ABUSE STATS., <https://drugabusestatistics.org/drug-overdose-deaths/#:~:text=Opioid%20Overdose%20Death%20Rates&text=Opioids%20kill%20more%20than%20136.increase%2C%20from%202015%20to%202016> (last visited May 11, 2022). Between staff’s execution of the settlement agreement with defendants and the Commission’s finalization of this matter, it is estimated that more than 100,000 people died from opioid overdoses. In 2020, 68,630 people overdosed on opioids and died. See *Overdose Death Rates*, NAT’L INST. ON DRUG ABUSE (Jan. 20, 2022), <https://nida.nih.gov/drug-topics/trends-statistics/overdose-death-rates>. In my new home state of West Virginia, researchers estimate that about 26,000 children are being raised by grandparents. See *Children In The Care of Grandparents In West Virginia: 2019*, ANNIE E. CASEY FOUND.: KIDS COUNT DATA CTR. (last visited Feb. 24, 2022), <https://datacenter.kidscount.org/data/tables/108-children-in-the-care-of-grandparents?loc=50&loct=2#detailed/2/50/false/1729,37,871,870,573,869,36,868,867,133/any/433,434/>. And the dramatic increase in grand-families is attributed to drug-related problems, including opioid addiction. See Anna N. Saab, *Rebuilding Families*, W. VA. UNIV., <https://generationopioids.wvu.edu/home/a-lost-generation> (last visited Feb. 24, 2022). From September 2020 through September 2021, West Virginia lost 1,349 residents (three per day) to fatal overdoses. See *In Worst Year for Overdoses, 17 W.Va. Counties Host Largest Free Naloxone Day*, WETZEL

CHRON. (Sept. 8, 2021), <https://www.wetzelchronicle.com/news/local-headlines/2021/09/08/in-worst-year-for-overdoses-17-w-va-counties-host-largest-free-naloxone-day/>.

⁶ Former Chairman Joe Simons often stated that “[a]ny time you see a press report of a significant potential privacy issue, it’s safe to assume that we’re investigating it already or, shortly after the release, we will investigate it.” See Cristiano Lima, *Zoom’s Legal Perils Mount as Democrats Call for FTC Probe*, POLITICO (Apr. 7, 2020, 7:08 PM), <https://www.politico.com/news/2020/04/07/zoom-legal-threats-democrats-ftc-probe-173966>. During Chairman Simon’s tenure, the press covered a significant number of data security and privacy breaches at prominent companies, as well as other potentially deceptive or unfair practices in the market.

⁷ See Daniel Kaufman, Blog Post: Tallying Complaints: Don’t Count Your FTC Chickens Before They Hatch (Dec. 1, 2021), <https://www.adttorneyslawblog.com/ftc/tallying-complaints-dont-count-your-ftc-chickens-beforethey-hatch/> (numbers in above text updated to add matter filed after Dec. 1, 2021).

⁸ Similarly, for merger enforcement, the FTC had an unprecedented 31 actions in CY2020; in CY2021, the FTC had only 12 merger enforcement actions. Notably, this decline in enforcement cannot be attributed to obstructionist Republicans – neither Commissioner Phillips nor I dissented on a merger action in CY2021.

⁹ Remarks of Christine S. Wilson, Commissioner, Fed. Trade Comm’n, at the Mercatus Antitrust Forum: One Year of Biden Antitrust, *Governing is Hard: Antitrust Enforcement in the First Year of the Biden Administration* 4-5 (Jan 26, 2022), https://www.ftc.gov/system/files/documents/public_statements/1600479/governing_is_hard_antitrust_enforcement_in_the_first_year_of_the_biden_administration_0.pdf.