CONSUMER ACTION for a STRONG ECONOMY

March 3, 2021

To Whom It May Concern:

Consumer Action for a Strong Economy (CASE) is the nation's pre-eminent free-market consumer advocacy organization, championing policies that promote an economic environment of innovation, competition, consumer choice, fiscal responsibility, and reasonable consumer protections. Through these time-tested principles, CASE aims to create more prosperity and opportunity for every American. Thusly, we wish to provide the below public testimony in regards to SB 764:

For years U.S. consumers have realized significant benefits and cost savings through patent settlement agreements between pharmaceutical patent holders and generic drug manufacturers. These agreements have had an enormous impact in helping consumers gain access to generic and biosimilar drugs much sooner than they would otherwise be available, leading to tens of billions of dollars in cost savings for patients while increasing access to potentially life-savings treatments.

As a consumer advocacy organization, we are greatly concerned by legislation currently under consideration in the Oregon State Senate (SB 764) that would drastically rewrite the standard of review for patent settlement agreements. We believe that proven market factors and sound economic analysis are correct in concluding that enacting this measure would undermine a strong and well-established federal system for reviewing patent agreements, leading to unnecessary confusion and uncertainty in the marketplace. Further, this measure has the potential to undermine pro-competition arrangements that speed generic drugs to market faster for the benefit of patients.

As you are aware, the United States Supreme Court set the standard of review in patent settlement agreements in *FTC v. Actavis*, which established an evidence-based "rule of reason" for the FTC to determine whether patent agreements were anticompetitive and therefore harmful to consumers. In both 2003 and again in 2018 the U.S. Congress has reiterated the requirement that makers of new and generic drugs submit certain agreements for review to the FTC, who can then choose to take enforcement actions against anti-competitive agreements.

This national standard as now enforced by the FTC is not only working exceptionally well in helping enforce anti-competitive arrangements and leading to faster access to generic drugs for consumers, but also brings the necessary certainty required into a key patent process that is so critical to setting incentives for investment and future innovation. SB 764 creates an entirely new standard for the review of patent settlement agreements, one which is not only untested but which could potentially undermine the agreements that give consumers access to less expensive generic drugs faster.

An outlying standard, such as being proposed in this instance, risks making patent agreements more difficult and legally complex, and therefore less likely to bring generic drugs to market sooner for U.S. consumers. Fewer deals will be reached, and both patent holders and generic manufacturers will leverage their positions in court, meaning more costly and delayed timelines in bringing drugs to market.

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There are even deeper legal issues at stake, given similar legislation passed by California being challenged on Constitutional grounds, with one district court judge insisting such legislative measures are a recipe for triggering a violation of the dormant commerce clause.

We urge legislators to avoid this complex, unnecessary, and risky legal thicket now under consideration in SB 764. There is too much at stake to gamble with patient health, and no guarantee that this legislation will bring anything other than confusion, more conflict, and higher costs to a system working quite well under guidance from Congress and the FTC. Please take a position on this issue that stands with consumers and their ability to gain quicker access to more affordable drugs, and also for a secure and consistent patent enforcement framework that helps lower healthcare costs while also supporting innovation into new cures and treatments for us all.

Please **oppose** SB 764 and all such similar legislation. Thank you for your time and consideration.

Sincerely,

Matthew Kandrach
President

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