THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

STATE OF NEW YORK, et al.,	)	
	)	
Plaintiffs,	)	Civil Action No. 16-
	)	
vs.	)	
	)	JUDGE
CEPHALON, INC., et al.,	)	
	)	
Defendants	)	
	)	

MEMORANDUM IN SUPPORT OF THE STATES' MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENT AND PROPOSED CONSUMER NOTICE AND DISTRIBUTION PLAN AND ENTRY OF ORDER

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I. INTRODUCTION

Plaintiff States[1] (the "States") respectfully request preliminary approval of a proposed settlement ("Settlement") with Cephalon, Inc., Barr Laboratories, Inc., Teva Pharmaceutical Industries Ltd., and Teva Pharmaceuticals USA, Inc. (collectively, the "Cephalon Parties"). If finally approved, the Settlement will resolve and release the States' claims under federal and state antitrust and consumer protection laws that the Cephalon Parties unlawfully delayed generic competition for Provigil® and damaged the States and consumers in the States, in exchange for the payment of $125 million.

The States assert claims in their sovereign capacities, on behalf of state entities that purchased Provigil® and/or its generic equivalent (modafinil, and as *parens patriae* on behalf of natural person consumers who purchased Provigil® and/or modafinil. The Settlement releases those claims and provides recovery for modafinil purchases made between June 24, 2006 and March 31, 2012 (the "Relevant Period"). The States submit that the Settlement[2] is sufficiently fair, reasonable, and adequate for the Court to grant preliminary approval, and to justify providing notice of the Settlement to Eligible Consumers,[3] and giving them an opportunity to submit a claim, object to, or opt out of the Settlement. The Settlement includes a proposed plan under which Eligible Consumers may present claims for their purchases of Provigil, which the States expect will merit final approval as fair, reasonable, and adequate. The States also seek

[1] The "States" are Alabama, Alaska, Arizona, Arkansas, Colorado, Connecticut, Delaware, District of Columbia, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming. The Settlement includes every state except California and Louisiana.

[2] Defined terms in the Settlement have been capitalized in this Memorandum and have the same meaning as in the Settlement.

[3] "Eligible Consumers" means natural persons who purchased Provigil® and/or modafinil during the Relevant Period.

approval of the uses to which the States may put funds designated for disgorgement, costs, and fees. The States have filed their Complaint in this district and seek approval of the Settlement from this Court because their action arises from the same operative facts as in the actions brought by the Federal Trade Commission and other related actions.[4]

State attorneys general are politically accountable representatives of their states and have authority under state law to recover (1) for consumers to the extent permitted by state law; (2) for public purchasers; and (3) for the state, in the form of disgorgement, costs, and fees. Here, the attorneys general are providing consumer recovery and exercising authority to settle and release consumer claims in their *parens patriae* or other similar state law authority. For this case and as a matter of law and/or policy, the States seek court approval of their plan to distribute funds to consumers and the process by which that plan is explained to consumers, who will be given an opportunity to object to or opt out of the Settlement.[5]

II. THE SETTLEMENT

A. Monetary Payment and Distribution

The Settlement provides for a total cash payment (referred to as the "Settlement Amount") of $125 million, $35 million of which will be paid to Eligible Consumers and $90 million to state governmental entities. If the Settlement is preliminarily approved by this Court, the Cephalon Parties will submit disbursement requests to the FTC for the payment of the

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[4] *Federal Trade Commission v. Cephalon, Inc.*, No. 08-2141 (E.D. Pa.) ("FTC Case"); *King Drug Co., et al. v. Cephalon, Inc., et al.*, No 06-1797 (E.D. Pa.) ("Direct Purchaser Class Case"); *Vista Healthplan, Inc., et al. v. Cephalon, Inc., et al.*, No. 06-1833 (E.D. Pa.) ("End Payor Class Case"); *Apotex, Inc. v. Cephalon, Inc., et al.*, No. 06-2768 (E.D. Pa.); *Rite Aid Corp. v. Cephalon, Inc., et al.*, No. 09-3820 (E.D. Pa.); *Walgreen Co. v. Cephalon, Inc., et al.*, No. 09-3956 (E.D. Pa.); and *Giant Eagle, Inc. v. Cephalon, Inc., et al.*, No. 10-5164 (E.D. Pa.).

5 If a settlement is reached in the End Payors Class Case, consumers who are class members may also recover settlement monies from that lawsuit. Nothing in Released Claims of the Settlement is intended to affect any consumer's right to participate in or receive monies in Vista Healthplan, Inc., et al., v. Cephalon, Inc. et al, Civil No. 06-CV-01833. *See* Exhibit C to the Settlement.

settlement monies into accounts established by the States for disbursement to Eligible Consumers and to the States.

1. Consumer Compensation

Natural persons who purchased Provigil and/or modafinil during the Relevant Period (when there was a lack of generic modafinil as a result of the Cephalon Defendants' anticompetitive acts), are deemed "Eligible Consumers" and are entitled to make claims on the Settlement proceeds. Under the Settlement, within eight business days of the later of (i) entry of the Preliminary Approval Order by this Court, and (ii) receipt in writing of all required payment information, the Cephalon Parties will submit a request to the FTC[6] that $35,000,000 ("Consumer Settlement Payment") be made into a qualified settlement escrow account established by the States for disbursement to Eligible Consumers ("Consumer Compensation Account"). The Consumer Compensation Account, plus any interest earned and less any taxes earned on the interest, will constitute the "Consumer Fund." The Consumer Compensation Account will be established and administered pursuant to the Escrow Agreement attached as Exhibit B to the Settlement. Disbursements from that account will be made pursuant to Settlement ¶ II.A.2.

The Consumer Fund will be available for distributions to Eligible Consumers upon the Effective Date of the Settlement (the date when the Settlement has received final approval and is no longer subject to further appeal or review), subject to deductions for payments of taxes payable on the Settlement Fund. All funds in the Consumer Compensation Account will be distributed according the Distribution Plan, described in Exhibit C to the Settlement. The expenses associated with administering the Settlement, including the cost of providing notice to

[6] This procedure is from paragraph 8 of the Settlement Fund Disbursement Agreement, which is Exhibit A to the Stipulated Order for Permanent Injunction and Equitable Monetary Relief (Dkt. 405, *FTC v. Cephalon*, Case No. 08-2141, E.D. Pa., 6/17/15) and Exhibit A to the Settlement.

consumers, the cost of processing and paying claims, and the fees of the Escrow Agent, will be paid out of the State Disgorgement, Costs, and Fees Account. A more detailed discussion of the proposed Consumer Distribution Plan is in Section VI.A. below.

2. Compensation to the States

The States will receive $90 million of the Settlement Fund, and the Cephalon Parties will follow the same Disbursement Request procedure for payment into the "State Compensation Account" as described above regarding the consumer fund disbursement. The $90 million payment consists of a $55 million payment for Provigil® purchases in the Relevant Period through state contracts, and $35 million for other purposes, which includes a disgorgement payment based on each State's retail prescription drug sales, costs and fees, including the costs of settlement administration. The State Compensation Account will be established and administered pursuant to the Escrow Agreement attached as Exhibit B to the Settlement, and disbursed by the Escrow Agent consistent with the terms of the Settlement, the Escrow Agreement, the Preliminary and Final Approval Orders, or any other Court order. Any accrued interest, less taxes thereon, will constitute the "State Fund." The State Fund will be available for distribution to the States upon the Effective Date of the Settlement, subject to deductions for payments of taxes payable on the Settlement Fund and any and all costs of the administration of the Settlement. The State's Compensation Account will be apportioned among the States at their sole discretion. Because the Attorneys General, by state law and constitution represent their state agencies in all litigation, the Attorneys General may settle and release those claims.

Upon preliminary approval, the States will use funds in the State Disgorgement, Costs, and Fees Account to pay settlement administration costs. The remainder of that

account will be available for distribution at the Settlement's Effective Date for the uses specified in Settlement ¶ III.B.1. To be consistent with various state laws, the States seek Court approval for using those funds in those ways.

B. Release of Claims

The Settlement provides that if this Court enters an order finding the Settlement to be fair, reasonable, and adequate, and all appeals have been resolved or all appeal periods have expired, States shall be deemed to have and by operation of the Judgment shall have released, to the extent permitted by law, all "Released Claims," as that term is defined in the Settlement. Exercising their *parens patriae* or similar authority under state law, States will, to the extent permitted by state law, release the claims of individual consumers, with the exception of claims of individual consumers who exercise the right to exclude themselves from the Settlement that were asserted or could have been asserted in the States' Complaint. Settlement ¶ O.

C. The States' *Parens* Authority

1. The States' *Parens Patriae* Authority to Represent Consumers

Although consumers are also represented in *Vista Healthplan, Inc. v. Cephalon, Inc.*, No. 2:06-CV-1833, the States' authority to represent consumers is additional and significantly different than the authority of counsel seeking to represent a class. Political accountability and judicial review operate as checks on state attorney general authority to represent consumers, while judicial review serves as the check on an attorney seeking to represent consumers within a class. Unlike an attorney general, an attorney seeking to represent a class is obliged to establish superiority of the representation, typicality of the class representatives, and the ascertainability of consumer harm under Fed. R. Civ. P. 23. How the States' authority to represent consumers

differs from that of class counsel begins with a discussion of *parens patriae* authority exercised by attorneys general.

The States bring their claims for damages pursuant to state and federal antitrust laws, which build or elaborate on the common law doctrine of *parens patriae*. The term *parens patriae* literally means "parent of the country." *Alfred L. Snapp & Son, Inc. v. Puerto Rico,* 458 U.S. 592, 600 & n.8 (1982) (*quoting* BLACK'S LAW DICTIONARY 1003 (5th ed. 1979)). The doctrine originated under the English common law, which recognized the King as the guardian of "all charitable uses in the kingdom." 3 William Blackstone, Commentaries, 47-48 (1794).

In the United States, *parens patriae* authority has "been greatly expanded … beyond that which existed in England." *Hawaii v. Standard Oil Co. of Cal.,* 405 U.S. 251, 257 (1972). The King's role as "royal guardian" in England was assumed by the states here. *Id.* The doctrine subsequently evolved to encompass a wide range of actions to protect the health and safety of a state's citizens. *See, e.g., Georgia v. Tennessee Copper Co.,* 206 U.S. 230 (1907) (action to enjoin interstate air pollution); *Kansas v. Colorado,* 185 U.S. 125 (1902) (action to prevent water diversion); *Louisiana v. Texas,* 176 U.S. 1 (1899) (action to prevent spread of communicable disease). The doctrine extends to monetary damages. *See, e.g., California v. eBay, Inc.*, No. 5:12-CV-05874-EJD, 2014 WL 4273888, at *4 (N.D. Cal. Aug. 29, 2014) (a state's attorney general can bring forth a civil action as *parens patriae* on behalf of natural persons residing in the state to secure monetary and injunctive relief); *In re Insurance Antitrust Litigation*, 938 F.2d 919, 927 (9th Cir. 1991) (the "state's interest in preventing harm to its citizens by antitrust violations is, indeed, a prime instance of the interest that the *parens patriae*

can vindicate by obtaining damages and/or an injunction"), *aff'd in part, rev'd in part sub. nom. Hartford Fire Ins. Co. v. California,* 509 U.S. 764 (1993).

State authority to bring a *parens patriae* action for antitrust law violations was recognized by the Supreme Court in *Georgia v. Pennsylvania Railroad Co.,* 324 U.S. 439 (1945). The Supreme Court recognized a state's right to seek to enjoin price fixing, declaring that antitrust violations could erect trade barriers harmful to the state's "prosperity and welfare," and that the state had a sovereign interest in such "matter[s] of grave public concern." *Id.* at 449. Since *Georgia* and the enactment of statutory authority in the Clayton Act, 15 U.S.C. § 15C, to recover damages for consumers, courts have routinely recognized the state attorneys' general right under federal law to bring *parens patriae* actions to redress consumer deception and antitrust violations. *E.g., Louisiana v. Borden, Inc.,* No. 94-3540, 1995 U.S. Dist. LEXIS 1921 at *6 (E.D. La. February 10, 1995) (milk price-fixing claim on behalf of schools and students); *New York v. Reebok International, Ltd.,* 96 F.3d 44 (2d Cir. 1996) (cy pres distribution for resale price-fixing); *Pennsylvania v. Milk Indus. Mgmt. Corp.,* 812 F. Supp. 500 (E.D. Pa. 1992) (milk bid-rigging claims on behalf of schools); *United States v. Microsoft Corp.,* 87 F. Supp. 2d 30 (D.D.C. 2000), *aff'd in part, rev'd in part*, 253 F.3d 34 (D.C. Cir. 2001) (en banc) (monopolization, exclusive dealing, and tying claims). Similarly, state law has been codified or construed to allow state attorneys general to represent and/or recover for consumers.[7]

[7] *E.g., Weaver v. Blue Cross and Blue Shield*, 570 So.2d 675 (Ala. Sup. Ct. 1990); Alaska Stat. § 45.50.580; Ariz. Rev. Stat. Ann. § 44-1407; I*n Re Maricopa Co.*, Cause No. MH-90-00566, 840 P.2d 1042, 1047 (Ariz. Ct. App. 1992); Ark. Code Ann. § 4-75-212; Col. Rev. Stat. § 6-4-111; Conn. Gen. Stat. § 35-32(c); Del. Code Ann. § 2108; D.C. Code § 28-4507; Fla. Stat. § 542.22(22); Ga. Code Ann. § 10-1-397(b); Haw. Rev. Stat. § 480-14(b); Idaho Code Ann. § 48-108(2); 740 Ill. Comp. Stat. 10/7(2); Ind. Code § 24-1-2-5; Iowa Code § 533.12; Kan. Stat. Ann. § 50-109; Ky. Rev. Stat. Ann § 518.020; *Lund ex rel. Wilbur v. Pratt*, 308 A.2d 554 (Me.1973); Md. Com. Law Code Ann., § 11-209; Mass. Ge. Laws Ann. Ch. 93, § 9; *State v. Detroit Lumberman's Association*, 1979-2 Trade Cas. (CCH) ¶ 62,990, 1979 WL 18703 (Mich. Cir. Ct. 1979); *Minnesota v. Standard Oil Co.*, 568 F. Supp. 556, 563 (D. Minn.

2. Fundamental Differences Between *Parens Patriae* Claims And Rule 23 Claims

Parens claims differ from Rule 23 claims substantively and procedurally. As discussed above, *parens* authority derives from the states' interest as sovereigns. *Georgia*, 324 U.S. at 449. By contrast, class action representation developed to more efficiently and effectively manage litigation. *American Pipe & Const. Co. v. Utah*, 414 U.S. 538, 553 (1974) (characterizing "efficiency and economy of litigation" as "a principal purpose of the [class action] procedure").

Because of its sovereign nature and political accountability, *parens patriae* authority is exercised as soon as a state attorney general files an action. In contrast, Rule 23 requires court approval, certification, and factual findings before class representation is effective. *Compare* 15 U.S.C. § 15c (a)(1) (a State may bring a *parens* action to secure monetary relief for injury sustained by natural persons in the state) *with* Fed. R. Civ. P. 23(c) (1) (court approval needed for class actions), Rule 23(b)(3) (requires finding of superiority of class adjudication), and Rule 23(a) (requires findings of typicality, impracticability of joinder, and fair and adequate representation). Similarly, a class action requires the ascertainability of class members. *E.g., Carrera v. Bayer Corp.*, 727 F.3d 300 (3d Cir. 2013); *Hayes v. Wal-Mart Stores, Inc.*, 725 F.3d 349 (3d Cir. 2013); *Marcus v. BMW of N. Am., LLC*, 687 F.3d 583 (3d Cir. 2012); *Little v. T-*

1983); Miss. Code Ann. §§ 7-5-1; *Clark Oil & Ref Corp. v. Ashcroft*, 639 S.W.2d 594, 596 (Mo. 1982); *State ex rel. Olsen v. Public Service Comm'n*, 283 P.2d 594 (1955); Neb. Rev. Stat. § 84-212; Nev. Rev. Stat. § 598A.160(1) (1999); N.H. Rev. Stat. Ann. § 356:4-a; N.J. Stat. Ann. §§ 56:9-12.b; *New Mexico v. Scott & Fetzer Co.*, 1981-2 Trade Cas. ¶ 64,439, 1981 WL 2167 (D.N.M. 1981); N.Y. Exec. Law § 63(12) and N.Y. Gen. Bus. Law § 340; N.C. Gen. Stat. § 114-2(8)(a); N. D. Cent. Code § 51-08.1-07; Ohio Rev. Code § 109.81; 79 O.S. § 205 (A)(1); Or. Rev. Stat. § 646.775; 71 Pa. Cons. Stat. Ann. § 732-204(c); R.I. Gen. Laws § 6-36-12; S.D. Codified Laws § 37-1-23; S.C. Code Ann. § 39-5-50(b), *State ex rel. Condon v. Hodges*, 349 S.C. 232, 562 S.E. 2d 623 (2002); *Sage v. Appalachian Oil Co.*, 1994-2 Trade Cas. (CCH) ¶ 70,745, 1994 WL 637443 (E.D. Tenn.1994); *Texas v. Scott & Fetzer Co.*, 709 F.2d 1024 (5th Cir. 1983); Utah Code Ann. §§ 76-10-916 and 76-10-918; Vermont Stat. Ann. 9 V.S.A. § 2458; Va. Code Ann. §§ 59.1-9.15; *Washington v. Chimei Innolux Corp.*, 659 F.3d 842, 847 (9th Cir. 2011); W. Va. Code § 47-18-17; and Wis. Stat. Ann. §§ 133.16 – 133.17(1).

Mobile USA, Inc., 691 F.3d 1302, 1304 (11th Cir. 2012); *John v. Nat'l Sec. Fire & Cas. Co.*, 501 F.3d 443, 445 (5th Cir. 2007).

This fundamental difference is further illuminated by the legislative history of federal antitrust laws. In 1976, Congress enacted the Hart-Scott-Rodino Antitrust Improvements Act (HSRA), which, among other amendments, added section 4C to the Clayton Act. This change confirmed state attorney general authority to represent the natural persons in their states as *parens patriae* in any lawsuit arising under the Sherman Act. 15 U.S.C. § 15c(a)(1). The House Report on the bill noted that section 4C was intended "to avoid, in consumer actions, the cumbersome litigation of peripheral issues which under Rule 23 has sometimes become more time-consuming and costly than litigating the merits of the case." See HR. Rep. No. 94-499, 94th Cong. 1st Sess. 8, *reprinted in* [1976] U.S. Code Cong. & Admin. News 2578. Similarly, the Senate Report describes the statute as the "legislative response to restrictive judicial interpretation of the notice and manageability provisions of Rule 23." Senate Report No. 803, 94th Cong., 2d Sess. 40-41 (1976).

Courts have further illuminated this distinction, holding that "Congress intended to permit the States to enforce federal antitrust laws without having to navigate the requirements of Rule 23." *In re Elec. Books Antitrust Litig.*, 14 F. Supp. 3d 525, 536 (S.D.N.Y. 2014). As the Second Circuit has explained, *parens* claims are:

> … directed toward remedying inadequacies in the existing scheme of enforcement which affected the usefulness of private consumer class actions and were barriers to suits brought by small consumers. …The basic problems addressed were the difficulty of achieving class certification of consumer actions pursuant to Federal Rules of Civil Procedure, Rule 23 … and the complexity of measuring and distributing damages in class actions… In effect, the thrust of Title III of the Act was to overcome obstacles to private class actions through enabling state attorneys general to function more efficiently as consumer advocates…Accordingly, Congress removed the barrier presented by Rule 23 by eliminating the requirement of class certification in *parens patriae* actions.

In re Grand Jury Investigation of Cuisinarts, Inc., 665 F.2d 24, 35 (2d Cir.1981) (citation omitted); *see New York v. Reebok Int'l Ltd.*, 96 F.3d 44, 46 (2d Cir.1996) ("Congress empowered state attorneys general to investigate and prosecute antitrust abuses on behalf of consumers stymied by Rule 23's certification and notification hurdles").

3. *Parens Patriae* Successfully Provides Consumer Recovery for Antitrust Violations

State attorneys general have a rich history of acting to benefit consumers. As part of the state's role as sovereign guardian of its citizens, state attorneys general regularly maintain consumer hotlines, online complaint forms, and other outreach. Because they regularly and actively monitor and regulate these markets, state attorneys general have a more holistic understanding of the extent and impact of competition-related harm on consumers. *See* Stephen Calkins, *Perspectives on State and Federal Antitrust Enforcement*, 53 Duke L.J. 673, 679 (2003).

Using this understanding to identify and provide relief to consumers, state attorneys general have vigorously and successfully prosecuted antitrust actions that delivered significant recovery directly to consumers. *See, e.g., In re Elec. Books Antitrust Litig.*, 11-md-02293 (S.D.N.Y.) (DLC) (recovery totaling $566 million for consumers); *In re Compact Disc Minimum Advertised Price Antitrust Litig.*, No. 2:01-CV-125-P-H, 2003 U.S. Dist. LEXIS 12663 (D. Me. July 9, 2003) (recovery provided to approximately 3.5 million consumers); *In re Disposable Contact Lens Antitrust Litigation,* MDL 1030; No. 94-619-CIV: J-20 (M.D. Fla) (2001-1 Trade Cas. (CCH) ¶ 73,150) (over 18,000 checks to consumer processed, from a total cash-and-coupon settlement of $90 million); *In re Cardizem CD Antitrust Litig.*, 218 F.R.D. 508 (E.D. Mich. 2003) ($80 million provided in consumer recovery); *Giral v. F. Hoffmann-La*

Roche Ltd., No. 98 CA 7467 (D.C. Super. Ct. Jan. 22, 2001) (settlement resulting in $42 million in refunds to businesses and $38 million for consumer health programs); *Connecticut v. Mylan Laboratories, Inc.*, MDL No. 1290 (D.D.C. June 15, 2000) ($100 million for consumer and governmental compensation).

III. THE SETTLEMENT MEETS THE STANDARD FOR PRELIMINARY APPROVAL

A. Standard for Approval

The Settlement is presented by the attorneys general of the States in their capacity as *parens patriae* or similar authority under their state laws to bring claims for damages on behalf of their consumers. When evaluating what a *parens patriae* settlement delivers, federal courts in this circuit and elsewhere have adopted the approval standards used for class action settlements: *See, e.g.*, *In re Nat'l Football League Players' Concussion Injury Litig.*, 961 F. Supp. 2d 708 (E.D. Pa. 2014) ("*Nat'l Football League*"); *In re Toys "R" Us Antitrust Litig.*, 191 F.R.D. 347, 351 (E.D.N.Y. 2000); *New York v. Salton, Inc.*, 265 F. Supp. 2d 310, 313 (S.D.N.Y. 2003); *Weinberger v. Kendrick*, 698 F.2d 61, 73 (2d Cir. 1982). Courts are further guided by the strong judicial policy favoring settlement. *Id.* at 74; *In re Compact Disc Minimum Advertised Price Antitrust Litig.*, 216 F.R.D. 197, 206 (D. Me. 2003), *judgment entered*, No. MDL 1361, 2003 WL 21685581 (D. Me. July 18, 2003); *In re TFT–LCD (Flat Panel) Antitrust Litig.*, No. M 07–1827–SI, 2013 WL 1365900, at *4 (N.D. Cal. Apr. 3, 2013) (granting final approval to a combined class and *parens patriae* settlement).

Courts generally apply a two-step approach to the settlement approval process in *parens patriae* proceedings and class actions: 1) preliminary approval of the settlement; and 2) final approval of the settlement at a hearing following notice to those represented. First, the court makes a preliminary evaluation of the fairness of the settlement and preliminarily approves the

settlement. *Nat'l Football League,* 961 F. Supp. 2d at 713-14, citing *Manual for Complex Litig.* § 21.632 (4th Ed. 2004) (*"MCL"*). That preliminary determination "establishes an initial presumption of fairness when the court finds that: (1) the negotiations occurred at arm's length; (2) there was sufficient discovery; (3) the proponents of the settlement are experienced in similar litigation; and (4) only a small fraction of the class objected."[8] *In re General Motors Corp. Pick-up Truck Fuel Tank Products Liability Litig.*, 55 F.3d 768, 778 (3d Cir. 1995). This analysis enables the court to determine whether there are defects in the settlement that would "risk making 'notice to the class, with its attendant expenses, and a hearing … futile gestures.'" If the proposed settlement is acceptable at this stage, the court then directs that notice be provided to those who would be bound by the proposed settlement in order to afford them an opportunity to be heard on, object to, and opt out of the settlement. *Nat'l Football League*, 961 F. Supp. 2d at 714, citing 4 Alba Conte & Herbert Newberg, *Newberg on Class Actions*, § 11:25 (4th ed. 2002). Final approval requires a determination that the settlement is "fair, adequate, and reasonable." *Walsh v. Great Atl. & Pac. Tea Co.*, 726 F.3d 956, 965 (3rd Cir. 1983).

The settlement negotiation process and the substantive terms of the agreements explained above are sufficient, without more, to support preliminary approval of the Settlement. At this point, the Court need only find the requisite *parens patriae* authority and that the Settlement fits "within the range of possible approval." *Armstrong v. Board of School Directors,* 616 F.2d 305, 314 (7th Cir. 1980). A motion for preliminary approval is distinct from a motion for final approval. Preliminary approval does not address whether the settlement is fair, adequate, and reasonable, because that is addressed at the fairness hearing for final approval. Rather, court review for preliminary approval is intended to

[8] Because notice to Eligible Consumers has not yet been sent, no objections have been received.

"ascertain whether there is any reason to notify [consumers] of the proposed settlement and to proceed with a fairness hearing." *Armstrong,* 616 F.2d at 314.

Preliminary approval does not require a full fairness hearing. "Preliminary approval of a [*parens patriae*] settlement, in contrast to final approval, is at most a determination that there is what might be termed 'probable cause' to submit the proposal to [consumers] and hold a full-scale hearing as to its fairness." *Nieves v. Cmty. Choice Health Plan of Westchester, Inc.*, No. 08 CV 321 (VB)(PED), 2012 U.S. Dist. LEXIS 37720, at *12 (S.D.N.Y. Feb. 24, 2012) (quoting *Menkes v. Stolt-Nielsen S.A.*, 270 F.R.D. 80, 101 (D. Conn. 2010). As this Court observed in *Dugan v. Towers, Perrin, Forster & Crosby, Inc.*, No. 2:09-CV-5099, 2013 WL 5330116, at *4 (E.D. Pa. Sept. 24, 2013): "Preliminary approval may be granted as long as the proposal does not 'disclose grounds to doubt its fairness or other obvious deficiencies such as unduly preferential treatment of class representatives or segments of the class, or excessive compensation for attorneys, and whether it appears to fall within the range of possible approval'" (citations omitted).

Because a settlement represents an exercise of judgment by the negotiating parties, cases consistently hold that the function of a court reviewing a settlement is neither to rewrite the settlement agreement reached by the parties nor to try the claims resolved by the settlement. *Blyan v. Pittsburgh Plate Glass Co.,* 494 F.2d 799, 804 (3d Cir. 1974), *Bell Atl. Corp. v. Bolger,* 2 F.3d 1304, 1315 (3d Cir. 1993). This approach is applied equally to actions in which counsel are representing consumers. *See, e.g., Girsh v. Jepson,* 521 F.2d 153, 156 (3d Cir. 1975); *In re Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions,* 148 F.3d 283, 317 (3d Cir. 1998) (*"In re Prudential Agent Actions"*).

B. The Settlement Satisfies the Standard for Preliminary Approval

1. The Negotiations Were at Arm's Length by Experienced Counsel

The initial determination of fairness, often called "procedural fairness," focuses on the settlement process itself. *Ebbert v. Nassau County*, No. CV 05-5445 (AKT), 2011 U.S. Dist. LEXIS 150080, at *20 (E.D.N.Y. Dec. 22, 2011); *Dupler v. Costco Wholesale Corp.*, 705 F. Supp. 2d 231, 238-39 (E.D.N.Y. 2010). The court must determine whether the settlement was the result of good-faith bargaining at arm's-length by experienced counsel after reasonable discovery and not based on fraud or collusion. *Mehling v. New York Life Insurance Co.*, 246 F.R.D. 467 (E.D. Pa. 2007); *Tenuto v. Transworld Sys., Inc.*, 2001 WL 1347235, at *1 (E.D. Pa. Oct. 31, 2001). Such findings support a presumption that the settlement is fair. *New York v. Reebok Int'l, Ltd.*, 903 F. Supp. 532, 535 (S.D.N.Y. 1995), *aff'd*, 96 F.3d 44 (2d Cir. 1996). When evaluating these issues, courts recognize that the opinion of experienced and informed counsel supporting the settlement should be afforded substantial consideration. Courts have deferred to the judgment of experienced counsel who have conducted arm's-length negotiations in approving proposed settlements. *See, e.g., Stewart v. Rubin*, 948 F. Supp. 1077, 1099 (D.D.C. 1996); *In re Nasdaq Market-Makers Antitrust Litig.*, 169 F.R.D. 493, 515 (S.D.N.Y. 1996); *McGiness v. Parnes*, 1989 WL 29814, *1 (D.D.C. Mar. 22, 1989).

The States were well informed about the issues in this matter when they entered into settlement negotiations. The States had been investigating the claims since 2008. The extensive litigation in the *Apotex* action, Direct Class Action, End Payor Class Action, and the FTC Action provided an excellent foundation to understand the issues, as did this Court's opinions. The States understand what the States have paid for Provigil and/or modafinil, based on data provided by state agencies and Cephalon, and the price effect on modafinil because of the

challenged conduct, including from expert reports in the End Payor Class Action.

No reason exists to doubt the fairness of the Settlement, nor are there any "obvious deficiencies." In addition to settling their proprietary claims, the States have obtained $35 million for consumers, an amount that easily falls within the range of possible approval for this case specifically. The States have analyzed consumers' Provigil and/or modafinil purchases and the damage analysis of the End Payor class's experts and the Cephalon Parties' opposition to that analysis. The States defer somewhat to the analysis done in the class action because counsel have been directly involved in that action for many years and the States rely on that analysis when considering the fairness, reasonableness, and adequacy of the States' Settlement.

The attorneys representing the parties to the Settlement are experienced and well-informed. The attorneys representing the Cephalon Parties have significant expertise in complex antitrust litigation. The Assistant Attorneys General in the offices of the Attorneys General for New York, Ohio, Minnesota, Indiana, and Vermont who negotiated the Settlement Agreements, individually and collectively, also have extensive experience with antitrust investigations and litigation. Significantly, forty-nine attorneys general have reviewed and approved the settlements on behalf of their consumers. "The Attorneys General have extensive expertise in complex antitrust cases brought under their *parens patriae* powers." *New York v. Nintendo of Am.*, 775 F. Supp. 676, 680 (S.D.N.Y. 1991). Indeed, this action is part of a long and successful tradition of multistate litigation by State Attorneys General. *See, e.g.*, *California v. ARC Am. Corp.*, 490 U.S. 93 (1989); *Hartford Fire Ins. v. California*, 509 U.S. 764 (1993); *In re Panasonic Consumer Elect. Prod.*, 1989-1 Trade Cas. (CCH) ¶ 68,613 (S.D.N.Y. 1989); *Colorado v. Airline Tariff Publ's Co.*, 1995-2 Trade Cas. (CCH) ¶ 71,231 (D.D.C. 1995).

In addition, courts are entitled to place special weight on a settlement agreement being

negotiated by government attorneys committed to protect the public interest. *Wellman v. Dickson,* 497 F. Supp. 824, 830 (S.D.N.Y. 1980), *aff'd*, 682 F.2d 355 (2d Cir. 1982); *see New York v. Reebok Int'l. Ltd.*, 96 F.3d 44, 48 (2d Cir. 1996) (noting Attorneys General in *parens* actions are motivated by concern for the public interest); *In re Toys "R" Us Antitrust Litig.*, 191 F.R.D. 347, 351 (E.D.N.Y. 2000) (the participation of the State Attorneys General furnishes extra assurance that consumers' interests are protected).

As detailed above, settlement discussions were initiated after significant investigation and were conducted by informed counsel who vigorously advocated their positions. This Settlement is the result of a good-faith, procedurally fair process, satisfying the first and third preliminary approval factors.

2. The States' Investigation in Support of the Settlement

The States have done significant investigatory work to support their belief in their claims, but recognize that litigation has risks. Litigating the claims and defenses in this case would require focus on the specific communications and actions of each of the Cephalon Parties, and would necessarily entail a risk that the fact finder would find one or more not liable, or that the damages caused by the anticompetitive conduct were less than alleged by the States. "Federal antitrust cases are complicated, lengthy and bitterly fought." *Wal-Mart Stores, Inc., v. Visa U.S.A., Inc.*, 396 F.3d 96, 118 (2d Cir. 2005); *In re Shopping Carts Antitrust Litig.*, 1984-1 Trade Cas. (CCH) ¶ 65,823, at 67,443 (S.D.N.Y. Nov. 18, 1983) (citing *Grinnell,* 495 F.2d at 467-68). This litigation is no exception, particularly given that the other litigation against the Cephalon Parties with respect to the same subject matter have continued for many years.

This case involves numerous, complex legal issues. In *Federal Trade Commission v. Actavis,* 570 U.S. 756 (2013), the Supreme Court held that patent litigation settlements that

contain "reverse" payments from branded drug manufacturers to generic drug manufacturers may violate the antitrust laws if the payments are "large and unjustified." *Id.* at 2236-37. The Court gave little guidance with which to evaluate when such payments are "large and unjustified," and courts have split on the issue – particularly when (like here) compensation for the delay is not only in cash, but in other forms of consideration. *See, e.g., King Drug Co. of Florence Inc. v. SmithKline Beecham Corp.*, 2015 U.S. App. LEXIS 10859 (3d Cir. Jun. 26, 2015); *In re Wellbutrin XL Antitrust Litig.*, 08-cv-02431 (E.D. Pa. Sept. 23, 2015); *In re Actos End Payor Antitrust Litig.*, 13-cv-9244 (S.D.N.Y. Sept. 22, 2015); *In re Nexium Antitrust Litig.*, 12-md-02409 (D. Mass July 30, 2015); *In re Lidoderm Antitrust Litig.*, 13-md-02521 (N.D. Ca. Nov. 17, 2014); *In re Effexor XR Antitrust Litig.*, 11-cv-05479 (D.N.J. Oct. 6, 2014); *In re Loestrin 24 Fe Antitrust Litig.*, 2014 WL 4368924 (D.R.I. Sept. 4, 2014); *In re Niaspan Antitrust Litig.*, 42 F. Supp. 3d 735 (E.D. Pa. Sept. 8, 2014); *In re Lamictal Direct Purchaser Antitrust Litig.*, 18 F. Supp. 3d 560 (D.N.J. Jan 24, 2014).

The States also considered the central claim that Cephalon knowingly enforced a fraudulently procured patent for the sole purpose of delaying generic entry. Although that conduct may be an antitrust violation,[9] proving that violation would be difficult. To succeed, a plaintiff is typically required to prove: (1) an intentional misrepresentation or omission to the PTO; (2) on which the PTO justifiably relied; (3) "but for" which the patent would not have issued; and (4) enforcement of the patent with anticompetitive effects.[10] Even in light of this Court's 2011 findings pertaining to Cephalon's material, fraudulent omissions and

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[9] *See Walker Process Equipment, Inc. v. Food Machinery & Chemical Corp.*, 382 U.S. 172, 174 (1965) ("The enforcement of a patent procured by fraud on the Patent Office may be violative of §2 of the Sherman Act provided the other elements necessary to a §2 case are present.").

[10] *Unitherm Food Sys. v. Swift-Eckrich, Inc.*, 375 F.3d 1341, 1355 (Fed. Cir. 2004); *C.R.Bard, Inc. v. M3 Sys., Inc*, 157 F.3d 1340, 1364, 1367 (Fed. Cir. 1998); *Nobelpharma AB USA v. Implant Innovations Inc.*, 141 F.3d 1059, 1069 (Fed. Cir. 1998).

misrepresentations to the PTO, the States would still be required to prove intent and the prima facie elements of an antitrust case, which could present substantial challenges.[11]

In addition to these litigation risks, the States have considered standing and statute of limitations issues presented in various states. Given that the conduct took place over a decade ago, the statute of limitations is likely to present a challenge. While the States believe they have a strong argument for tolling under various principles (*e.g.*, 15 U.S.C. §16(i) based on the FTC litigation, class tolling under *American Pipe v. Utah*, 414 U.S. 538, 551 (1974), fraudulent concealment, tolling agreements, and continuing violations), there are certainly risks that damages could be limited on statute of limitations grounds. In agreeing to the Settlement, the States carefully considered the recovery to consumers and the States they represent, balanced against the risks inherent in such complex litigation (including that the significant expense and effort required for trial does not guarantee success), and concluded the Settlement provides relief appropriate to the harm suffered by consumers and state entities.

The substantial, guaranteed recovery for consumers is fair, reasonable, and adequate given the litigation risks. This is especially true if the States' case were bifurcated such that litigation on damages would proceed only if plaintiffs successfully establish liability in a separate trial. *Ebbert v. Nassau County*, No. CV 05-5445 (AKT), 2011 U.S. Dist. LEXIS 150080, at *25-26 (E.D.N.Y. 2011) ("Even assuming that Plaintiffs prevailed at [the liability] trial, there would have been further significant delay in ascertaining damages, thus delaying monetary relief to the class members if they were successful").

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[11] In 2014, this Court held collateral estoppel would prevent Cephalon from relitigating the materiality in the class action cases, but not intent to deceive. *King Drug Co. v. Cephalon et al*, 06-CV-1833, 2014 LEXIS 32508 (E.D. Pa. March 14, 2014). That holding was subsequently extended to the FTC's litigation. *Federal Trade Commission v. Cephalon*, 08-2141 (E.D. Pa. July 29, 2014.)

Settlement has far-reaching benefits to the judicial system in the context of a complex antitrust action. "[A] prompt and efficient attorney who achieves a fair settlement without litigation serves both his client and the interests of justice." *Maley v. Del Global Techs. Corp.*, 186 F. Supp. 2d 358, 373 (S.D.N.Y. 2002) (citing *McKenzie Constr. Inc. v. Maynard*, 758 F.2d 97, 101-02 (3d Cir. 1985). Speed of settlement must be balanced against the ability of the parties to gather information to adequately assess their risks of litigation.

Typically, the court will begin to evaluate the reasonableness of the settlement amount by looking at an estimated benchmark damages amount. Antitrust damages are "frequently measured by the comparison of the fixed or monopoly price and the price that would have prevailed in the absence of the illegal conduct, often referred to as the 'but for' price: what the competitive price would have been but for the illegal conduct." PHILLIP AREEDA & HERBERT HOVENKAMP, ANTITRUST LAW, 394 at n.2 (Aspen Law & Business, 2d ed. 2001). The court's evaluation then must not only compare the percentage of the settlement amount to the full estimated damages, but must also weigh that comparison in light of all the risks of litigation.

The Settlement provides a significant recovery that will reimburse millions of consumers with a substantial amount of their damages. The terms are calculated to bring relief to as many consumers as possible by employing a method that will equitably distribute the benefits to affected consumers. All Eligible Consumers will be equally entitled to make a claim for their Provigil® purchases. No consumers will receive preferential treatment and no portion of the consumer recovery is being paid to the States as fees.

In addition to lump-sum cash payments from Cephalon to the generics, the settlements in which the Cephalon parties were involved all included various side agreements (licensing, supply, collaborations, etc.), which, in the aggregate, were estimated by the indirect class

plaintiffs and the Federal Trade Commission to be worth in excess of $200 million.

Based on information obtained by the States and our own analysis, the Settlement provides a recovery of 12% of the total estimated damages to States and their consumers. This is a significant percentage settlement which "falls within the range of possible approval" for purposes of preliminary approval. In addition, the opportunity for immediate, widespread distribution of reimbursement to consumers weighs heavily in favor of the settlement, especially in light of the risks inherent in any litigation and more particularly in a complex antitrust case such as this matter. As such, this settlement constitutes a fair and adequate resolution of the parties' claims. Indeed, as the Second Circuit emphasized in *Detroit v. Grinnell Corp.*, 495 F.2d at 455, an antitrust class action settlement may be approved even if the settlement amounts to a small percentage of the single damages sought, if the settlement is reasonable relative to other factors, such as the risk of no recovery. "In fact, there is no reason, at least in theory, why satisfactory settlement could not amount to a hundredth or even a thousandth part of the potential recovery." *Id.*

The facts and law relevant for this Court's consideration of preliminary approval overwhelmingly support submitting these settlements to the consumers represented by the attorneys general of the States and thereafter holding a hearing for final approval.

IV. THE PROPOSED NOTICE PLAN SHOULD BE APPROVED BY THE COURT

The States seek the Court's approval of the proposed Consumer Notice Plan attached as Exhibit 1 to the Declaration of Linda V. Young, Vice President, Media, with A.B. Data ("Young Decl."). Consumers in the States are entitled to notice of the Settlement and their rights under the Settlement, which includes the right to exclude themselves and the opportunity to be heard. *See* 15 U.S.C. § 15c(b)-(c); *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 812

(1985); *In re Lloyd's Am. Trust Fund Litig.*, No. 96 Civ. 1262 (RWS), 2002 U.S. Dist. LEXIS 22663 (S.D.N.Y. Nov. 26, 2002). The mechanics of the notice process, however, are within the discretion of the court subject only to the "broad reasonableness standards imposed by due process." *Handschu v. Special Services Div.*, No. 96 Civ. 1262 (RWS), 1981 U.S. Dist. LEXIS 12283 (S.D.N.Y. April 7, 1980) (internal citations omitted); *In re Prudential Sec. Ltd. P'ships Litig.*, 164 F.R.D. 362, 368 (S.D.N.Y. 1996) (quoting *Grunin v. Int'l House of Pancakes*, 513 F.2d 114, 121 (8th Cir. 1975). The notice "must provide the following information: (1) the nature of the litigation; (2) the settlement's general terms; (3) where complete information can be located; and (4) the time and place of the fairness hearing." *In re Cendant Corp. Sec. Litig.*, 109 F. Supp. 2d 235, 254 (D.N.J. 2000). The States' Notice Plan fully comports with the requirements of due process, both in terms of form and substance.

A. The Notice Plan

The States have retained A.B. Data, a company specializing in providing notice in *parens* and class actions, addressing consumer inquiries, and processing claims. A.B. Data has extensive experience in state and federal class and *parens patriae* actions. *See* Young and Miller Declarations. The States contemplate that the Notice Plan will take ninety (90) days, or such other time period set by the Court.

The Notice Plan will fully apprise consumers of the claims asserted by the States, the Settlement, and the information consumers need to make informed decisions about the Settlement. The Notice Plan is designed to reach consumers directly through pharmacies and indirectly through doctors' offices, sleep centers, advertising in national consumer magazines, a national newspaper supplement in 620 newspapers, and digital media, including website banner and Facebook right-rail advertisements. Young Decl. ¶¶ 8-9 and 12-18. A.B. Data will post

all case-related documents on its own website, establish a case specific website, and advertise with major search engines so consumers can obtain information about the Settlement and make their claims online. *Id.* ¶¶ 19 and 25-26. All print media notices will include a Summary Notice with a toll-free telephone number, the website address, and a mailing address so that consumers may request or access the Long Form Notice, which provides details about the Settlement. A.B. Data operates a call center with a toll-free number that operates 24 hours a day seven days a week, including live operators during business hours. *Id.* ¶¶ 29-30.

The States propose that notice begin within 30 days of preliminary approval and continue for a 90-day period and that the consumer claims be accepted for another month, for a total of 120 days. The proposed "short-form" Summary Notice will inform consumers about the Settlement, and includes an address to write for more information, a toll-free telephone number, and an internet website address. The Summary Notice will also apprise consumers that the "long-form" Notice of Proposed Settlement and Claim Form are available upon request. The long-form notice provides more detailed information about the Settlement, including a question and answer pamphlet, comprehensive summaries of the Settlement, and the terms of the releases. In addition, the long-form notice provides information about the fairness hearing date, consumers' rights to object or opt out (and the deadlines), information as to eligibility, and the procedure to make claims, including a claim form. The proposed Summary Notice and long form notice are attached as Exhibits P and Q to the Notice Plan, which is Exhibit 1 to the Young Declaration.

In his declaration, Mr. Miller describes how A.B. Data has identified and validated that a claimant is a legitimate claimant, and how that process will be used here.

Consumers will need to complete and submit a claim form that provides the consumer's name, contact information, and the amount of out-of-pocket money the consumer spent on modafinil during the Relevant Period. Miller Decl. ¶ 5. By using this process and requiring claimants to sign the form under penalty of perjury and through pharmacy records, the claims administrator can validate that the claimant is eligible without requiring consumers to shoulder the burden of compiling purchase records for several years. *Id.* ¶¶ 5-6. A.B. Data's process will lessen the burdens on consumers and increase consumer participation. *Id.* This meets the States' goal of delivering the settlement proceeds to as many consumers as possible.

Consumers will also be able to call a toll-free number to call and access to a website with links to the long-form notice, the States' Complaint and the Settlement. Young Decl. ¶¶ 25-26 and 29-30. After submitted claims have been reviewed, A.B. Data will prepare a Distribution Report for review and approval by the Court. The Report will contain a plan for the distribution of the Consumer Fund to Eligible Consumers with valid claims. Upon approval of a distribution plan from the Court, A.B. Data will distribute the settlement proceeds to consumers.

B. The Proposed Notice Plan and Claims Procedure Meets the Requirements of Due Process

The notice plan will result in a very high percentage of actual notice to affected consumers, which will ensure that the Notice Plan not only meets, but exceeds the mandates of due process. The Notices "fairly, accurately, and neutrally describe the claims and parties in the litigation, the terms of the proposed settlement and the identity of persons entitled to participate in it," as well as apprising affected consumers of their options with regard to the proposed Settlement. *In re Marsh ERISA Litig.*, 265 F.R.D. 128, 145 (S.D.N.Y. 2010) (citing *Foe v. Cuomo*, 700 F. Supp. 107, 113 (E.D.N.Y. 1988), *aff'd,* 892 F.2d 196 (2d Cir. 1989)). *See also*

Mullane v. Central Hanover Trust Co., 339 U.S. 306 (1950); *Weinberger v. Kendrick*, 698 F.2d 61, 70 (2d Cir. 1982).

The States request that this Court preliminarily approve the Notice Plan, and order that Notice be given thirty days after the entry of the Preliminary Approval order, or as soon thereafter as practicable.

V. THE PROPOSED CONSUMER DISTRIBUTION PLAN SHOULD BE APPROVED BY THE COURT

The Distribution Plan, which is Exhibit C to the Settlement, describes how funds in the Consumer Compensation Account will be distributed and requires this Court's approval. The Consumer Distribution Plan is designed to fairly compensate consumers for their estimated damages.

A. Consumer Distribution Plan

The States have allocated $35 million of the Settlement Account to the Consumer Fund for the purpose of compensating Eligible Consumers and to pay any taxes attributable to the Consumer Fund. The goal of the plan is to compensate the largest possible number of injured consumers in a way that makes it very simple for them to participate and recover. The States strive to identify and have claims from all Eligible Consumers. If that unreachable goal were achieved, The States estimate that the recovery would be about 6.7% of Eligible Consumers' out-of-pocket costs for Provigil in the Relevant Period.

B. The Distribution Plan is Fair and Reasonable

Judicial approval of a settlement agreement, as provided for in the state law specified in note 8, involves a finding that the settlement is fair, adequate and reasonable, and is not the product of collusion amongthe parties. *See In re Chicken Antitrust Litig.*, 669 F.2d 228, 238 (5th Cir. 1982); *In re Prudential Sec. Inc. Limited Partnerships Litig.*, [1995 Transfer Binder]

Fed. Sec. L. Rep. (CCH) ¶ 98,978, at 93,759 (S.D.N.Y. Nov. 20, 1995). This standard "applies with as much force to the review of the allocation agreement as it does to the review of the overall settlement between plaintiffs and defendants." *In re Chicken,* 669 F.2d at 238. Approval of a plan of distribution is within the discretion of the Court. *Id.; West Virginia v. Chas. Pfizer & Co., Inc.,* 440 F.2d 1079, 1085 (2d Cir. 1971); *In re Prudential,* [1995 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 98,978, at 93,759; *White v. National Football League,* 822 F. Supp. 1389, 1417 (D. Minn. 1993).

VI. CONCLUSION

For the foregoing reasons, the States respectfully request that the Court grant preliminary approval of the (1) Settlement and Consumer Notice and Consumer Distribution Plan; and (2) order that notification to Eligible Consumers may begin within thirty (30) days of the Court's Order. A proposed Preliminary Approval Order for the Court's consideration is attached to this memorandum as Exhibit A.

Dated: August 4, 2016

Respectfully submitted,

COMMONWEALTH OF PENNSYLVANIA
Office of the Attorney General
BRUCE L. CASTOR, JR.
First Deputy Attorney General

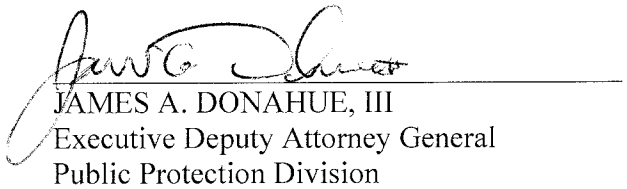

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EXHIBIT A

SETTLEMENT AGREEMENT

This Settlement Agreement is made and entered into on July 28, 2016, by and among the respective States, by and through their respective Attorneys General (the "States"), and Barr Laboratories, Inc., Teva Pharmaceutical Industries Ltd., Teva Pharmaceuticals USA, Inc., and Cephalon, Inc. (together the "Cephalon Parties"), by and through its undersigned counsel, (collectively, the "Parties").

WHEREAS, the States allege under various antitrust and consumer protection laws that actions by the Cephalon Parties delayed the entry of generic versions of the prescription drug Provigil and made misrepresentations to the Patent & Trademark Office that damaged the States and Eligible Consumers;

WHEREAS, the Cephalon Parties deny any allegation of unlawful conduct, and deny they caused any damage;

WHEREAS, the Parties agree that this Settlement Agreement shall not be deemed or construed to be an admission or evidence of any violation of any statute or law or of any liability or wrongdoing by the Cephalon Parties, or a waiver of any defenses thereto;

WHEREAS, arm's-length settlement negotiations have taken place between the States and the Cephalon Parties, and the result is this Settlement Agreement, which embodies all of the terms and conditions of the settlement between the States and the Cephalon Parties (the "Settlement Agreement");

WHEREAS, the States have concluded that it is in the best interests of the States and, through them, Eligible Consumers to enter into this Settlement Agreement; and

WHEREAS, the Cephalon Parties have concluded, despite their belief that no unlawful conduct has occurred, that it would be in their best interests to enter into this Settlement Agreement to avoid the uncertainties and risks inherent in complex litigation;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED:

I. DEFINITIONS

As used herein:

A. The "Cephalon Parties" means Cephalon, Inc., Barr Laboratories, Inc., Teva Pharmaceutical Industries Ltd., and Teva Pharmaceuticals USA, Inc.

B. "Claims Administrator" means A.B. Data, Ltd.

C. "Distribution Plan" means the plan or method of allocation among Eligible Consumers (1) who have not filed valid and timely requests for exclusion from this Settlement Agreement with the District Court when applicable; and (2) who otherwise participate in the allocation. The Distribution Plan will be submitted to the District Court separately from the Settlement Agreement and is not part of this Settlement Agreement.

D. The "District Court" means the United States District Court for the Eastern District of Pennsylvania.

E. "Effective Date" means the date when all of the following conditions have been satisfied, unless one or more of such conditions is modified or waived in a writing signed by the Parties: (1) execution of this Settlement Agreement; (2) entry by the District Court of the Preliminary Approval Order; (3) approval and effectuation of the Notice Plan; (4) final approval by the District Court of the Settlement Agreement; (5) entry of the Final Approval Order by the District Court; and (6) the time for appeal or to seek permission to appeal from the District Court's Final Approval Order has expired or, if appealed, the Final Approval Order has been affirmed in its entirety by the court of last resort to which such appeal has been taken and such affirmance has become no longer subject to further appeal or review.

F. "Eligible Consumers" mean natural persons who purchased Modafinil during the period June 24, 2006 through March 31, 2012.

G. "Escrow Agent" means Huntington National Bank.

H. "Final Approval Order" means the order to be entered by the District Court that grants final approval of this Settlement Agreement. The Parties intend that the Final Approval Order will include the following provisions: (1) an affirmance by the District Court that the Notice Plan has been completed; (2) a determination by the District Court that the Settlement Agreement is approved finally as fair, reasonable, and adequate; (3) a directive from the Court that the monies in the Consumer Compensation Account are to be disbursed pursuant to the Court-approved Distribution Plan; and (4) a directive from Liaison Counsel that monies in the State Proprietary Compensation Account and State Disgorgement, Costs, and Fees Account are to be paid to the Escrow Agent for disbursement to the States for use pursuant to Paragraph III.B.

I. "Liaison Counsel" mean the designated representatives for the Attorneys General of the States of Indiana, Minnesota, New York, Ohio, and Vermont.

J. "Modafinil" means Provigil® or its generic version (modafinil).

K. "Notice Plan" means the plan specifying the manner and content of notifying Eligible Consumers of this Settlement Agreement and informing Eligible Consumers of their rights to object to or exclude themselves from the Settlement Agreement. The Parties contemplate that the Notice Plan will take ninety (90) days or such other time period set by the District Court. The Notice Plan shall specify the manner in which Eligible Consumers are to be notified of this settlement and shall be coordinated with the notice plan under the settlement of *Vista Healthplan, Inc., et al. v. Cephalon, Inc., et al.*, No. 06-1833 (E.D. Pa.) ("End Payor Class Case").

L. "Plaintiff States" means the following States and Commonwealths of the United States, by and through their Attorney Generals, in their sovereign capacity, as plaintiffs, and as *parens patriae* on behalf of Eligible Consumers in such Plaintiff States: Alabama, Alaska, Arizona, Arkansas, Colorado, Connecticut, Delaware, District of Columbia,[1] Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming.

M. "Preliminary Approval Order" means an order to be entered by the District Court that preliminarily approves this Settlement Agreement. The Parties intend that the Preliminary Approval Order will include the following provisions: (1) preliminary approval of this Settlement Agreement as fair, reasonable, and adequate and in the best interests of Eligible Consumers; and (2) approval of the Notice Plan.

N. "Related Case" means any of the following cases, or any case consolidated with or merged into the following cases: *Federal Trade Commission v. Cephalon, Inc.*, No. 08-2141 (E.D. Pa.) ("FTC Case"); *King Drug Co., et al. v. Cephalon, Inc., et al.*, No 06-1797 (E.D. Pa.) ("Direct Purchaser Class Case"); *Vista Healthplan, Inc., et al. v. Cephalon, Inc., et al.*, No. 06-1833 (E.D. Pa.) ("End Payor Class Case"); *Apotex, Inc. v. Cephalon, Inc., et al.*, No. 06-2768 (E.D. Pa.); *Rite Aid Corp. v. Cephalon, Inc., et al.*, No. 09-3820 (E.D. Pa.); *Walgreen Co. v. Cephalon, Inc., et al.*, No. 09-3956 (E.D. Pa.); and *Giant Eagle, Inc. v. Cephalon, Inc., et al.*, No. 10-5164 (E.D. Pa.).

[1] The District of Columbia has a "quasi-sovereign interest in the . . . well-being . . . of its residents in general." *See Alfred L. Snapp & Son, Inc. v. Puerto Rico*, 458 U.S. 592, 607 (1982) (applying analysis to Puerto Rico).

O. "Released Claims" means any and all manner of claims, counterclaims, set-offs, demands, actions, rights, liabilities, costs, debts, expenses, attorneys' fees, and causes of action of any type, whether or not accrued in whole or in part, that were asserted or that could have been asserted, known or unknown, against the Cephalon Parties, and/or their officers, directors, employees and attorneys, arising from any of the facts, matters, transactions, events, occurrences, acts, disclosures, statements, omissions, or failures to act set forth or alleged in the Complaint filed by Plaintiff States as part of implementing this Settlement Agreement ("State Complaint"), including, without limitation, past, present and future competition claims arising under federal or state antitrust, unfair competition or consumer protections laws, or state common or equitable law that seeks damages, unjust enrichment, restitution, penalties, or other monetary, declaratory, or injunctive relief, whether brought as direct claims, representative claims, class claims, or *parens patriae* claims on behalf of the States or any other person or entity the States represent for:

1. the alleged delayed entry of generic versions of Provigil (modafinil);
2. conduct with respect to the procurement, maintenance, and enforcement of United States Reissue Patent Number 37,516, United States Patent Number 5,618,845, or United States Patent Number 7,297,346,[2] including but not limited to any commencement, maintenance, defense, settlement, or other participation in litigation concerning any such patents;
3. any conduct relating to Nuvigil that could fairly be characterized as being alleged in, is related to an allegation made in, or could have been alleged

[2] The release of claims concerning United States Patent Number 7,297,346 does not extend to enforcement actions taken by the Cephalon Parties after the execution of this Settlement Agreement.

in the State Complaint, expressly excluding any litigation or agreement with any pharmaceutical manufacturer pertaining to Nuvigil; and

4. the impact on competition in the sale, marketing, or distribution of Provigil or its generic equivalent, except as expressly excluded in this Agreement.

State Attorneys General have authority to release claims held by (a) any Eligible Consumer in a Plaintiff State, who did not timely and validly exclude themselves from this Settlement Agreement, to the extent permitted by state law; (b) each Plaintiff State's Attorney General in his or her sovereign capacity as chief law enforcement officer of his or her respective state; (c) each Plaintiff State for claims of the Plaintiff State, including but not limited to claims based on purchases made by the Plaintiff State; and (d) each Plaintiff State for claims the Plaintiff State may have in a representative capacity, including any *parens patriae*, class, or other representative claims.

Notwithstanding any term in this Agreement, Released Claims specifically do not include claims unrelated to competition, including:

1. any civil or administrative liability under state revenue codes;
2. any civil or administrative liability related to a State's Medicaid program under any statute, regulation, or rule for any conduct other than the conduct alleged in the State Complaint, including, but not limited to, state or federal false claims act, anti-kickback or off-label marketing violations associated with Provigil, modafinil, Nuvigil, or armodafinil;
3. any criminal liability;
4. any liability based upon obligations created by this Agreement;

5. any liability for expressed or implied warranty claims or other liability for defective or deficient products and services provided by the Cephalon Parties;

6. any liability for unfair or deceptive representations made in the marketing or advertising or for off-label marketing claims of Provigil, modafinil, Nuvigil, or armodafinil.

Nothing in this definition of Released Claims is intended to affect the ability of government entities that may be considered class members in the Direct Purchaser Class Case or the End Payor Class Case to submit claims and receive payment through the relevant class claims process.

P. "Released Parties" means the Cephalon Parties and any past and present parents, subsidiaries, divisions, affiliates, joint ventures, stockholders, officers, directors, management, supervisory boards, insurers, general or limited partners, employees, agents, trustees, associates, attorneys and any of their legal representatives, or any other representatives thereof (and the predecessors, heirs, executors, administrators, successors and assigns of each of the foregoing).

Q. "Settlement Accounts" mean the Consumer Compensation Account, the State Proprietary Compensation Account, and the State Disgorgement, Costs, and Fees Account as described in Paragraph II. The Settlement Accounts shall be administered by Huntington National Bank, as Escrow Agent, pursuant to Paragraph IV.

R. "Settlement Administration Costs" means costs to be paid for all actual, customary, and reasonable costs and fees incurred in the administration of this Settlement Agreement, which includes costs and fees incurred for the purpose of (1) compiling necessary Eligible Consumer information and providing notice, including notice by publication or paid

media as may be needed to effectuate adequate notice, (2) completing administrative tasks, and (3) processing and paying claims, including distributing credits and/or checks to Eligible Consumers. Such Settlement Administration Costs expressly include those fees or costs payable to the Escrow Agent and Claims Administrator appointed by Plaintiff States pursuant to Paragraph IV.

S. "Written Direction" means a written notification directed to the Escrow Agent and/or Claims Administrator directing disbursements from the Settlement Accounts and signed by representatives of Ohio and Texas on behalf of Plaintiff States.

II. DISBURSEMENT REQUESTS

A. Consumer Compensation Account

1. Within eight business days of the later of (i) entry of the Preliminary Approval Order by the Court and (ii) receipt in writing of all required payment information, the Cephalon Parties shall submit a Disbursement Request to the Federal Trade Commission under paragraph 8 of the Settlement Fund Disbursement Agreement, which is Exhibit A to the Stipulated Order For Permanent Injunction and Equitable Monetary Relief (Dkt. 405, *FTC v. Cephalon*, Case No. 08-2141, E.D. Pa., 6/17/15) (attached as Exhibit A). The Disbursement Request will request disbursement in the amount of U.S. Dollars $35,000,000 ("Consumer Settlement Payment"). The Disbursement Request will request that the disbursement of the Consumer Settlement Payment be made into a qualified settlement escrow account for disbursement to Eligible Consumers ("Consumer Compensation Account") as directed by Plaintiff States. The Consumer Settlement Payment deposited into the Consumer Compensation Account and any accrued interest after deposit shall become part of and shall be referred to as the "Consumer Fund."

2. The Consumer Compensation Account shall be established and administered pursuant to the Escrow Agreement attached hereto as Exhibit B (the "Escrow Agreement"). Except as otherwise expressly permitted by the Escrow Agreement, the Escrow Agent shall disburse funds from the Consumer Compensation Account only pursuant to and consistent with the express terms of this Settlement Agreement, the Preliminary Approval Order, the Final Approval Order, the Escrow Agreement, and as expressly authorized by any other applicable order of the Court. Interest earned by the Consumer Fund shall become part of the Consumer Fund, less any taxes imposed on such interest.

3. The Consumer Fund shall be available for distributions to Eligible Consumers upon the Effective Date, subject to deductions for payments of taxes payable on the Settlement Fund.

B. State Proprietary Compensation Account

1. Within eight business days of the later of (i) the Preliminary Approval Order being entered by the Court and (ii) receipt in writing of all required payment information, the Cephalon Parties shall submit a Disbursement Request to the Federal Trade Commission as required by paragraph 8 of the Settlement Fund Disbursement Agreement, which is Exhibit A to the Stipulated Order For Permanent Injunction and Equitable Monetary Relief (Dkt. 405, *FTC v. Cephalon*, Case No. 08-2141, E.D. Pa., 6/17/15) (attached as Exhibit A). The Disbursement Request will request disbursement in the amount of U.S. Dollars $55,000,000 ("State Proprietary Compensation Payment"). The Disbursement Request will request that the disbursement of the State Proprietary Compensation Payment be made into a qualified settlement escrow account for disbursement to Plaintiff States ("State Proprietary Compensation Account") as directed by Plaintiff States. The State Proprietary Compensation Payment deposited into the State

Proprietary Compensation Account and any accrued interest after deposit shall become part of and shall be referred to as the "State Proprietary Fund."

2. The State Proprietary Compensation Account shall be established and administered pursuant to the Escrow Agreement attached hereto as Exhibit B (the "Escrow Agreement"). Except as otherwise expressly permitted by the Escrow Agreement, the Escrow Agent shall disburse funds from the State Proprietary Compensation Account only pursuant to and consistent with the express terms of this Settlement Agreement, the Preliminary Approval Order, the Final Approval Order, the Escrow Agreement, and as expressly authorized by any other applicable order of the Court. Interest earned by the State Proprietary Fund shall become part of the State Proprietary Fund, less any taxes imposed on such interest.

3. The State Proprietary Compensation Fund shall be available for distributions to Plaintiff States upon the Effective Date, subject to deductions for payments of taxes payable on the Settlement Fund.

C. State Disgorgement, Costs, and Fees Account

1. Within eight business days of the later of (i) the Preliminary Approval Order being entered by the Court and (ii) receipt in writing of all required payment information, the Cephalon Parties shall submit a Disbursement Request to the Federal Trade Commission as required by paragraph 8 of the Settlement Fund Disbursement Agreement, which is Exhibit A to the Stipulated Order For Permanent Injunction and Equitable Monetary Relief (Dkt. 405, *FTC v. Cephalon*, Case No. 08-2141, E.D. Pa., 6/17/15) (attached as Exhibit A). The Disbursement Request will request disbursement in the amount of U.S. Dollars $35,000,000 ("State Disgorgement, Costs, and Fees Payment"). The Disbursement Request will request that the disbursement of the State Disgorgement, Costs, and Fees Payment be made into a qualified

settlement escrow account for disbursement to Plaintiff States ("State Disgorgement, Costs, and Fees Account") as directed by Plaintiff States. The State Disgorgement, Costs, and Fees Payment deposited into the State Disgorgement, Costs, and Fees Account and any accrued interest after deposit shall become part of and shall be referred to as the "State Disgorgement, Costs, and Fees Fund."

2. The State Disgorgement, Costs, and Fees Account shall be established and administered pursuant to the Escrow Agreement attached hereto as Exhibit B (the "Escrow Agreement"). Except as otherwise expressly permitted by the Escrow Agreement, the State Escrow Agent shall disburse funds from the State Disgorgement, Costs, and Fees Account only pursuant to and consistent with the express terms of this Settlement Agreement, the Preliminary Approval Order, the Final Approval Order, the Escrow Agreement, and as expressly authorized by any other applicable order of the Court. Interest earned by the State Disgorgement, Costs, and Fees Fund shall become part of the State Disgorgement, Costs, and Fees Fund, less any taxes imposed on such interest.

3. The State Disgorgement, Costs, and Fees Fund shall be available for distributions to Plaintiff States upon the Effective Date, subject to deductions for payments of taxes payable on the Settlement Fund and settlement administration costs.

D. The Consumer Settlement Payment, the State Proprietary Compensation Payment, and the State Disgorgement, Costs, and Fees Payment together constitute the Settlement Amount. The sole and total consideration that the Cephalon Parties, by making the above referenced Disbursement Requests, will pay under this Settlement Agreement shall be the Settlement Amount. All Settlement Administration Costs will come out of the States Disgorgement Costs & Fees Amount.

E. No portion of the Settlement Amount shall constitute, or shall be construed as constituting, a payment in lieu of treble damages, fines, penalties, punitive damages or forfeitures.

F. The Settlement does not include any provision for injunctive or declaratory conduct relief.

III. SETTLEMENT DISTRIBUTIONS

A. Distribution to Consumers

1. All funds in the Consumer Compensation Account shall be distributed according to the Distribution Plan (Exhibit C). The Distribution Plan shall be submitted to the District Court for approval concurrently with this Settlement Agreement.

2. The Parties agree and understand that the Distribution Plan is to be considered by the District Court separately from the District Court's consideration of the fairness, reasonableness, and adequacy of the resolution set forth in the Settlement Agreement, and any order or proceedings relating to the Distribution Plan shall not operate to terminate or cancel the Settlement Agreement or affect the finality of the Final Approval Order, or any other orders entered pursuant to the Settlement Agreement.

B. Distribution to States

1. The State Proprietary Compensation Payment and the State Disgorgement Costs & Fees Payment shall be apportioned among the States at their sole discretion. The State Proprietary Compensation Payment shall be distributed to the States on behalf of state purchasers for distribution in accordance with state law. The State Disgorgement Costs & Fees Payment shall be used for settlement administration costs and then collectively or individually by the States' Attorneys General for any one or more of the following purposes, as the Attorneys

General, in their sole discretion, see fit: (i) payment of attorneys' fees and expenses; (ii) antitrust or consumer protection law enforcement; (iii) to cover additional expenses relating to the ongoing Attorneys General's Investigation and any related litigation; (iv) for deposit into a state antitrust or consumer protection account (e.g., revolving account, trust account), for use in accordance with the state laws governing that account; (v) for deposit into a fund exclusively dedicated to assisting state attorneys general enforce the antitrust laws by defraying the costs of a) experts, economists, and consultants in multistate antitrust investigations and litigation, b) training or continuing education in antitrust for attorneys in state attorney general offices, or c) information management systems used in multistate antitrust investigations and litigation; or (vi) for such other purpose as the Attorneys General deem appropriate, consistent with the various states' laws.[3]

IV. SETTLEMENT ADMINISTRATION

A. The Escrow Agent for the Settlement Accounts shall be Huntington National Bank.

1. Other than maintaining an account to meet short-term obligations, the Escrow Agent shall invest the funds in the Settlement Accounts in obligations of, or obligations guaranteed by, the United States of America or any of its departments or agencies, to obtain the

[3] Colorado's allotted share is to be held, along with any interest thereon, in trust by the Attorney General to be used for reimbursement of the State's actual costs and attorneys' fees, the payment of restitution, if any, and for future consumer fraud or antitrust enforcement actions, consumer education, and public health initiatives. Connecticut's allotted share shall be deposited as follows: (a) One Hundred Fifty Thousand Dollars ($150,000) shall be deposited into the State's Department of Consumer Protection "Prescription Drug Monitoring Fund;" (b) Any amounts paid to the State of Connecticut for reimbursement to the state's Medicaid program shall be deposited with the State's Department of Social Services; and (c) The remaining amount shall be deposited into the State's General Fund. Wyoming's allocated share shall be used by the Attorney General of the State of Wyoming as trustee to hold and distribute such amount, pursuant to Wyoming Statute § 9-1-639(a)(i), exclusively for the purpose of addressing consumer protection matters in the State of Wyoming, including future consumer protection enforcement, consumer education, litigation, or grants or other aid to agencies and organizations approved by the Attorney General of the State of Wyoming at his sole discretion. Any interest accruing to these funds will remain with the fund. Vermont's share shall be used in accordance with the Constitution of the State of Vermont, Ch. II, § 27, and 32 V.S.A. § 462.

highest available return on investment, and shall reinvest the proceeds of these instruments as they mature in similar instruments at their then-current market rates. The Cephalon Parties shall bear no risk related to the investment of the escrow funds.

2. The Escrow Agent shall not disburse the funds of the Settlement Accounts except by an order of the District Court or pursuant to Written Direction.

3. All funds held by the Escrow Agent shall be deemed to be in the custody of the District Court, and shall remain subject to the jurisdiction of the District Court, until the funds shall be distributed pursuant to the Settlement Agreement, Distribution Plan, and/or further order(s) of the District Court.

B. Tax Treatment of Settlement Accounts:

1. Parties and Escrow Agent agree to treat the Settlement Accounts as being, at all times, a "qualified settlement fund" within the meaning of Treas. Reg. § 1.468B-1(a). In addition, the Escrow Agent and, as required, the Parties shall jointly and timely make such reasonable elections that are necessary or advisable to carry out the provisions of this Section, including the "relation-back election" (as defined in Treas. Reg. § 1.468B-1(j)(2)(M)), back to the earliest permitted date. Such elections shall be made in compliance with the procedures and requirements contained in such regulation. It shall be the responsibility of the Escrow Agent to timely and properly prepare and deliver the necessary documentation for signature by all necessary Parties, and thereafter to cause the appropriate filing to occur.

2. For the purpose of § 468B of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, the "administrator" shall be the Escrow Agent. The Escrow Agent shall timely and properly file all informational and other tax returns necessary or advisable with respect to the Settlement Accounts (including without limitation the

returns described in Treas. Reg. § 1.468B-2(k) and (1)). Such returns (as well as any election as described in Paragraph IV.B.1above, shall be consistent with this Section IV, and in all events shall reflect that all taxes (including any estimated taxes, interest or penalties) on the income earned by the Settlement Accounts shall be paid out of the Settlement Accounts.

3. All taxes (including any estimated taxes, interest or penalties) arising with respect to the income earned by the Settlement Accounts, including any taxes that may be imposed upon the Cephalon Parties with respect to any income earned by the Settlement Accounts for any period during which the Settlement Accounts do not qualify as a "qualified settlement fund" for federal, state, or local income tax purposes ("Taxes") shall be paid out of the Settlement Accounts and in all events the Cephalon Parties and their insurers shall have no liability or responsibility for such Taxes or the filing of any tax returns or other documents with the Internal Revenue Service or any other state or local taxing authority in respect of such Taxes. Taxes shall be treated as, and considered to be, a Settlement Administration Cost and shall be timely paid by the Settlement Administrator out of the Settlement Accounts without prior order from the District Court, and the Settlement Administrator and the Escrow Agent shall be obligated (notwithstanding anything herein to the contrary) to withhold from distribution to Plaintiff States any funds necessary to pay such amounts including the establishment for adequate reserves for any Taxes (as well as any amounts that may be required to be withheld under Treas. Reg. § 1.468B-2(1)(2)). The Cephalon Parties and their insurers are not responsible and shall have no liability for such withholdings or for any reporting requirements that may relate thereto. The Parties agree to cooperate with the Settlement Administrator, Escrow Agent, each other, and their tax attorneys and accountants to the extent reasonably necessary to carry out

the provisions of this Paragraph IV. For purposes of this Paragraph, references to the Settlement Accounts shall include the Settlement Accounts and any earnings thereon.

V. REQUESTS FOR APPROVAL AND NOTICE

A. Plaintiff States intend to seek approval from the District Court for the actions that the Parties contemplate for the Consumer Compensation Account and the State Disgorgement, Costs, and Fees Account. Within seven (7) days of this Settlement Agreement being finally executed, Plaintiff States will file a Motion for Preliminary Approval Order. Plaintiff States shall provide a copy of such motion (including all exhibits and attachments to such motion) to the Cephalon Parties for comment in advance of filing.

B. Plaintiff States shall disseminate Notice of the Settlement Agreement to potentially affected Eligible Consumers in the manner and within the time directed by the District Court. The Parties contemplate a Notice Period of ninety (90) days, unless another time period is set by the District Court.

C. Within thirty (30) days following the conclusion of the Notice Period or as otherwise directed by the District Court, Plaintiff States shall file with the District Court a Motion for a Final Approval Order. At least seven (7) days prior to filing their Motion for a Final Approval Order, Plaintiff States shall provide a copy of such motion (including all exhibits and attachments to such motion) to the Cephalon Parties for comment.

VI. RELEASED CLAIMS

A. Upon entry of the Final Approval Order and only as permitted by law, each Plaintiff State shall unconditionally, fully and finally release and forever discharge the Released Parties from all Released Claims.

B. Each Plaintiff State hereby covenants and agrees that it shall not sue or otherwise seek to establish or impose liability, in any capacity and on behalf of itself or any other person or entity or class thereof, against any Released Party based, in whole or in part, on any of the Released Claims. The Final Approval Order shall be deemed *res judicata* of any Released Claim.

C. In addition, the Parties expressly waive, release and forever discharge any and all provisions, rights and benefits conferred by §1542 of the California Civil Code, which reads:

> **Section 1542. General Release; extent.** A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor;

or by any law of any state or territory of the United States or other jurisdiction, or principle of common law, which is similar, comparable or equivalent to § 1542 of the California Civil Code. The Parties may hereafter discover facts other than or different from those which he, she or it knows or believes to be true with respect to the Released Claims, but each Party hereby expressly waives and fully, finally and forever settles, releases and discharges, upon this Settlement becoming final, any known or unknown, suspected or unsuspected, asserted or unasserted, contingent or non-contingent claim that would otherwise fall within the definition of Released Claims, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts. This provision shall not in any way expand the scope of the Released Claims and shall not convert what is a limited release into a general release.

VII. COOPERATION AND IMPLEMENTATION

A. The Parties, and their respective counsel, agree to cooperate fully to implement the terms and conditions of this Settlement Agreement.

B. The Cephalon Parties waive notice under the tolling agreement with any Plaintiff State and of any claims asserted by any Plaintiff State in the State Complaint.

VIII. NO ADMISSION

A. Neither the Settlement, the Settlement Payment, nor the Settlement Agreement shall be used or construed by any person as an admission of liability by the Cephalon Parties to any party or person, or be deemed evidence of any violation of any statute or law or admission of any liability or wrongdoing by the Cephalon Parties or of the truth of any of the claims or allegations contained in the Related Cases.

IX. BENEFIT AND BINDING EFFECT

A. The terms of this Settlement Agreement shall be binding on, and shall inure to the benefit of the Parties and their successors. The Parties expressly disclaim any intention to create rights under this Settlement Agreement which may be enforced by any other person under any circumstances whatsoever.

X. MISCELLANEOUS

A. The Cephalon Parties may file the Settlement Agreement and/or the Final Approval Order in any action that may be brought against them to support a defense or counterclaim based on principles of res judicata, collateral estoppel, release, good faith settlement, judgment, bar or reduction or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

B. Liaison Counsel for the States are expressly authorized by the States to execute this Settlement Agreement on their behalf and take all appropriate action required or permitted to be taken pursuant to the Settlement Agreement to effectuate its terms.

C. Each counsel or other person executing the Settlement Agreement on behalf of any party hereto warrants that such person has full authority to do so.

D. This Settlement Agreement contains the entire agreement and understanding of the Parties. There are no additional promises or terms of the Settlement Agreement other than those contained herein. This Settlement Agreement shall not be modified except in writing signed by counsel for Liaison States and the Cephalon Parties or by their authorized representatives.

E. All dates and time periods in this Settlement Agreement shall be calculated pursuant to the Federal Rules of Civil Procedure. All such dates and time periods may be modified if mutually agreed upon, in writing, signed by counsel for Liaison States and the Cephalon Parties or by their authorized representatives.

F. Each of the parties hereto participated materially in the drafting of this Settlement Agreement. None of the parties hereto shall be considered the drafter of this Settlement Agreement or any provision hereof for the purpose of any statute, case law or rule of interpretation or construction that would or might cause any provision to be construed against the drafter thereof.

G. The captions contained in this Settlement Agreement are inserted only as a matter of convenience and in no way define, limit, extend, or describe the scope of this Settlement Agreement or the intent of any provision hereof.

H. The Settlement Agreement may be executed in one or more counterparts. Scanned signatures, digital signatures or signatures received by facsimile or PDF shall be treated the same as originals for the Settlement Agreement and any written, agreed modification thereof. All executed counterparts and each of them shall be deemed to be one and the same instrument.

I. The terms of the Settlement Agreement shall control in the event there are any conflicting terms in any related document.

J. The Settlement Agreement and any related documents shall be subject to, governed by and construed, interpreted and enforced pursuant to the internal laws of the Commonwealth of Pennsylvania, without regard to choice of law principles.

K. The District Court shall retain jurisdiction with respect to the implementation and enforcement of the terms of the Settlement Agreement, and all Parties hereby submit to the exclusive jurisdiction of the District Court for purposes of implementing and enforcing the Settlement Agreement.

L. Any and all notices, requests, consents, directives, or communications by any party intended for any other party shall be in writing and shall, unless expressly provided otherwise herein, be provided by United States mail and electronic mail to:

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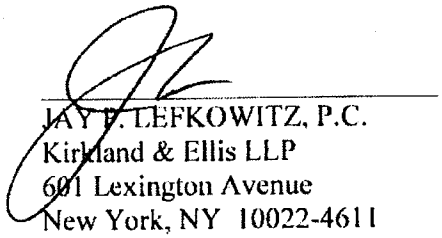
Counsel for the Defendants

Any one of the Parties may, from time to time, change the address to which such notices, requests, consents, directives, or communications are to be delivered, by giving the other Parties prior written notice of the changed address, in the manner herein above provided, ten (10) calendar days before the change is effective.

BARR LABORATORIES, INC.,
TEVA PHARMACEUTICAL INDUSTRIES LTD.,
TEVA PHARMACEUTICALS USA, INC., and
CEPHALON, INC.



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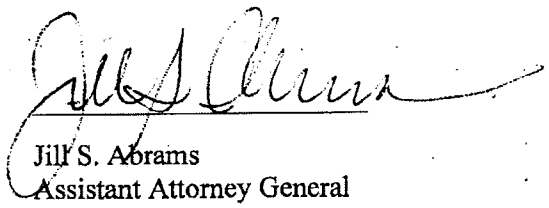

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EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

FEDERAL TRADE COMMISSION, 600 Pennsylvania Avenue, N.W. Washington, D.C. 20580 Plaintiff, v. CEPHALON, INC., 41 Moores Road Frazer, Pennsylvania 19355 Defendant.	:	CIVIL ACTION No. 2:08-cv-2141

STIPULATED ORDER FOR PERMANENT INJUNCTION AND EQUITABLE MONETARY RELIEF

Plaintiff, the Federal Trade Commission ("Commission"), filed its Complaint for Injunctive Relief, subsequently amended as Plaintiff Federal Trade Commission's First Amended Complaint for Injunctive Relief, ("Complaint"), in this matter pursuant to Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b). The Commission, Cephalon, Inc. ("Cephalon") and Teva Pharmaceutical Industries Ltd. ("Teva") have reached an agreement to resolve this case through settlement, and without trial or final adjudication of any issue of fact or law, and stipulate to entry of this Stipulated Order for Permanent Injunction and Equitable Monetary Relief ("Order") to resolve all matters in dispute in this action.

THEREFORE, IT IS ORDERED as follows:

DEFINITIONS

For purposes of this Order, the following definitions apply:

1. "Commission" means the United States Federal Trade Commission.

2. "Cephalon" means Cephalon, Inc.

3. "Cephalon Group" means Cephalon, any joint venture, subsidiary, division, group, or affiliate Controlled currently or in the future by Cephalon that engages in Commerce in the United States, their successors and assigns, and the respective directors, officers, employees, agents and representatives acting on behalf of each.

4. "Teva" means Teva Pharmaceutical Industries Ltd.

5. "Teva US Entities" means any joint venture, subsidiary, division, group, or affiliate Controlled currently or in the future by Teva that engages in Commerce in the United States.

6. "Teva Group" means Teva, Teva US Entities, their successors and assigns, and the respective directors, officers, employees, agents, and representatives acting on behalf of each.

7. "Cephalon Parties" mean Cephalon, Cephalon Group, Teva and Teva Group.

8. "ANDA" means an Abbreviated New Drug Application filed with the United States Food and Drug Administration pursuant to Section 505(j) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C.§ 355(j).

9. "ANDA Filer" means a party to a Brand/Generic Settlement who controls an ANDA for the Subject Drug Product or has the exclusive right under such ANDA to distribute the Subject Drug Product.

10. "ANDA Product" means a Drug Product manufactured under an ANDA.

11. "Brand/Generic Settlement" means any agreement or understanding that settles a Patent Infringement Claim in or affecting Commerce in the United States.

12. "Brand/Generic Settlement Agreement" means a written agreement that settles a Patent Infringement Claim in or affecting Commerce in the United States.

13. "Branded Subject Drug Product" means a Subject Drug Product marketed, sold or distributed in the United States under the proprietary name identified in the NDA for the Subject Drug Product.

14. "Commerce" has the same definition as it has in 15 U.S.C. § 44.

15. "Control" or "Controlled" means the holding of more than fifty percent (50%) of the common voting stock or ordinary shares in, or the right to appoint more than fifty percent (50%) of the directors of, or any other arrangement resulting in the right to direct the management of, the said corporation, company, partnership, joint venture or entity.

16. "Drug Product" means a finished dosage form (e.g., tablet, capsule, or solution), as defined in 21 C.F.R. § 314.3(b), that contains a drug substance, generally, but not necessarily, in association with one or more other ingredients.

17. "NDA" means a New Drug Application filed with the United States Food and Drug Administration pursuant to Section 505(b) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. § 355(b), including all changes or supplements thereto which do not result in the submission of a new NDA.

18. "NDA Holder" means a party to a Brand/Generic Settlement that controls the NDA for the Subject Drug Product or has the exclusive right to distribute the Branded Subject Drug Product.

19. "U.S. Patent" means any patent issued by the United States Patent and Trademark Office, including all renewals, derivations, divisions, reissues, continuations, continuations-in part, modifications or extensions thereof.

20. "Patent Infringement Claim" means any allegation threatened in writing or included in a complaint filed with a court of law, that an ANDA Product may infringe any U.S. Patent held by, or exclusively licensed to, an NDA Holder.

21. "Payment by the NDA Holder to the ANDA Filer" means transfer of value by the NDA Holder to the ANDA Filer (including, but not limited to, money, goods or services), regardless of whether the ANDA Filer purportedly transfers value in return, where such transfer is either (i) expressly contingent on entering a Brand/Generic Settlement Agreement, or (ii) agreed to during the 60 day period starting 30 days before executing a Brand/Generic Settlement Agreement and ending 30 days after executing a Brand/Generic Settlement Agreement. The following, however, are not Payment by the NDA Holder to the ANDA Filer:

    a. compensation for saved future litigation expenses not to exceed a maximum limit, which is initially set at seven million dollars ($7,000,000), and shall be increased (or decreased) as of January 1 of each year by an amount equal to the percentage increase (or decrease) from the previous year in the annual average Producer Price Index for Legal Services (Series Id. PCU5411--5411--) published by the Bureau of Labor Statistics of the United States Department of Labor, or its successor;

    b. provisions in a Brand/Generic Settlement Agreement providing a date after which an ANDA Filer can begin selling, offering for sale or distributing the Subject Drug Product;

c. provisions in a Brand/Generic Settlement Agreement through which the NDA Holder provides the ANDA Filer an exclusive license to the Subject Drug Product;

d. provisions in a Brand/Generic Settlement Agreement that permit an ANDA Filer to begin selling, offering for sale, or distributing the Subject Drug Product once another drug company begins selling, offering for sale, or distributing the Subject Drug Product;

e. an agreement to settle or resolve a different litigation claim, so long as that separate agreement independently complies with the terms of this Order (including the timing provisions above); and

f. continuation or renewal of a pre-existing agreement so long as (i) the pre-existing agreement was entered at least 90 days before the relevant Brand/Generic Settlement Agreement, (ii) the terms of the renewal or continuation, including the duration and the financial terms, are substantially similar to those in the pre-existing agreement, and (iii) entering the continuation or renewal is not expressly contingent on agreeing to a Brand/Generic Settlement.

22. "Related Case" means (a) any of the following cases, or any case consolidated with or merged into the following cases: *King Drug Co., et al. v. Cephalon, Inc., et al.*, No 06-1797 (E.D. Pa.) ("Direct Purchaser Class Case"); *Vista Healthplan, Inc., et al. v. Cephalon, Inc., et al.*, No. 06-1833 (E.D. Pa.) ("End Payor Class Case"); *Apotex, Inc. v. Cephalon, Inc., et al.*, No. 06-2768 (E.D. Pa.); *Rite Aid Corp. v. Cephalon, Inc., et al.*, No. 09-3820 (E.D. Pa.); *Walgreen Co. v. Cephalon, Inc., et al.*, No. 09-3956 (E.D. Pa.); and *Giant Eagle, Inc. v. Cephalon, Inc., et al.*, No. 10-5164 (E.D. Pa.); or (b) any other

government investigation or litigation that is threatened in writing or filed that seeks to recover damages or equitable monetary relief based on alleged anticompetitive or other unlawful practices by the Cephalon Parties in connection with (i) the procurement, listing or enforcement of patents related to the drug Provigil®, (ii) FDA exclusivities related to the drug Provigil®, or (iii) settling litigation related to the drug Provigil®.

23. "Subject Drug Product" means the Drug Product for which one or more Patent Infringement Claims are settled under a given Brand/Generic Settlement. For purposes of this Order, the Drug Product of the NDA Holder and the ANDA Filer to the same Brand/Generic Settlement shall be considered to be the same Subject Drug Product.

24. "Verified Accounting" means a written statement by a representative of the Cephalon Parties, made pursuant to 28 U.S.C. § 1746, that verifies the relevant details of each relevant settlement and judgment.

FINDINGS

1. This Court has jurisdiction over the parties and the subject matter of this action. Teva has stipulated that, for purposes of this Order alone, the Court has personal jurisdiction over Teva.

2. Venue for this matter is proper in this Court under Sections 5(a) and 13(b) of the FTC Act, 15 U.S.C. §§ 45(a), 53(b).

3. The Complaint charges that Cephalon engaged in anticompetitive acts that constitute an unfair method of competition in violation of Sections 5(a) and 13(b) of the FTC Act, 15 U.S.C. §§ 45(a) and 53(b), by entering agreements that delayed the launch of generic equivalents of the name-brand drug Provigil®.

4. In *FTC v. Actavis*, 133 S. Ct. 2223 (2013), the United States Supreme Court held that certain agreements to settle patent litigation can violate the United States antitrust laws, including the FTC Act.

5. Cephalon has answered the Complaint denying the charges, and disputes that the Commission is entitled to obtain relief, including monetary relief under Section 13(b) of the FTC Act.

6. Cephalon admits the facts necessary to establish the personal and subject matter jurisdiction of this Court in this matter only.

7. The Court denied Cephalon's motion for summary judgment.

8. The Commission and Cephalon have agreed to stipulate to entry of this Order to resolve the litigation between them.

9. Cephalon waives any claim that it may have under the Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action through the date of this Order, and agrees to bear its own costs and attorney fees in this action.

10. Cephalon waives all rights to appeal or otherwise challenge or contest the validity of this Order.

11. This Order does not constitute any evidence against the Cephalon Parties, or an admission of liability or wrongdoing by the Cephalon Parties in this case, any Related Case, or any other case or proceeding. This Order shall not be used in any way, as evidence or otherwise, in any Related Case or other proceeding; *provided that*, nothing in this provision prevents the Commission from using this Order in this case, in any proceeding regarding enforcement or modification of this Order, or as otherwise required by law.

12. Entry of the Order satisfies the requests for relief made by the FTC in its complaint and is in the public interest.

STIPULATIONS

1. Teva stipulates that, in return for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Teva agrees to be fully bound by the terms of this Order.
2. Teva stipulates that it will not object to the Commission's right to seek relief under this Order against Teva to the same extent the Commission can seek relief against Cephalon (or Cephalon's successors and assigns). Teva does not otherwise waive its right to contest any enforcement action against it.
3. For purposes of this Order alone, Teva does not contest personal jurisdiction of this Court over Teva. Teva is an Israeli company with its principal place of business at 5 Basel Street, Petah Tikva, 49131, Israel.
4. Teva stipulates that it is the ultimate corporate parent of Cephalon.
5. Teva stipulates that venue for this matter is proper in this Court under Sections 5(a) and 13(b) of the FTC Act, 15 U.S.C. §§ 45(a), 53(b).
6. Teva stipulates that all stipulations herein are made on behalf of, and include, Teva and Teva Group.
7. The Cephalon Parties stipulate that they shall comply with the provisions of this Order pending its entry by the Court.

ORDER

I. Prohibited Agreements

IT IS ORDERED that

A. From the date this Order is signed by Cephalon and Teva, the Cephalon Parties are prohibited from, together or separately, entering into any Brand/Generic Settlement that includes: (1) Payment by the NDA Holder to the ANDA Filer; and (2) an agreement by the ANDA Filer not to research, develop, manufacture, market or sell the Subject Drug Product for any period of time,

provided, however, that any agreement entered into by an entity prior to that entity becoming part of the Cephalon Parties is not subject to the terms of this Order;

provided further, however, that the Cephalon Parties may enter into any written agreement that receives the prior approval of the Commission. Within thirty (30) days of receiving a request for prior approval under this paragraph, the Director of the Bureau of Competition (or his or her designee) shall consider the request in good faith and shall notify the requesting party in writing whether Commission staff believes the relevant agreement raises issues under Section 5 of the FTC Act and the reasons for such a belief, or this Order shall be deemed not to preclude the requesting party from entering into the subject written agreement.

B. Nothing in this Order shall prohibit the Cephalon Parties from purchasing, merging with, or otherwise acquiring or being acquired by any party with which a Cephalon Party has entered a Brand/Generic Settlement.

C. In the event of a material change in the law governing the antitrust implications of Brand/Generic Settlements, the Commission will consider, in good faith, modifications to this Order proposed by the Cephalon Parties.

II. Equitable Monetary Relief

IT IS FURTHER ORDERED that

A. The Cephalon Parties shall pay One Billion and Two Hundred Million Dollars (US$ 1,200,000,000) as equitable monetary relief, which shall be used for a settlement fund ("Settlement Fund") in accordance with the terms of this Order, including the Settlement Fund Disbursement Agreement, attached hereto as Exhibit A.

B. Subject to Paragraphs II.C and II.D, no later than the thirtieth day following the date of entry of this Order, the Cephalon Parties shall deposit the Settlement Fund into an escrow account to be designated by the Commission ("Settlement Account") and to be administered by the Commission or its agent. As set forth in the Settlement Fund Disbursement Agreement, the amount of the Settlement Fund that is deposited into the Settlement Account shall be held in trust to satisfy the amount of any settlement or judgment in a Related Case.

C. Any amount that the Cephalon Parties have paid in settlement or judgment in the Related Cases prior to the thirtieth day following the date of entry of this Order shall be credited against the Settlement Fund, and the total amount to be deposited by the Cephalon Parties into the Settlement Account shall be reduced accordingly.

D. If the Cephalon Parties have signed a binding settlement agreement or binding term sheet to resolve a Related Case prior to the thirtieth day following the date of the entry of this Order, the amount agreed to be paid in settlement of such Related Case shall be credited against the Settlement Fund, and the amount to be deposited by the Cephalon Parties into the Settlement Account shall be reduced accordingly. In the event that such a settlement is disapproved by the court or otherwise terminated, the Cephalon Parties shall deposit the amount of any uncommitted settlement funds into the Settlement Account within four (4) months of such

disapproval or termination, unless the Director of the Bureau of Competition or his or her designee determines that, for good cause shown, the monies may continue to be maintained by the Cephalon Parties for settlement of Related Cases for such period as the Director of the Bureau of Competition or his or her designee prescribes.

E. The Cephalon Parties shall submit to the Commission a Verified Accounting of all individual credits against the Settlement Fund under Paragraphs II.C and II.D no later than sixty (60) days after the date of the entry of this Order. The Cephalon Parties shall submit the Verified Accounting to the Secretary of the Commission and send an electronic version of the Verified Accounting to the Compliance Division of the Bureau of Competition at bccompliance@ftc.gov.

F. The payment provided for herein is provided for purposes of settlement only. No portion of the payment shall constitute, or shall be construed as constituting, a payment in lieu of treble damages, fines, penalties, punitive damages or forfeitures.

III. Reporting Requirements

IT IS FURTHER ORDERED that:

A. The Cephalon Parties shall submit to the Commission a verified written report setting forth in detail the manner and form in which the Cephalon Parties have complied and are complying with this Order:

1. Within sixty (60) days after entry of this Order, and

2. On the first anniversary of entry of this Order, and annually thereafter for nine (9) years.

B. The Cephalon Parties shall include with each verified written report required by this provision, a copy of any additional agreement with a party to a Brand/Generic Settlement to

which a Cephalon Party is also signatory if (i) the relevant Brand/Generic Settlement Agreement includes an agreement by the ANDA Filer not to research, develop, manufacture, market or sell the Subject Drug Product for any period of time, and (ii) the relevant additional agreement is entered within a year of executing the Brand/Generic Settlement Agreement, *provided that,* the Cephalon Parties do not need to submit any additional agreement that they submitted to the Commission with a prior verified written report required by this provision;

C. The Cephalon Parties shall submit each report required under this paragraph to the Secretary of the Commission and shall send an electronic copy of each report to the Compliance Division of the Bureau of Competition of the Commission at bccompliance@ftc.gov.

D. No information or documents obtained by the means provided in this Paragraph shall be divulged by the Commission to any person other than an authorized representative of the Commission, except in the course of a legal proceeding regarding enforcement or modification of this Order, or as otherwise required by law.

E. This Order does not alter the reporting requirements of the Cephalon Parties pursuant to Section 1112 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003.

IV. Change of Corporate Control

IT IS FURTHER ORDERED that

A. The Cephalon Parties shall notify the Commission at least thirty (30) days prior to any proposed dissolution, acquisition, merger, or consolidation of Teva that might affect compliance obligations arising out of this Order.

B. The Cephalon Parties shall submit any notice required under this paragraph to the Secretary of the Commission and shall send an electronic copy of the notification to the

Compliance Division of the Bureau of Competition of the Commission at bccompliance@ftc.gov.

C. No information or documents submitted pursuant to this Paragraph shall be divulged by the Commission to any person other than an authorized representative of the Commission, except in the course of a legal proceeding regarding enforcement or modification of this Order, or as otherwise required by law.

V. Access to Information

A. For the purpose of determining or securing compliance with this Order, subject to any legally recognized privilege, and upon written request with reasonable notice to the Cephalon Parties, the Cephalon Parties shall permit any duly authorized representative of the Commission:

1. Access, during office hours and in the presence of counsel, to all facilities and access to inspect and copy, at the Cephalon Parties' expense, non-privileged books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of the Cephalon Parties reasonably related to this Order; and

2. Upon reasonable notice to the Cephalon Parties, to interview a reasonable number of officers, directors, or employees of the Cephalon Parties, who may have counsel present, regarding any such matters.

B. No information or documents obtained by the means provided in this Paragraph shall be divulged by the Commission to any person other than an authorized representative of the Commission, except in the course of a legal proceeding regarding enforcement or modification of this Order, or as otherwise required by law.

VI. Retention of Jurisdiction

IT IS FURTHER ORDERED that this Court retains jurisdiction of this matter for purposes of construction, modification, and enforcement of this Order.

VII. Expiration of Order

IT IS FURTHER ORDERED that this Order shall expire ten (10) years after the date it is entered.

VIII. Dismissal and Costs

This action shall be dismissed with prejudice. Each party shall bear its own costs.

SO ORDERED this 17 day of June, 2015.

Hon. Mitchell S. Goldberg
UNITED STATES DISTRICT JUDGE

SO STIPULATED AND AGREED:

FOR PLAINTIFF FEDERAL TRADE COMMISSION:

_____ Date: _____

Markus H. Meier
Assistant Director
Health Care Division
Bureau of Competition
Federal Trade Commission

FOR CEPHALON, INC.:

Siggi Olafsson Date: 5/22 2015

Name: Siggi Olafsson

Title: President & CEO, Global Generic Medicines

_____ Date: _____

Name:

Title:

_____ Date: _____

James C. Burling
Wilmer Cutler Pickering Hale and Dorr LLP
COUNSEL FOR CEPHALON, INC.

SO STIPULATED AND AGREED:

FOR PLAINTIFF FEDERAL TRADE COMMISSION:

Date: 5/22/15

Markus H. Meier
Assistant Director
Health Care Division
Bureau of Competition
Federal Trade Commission

FOR CEPHALON, INC.:

Date: _____

Name:

Title:

LEGAL AFFAIRS BR

Date: 5/21/2015

Name: Ilciko Mehes

Title: VP & GC, NA Generics

Date: 5/22/2015

James C. Burling
Wilmer Cutler Pickering Hale and Dorr LLP
COUNSEL FOR CEPHALON, INC.

FOR TEVA PHARMACEUTICAL INDUSTRIES LTD.:

Date: 5/21/2015

Name: Eyal Deshe h

Title: EVP and CFO

LEGAL AFFAIRS

Date: 5/21/15

Name: **Dov P. Bergwerk**

Title: SVP, General Counsel-Corporate & Company Secretary

Date: 5/21/15

Jay P. Lefkowitz, P.C.
Kirkland & Ellis LLP
COUNSEL FOR TEVA PHARMACEUTICAL INDUSTRIES LTD.

Federal Trade Commission v. Cephalon, Inc., CA 2:08-cv-2141-MSG

Exhibit A to Stipulated Order for Permanent Injunction and Equitable Monetary Relief

SETTLEMENT FUND DISBURSEMENT AGREEMENT

SETTLEMENT FUND DISBURSEMENT AGREEMENT

Plaintiff, the Federal Trade Commission ("Commission"), Cephalon, Inc. ("Cephalon"), and Teva Pharmaceutical Industries, Ltd. ("Teva") hereby enter into this Settlement Fund Disbursement Agreement, which is Exhibit A to the Stipulated Order for Permanent Injunction and Equitable Monetary Relief. The Settlement Fund Disbursement Agreement and the Stipulated Order for Permanent Injunction and Equitable Monetary Relief are collectively referred to herein as the "Order."

1. Unless otherwise noted herein, the capitalized terms in this Settlement Fund Disbursement Agreement have the same meaning as in the Stipulated Order for Permanent Injunction and Equitable Monetary Relief.

SETTLEMENT ACCOUNT

2. The Settlement Fund required by the Order (except for monies credited against the Settlement Fund under Paragraph II of the Order) will be held in trust in an escrow account established and maintained by the Commission or its agent ("Settlement Account"). The Commission will provide the Cephalon Parties with instructions for wiring the Settlement Fund into the Settlement Account, as well as any other necessary paperwork or instructions. Disbursement of the proceeds of the Settlement Account shall be made by the Commission in accordance with the requirements of the Order.

3. Any interest earned on amounts deposited into the Settlement Account will remain in the Settlement Account, and will become part of the Settlement Fund.

4. The Commission may use the Settlement Fund to pay reasonable costs necessary to administer the Settlement Account. The Cephalon Parties will not be required to pay any additional monies, over and above the Settlement Fund required to be deposited pursuant

to the Order, to cover any expenses, fees, or other costs associated with the Settlement Account.

5. The Cephalon Parties may, no more frequently than once a month, submit a request to the Commission in writing for a statement of the remaining balance in the Settlement Account, and an itemized list of any disbursements made from the Settlement Account. Any such request shall be submitted to the Secretary of the Commission, and, on the same day, an electronic copy of the request shall be submitted to the Compliance Division of the Bureau of Competition of the Commission at bccompliance@ftc.gov and the Financial Management Office of the Commission at Finance@ftc.gov. The Chief Financial Officer of the Commission or his or her designee will provide the information requested within fifteen (15) business days.

DISBURSEMENT OF FUNDS FROM THE SETTLEMENT ACCOUNT

6. Except as provided for in this Settlement Fund Disbursement Agreement, the Settlement Fund shall be held in trust and used solely to satisfy the amount of any settlement (including associated fees, costs, and expenses) reached by the Cephalon Parties in a Related Case, or the amount of any judgment (including associated fees, costs, and expenses) against the Cephalon Parties in a Related Case, regardless of the date of that settlement or judgment.

7. The Cephalon Parties shall submit a list of Related Cases that have not been settled and for which a judgment has not been entered ("Remaining Cases List") on or up to 30 (thirty) days before the five-year anniversary of the entry of this Order, and each year thereafter, until, in the good faith belief of the Cephalon Parties, settlements have been reached, or final judgments entered, in the relevant Related Cases. The Cephalon Parties

shall submit the Remaining Cases List to the Secretary of the Commission, and, on the same day, transmit an electronic copy of the request to the Compliance Division of the Bureau of Competition of the Commission at bccompliance@ftc.gov. If the Cephalon Parties do not submit a Remaining Cases List as provided in this paragraph, or the term of the Order has expired, any monies remaining in the Settlement Account, less reasonable administrative expenses, shall be paid to the Treasurer of the United States.

8. To obtain disbursement from the Settlement Account as authorized by the Order, the Cephalon Parties shall submit a written request for disbursement with the Commission ("Disbursement Request"). The Disbursement Request shall include:

a. a reference to the Order;

b. contact information, including business address, phone number and email address, for the relevant contact person(s) for the Cephalon Parties ("Cephalon Parties' Contact");

c. the identity of the party or parties threatening or asserting a claim in the relevant Related Case ("Settling Parties");

d. contact information, including business address, phone number, e-mail address, and relationship to the Settling Parties, for the contact person(s) for the Settling Parties in the relevant Related Case ("Settling Parties' Contact");

e. a copy of the settlement or judgment in the Related Case for which disbursement is being sought;

f. the complaint filed in the Related Case or other documents sufficient to show the allegations and relief sought by the Settling Parties;

g. the amount of the settlement or judgment in the Related Case ("Disbursement Amount"); and

h. the information necessary to wire the Disbursement Amount from the Settlement Account to the Settling Parties.

9. The Cephalon Parties shall submit the Disbursement Request to the Secretary of the Commission, and on the same day, send an electronic copy of the request to the Compliance Division of the Bureau of Competition of the Commission at bccompliance@ftc.gov.

10. Within ten (10) business days of receiving the Disbursement Request, the Director of the Bureau of Competition or his or her designee ("BC Director") shall

a. if the Disbursement Request complies with the requirements of the Order, authorize transfer of the Disbursement Amount to the Settling Parties and notify the Cephalon Parties' Contact and the Settling Parties' Contact in writing that the transfer has been authorized; or

b. if the BC Director believes that additional information is required to determine the whether the Disbursement Request complies with the requirements of the Order, notify the Cephalon Parties' Contact and the Settling Parties' Contact in writing and identify the additional information required; or

c. if the BC Director believes that the Disbursement Request does not comply with the requirements of the Order, notify the Cephalon Parties' Contact and the Settling Parties' Contact and provide a written explanation why the Disbursement Request has been denied and how, in the BC Director's view, the Disbursement Request does not comply with the requirements of the Order.

11. Within ten (10) business days of receiving the information requested under Paragraph 10 above (if such information is requested), the BC Director shall

    a. if the Disbursement Request complies with the requirements of the Order, authorize transfer of the Disbursement Amount to the Settling Parties and notify the Cephalon Parties' Contact and the Settling Parties' Contact in writing that the transfer has been authorized; or

    b. if the BC Director believes that the Disbursement Request does not comply with the requirements of the Order, notify the Cephalon Parties' Contact and the Settling Parties' Contact and provide a written explanation why the Disbursement Request has been denied and how, in the BC Director's view, the Disbursement Request does not comply with the requirements of the Order.

12. If the Commission and the Cephalon Parties cannot agree on whether a Disbursement Request complies with the requirements of the Order, either party may petition the Court for a determination.

13. Any settlement of the Direct Purchaser Class Case or the End Payor Class Case that is approved by the Court complies with the Order, and a Disbursement Request submitted for any such settlement will be approved provided the requirements of Paragraph 8 are met.

14. Disbursement Requests shall be authorized in the order they are submitted to the Commission by the Cephalon Parties.

15. If this Settlement Fund Disbursement Agreement or any of its provisions are ruled invalid or unenforceable, in whole or in part, the Commission and the Cephalon Parties agree to work together on modifications to effectuate the intent of the settlement.

CONFIDENTIALITY

16. Any information submitted under this Settlement Fund Disbursement Agreement shall not be divulged by the Commission to any person other than an authorized representative of the Commission, except in the course of a legal proceeding regarding enforcement or modification of this Order, or as otherwise required by law.

CLOSING THE SETTLEMENT ACCOUNT

17. The Commission shall close the Settlement Account if the entire Settlement Fund (less any remaining reasonable administrative costs) has been fully disbursed or, in accordance with Paragraph 7, the Commission pays any monies remaining in the Settlement Account (less any remaining reasonable administrative costs) to the Treasurer of the United States. The BC Director shall provide written notice to the Cephalon Parties of the intent to close the Settlement Account no later than thirty (30) days in advance of closing the Settlement Account, and shall provide written notice to the Cephalon Parties when the Settlement Account is closed.

18. The Commission will not close the Settlement Account until all reasonable administrative costs have been paid.

EXHIBIT B

ESCROW AGREEMENT

THIS ESCROW AGREEMENT, dated as of May 16, 2016 ("Escrow Agreement"), is entered into by the State of Ohio, through its Attorney General, on behalf of the Plaintiff States, as defined in the Settlement Agreement, and The Huntington National Bank, an Ohio banking corporation, as Escrow Agent hereunder ("Escrow Agent").

RECITAL

A. Plaintiff States and "Cephalon, Inc., Barr Laboratories, Inc., Teva Pharmaceutical Industries Ltd., and Teva Pharmaceuticals USA, Inc.". (hereinafter Cephalon Parties) have entered into a Settlement Agreement (copy of which is attached hereto and the terms and definitions of which are incorporated herein), pursuant to which the Provigil litigation to be filed by the Plaintiff States against the Cephalon Parties will be resolved, upon court approval. The Settlement Agreement provides that the Cephalon Parties shall submit a Disbursement Request to the Federal Trade Commission under Section II of the Settlement Fund Disbursement Agreement, which is Exhibit A to the Stipulated Order For Permanent Injunction and Equitable Monetary Relief (Dkt. 405, *FTC v. Cephalon*, Case No. 08-2141, E.D. Pa., 6/17/15) (attached as Exhibit 1). The Disbursement Request will request disbursement in the total amount of $125,000,000.00 to be paid to the Escrow Agent for the benefit of the Plaintiff States. These monies will be distributed to various Settlement Accounts and otherwise in accordance with the terms of this Agreement.

B. Pursuant to the Settlement Agreement, the Escrow Agent is to establish three accounts, a separate Consumer Compensation Account, the States' Proprietary Compensation Account, and the States' Disgorgement, Cost and Fees Account (the "Settlement Accounts"), into which the monies paid as described in Paragraph A above are to be applied.

C. Counsel for the Plaintiff States have appointed the Escrow Liaison Counsel for Plaintiff States (as defined below) to represent them for all purposes in connection with the settlement.

D. Counsel for the Plaintiff States, by and through the Liaison Counsel for Plaintiff States, agree to appoint Huntington Bank as the Escrow Agent and Huntington Bank is willing to act as Escrow Agent hereunder in accordance with the terms and conditions of this Escrow Agreement. In order to administer the Escrow Funds (as defined below), the Parties hereto have entered into this Escrow Agreement.

STATEMENT OF AGREEMENT

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto, for themselves, their successors and assigns, hereby agree to the foregoing and as follows:

1. Definitions.

a. All capitalized terms used herein shall have the same meaning as provided

for in the Settlement Agreement, unless the capitalized term is expressly defined herein.

b. "Written Direction" shall mean a written notification, signed by at least two Liaison Counsel for Plaintiff, in the form attached hereto as Exhibit A. Each Written Direction shall include a certification by Liaison Counsel for Plaintiff States that the instructions in the notification are being made pursuant to the Settlement Agreement and this Escrow Agreement and that such Liaison Counsel is authorized to act on behalf of such State or other authority in accordance with the terms of this Agreement.

c. "Escrow Funds" shall mean the $125,000,000.00 deposited as described in Paragraph A above with the Escrow Agent pursuant to this Escrow Agreement, together with any interest and other income thereon, into the Settlement Accounts. These Escrow Funds will be distributed into the Settlement Accounts in accordance with Section 3 below.

d. "Liaison Counsel for Plaintiff States" shall mean, for purposes of this Escrow Agreement, the designated representatives for the Attorneys General of the States of Ohio, Texas and Vermont described in an incumbency certificate and any other designated representatives about which the Escrow Agent is notified in writing.

2. Appointment of and Acceptance by Escrow Agent. The Liaison Counsel for Plaintiff States hereby appoint Huntington Bank to serve as the Escrow Agent hereunder. Escrow Agent hereby accepts such appointment and, upon receipt by wire transfer of the Escrow Funds in accordance with Section 3 below, agrees to hold, invest and disburse the Escrow Funds in accordance with this Escrow Agreement.

3. Creation of the Settlement Accounts. The Escrow Agent shall establish the following accounts ("Settlement Accounts"):

a. Consumer Compensation Account: The Escrow Agent will establish one Consumer Compensation Settlement Account, in the Amount of $35,000,000.00. The Consumer Compensation Account shall be used to fund the Consumer distribution, as described in Section II.A of the Settlement Agreement. The Escrow Agent shall only distribute funds in the Consumer Compensation Account pursuant to a Court-approved Distribution Plan which has become Final within the meaning of Section I paragraph H ("Final Approval Order") and Section II.A(2) of the Settlement Agreement. Any and all interest earned on the Consumer Compensation Account shall accrue to and become a part of the Consumer Compensation Account and shall be used to fund the Consumer.

i. Cephalon Parties will submit a Disbursement Request to the Federal Trade Commission as described in paragraph A in order to effectuate the transfer the sum they are obligated to pay under Section II of the Settlement Agreement to the Escrow Agent, by wire transfer of immediately available funds, to the following account:

The Huntington National Bank, N.A.
ABA # 044000024
National Settlements Wire Account

A/C # 01893320239
FFC Provigil Consumer Compensation Account
A/C # 1087218656

b. States' Proprietary Compensation Account: The States' Proprietary Compensation Account shall be used to fund the compensation to the States, in the Amount of $55,000,000.00, as described in Section II.B of the Settlement Agreement. Any and all interest earned on the States' Compensation Settlement Account shall accrue to and become a part of the States' Proprietary Compensation Settlement Account and shall be apportioned among the Plaintiff States.

i. Cephalon Parties will submit a Disbursement Request to the Federal Trade Commission as described in paragraph A in order to effectuate the transfer the sum they are obligated to pay under Section I paragraph H ("Final Approval Order") and Section II.B(2) of the Settlement Agreement to the Escrow Agent, by wire transfer of immediately available funds, to the following account:

The Huntington National Bank, N.A.
ABA # 044000024
National Settlements Wire Account
A/C # 01893320239
FFC Provigil States' Proprietary Compensation Account
A/C # 10872187109

ii. The States' Proprietary Compensation Account, as established pursuant to this Section, shall be tax-free.

c. States' Disgorgement, Cost & Fees Account: The State" Disgorgement, Cost & Fees Account shall be used to pay the States and fund Settlement Administration Costs, in the total Amount of $35,000,000.00., as described in Section II.C of the Settlement Agreement. Any and all interest earned on the States' Disgorgement, Fees & Costs Account shall accrue to and become part of the States' Disgorgement, Fees & Costs Account and shall be used to pay the States and the Settlement Administration Costs.

i. Cephalon Parties will submit a Disbursement Request to the Federal Trade Commission as described in paragraph A in order to effectuate the transfer the sum they are obligated to pay under Section I paragraph H ("Final Approval Order") and Section II.C(2) of the Settlement Agreement to the Escrow Agent, by wire transfer of immediately available funds, to the following account:

The Huntington National Bank, N.A.
ABA # 044000024
National Settlements Wire Account

A/C # 01893320239
FFC Provigil Disgorgement Account
A/C # 1087218754

ii. If, after final distribution of all funds in the Consumer Compensation Settlement Account and after payment of all incurred, committed or anticipated Settlement Administration Costs, as defined in the Settlement Agreement, there are any unused funds remaining, the Escrow Agent shall pay the remaining funds as directed by Liaison Counsel for Plaintiff States or by order of Court.

4. Disbursement of Escrow Funds. The Escrow Agent shall disburse Escrow Funds, at any time and from time to time, in accordance with the Written Directions from the Liaison Counsel for Plaintiff States or by order of the Court. The Escrow Agent shall not disburse Escrow Funds except pursuant to Written Directions from the Liaison Counsel for Plaintiff States or by order of Court.

5. Termination of Settlement Agreement. If the Settlement Agreement is not approved, all monies paid into the Settlement Accounts shall be refunded to the same Federal Trade Commission fund as described in Paragraph A above, reduced by the amount of actual out-of-pocket costs and expenses incurred in the administration of the Settlement to the date of disapproval. In such case, refund shall occur within ten (10) business days of the Court's decision becoming Final.

6. Investment of Funds. At the Written Direction of Liaison Counsel, the Escrow Agent shall invest the Escrow Funds in obligations of, or obligations guaranteed by, the United States of America or any of its departments or agencies, and shall reinvest the proceeds of these instruments as they mature in similar instruments at their then current market rates. The Escrow Funds shall be deemed and considered to be in *custodia legis* of the Court, and shall remain subject to the jurisdiction of the Court, until such time as such funds are dispersed pursuant to the Settlement Agreement or upon further order(s) of the Court.

The Escrow Agent shall not bear any risks related to the investment of the Settlement Fund in accordance with the provisions of this Escrow Agreement. The Escrow Agent will be indemnified by the Settlement Fund1, and held harmless against, and with respect to, any and all loss, liability, damage or expense (including, but without limitation, attorneys' fees, costs and disbursements) that the Escrow Agent may suffer or incur in connection with this Escrow Agreement and its performance hereunder or in connection herewith, except to the extent such loss, liability, damage or expense arises from its bad faith, misconduct or negligence as adjudicated by a court of competent jurisdiction.

7. Preparation and Payment of Taxes. The Settlement Accounts shall be treated as being, at all times from and after expiration or waiver of the period within which the Cephalon Parties may void the Settlement under Section IV of the Settlement Agreement, a "qualified

1 The State of Ohio, as well as all Plaintiff States and all Plaintiff States' Attorneys General, shall not be liable for anything with pertaining to this agreement and furthermore, shall not indemnify anyone with respect to this agreement.

settlement fund" within the meaning of Treas. Reg. § 1.468B-1(a). In addition, the claims administrator, A.B. Data, and, as required, settling parties shall jointly and timely make such elections as necessary or advisable to carry out the provisions of Section IV.B of the Settlement Agreement, including the "relation-back election" (as defined in Treas. Reg. § 1.468B-1(j)(2)(ii)), back to the earliest permitted date. Such elections shall be made in compliance with the procedures and requirements contained in such regulation. It shall be the responsibility of the claims administrator to timely and properly prepare and deliver the necessary documentation for signature by all necessary parties, and thereafter to cause the appropriate filing to occur. For the purpose of § 468B of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, the "administrator" shall be the Escrow Agent. The claims administrator shall timely and properly file all informational and other tax returns necessary or advisable with respect to the Settlement Accounts (including without limitation the returns described in Treas. Reg. § 1.468B-2(k and l)). The claims administrator may engage an accounting firm or tax preparer to assist in the preparation of any tax reports or the calculation of any tax due and the expense of such assistance shall be paid from the Settlement Fund. Such returns shall reflect that all taxes (including any estimated taxes, interest or penalties) on the income earned by the Settlement Accounts shall be paid out of the Settlement Accounts as provided in Section II. B.(3) of the Settlement Agreement. All taxes (including any estimated taxes, interest or penalties) arising with respect to the income earned by the Settlement Accounts, including any taxes that may be imposed upon Cephalon Parties with respect to any income earned by the Settlement Accounts for any period during which the Settlement Accounts do not qualify as a "qualified settlement fund" for federal, state, or local income tax purposes ("Taxes") shall be paid out of the Settlement Accounts and in all events Cephalon Parties and their insurers shall have no liability or responsibility for such Taxes or the filing of any tax returns or other documents with the Internal Revenue Service or any other state or local taxing authority in respect of such Taxes. Taxes shall be treated as, and considered to be, a cost of administration of the Settlement Agreement and shall be timely paid by the Escrow Agent out of the Settlement Cost Account without prior order from the Court and the Escrow Agent shall be obligated (notwithstanding anything herein to the contrary) to withhold from distribution to Plaintiff States any funds necessary to pay such amounts including the establishment for adequate reserves for any Taxes (as well as any amounts that may be required to be withheld under Treas. Reg. § 1.468B-2(l), (2)).

8. Registration and Removal of Escrow Agent. Escrow Agent may resign from the performance of its duties hereunder at any time by giving sixty (60) days prior written notice to the Liaison Counsel for Plaintiff States or may be removed, with or without cause, by the Liaison Counsel for Plaintiff States, by furnishing Written Direction to Escrow Agent, at any time by the giving of thirty (30) days prior written notice to Escrow Agent. Such resignation or removal shall take effect upon the appointment of a successor Escrow Agent as provided herein. Upon any such notice of resignation or removal, the Liaison Counsel for Plaintiff States shall appoint a successor Escrow Agent hereunder. Upon the acceptance in writing of any appointment as Escrow Agent hereunder by a successor Escrow Agent, such successor Escrow Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Escrow Agent, and the retiring Escrow Agent shall be discharged from its duties and obligations under this Escrow Agreement, but shall not be discharged from any liability for

actions taken as Escrow Agent hereunder prior to such succession. The retiring Escrow Agent shall transmit all records pertaining to the Settlement Accounts and shall pay all Escrow Funds to the successor Escrow Agent, after making copies of such records as the retiring Escrow Agent deems advisable and after deduction by and payment to the retiring Escrow Agent (after written notice to Liaison Counsel for Plaintiff States) of all fees and expenses incurred by or expected to be incurred by the retiring Escrow Agent in connection with the performance of its duties and the exercise of its rights hereunder.

9. Fees and Expenses of Escrow Agent:

a. Escrow Agent will be compensated in accordance with the terms of Exhibit B. The Escrow Agent is authorized to, and may, disburse to itself from the Escrow Funds, from time to time, the amount of any compensation payable hereunder. Such compensation and reimbursement may be directly disbursed by the Escrow Agent to itself from the Settlement Disgorgement, Fees & Cost Account on a monthly basis, thirty (30) days after giving written notice, consisting of an itemization of compensation earned, to the Liaison Counsel for Plaintiff States.

b. The Escrow Agent understands and agrees that all payments to the Escrow Agent will be made from the Settlement Disgorgement, Fees & Cost Account. The Escrow Agent understands and agrees that neither the Ohio Attorney General nor the State of Ohio are responsible or liable for payments under this Agreement and that the Escrow Agent will look solely to the Settlement Disgorgement, Fees & Cost Account for payment, pursuant to the payment procedures set forth in this Agreement.

10. Reports and Accounting. Escrow Agent will provide monthly reports to the Liaison Counsel for Plaintiff States and to A. B. Data, Ltd., in a form that is acceptable to the Plaintiff States, reflecting income and disbursement activity on the Settlement Accounts for the period and year to date. The Escrow Agent shall further issue a Final Report and Accounting which will summarize the income, expenses, and disbursements associated with the administration of the Settlement Accounts; expenses and disbursements associated with payments to the Plaintiff States; and such other reports as the Liaison Counsel for Plaintiff States may reasonably require from time to time. Reports and the status of all Settlement Accounts shall be accessible to the Liaison Counsel for Plaintiff States on-line. The Escrow Agent will provide the name of the officer who will have principal responsibility of the management of the Settlement Accounts and the Escrow Agent's relationship with the Liaison Counsel for Plaintiff States.

11. Consent to Jurisdiction and Venue. In the event that any party hereto commences a lawsuit or other proceeding relating to or arising from this Escrow Agreement, the Parties hereto agree that the proper court in Ohio shall have the sole and exclusive jurisdiction over any such proceedings. Such Court shall have proper venue for any such lawsuit or judicial proceeding and the Parties hereto waive any objection to such venue. The Parties hereto consent to and agree to submit to the jurisdiction of such Court and agree to accept service of process to vest personal jurisdiction over them in such Court.

12. Notices. All notices and other communications hereunder shall be in writing and shall be deemed to have been validly served, given or delivered five (5) days after deposit in the United States mails, by certified mail with return receipt requested and postage prepaid, when delivered personally, one (1) day after delivery to any overnight courier, or when transmitted by facsimile transmission facilities, and addressed to the party to be notified as follows:

If to Plaintiff States at:

Office of the Attorney General of Ohio
Chief, Antitrust Section
150 E. Gay St., 22nd Floor
Columbus, OH 43215-3428

Office of the Attorney General of Texas
Chief, Antitrust Section
300 W. 15th St., 7th Floor
Austin, TX 78701

Office of the Attorney General of Vermont
Chief, Antitrust Section
109 State Street
Montpelier, VT 05609

If to Escrow Agent at:

The Huntington National Bank
c/o Susan Brizendine, Trust Officer
7 Easton Oval – EA4E
Columbus, OH 43219

The Huntington National Bank
c/o Christopher Ritchie, Senior Vice President
1150 First Avenue, Suite 501
King of Prussia, PA 19406

If to the Settlement Administrator, A. B. Data, LTD.at:

Thomas R. Glenn
A. B. Data, LTD.
600 A B Data Drive
Milwaukee, WI 53217

or to such other address as each party may designate for itself by like notice.

13. Amendment or Waiver. This Escrow Agreement may be changed, waived,

discharged or terminated only by a writing signed by the Liaison Counsel for Plaintiff States and Escrow Agent. No delay or omission by any party in exercising any right with respect hereto shall operate as a waiver. A waiver on any one occasion shall not be construed as a bar to, or waiver of, any right or remedy on any future occasion.

14. Severability. To the extent any provision of this Escrow Agreement is prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Escrow Agreement.

15. Governing Law. This Escrow Agreement shall be construed and interpreted in accordance with the laws of the State of New York without giving effect to the conflict of laws principles thereof.

16. Entire Agreement. This Escrow Agreement and the Settlement Agreement constitutes the entire agreement between the Parties relating to the holding, investment and disbursement of the Escrow Funds and sets forth in their entirety the obligations and duties of Escrow Agent with respect to the Settlement Accounts.

17. Binding Effect. All of the terms of this Escrow Agreement, as amended from time to time, shall be binding upon, inure to the benefit of and be enforceable by the Parties and their respective heirs, successors and assigns.

18. Confidentiality. This Escrow Agreement and the Settlement Agreement, which are incorporated herein, should not be disclosed unless, or until, notification is made in writing to Counsel for the Liaison States.

19. Execution in Counterparts. This Escrow Agreement and any Written Direction may be executed in two or more counterparts, each of which shall be deemed to be an original and all of which when so executed shall constitute one and the same agreement or direction.

20. Dealings. Nothing herein shall preclude the Escrow Agent from acting in any other capacity for any party, person or entity referenced herein.

21. Patriot Act Warranties. Section 326 of the USA Patriot Act (Title III or Pub. L 107-56), as amended from time to time (the "Patriot Act"), requires financial institutions to obtain, verify and record information that identifies each person or legal entity that opens an account (the "Identification Information"). The parties to this Escrow Agreement agree that they will provide the Escrow Agent with such Identification Information as the Escrow Agent may request in order for the Escrow Agent to satisfy the requirements of the Patriot Act.

22. This Agreement will become effective upon signature by the Parties and will continue in effect until June 30, 2018. The Parties agree that this Agreement may be renewed as necessary for successive two (2) year terms beginning July 1, 2018.

IN WITNESS WHEREOF, the Parties hereto have caused this Escrow Agreement to be executed under seal as of the date first above written.

PLAINTIFF STATES

MICHAEL DeWINE, Attorney General for the State of Ohio

By: Mitchell L. Gentile

Title: Assistant Attorney General Antitrust

Huntington Bank, as Escrow Agent

By: Christopher W. Ritchie

Title: Senior Vice President

EXHIBIT A

JOINT WRITTEN DIRECTION
EXAMPLE

STATE OF NEW YORK, ET AL V.
CEPHALON PARTIES PHARMACEUTICAL INDUSTRIES LTD, ET AL,
IN RE PROVIGIL ANTITRUST LITIGATION
ESCROW # _____

In accord with the Escrow Agreement, dated May 16, 2016 and the Settlement Agreement referenced in the Escrow Agreement, the Liaison Counsel for Plaintiff States, all of whom are authorized to direct Huntington Bank as the Escrow Agent to take the following action with respect to the Escrow Funds and/or Settlement Accounts. The Escrow Agent shall

_____

_____

DATED: _____, 2016

PLAINTIFF STATES

MICHAEL DeWINE, Attorney General for the
State of Ohio

By: _____

Title: _____

OR

KEN PAXTON, Attorney General for the
State of Texas

By: _____

Title: _____

OR

WILLIAM SORRELL, Attorney General for the State of Vermont

By: _____

Title: _____

Exhibit B

Schedule of Fees and Expenses

Annual Administration Fee:	Waived
Activity Charges:	Fed Wire - Waived Check - Waived Monthly statement – Waived Document handling – Waived On-line access – Waived

Investment Fee:

For Interest-Bearing or Money Market Account: Waived

For all investment management, purchases, sells, custody and safekeeping of Treasury Securities: Waived

EXHIBIT C

Exhibit C
Provigil® Consumer Distribution

Consumers may be eligible to receive a distribution from the States' Consumer Fund, the Class Consumer Fund, or both, as explained below.

Alternative A:

The $35 million in the settlement for consumer distribution after interest and applicable taxes (the "States' Consumer Fund") will be allocated to Eligible Consumers.

An Eligible Consumer will be entitled to recovery for purchases of Provigil® and/or generic versions of Provigil® (modafinil) from [June 24, 2006] through [March 31, 2012] made in the District of Columbia or any state except for California or Louisiana. The Settlement Administrator will determine whether the consumer paid for those drugs in that time period in those locations.

The States' Consumer Fund will be distributed to Eligible Consumers on a *pro rata* basis, based on the size of their payments eligible for recovery and the money available in the States' Consumer Fund. A "Distribution Amount" will be calculated for each Eligible Consumer, which will be the payments by the Eligible Consumer that are eligible for recovery divided by the total amount of payments eligible for recovery for all Eligible Consumers, multiplied by the States' Consumer Fund. An Eligible Consumer will not receive a distribution greater than the payments eligible for recovery made by that Eligible Consumer.

Alternative B:

If a settlement in *In re Modafinil Antitrust Litigation, Vista Health Plan Inc. v. Cephalon Inc. et al.* 2:06-cv-01833 (E.D. Penn.) provides a monetary distribution to consumers represented by the class ("Class Consumer Fund") the Consumer Distribution Plan is expected to be as follows:

Approximately $25 million (assuming that is the net amount to be distributed to consumers in the class) from the Class Consumer Fund,

+

Approximately $35 million from the States' Consumer Fund

Approximately $60 million total available for consumer distribution

Consumers in California and Louisiana will receive money only from the Class Consumer Fund. Consumers in the other states and the District of Columbia represented by the class will receive money from both the Class Consumer Fund and the States' Consumer Fund. Consumers in the states not represented by the class will receive money only from the States' Consumer Fund. In all instances, consumers will receive only one check from a joint settlement administrator and will not receive a distribution greater than the payments eligible for recovery made by that Eligible Consumer.

Method to Be Used to Determine the Amount Consumers Will Receive

Class Consumer Fund Reimbursement Rate Calculation

The Settlement Administrator will calculate a rate for all consumers represented by the class. Assuming the Class Consumer Fund is approximately $25 million, that amount will be divided by the total of all eligible purchases by consumers represented by the class. Using the class's estimate that consumer damages may be as high as $700 million nationwide and if all purchases by consumers within the class are included, maximum damages for consumers in the class would be $466 million. $25 million divided by $466 million gives a Class Reimbursement Rate of 5.36%.

Total Consumer Fund Reimbursement Rate Calculation

The Settlement Administrator will calculate a "Total Reimbursement Rate" for all Consumer Claims in the District of Columbia and all states except California and Louisiana. The approximate recovery for consumers in the class that are not in California or Louisiana is $19 million. Using the class's estimate that consumer damages may be as high as $700 million nationwide, and if all purchases by consumers represented by the states are included, maximum damages for consumers represented by the states would be $609 million. Adding $19 million to the $35 million from the States' Consumer Fund and dividing by $609 million, which is the maximum damages for the consumers represented by the States, the Total Reimbursement Rate is 8.87%.

Illustrations

The following illustrations apply the Total Reimbursement Rate and Class Reimbursement Rate:

#1. If a consumer filled a prescription for Provigil® in New York and paid $1,000, that consumer's check would be calculated as follows: $1,000 x 8.87% (the Total Reimbursement Rate) = $88.70. The check would consist of $53.60 from the Class Consumer Fund and $35.10 from the States' Consumer Fund because a New York consumer is eligible to receive money from both the States' Consumer Fund and the Class Consumer Fund.

#2. If a consumer filled a prescription for Provigil® in Ohio and paid $1,000, that consumer's check would be calculated as follows: $1,000 x 8.87% = $88.70. The entire amount would come from the States' Consumer Fund because an Ohio consumer is eligible to receive money only from the States' Consumer Fund.

#3. If a consumer filled a prescription for Provigil® in California or Louisiana and paid $1,000, that consumer's check would be calculated as follows: $1,000 x 5.36% = $53.60. The entire amount would come from the Class Consumer Fund. California and Louisiana consumers are eligible to receive money only from the Class Consumer Fund because those states are not participating in the States' settlement.

The joint Settlement Administrator will physically merge the two funds (the States' Consumer Fund and the Class Consumer Fund) into the Consumer Distribution Account after determining the amount of each consumer check. Any money from the States' Consumer Fund portion of the distribution payments remaining in the Consumer Distribution Account as a result of un-cashed checks will be returned to the States' Consumer Fund.

EXHIBIT B

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

THE STATE OF NEW YORK, et al. Plaintiffs, v. CEPHALON, INC., et al. Defendants.	)	CIVIL ACTION

DECLARATION OF ERIC J. MILLER

I, Eric J. Miller, declare as follows:

1. I am the Vice President of Case Management with A.B. Data, Ltd.'s Class Action Administration Division ("A.B. Data"). I submit this Declaration at the request of the 49 attorneys general who represent the 48 states and the District of Columbia (the "Attorneys General" and the "States," respectively) in this matter (the "Action"). This Declaration is based upon my personal knowledge and upon information provided by my associates and staff members. I have personal knowledge of the facts set forth herein and, if called as a witness, could and would testify competently thereto.

2. I have more than 15 years of experience administering consumer and class action cases, including direct experience in more than 25 pharmaceutical antitrust consumer and class action settlements including *In re Relafen Antitrust Litigation* (D.Ma. 01-CV-12239-WGY), *In re Terazosin Hydrochloride Antitrust Litigation* (MDL Docket No. 1317) (S.D. Fla.), and *In re Remeron End-Payor Antitrust Litigation* (D.N.J. 02-CV-2007). A representative list of these class actions is attached as Exhibit A.

3. I have overseen the implementation of numerous methodologies used to determine which consumers are entitled to a recovery pursuant to the terms of the settlement agreement between the parties and/or the plan of allocation approved by the court.

4. Based on my experience, the amount of information consumers are required to provide in consumer end-payor settlements varies somewhat, depending on the nature of the claims made in the litigation and whether the plaintiffs are class plaintiffs (where more detailed purchase information and/or supporting documentation is required) or state attorneys general. Typically, consumers are required to complete and submit a claim form that provides the person's name and contact information. Other information that may be required is the amount (which may be an estimate) of out-of-pocket money the consumer spent on purchases of the subject drug during the relevant time period, a proof of purchase (such as a receipt from the consumer's pharmacy or an explanation of benefits provided by the consumer's insurance company), and the consumer's signature attesting, under penalties of perjury, to the truth of the information provided on the claim form. The proposed claim form is attached hereto as Exhibit B.

5. By requesting (a) the total amount paid; (b) at least some identification of the purchases made; and (c) the eligible consumer's signature on the claim form as attestation under penalty of perjury, the claims administrator can reasonably validate that the claimant is eligible to receive settlement monies without the burden on the consumer of compiling purchase records for multiyear periods that can date back several years. Our experience indicates that making it easier and less burdensome for consumers to file claims results in increased consumer participation and, in turn, reduces administrative costs.

6. Consumers' claims are reviewed to identify any duplicate claims, claimants who are not eligible to receive settlement monies (e.g., who did not purchase the subject drug, did not purchase during the relevant time period, or did not pay out-of-pocket), and fraudulent filers. Additional methods are used to check the reasonableness of claims, including, but not limited to, secondary reviews of high-dollar-amount claims, audits aimed at suspicious claims, and cross-referencing of claim information against third-party information where available.

7. To validate a claim further, the claims administrator may also request additional documentation from the consumer, such as (a) purchase receipts; (b) written confirmation detailing how the claimant calculated his or her purchase amount(s); and/or (c) a letter from his or her doctor verifying that the doctor has prescribed the subject drug for a specific period of time.

8. Any claims that are deemed (a) incomplete, (b) including an unreasonable purchase amount, or (c) insufficiently documented would be rejected through written notification to the claimant. The claimant would have to be informed via such notification of the opportunity to provide additional information and/or documentation to cure the claim in whole or in part.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 3rd day of August 2016.

Eric J. Miller
Vice-President of Case Management,
A.B. Data, Ltd.

Exhibit A:

Representative List of Pharmaceutical Class Action Settlements

- *In re Lorazepam and Clorazepate Antitrust Litigation* (MDL No. 98-1232) (D.D.C.).
- *In re Cardizem CD Antitrust Litigation* (MDL No. 1278) (E.D. Mich).
- *Vista Healthplan, Inc., and Ramona Sakiestewa v. Bristol-Myers Squibb Co., and American BioScience, Inc.* (Civil Action No. 1:01CV01295 (EGS) (AK) (D.D.C.).
- *In re Lupron Marketing and Sales Practices Litigation* (MDL No. 1430) (D. Mass.).
- *In re Terazosin Hydrochloride Antitrust Litigation* (MDL Docket No. 1317) (S.D. Fla.).
- *In re Warfarin Sodium Antitrust Litigation* (MDL No. 98-1232) (SLR) (D. Del.).
- *Rosemarie Ryan House, et al. v. GlaxoSmithKline PLC and SmithKline Beecham Corporation* (Docket No. 2:02cv442) (E.D. Va.).
- *Carpenters and Joiners Welfare Fund, et al. v. SmithKline Beecham* (No. CV 04-3500 MJD/SRN) (D. Minn.).
- *New Mexico United Food and Commercial Workers Union's and Employers' Health and Welfare Trust Fund, et al. v. Purdue Pharma L.P.* (Civil Action No. 07-CV-6916-JGK) (S.D.N.Y.).
- *In Re Pharmaceutical Industry Average Wholesale Price Litigation* (Civil Action: 01-CV-12257-PBS) (D. Mass.).
- *Alma Simonet, et al. v. SmithKline Beecham Corporation, d/b/a GlaxoSmithKline* (Civil Action: 06-1230 (GAG) (D. Puerto Rico).
- *In re Relafen Antitrust Litigation* (D.Ma. 01-CV-12239-WGY)
- *In Re Remeron End-Payor Antitrust Litigation* (Master File No. 02-CV-2007) (FSH)
- *In re TriCor Indirect Purchasers Antitrust Litigation*, (D. Del. Civil Action No. 05-360) (SLR)
- *Nichols, et al., v. SmithKline Beecham Corporation* (E.D. Pa. 00-CV-6222)
- *In re: DDAVP Indirect Purchaser Litigation* (05-2237) (S.D.N.Y.)

Exhibit B:

Proposed Claim Form

FILING DEADLINE MUST BE RECEIVED BY MONTH XX, 201X	State of New York, et al., v. Cephalon, Inc. et al., Civil No. 16-CV-XXXX U.S. District Court for the Eastern District of Pennsylvania	FOR OFFICIAL USE ONLY

CONSUMER CLAIM FORM

For Provigil® or Generic Version of Provigil®
How to Apply for a Payment

If you would like to submit a claim, complete this form and mail it to the address below.

YOUR CLAIM MUST BE RECEIVED BY MONTH XX, 201X

Your claim should be mailed to: STATE AG PROVIGIL SETTLEMENT
c/o A.B. Data, Ltd.
PO Box 17XXXX
Milwaukee, WI 53217-XXXX

Section A: Claimant Identification

Please provide us with the following information related to the individual who **PAID** for Provigil® or generic versions of Provigil® (modafinil).

Claimant's Name

Street Address

City | State | Zip Code

Daytime Telephone Number

Section B: Contact Information

Complete this section only if the individual to contact regarding this Claim Form is different than the Claimant listed above (i.e., trustee, personal representative, executor). All correspondence regarding this claim will be mailed to the address listed below if different than the Claimant's address above.

Contact Name | Relationship to Claimant

Street Address

City | State | Zip Code

Daytime Telephone Number

Section C: Eligibility Questions

You must also answer the following questions:

Did you purchase branded Provigil® or generic versions of Provigil® (modafinil) between June 24, 2006 through March 31, 2012? ☐ Yes ☐ No

Did you have prescription benefits that paid for a portion of your purchase of Provigil® (modafinil)? ☐ Yes ☐ No

State the dates between June 24, 2016 through March 31, 2012 when you purchased Provigil® or generic versions of Provigil® (modafinil)? ___/___/___ to ___/___/___

Section D: Purchase Information

Please state the Total Amount you Paid for Provigil® or generic versions of Provigil® (modafinil) from June 24, 2006 through March 31, 2012 for prescriptions filled in the District of Columbia and/or in the following States: Alabama, Alaska, Arizona, Arkansas, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, Wyoming	TOTAL AMOUNT $_____

Section E: Required Proof of Payment

NOTE: *DON'T* include any amount you were reimbursed by insurance. *DON'T* include any purchases made when your insurance co-pay for generic drugs was the same as your co-pay for brand name drugs.

No documentation is required with this claim form, but you may be asked to provide some at a later time. Keep copies of your receipts. This claim may be rejected if you fail to respond to any request for documentation.

Section F: The Release

Note: Capitalized terms are defined in the Settlement Agreement dated July 28, 2016, available at www.StateAGProvigilSettlement.com. The Settlement Agreement provides as follows:

> " 'Released Claims' means any and all manner of claims, counterclaims, set-offs, demands, actions, rights, liabilities, costs, debts, expenses, attorneys' fees[1], and causes of action of any type, whether or not accrued in whole or in part, that were asserted or that could have been asserted, known or unknown, against the Cephalon Parties, and/or their officers, directors, employees and attorneys, arising from any of the facts, matters, transactions, events, occurrences, acts, disclosures, statements, omissions, or failures to act set forth or alleged in the Complaint filed by Plaintiff States as part of implementing this Settlement Agreement ("State Complaint"), including, without limitation, past, present and future competition claims arising under federal or state antitrust, unfair competition or consumer protections laws, or state common or equitable law that seeks damages, unjust enrichment, restitution, penalties, or other monetary, declaratory, or injunctive relief, whether brought as direct claims, representative claims, class claims, or *parens patriae* claims on behalf of the States or any other person or entity the States represent for:
>
> 1. the alleged delayed entry of generic versions of Provigil (modafinil);
> 2. conduct with respect to the procurement, maintenance, and enforcement of United States Reissue Patent Number 37 ,516, United States Patent Number 5,618,845, or United States Patent Number 7,297,346,2 including but not limited to any commencement, maintenance, defense, settlement, or other participation in litigation concerning any such patents;
> 3. any conduct relating to Nuvigil that could fairly be characterized as being alleged in, is related to an allegation made in, or could have been alleged (Footnote 1) in the State Complaint, expressly excluding any litigation or agreement with any pharmaceutical manufacturer pertaining to Nuvigil; and
> 4. the impact on competition in the sale, marketing, or distribution of Provigil or its generic equivalent, except as expressly excluded in this Agreement.
>
> State Attorneys General have authority to release claims held by (a) any Eligible Consumer in a Plaintiff State, who did not timely and validly exclude themselves from this Settlement Agreement, to the extent permitted by state law; (b) each Plaintiff State's Attorney General in his or her sovereign capacity as chief law enforcement officer of his or her respective state; (c) each Plaintiff State for claims of the Plaintiff State, including but not limited to claims based on purchases made by the Plaintiff State; and (d) each Plaintiff State for claims the Plaintiff State may have in a representative capacity, including any *parens patriae,* class, or other representative claims.

Notwithstanding any term in this Agreement, Released Claims specifically do not include claims unrelated to competition, including:

[1] The release of claims concerning United States Patent Number 7,297,346 does not extend to enforcement actions taken by the Cephalon Parties after the execution of this Settlement Agreement.

1. any civil or administrative liability under state revenue codes;
2. any civil or administrative liability related to a State's Medicaid program under any statute, regulation, or rule for any conduct other than the conduct alleged in the State Complaint, including, but not limited to, state or federal false claims act, anti-kickback or off-label marketing violations associated with Provigil, modafinil, Nuvigil, or armodafinil;
3. any criminal liability;
4. any liability based upon obligations created by this Agreement;
5. any liability for expressed or implied warranty claims or other liability for defective or deficient products and services provided by the Cephalon Parties;
6. any liability for unfair or deceptive representations made in the marketing or advertising or for off-label marketing claims of Provigil, modafinil, Nuvigil, or armodafinil.

Nothing in this definition of Released Claims is intended to affect the ability of government entities that may be considered class members in the Direct Purchaser Class Case or the End Payor Class Case to submit claims and receive payment through the relevant class claims process.

Note to Consumers: Nothing in the definition of the Released Claims is intended to affect any consumer's right to participate in or receive monies from the currently pending class action entitled *Vista Healthplan, Inc., et al., v. Cephalon, Inc. et al.,* Civil No. 06-CV-01833 .

Section G: Sworn Statement Regarding Payments Made

By signing this Claim Form, I declare under penalty of perjury that: (1) all of the information provided in this Claim Form is true and correct to the best of my knowledge; (2) the Claimant paid the amounts as indicated in this Claim Form for Provigil® or generic versions of Provigil® (modafinil) for the Claimant's own use (or for the Claimant's family or household) at some time during the period from June 24, 2006 through March 31, 2012; and (3) if not submitting this for myself, I am authorized to submit this form on behalf of the Claimant identified above.

Please note that signing a Claim Form that contains false information could constitute perjury.

Signature

Date

Mail the Completed Claim Form to:

STATE AG PROVIGIL SETTLEMENT
c/o A.B. Data, Ltd.
PO Box 17XXXX
Milwaukee, WI 53217-XXXX

THE COMPLETED CLAIM FORM MUST BE RECEIVED BY THE CLAIMS ADMINISTRATOR BY _____, 201_.

Do **not** send your Proof of Claim to the Court or to any of the parties or their counsel.

The receipt of a claim will not be confirmed or acknowledged automatically by the Claims Administrator. If you wish to have confirmation that your Proof of Claim has been received, send it by Certified Mail, Return Receipt requested.

EXHIBIT C

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

State of New York, et al.
v.
Cephalon, Inc., et al.

Civil Action No. 16-cv-01833

DECLARATION OF LINDA V. YOUNG

I, Linda V. Young, being duly sworn, certify as follows:

1. I am the Vice President, Media with A.B. Data, Ltd.'s Class Action Administration Company ("A.B. Data"). I am fully familiar with the facts contained herein based upon my personal knowledge.

2. I submit this Declaration at the request of the 49 attorneys general who represent the 48 States and the District of Columbia (the "Attorneys General" and the "States," respectively) in this matter (the "Action").

3. At the request of the Attorneys General, I have prepared a proposed Notice Program for the Action. This Declaration is based upon my personal knowledge and upon information provided by the Attorneys General, my associates, and A.B. Data staff members. The information is of a type reasonably relied upon in the fields of media, advertising, and communications. This Declaration describes the Proposed Notice Program (attached as Exhibit 1) that is recommended and how it will provide due process of law to the States' consumers.

RELEVANT EXPERIENCE

4. As the Vice President, Media for the Class Action Administration division of A.B. Data, Ltd., I provide a broad range of services, including market research and analysis,

creative development, advertising, and marketing planning. My curriculum vitae is attached as Exhibit 2.

5. I have developed and directed some of the largest and most complex national notification programs in the country. The scope of my work includes notification programs in antitrust litigation (specifically, pharmaceutical antitrust consumer settlements), securities settlements, and consumer, ERISA, and insurance settlements. I have developed or consulted on hundreds of notification programs, placing millions of dollars in media notice. Selected cases, including those which relate to antitrust and consumer settlement notice programs, are listed in Exhibit 2 to this Declaration.

6. A.B. Data has also been appointed as Notice, Claims, and/or Settlement Administrator in hundreds of high-volume consumer, civil rights, insurance, antitrust, ERISA, securities, and wage and hour cases, administering some of the largest and most complex class action settlements of all time, involving all aspects of media, direct, and third-party notice programs, data management, claims administration, and settlement fund distribution. Additional examples of A.B. Data's experience are annexed as Exhibit 3 to this Declaration.

EXECUTIVE SUMMARY

7. Under the Proposed Notice Plan, the States will provide notice to all "Eligible Persons" (defined as natural persons who purchased Provigil or modafinil, its generic version ("Modafinil") during the period from June 24, 2006, through March 31, 2012 ("Relevant Period") in Alabama, Alaska, Arizona, Arkansas, Colorado, Connecticut, Delaware, District of Columbia, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota,

Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming.

8. The Proposed Notice Program includes broad paid-media notice involving national print media, internet vehicles, and third-party notice targeted at Eligible Consumers. The "Notice of Settlement" long form will appear on the website that A.B. Data is developing for this case. The long-form Notice includes details about the case along with an in-depth explanation of rights and options. The "Summary Notice" is shorter and includes a brief explanation of the case and Eligible Consumer rights. The Summary Notice will appear in full in the printed publications described in the Notice Program.

9. The Notice Program includes the following:

- Consumer magazines;
- A newspaper supplement;
- Internet banner and "right-rail" ads on multiple networks, including social media and targeted websites;
- Third-party notice; and
- A news release.

10. To develop demographic profiles and media habits of the Eligible Consumers, A.B. Data analyzed data from the Provigil product website, the National Sleep Foundation website, and the National Institutes of Health website. Additionally, A.B. Data analyzed syndicated, audited data available from the 2013 Doublebase Survey from GfK MRI ("MRI") to assist in the development of the target audience, and reviewed the categories of people with sleep

apnea, people who take prescription medicine for sleep apnea, and people who are full-time employees.

11. For the purpose of evaluating media usage habits, A.B. Data determined the primary target audience to be 25 to 54-year old adults. A complete copy of all MRI research, which shows the media usage habits of 25 to 54-year old adults, is provided in the exhibits to the Proposed Notice Program.

12. The proposed media schedule in the Proposed Notice Program includes advertising in national consumer magazines; a newspaper supplement; and digital media, including website banner ads and Facebook right-rail ads that specifically target consumers that are potential Eligible Consumers. Also included in the proposed media schedule is notice to Eligible Consumers through third-party Notice, primarily doctors' offices and sleep centers, as well as pharmacies.

13. The U.S. national newspaper supplement included in the program will be *Parade* magazine, which is inserted into approximately 620 newspapers, and reaches into every major media market in the country.

14. The U.S. national consumer magazines will include the following:

a. *Better Homes and Gardens*

b. *People*

c. *ESPN The Magazine*

d. *Reader's Digest*

e. *Good Housekeeping*

f. *TV Guide*

15. The digital media will run during a 90-day time period, delivering a minimum of 192 million adult aged 25-54 impressions[1] and could include the following networks:

a. Facebook
   - Ad Unit: right-rail ads

b. Google
   - Ad Unit: banner ads

c. Bing Content Network
   - Ad Unit: banner ads

d. Yahoo! Network
   - Ad Unit: banner ads

Delivery of internet impressions to specific sites and networks is subject to change due to availability at the time A.B. Data negotiates and purchases the media. Total impressions delivered will not change.

16. Third-party notice to Eligible Consumers will include the following:

- Email notice to targeted doctors' offices and sleep centers, requesting that they send notice to their patients electronically; and/or
- Requesting that doctors and sleep centers post a physical flyer about the Settlement in their offices; and/or
- Requesting that doctors and sleep centers post a banner ad on their website about the Settlement; and
- Banner ads to be posted on the website SleepReviewMag.com to reach the doctors and personnel of sleep centers. A page on the Settlement website created specifically for physicians and sleep center personnel will provide them with case information and easy access to Notice materials.

[1]In reference to online media, an "impression" is a single occurrence of an ad being delivered from its source in a countable manner. The issue of clicking vs. nonclicking is not taken into account. Each time an ad is delivered is counted as one impression. All impressions purchased will meet the standards of the Interactive Advertising Bureau Ad Impressions Guidelines.

17. The proposed Notice Plan includes requiring that the 15 largest providers of retail pharmacy services, including mail-order pharmacies[2], send notice to their customers electronically and post a digital banner ad on their websites, for which they will be compensated for the reasonable value of their time. Physical placards will also be available for posting in the pharmacies and supplied to all pharmacies that agree to display them. A page on the Settlement website created specifically for pharmacies will provide them with case information and easy access to Notice materials.

18. A Summary Notice will be published via PR Newswire's US1 Newsline, which is distributed to over 10,000 print, broadcast, and digital-media outlets.

19. A website will be established and listed with major search engines to enable Eligible Consumers to get detailed information about the proposed Settlement, and relevant documents, including the Complaint and the Settlement Agreement.

20. All print-media notices in the proposed Notice Program will include a toll-free telephone number, the website address, and a mailing address for Eligible Consumers to request or access the Notice of Proposed Settlement. The online banner and text ads will include the website address and a link to the Settlement website. The Summary Notice and the Notice of Proposed Settlement are in plain language, as required by the revisions to Rule 23 of the Federal Rules of Civil Procedure.

21. For purposes of evaluating the strength and efficiency of the media concerned, the general-market digital-media impressions, consumer magazines, and newspaper supplement were measured against the demographic target to establish the estimated reach of the media program. Based on MRI syndicated research and the media planning experience of the A.B. Data

[2]In the aggregate, these pharmacies represent approximately 74% of the prescriptions filled, by revenue, in the United States in 2015. Source: Fein, Adam J., *The 2016 Economic Report on Retail, Mail, and Specialty Pharmacies*, Drug Channel Institute, January 2016.

team, this program delivers an estimated reach of 84% to the target audience of adults, ages 25-54. The reach provided by the third-party notice, including the pharmacy outreach referred to above, earned media, and informational case website is not calculable in the reach percentage, but will nonetheless aid in informing the Eligible Consumers of their rights and options under the Settlement.

LONG-FORM NOTICE

22. A.B. Data's in-house team of attorneys, executives, professional proofreaders, and graphic design specialists will ensure that the Notice documents are in plain language, meet the requirements of due process, and are clear, concise, accurate, and easy to understand. In addition, our in-house printing, mailing, and operational facilities provide the highest level of security, streamline communications, and ensure cost savings. A.B. Data has worked with the state attorneys general to create the Notice and Claim Form that are being submitted to the Court for approval.

23. A.B. Data will format and print the Notice and Claim Form in easy-to-understand "plain" English.

24. The Claim Form is designed to expedite efficient, correct administration of the Settlement.

WEBSITE

25. In addition to posting case-related documents on A.B. Data's own website and providing the documents to the relevant law firms for posting on their websites, A.B. Data will publish a case-specific website. A.B. Data will obtain and register a domain name, generate strategic search-engine placements and rankings, and implement, host, and maintain this website,

one where Eligible Consumers will have access to relevant case information and updates, key documents, applicable deadlines, and online claims filing.

26. This official Settlement website will be easy to navigate and will contain detailed information and features, including the following:

a. A downloadable Notice and Claim Form;

b. Background information;

c. Contact information;

d. Frequently asked questions and their answers;

e. Court documents;

f. Links to important information;

g. Online claims-filing capability;

h. Other key documents;

i. Site promotion through registration with search engines;

j. 24-hour monitoring and support; and

k. Detailed traffic reporting.

27. A.B. Data will also update the website with regard to applicable Settlement developments.

28. The Notice Plan will include methods of bringing the internet site to the attention of Eligible Consumers.

TOLL-FREE PHONE LINE

29. A.B. Data's call center, which operates 24/7, contains state-of-the-art telecommunications systems designed to meet the requirements of any administration project as well as to maximize the financial and service goals of the Settlement.

30. A.B. Data will establish and maintain a case-specific toll-free telephone number to support the Settlement with live operators during business hours. Our goal is to have all calls received during business hours answered within 20 seconds. Messages received after business hours will be returned during the morning of the following business day. Services will specifically include the following:

a. Inbound toll-free line;

b. Interactive voice response system;

c. Live operators during business hours;

d. Call scripts developed by our experts and approved by counsel;

e. Detailed reporting; and

f. Superior customer service.

31. A.B. Data's call center is managed by full-time staff members familiar with the specific details of this Settlement. Our skilled customer service representatives will be trained using case-specific materials and resources and will employ telephone scripts created by our attorneys and approved by Counsel. A.B. Data's quality assurance and control procedures will ensure the transmission of clear and accurate information to Eligible Consumers in a courteous and professional manner.

RESOURCES AND CAPACITY

32. A.B. Data is an industry leader in full-service class action notice and settlement administration. Our notice programs are known worldwide for their efficiency, effectiveness, affordability, and compliance with Federal Rule of Civil Procedure 23 and due process requirements. We are a recognized expert in carrying out customized notice programs in a cost-efficient manner that substantially improves the efficacy of these programs.

33. Skillful negotiations for paid media placement are paramount in order to maximize the value of paid media. A.B. Data has a long-lasting and well-established network of publisher and digital-media contacts that allow it to orchestrate precise placements within the chosen timelines at the lowest possible costs.

34. Founded in 1981, A.B. Data has earned an international reputation for expertly and adroitly managing the complexities of class action administration in consumer, securities, ERISA, antitrust, employment, civil rights, insurance, environmental, wage and hour, and other class action cases. A.B. Data's work in all aspects of class action administration has been perfected by decades of experience. Dedicated professionals deliver A.B. Data's all-inclusive services, working in partnership with counsel to administer the notice and settlement programs effectively and efficiently, regardless of size or scope. Over the last 15 years, A.B. Data has administered the settlement notice process in thousands of consumer and class action cases together involving billions of dollars in total settlements, including some of the largest and most complex class actions in history.

35. Whether notifying millions of consumers and class members in the United States or throughout the world, processing millions of claims, or printing and distributing millions of checks, A.B. Data matches its human talent and technology to the specific needs of each administration.

36. A.B. Data offers resources and capacity that make it capable of expertly administering any state attorneys general or class action settlement. A.B. Data offers the highest level of security and has the in-house capacity to mail 4 million personalized pieces every 24 hours. A.B. Data's 170,000-square-foot Mail Distribution Center, with its own on-site United States Postal Service substation, is one of America's largest and most advanced facilities. In

addition, A.B. Data has been entrusted to Magnetic Ink Character Recognition- (MICR-)print and mail more than 20 million checks in one year alone and has the capacity to print and mail more than 1 million checks in a day.

CONCLUSION

37. It is my opinion, based on my experience, that the reach of the target audience and the number of exposure opportunities to the Notice information are adequate and reasonable. In my opinion, the proposed Notice Plan is designed to effectively reach Eligible Consumers, as described herein, deliver Notices that will capture Eligible Consumers' attention, and provide them with the information necessary to understand their rights and options. This proposed Notice Program conforms to the standards employed by A.B. Data in notification programs designed to reach unidentified Eligible Consumers of settlement groups or classes that are national in scope and reach across broad demographic targets.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 3rd day of August 2016.

Linda V. Young