Execution Copy

SETTLEMENT AGREEMENT

This Settlement Agreement ("Settlement Agreement") is made and entered into as of this 17th day of July, 2019 by and between the Attorney General of the State of California ("State"), on the one hand, and Teva Pharmaceutical Industries Ltd. on behalf of itself and its wholly-owned subsidiaries Cephalon, Inc., Teva Pharmaceuticals USA, Inc., and Barr Laboratories, Inc. (collectively, "Defendants"), on the other hand. The parties hereto may sometimes be collectively referred to as "Parties" or individually as "Party."

RECITALS

WHEREAS, the State initiated an investigation into alleged activity by Defendants that delayed entry of generic competition and thus illegally maintained Defendants' monopoly power and/or artificially increased the prices of the branded drug Provigil® (generically known as modafinil);

WHEREAS, the State served numerous sets of investigative subpoenas and interrogatories on the Defendants, to which they responded, including by producing thousands of documents to the State;

WHEREAS, the State alleges that Defendants engaged in anticompetitive acts and unfair competition that delayed the entry of generic versions of the prescription drug Provigil® in violation of Section 1 and Section 2 of the Sherman Act, 15 U.S.C. §§ 1, 2, Section 4 of the Clayton Act, 15 U.S.C. § 15, Section 16 of the Clayton Act, 15 U.S.C. § 26, and California state antitrust and consumer protection laws, that damaged California and Eligible Consumers, as defined below;

WHEREAS, Defendants deny each and every one of the State's allegations of unlawful or wrongful conduct, deny that any conduct challenged by the State caused any damage

whatsoever, and maintain they have a number of defenses to any claims the State would file at the conclusion of its investigation ("Potential Claims");

WHEREAS, the State and counsel for Defendants engaged in arm's-length negotiations and negotiated a compromise agreement to settle Potential Claims against Defendants, and the result is this Settlement Agreement, which embodies all of the terms and conditions of the settlement between the State and the Defendants;

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 Defendants, or a waiver of any defenses thereto;

WHEREAS, this Settlement Agreement is neither an admission of facts or liability by Defendants, nor a concession by the State that its allegations are not well-founded. Neither this Settlement Agreement nor its execution, nor the performance of any obligation arising under it, including any payment, nor the fact of settlement is intended to be, or shall be understood as, an admission of liability or wrongdoing, or other expression reflecting on the merits of the dispute by any Party to this Settlement Agreement;

WHEREAS, the State has concluded that it is in the best interests of the State and its constituents to enter into this Settlement Agreement;

WHEREAS, the Defendants 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;

WHEREAS, to avoid the delay, expense, inconvenience, and uncertainty of protracted litigation of the State's Potential Claims, the Parties mutually desire to reach a full and final settlement as set forth below;

AGREEMENT

NOW, THEREFORE, in reliance on the representations contained herein and in consideration of the mutual promises, covenants, and obligations set forth in this Settlement Agreement, and for good and valuable consideration as stated herein, the Parties hereto mutually warrant and agree as follows:

I. DEFINITIONS

For purposes of this Settlement Agreement, the following definitions shall apply:

A. "Cephalon" means Cephalon, Inc.

B. "Teva" means Teva Pharmaceutical Industries Ltd.

C. "Teva Pharmaceuticals USA" means Teva Pharmaceuticals USA, Inc.

D. "Teva US Entities" means any joint venture, subsidiary, division, group, or affiliate Controlled (for clarity, currently or in the future) by Teva 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.

E. "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.

F. "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.

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

H. "Consumer Settlement" means the portion of this Settlement Agreement obtained by the State's Attorney General as *parens patriae* on behalf of the State's Eligible Consumers pursuant to California Business and Professions Code section 16760, as described in the below Section II, Paragraphs A and B.1 (Consumer Settlement Payment); Section III (payment satisfaction by Teva); Section IV, Paragraph A (disbursement by the State); Section VI (released claims); Section VIII (effectuating release of Eligible Consumers' claims); Section IX (binding effect of Consumer Settlement and release of Eligible Consumers' claims); and Section XXIII (authority to enter into agreement on behalf of Eligible Consumers).

I. "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 Consumer Settlement; (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.

J. "Eligible Consumers" mean natural persons who purchased modafinil or Nuvigil during the period June 24, 2006 through December 31, 2012.

K. "Escrow Agent" means The Huntington National Bank.

L. "Final Approval Order" means the order to be entered by the District Court that grants final approval of the Consumer Settlement. 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 Consumer Settlement 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.

M. "FTC" means the United States Federal Trade Commission.

N. "FTC Action" means *FTC v. Cephalon*, Civil Action no. 2-08-cv-2141-MSG.

O. "FTC Injunction" means the Stipulated Revised Order for Permanent Injunction and Equitable Monetary Relief between the FTC and the Defendants, entered by this Court on June 17, 2015 in the FTC Action. A copy of the FTC Injunction is attached hereto as Exhibit #1.

P. "Notice Plan" means the plan specifying the manner and content of notifying Eligible Consumers of the Consumer Settlement and informing Eligible Consumers of their rights to object or to exclude themselves from said settlement. The Notice Plan shall specify the manner in which Eligible Consumers are to be notified of the Consumer settlement and shall be coordinated, to the extent possible, 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"), including, *inter alia*, the engagement of A.B. Data, Ltd. as the notice and claims administrator.

Q. "Preliminary Approval Order" means an order to be entered by the District Court that preliminarily approves the Consumer Settlement. The Parties intend that the Preliminary Approval Order will include (1) preliminary approval of the Consumer Settlement as fair, reasonable, and adequate, and (2) approval of the Notice Plan.

R. "Revised FTC Injunction" means the Stipulated Revised Order for Permanent Injunction and Equitable Monetary Relief between the FTC and the Defendants, entered by this Court on February 21, 2019 in the FTC Action. A copy of the Revised FTC Injunction is attached hereto as Exhibit #2.

S. "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 could have been asserted, known or unknown, against Defendants, 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 proposed Complaint filed by California as part of implementing this Settlement Agreement ("Complaint"), including, without limitation, past, present and future competition claims arising under federal or California 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 California or any other person or entity that California represents for:

1. the alleged delayed entry of a generic version of Provigil® (modafinil); 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, including but not limited to any commencement, maintenance, defense, settlement, or other participation in litigation concerning any such patents;

2. any anticompetitive 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 in the Complaint, expressly excluding any litigation or agreement with any pharmaceutical manufacturer pertaining to Nuvigil®;

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

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

Notwithstanding any term in this Settlement 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 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 Settlement Agreement;

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

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.

In addition, nothing in this provision is intended to affect the ability of government entities that may be considered class members in *King Drug Co., et al. v. Cephalon, Inc., et al.*, No 06-1797 (E.D. Pa.) ("Direct Purchaser Class Case") or the End Payor Class Case to submit claims and receive payment through the relevant class claims process.

T. "Released Parties" means Defendants 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).

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

V. "State Injunction Order" means the order to be entered by this Court that grants the Parties' joint motion for entry of the injunctive terms, as described in Section V below.

II. SETTLEMENT PAYMENT, SETTLEMENT ACCOUNTS, AND DISBURSEMENT REQUESTS.

A. Settlement Payment

1. In full and final satisfaction of the State's Potential Claims, Defendants collectively agree to cause the State to be paid in the amount of U.S. Dollars

$69,000,000.00 (the "Settlement Payment").

2. Upon final execution of this Settlement Agreement and within five business days of receipt in writing of all Required Payment Information (as defined below) from the State, the Defendants shall promptly submit a disbursement request to the FTC as required by paragraphs 8 and 9 of the Settlement Fund Disbursement Agreement, which is Exhibit A to the FTC Injunction (Exhibit #1) ("Disbursement Request"). The Disbursement Request will request disbursement in the amount of the Settlement Payment and will contain the information required by paragraph 8(a)-(h) of the Settlement Fund Disbursement Agreement ("Required Payment Information"), including a request that the disbursement be made to the State's Escrow Agent pursuant to the Escrow Agreement attached hereto as Exhibit #3 ("Escrow Agreement"). The Defendants shall provide a copy of said Disbursement Request to the State simultaneous with its submission to the FTC.
3. Teva warrants that as of the date of execution of this Settlement Agreement, there is sufficient funds in said Settlement Fund from which the Settlement Payment will be drawn to cover the full amount of the Settlement Payment.
4. The Defendants further agree to use their best efforts to obtain prompt payment from the Settlement Fund, including but not limited to as outlined below and petitioning the court as detailed in paragraph 12 of the Settlement Fund Disbursement Agreement. Notwithstanding the provisions of this paragraph, the Defendants do not control the timing by which the FTC will authorize payment or transfer of the Settlement Payment to the State's Escrow

Agent. Nevertheless, in the event the FTC rejects Defendants' Disbursement Request, Teva shall remain responsible for the Settlement Payment and will pay the State, by wire transfer of the Settlement Payment to the State's Escrow Agent, within the earlier of sixty (60) days after receiving the FTC's rejection notice or ten (10) days after exhausting the procedures set forth in paragraphs 10 through 12 of the Settlement Fund Disbursement Agreement for seeking clarification or reconsideration of a denied disbursement request. If clarification or reconsideration is sought by Defendants pursuant to paragraphs 10, 11 and/or 12 of the Settlement Fund Disbursement Agreement, then Teva will provide the State with copies of all such requests for clarification or reconsideration as well as copies of all related communications with the FTC, and such information shall be provided to the State simultaneous with Defendants' submissions to and/or communications with the FTC.

B. **Settlement Accounts.**

1. **Consumer Compensation Account; Consumer Fund.**

a. Upon final execution of this Settlement Agreement, the State shall instruct its Escrow Agent to establish and administer a Consumer Compensation Account pursuant the Escrow Agreement (attached hereto as Exhibit #3), and that upon receiving the Settlement Payment described in the preceding Section II, Paragraph A, to transfer U.S. Dollars $25,250,000 (Twenty-Five Million Two Hundred and Fifty Thousand Dollars) to said account ("Consumer

Settlement Payment").

b. 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." 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.

c. Upon the Effective Date, the Consumer Fund shall be available for distributions to Eligible Consumers and as otherwise permitted by the Distribution Plan attached hereto as Exhibit #4, subject to deductions for payments of taxes payable on the Consumer Fund.

2. **State Compensation, Disgorgement, Costs, and Fees Account; State Proprietary Fund.**

a. Upon final execution of this Settlement Agreement, the State shall instruct its Escrow Agent to establish and administer a State Compensation, Disgorgement, Costs, and Fees Account pursuant to the Escrow Agreement, and that upon receiving the Settlement Payment described in the preceding Section II, Paragraph A, to transfer the remainder of the Settlement Payment (i.e., the

Settlement Payment less the amount deposited into the Consumer Compensation Account) into the State Compensation, Disgorgement, Costs, and Fees Account ("State Settlement Payment").

b. The State Settlement Payment deposited into the State Compensation, Disgorgement, Costs, and Fees Account and any accrued interest after deposit shall be referred to as the "State Proprietary Fund." Except as otherwise expressly permitted by the Escrow Agreement, the Escrow Agent shall disburse funds from the State Compensation, 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 Proprietary Fund shall become part of the State Proprietary Fund, less any taxes imposed on such interest.

c. The State Proprietary Fund shall be available for distributions to the State upon the Effective Date, subject to deductions for payments of taxes payable on the State Proprietary Fund.

III. FULL SATISFACTION; LIMITATION OF INTEREST AND LIABILITY.

A. The Consumer Settlement Payment and the State Proprietary Payment (described above) together constitute the Settlement Payment. Apart from the Settlement Payment, no other payment or monies will be paid or owed by Defendants as part

of the Settlement Agreement. The State shall look solely to the Settlement Payment for settlement and satisfaction against the Defendants of any Released Claims as defined in Section VI herein, including any costs, fees, or expenses of the State or its attorneys, experts, advisors, agents, and representatives. The Settlement Payment fully satisfies any and all Released Claims as defined in Section VI herein.

B. The State's Attorney General shall have the sole discretion and responsibility for use, allocation, division, and disbursement of the Settlement Payment. The Defendants shall have no responsibility for or influence with respect to the use, allocation, division, or disbursement of the Settlement Payment.

C. Each Party to this Settlement Agreement shall bear its own attorneys' fees and other costs and expenses incurred in connection with this matter, including the negotiation, preparation, and performance of this Settlement Agreement.

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

IV. DISBURSEMENT OF SETTLEMENT FUNDS.

A. All funds in the Consumer Fund shall be distributed according to a Distribution Plan that shall be submitted to the District Court for approval concurrently with this Settlement Agreement (see Exhibit #4). 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 Consumer Settlement, and any order or proceedings related 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. All funds in the State Proprietary Fund shall be disbursed to the State upon the Effective Date of this Settlement Agreement. The Parties understand and agree that the State Proprietary Fund shall be used for the following purposes: (i) civil penalties due to the Defendants' alleged anticompetitive conduct; (ii) deposit into an antitrust or consumer protection account for use in accordance with the laws governing such an account; (iii) antitrust or consumer protection enforcement by the Attorney General; (iv) compensation to the State for, inter alia, disgorgement under the Cartwright Act, harm to the State's general economy caused by the alleged anticompetitive conduct otherwise known as deadweight loss, and damages/restitution for proprietary claims; (v) settlement administration fees and costs, including costs of notice and claims administration, escrow costs, taxes due from the escrow fund, and related attorneys' fees; (vi) reimbursement of State's attorneys' fees, costs, and expenses relating to the investigation and litigation of the filed Complaint (other than the fees, costs, and expenses described under the preceding subsection (v)); (vii) for such other purposes as the State deems appropriate, consistent with California law.

V. ADOPTION OF THE REVISED FTC INJUNCTION; COMPLIANCE DETERMINATION BY THE STATE.

A. The Parties agree to adopt and incorporate herein, and to be bound by all operative terms of the permanent injunction set forth under Section I of the Revised FTC Injunction as well as the related Definitions set forth on Pages 2 through 13 of the

Revised FTC Injunction, as if those operative terms and definitions are fully set forth herein (hereinafter, "State Injunction"). The State Injunction also shall expire on the same date as the Revised FTC Injunction. The Parties further agree that any enforcement actions under the State Injunction or under the Revised FTC Injunction shall be filed solely by the FTC, but that the State and the FTC are free to consult as to any enforcement action without the need for any further consent from the Defendants. Nothing in this Section shall alter the State's authority to enforce its laws outside the terms and conditions of this Settlement Agreement.

B. To the extent the Revised FTC Injunction is altered or amended, the parties agree that the State Injunction shall be modified in the same way, such that the operative terms and definitions of the Revised FTC Injunction and the State Injunction remain consistent.

C. Reporting Requirements: Defendants shall produce to the State copies of the written reports, documents, and agreements required to be submitted to the FTC under Sections III and IV of the Revised FTC Injunction. Such production to the State shall be made simultaneous with the submission to the FTC.

D. Access to Additional Information: For the purpose of determining or securing compliance with the Revised FTC Injunction, as adopted by the Parties herein, subject to any legally recognized privilege, and upon written request with reasonable notice to Defendants, Defendants shall also allow the State to participate in any inspections or interviews pursued by the FTC under Section VI, Paragraph A of the Revised FTC Injunction. The State agrees to be subject to the level of confidentiality specified in Paragraph B of Section VI of the Revised FTC Injunction with respect to

those inspections and interviews, except that the State and the FTC may make any necessary disclosures to one another.

VI. RELEASED CLAIMS

A. On the Effective Date and upon release of the Settlement Payment from escrow, and as permitted by law, the State shall unconditionally, fully and finally release and forever discharge the Released Parties from all Released Claims.

B. The 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.

C. In addition, the State hereby expressly waives, releases and forever discharges as to the Defendants 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 State may hereafter discover facts other than or different from those which it knows or believes to be true with respect to the Potential Claims which are the subject matter of this Settlement Agreement, but except as excluded or limited herein, the State hereby expressly waives and fully, finally and forever settles, releases and discharges Defendants upon the Effective Date, 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.

D. In consideration of the obligations of the State set forth in the Settlement Agreement, Defendants waive and discharge the State, its former, current, and future officers, agents, employees, representatives, agencies, departments, and subdivisions ("State Released Parties"), from any causes of action (including claims for attorneys' fees, costs and expenses of every kind and however denominated) which Defendants have asserted, could have asserted, or may assert in the future against the State Released Parties in response to the State's Complaint.

VII. NO TRANSFER OF CLAIMS.

A. The State warrants that it has not assigned or transferred to any person or entity any right to recover for any claim or potential claim that otherwise would be released under this Settlement Agreement.

VIII. ENTRY OF STATE INJUNCTION, APPROVAL OF CONSUMER SETTLEMENT AND DISMISSAL OF COMPLAINT.

A. The Parties shall use their best efforts to effectuate this Settlement Agreement and its purpose, including jointly seeking any orders and final judgment necessary to effectuate the injunctive terms set forth in Section V and the release of *parens patriae* claims set forth in Section VI.

B. The State agrees that 1) in any official written press release that the State issues regarding this Settlement Agreement, that it will refer to or include a link directing the reader to the Settlement Agreement itself, a copy of which will be available on the State's website; and 2) it will provide Teva, through Teva's

counsel or press office, twenty four hours' notice of the State's issuance of a press statement, whether oral or written, announcing the Settlement Agreement, so that Teva may issue its own press statement.

IX. BINDING EFFECT.

A. Except as otherwise stated in this Settlement Agreement, this Settlement Agreement is intended to be for the benefit of the Parties only, and aside from any releases specified herein, the Parties do not release any liability against any other person or entity, nor do they intend to confer any rights, privileges, or rights of action of any kind upon any persons or entities other than those specified in this Settlement Agreement.

B. This Settlement Agreement shall be binding upon, inure to the benefit of, and be enforceable by, the Parties hereto, and their respective successors, transferees, beneficiaries, and/or assigns. The Defendants shall comply with the State Injunction Order pending its entry by the Court per the terms of this Settlement Agreement.

X. NOTIFICATION OF CHANGE OF CORPORATE CONTROL.

A. The Defendants shall notify the State within thirty (30) days of (i) dissolution of any of them, (ii) any final acquisition, merger, or consolidation of any of them, or (iii) any other substantial change in any of them, including, but not limited to, assignment of a substantial portion of any of the Defendants' assets, or the creation or dissolution of subsidiaries, if such changes might affect any of the Defendants' compliance with the obligations arising from this Settlement Agreement

XI. NO ADMISSION OF LIABILITY.

A. The State and Defendants agree that the Settlement Payment is made in

compromise and settlement of claims made and denied, and that neither the Settlement Payment nor this Settlement Agreement shall be construed as either (i) an admission or concession by Defendants of a violation of any statute, regulation, or other legal requirement or of any liability under any theory of recovery at law or in equity; or (ii) an admission or concession by Defendants regarding the strengths or merits of any claim previously alleged or which could have been alleged in the Potential Claims or any related action. The State and Defendants agree that this Settlement Agreement and any and all negotiations, documents, and discussions associated with it shall not be construed as or deemed to be evidence of any admission of liability or wrongdoing or of the truth of any of the claims or allegations contained in any complaint or any other pleading or document, or any admission of any lack of merit in the asserted claims, and evidence thereof shall not be discoverable, offered or accepted as evidence of such in any litigation, arbitration, or other proceeding between or among the State and Defendants or in any other litigation, arbitration or proceeding, and shall have no precedential value; provided, however, that nothing contained herein shall preclude use of this Settlement Agreement in any proceeding to enforce this Settlement Agreement.

XII. CONFIDENTIALITY.

A. The Parties agree that any agreements, information, or documents produced by the Defendants to the State pursuant to Section V, Paragraph B above shall be kept confidential pursuant to California Government Code sections 11180 *et seq.* The Parties further agree to keep confidential all terms and conditions of the

Settlement Agreement that contain "information required to be kept confidential by law," as defined by the laws of the State of California and its Rules of Court.

B. The information designated for protection in the preceding Section XII, Paragraph A ("Designated Materials") shall not be disclosed to any third party, even under the protection of a common-interest agreement or other similar agreement or arrangement, unless permitted by California Government Code Section 11800 *et seq.*, directed to do so by subpoena or court order or as otherwise required by law, or except as otherwise agreed to in writing by all of the undersigned. If any such disclosure is contemplated by any Party, it shall be the obligation of the disclosing Party to: (i) give prompt notice to other Parties to this Settlement Agreement (including the terms and circumstances surrounding such disclosure); (ii) use reasonable best efforts to oppose and seek to narrow any required disclosure; (iii) use reasonable best efforts to obtain an appropriate protective order or other remedy or assurance of confidential treatment; and (iv) consult and reasonably cooperate to the fullest extent permitted by law with the other Parties hereto with respect to the foregoing. Nothing in this paragraph, however, shall prevent a Party from abiding by any applicable law, subpoena or other legal process, or court order.

C. In addition, nothing in Section XII, Paragraph A shall limit:

    1. Defendants' ability to disclose the Designated Materials as needed: (i) to comply with the securities and corporate governance laws of the United States, or any State of the United States, or any other country; and (ii) to those with a legitimate business interest including financial advisors,

auditors, tax advisors, and attorneys, subject to agreements by those parties to maintain the confidentiality of the information;

2. the Attorney General's sovereign capacity as chief law enforcement officer of the State, including but not limited to his or her ability to disclose the Designated Materials as needed: (i) in disclosing the terms of this Settlement Agreement, especially the Consumer Settlement, to the Court and the public; (ii) to an authorized representative or retained consultant or expert of the State; or (iii) to other government enforcement agencies, such as the United States Federal Trade Commission, the United States Department of Justice, and other State Attorneys General, provided the Defendants are given reasonable advance written notice of such disclosure; or
3. any Party's ability to effectuate, enforce, or modify the terms of the Settlement Agreement.

XIII. INTEGRATED AGREEMENT.

A. This Settlement Agreement shall be construed as an integrated agreement that contains the entire, complete, and integrated statement of each and every term and provision of the Settlement Agreement. The terms of the Settlement Agreement shall control in the event there are any conflicting terms in any related document. This Settlement Agreement may not be modified in any respect except by express, written consent of all of the Parties hereto or by counsel on their behalf.

XIV. RELIANCE.

A. The Parties acknowledge and expressly represent and warrant that they have relied

solely upon their own judgment, together with advice of counsel of their choice, when deciding whether to enter into this Settlement Agreement. Each Party further agrees, acknowledges and expressly warrants that no information, statement, promise, representation, warranty, condition, inducement, or agreement of any kind, whether oral or written, made by or on behalf of any other Party shall be, or has been, relied upon by it in entering into this Settlement Agreement, unless specifically contained and incorporated herein.

XV. CHOICE OF LAW.

A. This Settlement Agreement shall be construed in accordance with, and its validity and effect, including any claims of breach of any of the terms hereof, shall be governed by, the laws of the State of California, without regard to California law regarding choice of law.

XVI. JURISDICTION AND VENUE.

A. For purposes of this Settlement Agreement alone, Teva does not contest personal and subject matter 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. Teva agrees that venue for this matter is proper in this Court under 15 U.S.C. § 22 and 28 U.S.C. § 1391(b) and (c).

XVII. WAIVER OF APPEAL.

A. Defendants waive all rights to appeal or otherwise challenge or contest the validity of this Settlement Agreement.

XVIII. COMPLETE DEFENSE; ENFORCEMENT.

A. This Settlement Agreement may be pleaded as a full and complete defense to any Party's action, suit, or other proceeding asserting a Released Claim that has been

or may be instituted, prosecuted, or attempted. The Parties agree that for any such proceeding, any court of competent jurisdiction may enter a declaratory judgment and/or an injunction restraining prosecution of such proceeding. The Parties further agree that this Settlement Agreement may be pleaded and otherwise used as reasonably necessary for the purpose of enforcing the Settlement Agreement. No Party's waiver of any breach or default hereunder shall be deemed a waiver of any other or subsequent breach or default.

XIX. NO PARTY IS THE DRAFTER.

B. 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 for or against the drafter thereof.

XX. NOTICE.

A. Notice to Defendants pursuant to this Settlement Agreement shall be sent by United States mail and electronic mail to:

Jay P. Lefkowitz
Kirkland & Ellis LLP
601 Lexington Avenue
New York, NY 10022
lefkowitz@kirkland.com

and

Katherine R. Katz
Kirkland & Ellis LLP
1301 Pennsylvania Avenue N.W.
Washington, DC 20004
katherine.katz@kirkland.com

B. Notice to the State pursuant to this Settlement Agreement shall be sent by United

States mail and electronic mail to:

Office of the Attorney General
STATE OF CALIFORNIA
455 Golden Gate, Suite 11000
San Francisco, CA 94102

and

Kathleen E. Foote
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XXI. HEADINGS.

A. The headings used in this Settlement Agreement are intended for the convenience of the reader only and shall not affect the meaning or interpretation of this Settlement Agreement.

XXII. EXECUTION IN COUNTERPARTS.

A. This Settlement Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall together constitute one and the same agreement. All copies signed and transmitted by facsimile or electronic means (such as pdf) shall be deemed original signatures for all purposes. The "Execution Date" of this Settlement Agreement shall be the date of signature of the last signatory to this Settlement Agreement.

XXIII. AUTHORITY TO ENTER INTO AGREEMENT.

A. The State and Defendants represent and warrant that they are each respectively authorized to enter into this Settlement Agreement and that they intend this

Settlement Agreement to be a valid and binding obligation, enforceable in accordance with its terms. Each Party hereto represents and warrants that its undersigned officer has full authority and capacity to execute this Settlement Agreement on that Party's behalf.

IN WITNESS WHEREOF, each of the signatories has read and understood this Agreement, has executed it, represents that he or she is authorized to execute this Agreement on behalf of the Party for whom he or she has signed, has agreed on behalf of his or her respective Party to be bound by its terms, and has entered into this Agreement on behalf of the Party or Parties for whom he or she has signed as of the date indicated below.

PLAINTIFF STATE OF CALIFORNIA

Signature: Cheryl Lee Johnson

Name (print): Cheryl L. Johnson

Title: Deputy Atty Gen'l, ~~Attorney~~ General of California

Date: 07/23/2019

TEVA PHARMACEUTICAL INDUSTRIES LTD. FOR ALL DEFENDANTS

Signature: _____

Name (print): Jay P. Lefkowitz

Title: Counsel for Teva Pharmaceutical Industries LTD.

Date: 07/22/2019

EXHIBIT 1

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.:

_____ 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:

Mark Meier 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: Ilcko Melies

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 Desheh

Title: EVP and CFO

Date: 5/21/15

Name: Dov P. Bergwerk

Title: SVP, General Counsel-Corporate & Company Secretary

LEGAL AFFAIRS BR

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 2

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-MSG

[PROPOSED] STIPULATED REVISED 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") reached an agreement to resolve this case through settlement, and without trial or final adjudication of any issue of fact or law, and stipulated to entry of a Stipulated Order for Permanent Injunction and Equitable Monetary Relief ("Original Order") to resolve all matters in dispute in this action. The Commission, Cephalon and Teva now stipulate to entry of a Stipulated Revised Order for Permanent Injunction and Equitable Monetary Relief ("Revised Order") in settlement of the Commission's claims against Teva Pharmaceuticals USA in *FTC v. AbbVie Inc.*, Nos. 18-2621,

18-2748, 18-2758 (3d Cir.); Actavis in *Federal Trade Commission v Actavis.*, Civ. Action No. 09-cv-955 (N.D. Ga.); and Watson in *FTC v. Allergan PLC*, Civ. Action No. 17-cv-00312 (N.D. Cal.).

THEREFORE, IT IS ORDERED as follows:

DEFINITIONS

For purposes of this Revised Order, the following definitions apply:

1. "Commission" means the United States Federal Trade Commission.
2. "Actavis" means Actavis Holdco US, Inc.
3. "Cephalon" means Cephalon, Inc.
4. "Watson" means Watson Laboratories, Inc.
5. "Cephalon Group" means Cephalon, any joint venture, subsidiary, division, group, or affiliate Controlled (for clarity, 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.
6. "Teva" means Teva Pharmaceutical Industries Ltd.
7. "Teva Pharmaceuticals USA" means Teva Pharmaceuticals USA, Inc.
8. "Teva US Entities" means any joint venture, subsidiary, division, group, or affiliate Controlled (for clarity, currently or in the future) by Teva that engages in Commerce in the United States, including Cephalon, Teva Pharmaceuticals USA, Actavis, and Watson.
9. "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.
10. "Cephalon Parties" mean Cephalon, Cephalon Group, Teva and Teva Group.

11. "505(b)(2) Application" means an application filed with the United States Food and Drug Administration pursuant to Section 505(b)(2) of the Federal Food, Drug and Cosmetic Act, 21 § 355(b)(2).

12. "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).

13. "Authorized Generic" means a Drug Product that is manufactured pursuant to an NDA and promoted, offered for sale, sold or distributed in the United States under a name other than the proprietary name identified in the NDA.

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

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

16. "Branded Subject Drug Product" means a Subject Drug Product Marketed in the United States under the proprietary name identified in the NDA for the Subject Drug Product.

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

18. "Contingent Supply Agreement" means a Supply Agreement that terminates within 30 days after the Generic Filer, after good faith commercially reasonable efforts, (i) has final FDA approval for its ANDA or 505(b)(2) Application for the Generic Subject Drug Product and (ii) can manufacture commercial quantities of the Generic Subject Drug Product,

provided, however, the Generic Filer may take delivery of and Market quantities of Authorized Generic ordered prior to termination of the Contingent Supply Agreement

so long as the total quantity of Authorized Generic delivered to the Generic Filer following termination of the Contingent Supply Agreement: (i) does not exceed the total quantity needed by the Generic Filer (as reflected in forecasts provided to the NDA Holder prior to termination of the Contingent Supply Agreement) during the 8 months following (x) termination of the Contingent Supply Agreement, if termination occurs after the Generic Entry Date or (y) the Generic Entry Date, if termination occurs before the Generic Entry Date; and (ii) is delivered within 8 months of termination of the Contingent Supply Agreement.

19. "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.

20. "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.

21. "Exclusion Period" means the 60-day period starting 30 days before executing a Brand/Generic Settlement Agreement and ending 30 days after executing the Brand/Generic Settlement Agreement.

22. "Fully Allocated Manufacturing Cost" means the sum of the following:

a. Direct costs incurred to produce (or acquire) the Subject Drug Product or materials, as consistently applied in accordance with past practice and in the ordinary course of business, including but not limited to (x) acquisition costs or (y) if applicable, materials, labor, manufacturing costs, packaging, labeling,

testing, quality control, storage, insurance, and product maintenance, and determined in accordance with GAAP;

b. The cost to ship the Subject Drug Product or materials to the Generic Filer; and

c. Administrative expenses and overhead expenses directly related to the production of the Subject Drug Product or materials as allocated in accordance with past practice and in the ordinary course of business,

provided that, if administrative expenses and overhead expenses are not allocated to the Subject Drug Product in the ordinary course of business, for this definition, these expenses shall be allocated as a proportion of the NDA Holder's COGS of the Subject Drug Product to the NDA Holder's total COGS, excluding administrative expenses and overhead expenses. To illustrate, overhead expenses and administrative expenses shall be allocated proportionately, by determining the ratio of the Subject Drug Product's COGS (excluding administrative expenses and overhead expenses) to the NDA Holder's total COGS for the relevant manufacturing site (again excluding administrative expenses and overhead expenses), multiplied by the administrative expenses and overhead expenses for the same manufacturing site. In this provision COGS refers to the NDA Holder's cost of goods sold, determined in accordance with GAAP, as consistently applied in accordance with past practice and in the ordinary course of business.

23. "Generic Entry Date" means the date in a Brand/Generic Settlement Agreement, whether certain or contingent, on or after which a Generic Filer is authorized by the NDA Holder to begin manufacturing, importing, using or Marketing the Generic Subject Drug Product.

24. "Generic Filer" means a party to a Brand/Generic Settlement who controls an ANDA or 505(b)(2) Application for the Subject Drug Product or has the exclusive right under such ANDA or 505(b)(2) Application to distribute the Subject Drug Product.

25. "Generic Party" means the Generic Filer, its parents, and any joint venture, subsidiary, division, group, or affiliate Controlled (for clarity, currently or in the future) by the Generic Filer or its parent, and their successors and assigns.

26. "Generic Product" means a Drug Product manufactured under an ANDA or a 505(b)(2) Application.

27. "Generic Subject Drug Product" means the Generic Product that is the subject of the Patent Infringement Claim being resolved by the Brand/Generic Settlement.

28. "Market," "Marketed" or "Marketing" means the promotion, offering for sale, sale, or distribution of a Drug Product.

29. "Materials Agreement" means provisions in, or incorporated into, a Brand/Generic Settlement Agreement providing for the supply of materials to a Generic Party by an NDA Party for securing and/or maintaining regulatory approval, or manufacturing and Marketing by the Generic Filer of the Subject Drug Product, including the terms and conditions of any such supply.

30. "Materials Price" means the total actual per-unit price charged by the NDA Holder for materials provided through a Materials Agreement, including any transfer price and royalty or profit-share payments to be made by the Generic Filer, net of any discounts, allowances, rebates, or other reductions.

31. "Minor Purchase Order" means an ordinary course purchase order for Drug Products, their ingredients, or related equipment or supplies that does not exceed $1,000,000,

provided that the $1,000,000 limit referenced in this definition 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 Pharmaceutical preparations - WPU0638 published by the Bureau of Labor Statistics of the United States Department of Labor, or its successor.

32. "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.

33. "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 in the United States.

34. "NDA Party" means the NDA Holder, its parents, and any joint venture, subsidiary, division, group, or affiliate Controlled (for clarity, currently or in the future) by the NDA Holder or its parent, their successors and assigns.

35. "No-AG Commitment" means any agreement with, or commitment or license to, a Generic Party that prohibits, prevents, restricts, requires a delay of, or imposes a condition precedent upon the research, development, manufacture, regulatory approval, or Marketing of an Authorized Generic of the Subject Drug Product,

provided, however, that agreement by the Generic Party to pay royalties to the NDA Party for the right to Market the Generic Subject Drug Product or an Authorized Generic of the Subject Drug Product, including agreement on the terms and conditions governing payment of such royalties, shall not be considered a No-AG Commitment.

36. "Original Order" means the Order for Permanent Injunction and Equitable Monetary Relief entered in this matter on June 17, 2015, at Docket No. 405.

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

38. "Payment by the NDA Party to the Generic Party" means a transfer of value, other than a No-AG Commitment, by an NDA Party to a Generic Party (including, but not limited to, money, goods, or services), regardless of whether the Generic Party purportedly transfers value in return, where such transfer is either expressly contingent on entering a Brand/Generic Settlement Agreement or agreed to during the Exclusion Period. However, Payment by the NDA Party to the Generic Party does not include:

a. compensation for saved future litigation expenses in litigation involving a Patent Infringement Claim that does not exceed x) the maximum limit (as defined in this paragraph) minus y) the value of Minor Purchase Orders (i) that were placed or confirmed during the Exclusion Period and (ii) do not qualify as the continuation or renewal of a pre-existing agreement, as set forth in Paragraph 38(f) below. The maximum limit was $7,000,000 when the Original Order was entered on June 17, 2015 and, as required by the Original Order and this Revised Order, has increased (or decreased) – and, going forward, shall continue to increase (or decrease) – on 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. the right to Market, as of an agreed upon Generic Entry Date: (i) Generic Product(s) in the United States under an ANDA or 505(b)(2) Application (x) that is controlled by the Generic Filer and was not transferred to the Generic Filer by the NDA Holder, or (y) to which the Generic Party has a license from a party other than the NDA Holder; or (ii) an Authorized Generic of the Subject Drug Product, regardless of whether the Generic Filer must pay for the right to Market or the terms and conditions governing such payment;

c. an agreement to settle or resolve a different litigation claim, so long as that separate agreement independently complies with the terms of this Revised Order;

d. a Qualified Materials Agreement or Qualified Supply Agreement;

e. Minor Purchase Orders placed or confirmed during the Exclusion Period that do not exceed a cumulative maximum, which is initially $4,000,000 and shall increase (or decrease) on 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 Pharmaceutical preparations - WPU0638 published by the Bureau of Labor Statistics of the United States Department of Labor, or its successor;

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 the relevant Brand/Generic Settlement;

g. provisions to facilitate, by means other than the transfer of goods or money, the Generic Filer's ability to secure or maintain final regulatory approval, or commence or continue the Marketing, of a Generic Product, by, *inter alia*, providing covenants, waivers, permissions, releases, dismissals of claims, and/or authorizations; or

h. waiver or limitation of a claim for damages or other monetary relief based on prior Marketing of the Generic Subject Drug Product, but only if the NDA Holder and the Generic Filer do not agree, and have not agreed, to another Brand/Generic Settlement for a different Drug Product during the Exclusion Period.

39. "Qualified" as referring to a Materials Agreement or a Supply Agreement means a Materials Agreement or Supply Agreement that meets all of the following conditions:

a. the price is above the Fully Allocated Manufacturing Cost, meaning

i) if the Agreement is a Materials Agreement, the Materials Price charged by an NDA Party for materials provided through the Materials Agreement is at or above the Fully Allocated Manufacturing Cost incurred by the NDA Party per unit of the relevant materials, or

ii) if the Agreement is a Supply Agreement, the Supply Price charged by an NDA Party for the Authorized Generic of the Subject Drug Product is at or above the Fully Allocated Manufacturing Cost incurred by the NDA Party per unit of the Authorized Generic of the Subject Drug Product provided under the agreement;

b. the Brand/Generic Settlement Agreement containing or incorporating the Materials Agreement or Supply Agreement is the only Brand/Generic Settlement Agreement that the NDA Party and the Generic Party have entered, or agreed to enter, during the Exclusion Period;

c. within 14 days after signing the Brand/Generic Settlement Agreement containing or incorporating the Materials Agreement or Supply Agreement, the Cephalon Parties submit to the Monitor a full and complete copy of the Brand/Generic Settlement Agreement, including any Materials Agreement and/or Supply Agreement;

d. within 14 days after the NDA Holder provides to the Generic Filer the Materials Price or Supply Price, as applicable, the Cephalon Parties submit to the Monitor notification of the relevant Materials Price or Supply Price;

e. within 30 days after beginning supply under the relevant Materials Agreement or Supply Agreement, the NDA Holder submits to the Monitor:

i) if a Materials Agreement, a verified written statement containing (i) the Fully Allocated Manufacturing Cost per unit for the materials and (ii) a detailed breakdown of the Fully Allocated Manufacturing Cost for the materials, stated separately by cost component and on a per-unit basis; and

ii) if a Supply Agreement, a verified written statement containing (i) the Fully Allocated Manufacturing Cost per unit for the relevant Authorized Generic of the Subject Drug Product and (ii) a detailed breakdown of the Fully Allocated Manufacturing Cost for the Authorized Generic of the Subject Drug Product, stated separately by cost component and on a per-unit basis; and

f. if the NDA Party is not a Cephalon Party, the Materials Agreement or Supply Agreement, as applicable, requires the NDA Party to (i) provide the notification required by subsection (e) above and cooperate with any reasonable request by the Monitor or staff of the Commission for documents and information to determine

the relevant Fully Allocated Manufacturing Cost, including without limitation and subject to any demonstrated legally recognized privilege, providing the Monitor reasonable access to personnel, books, documents, records kept in the ordinary course of business;

provided that, notwithstanding subsections (e) and (f) above, a Materials Agreement or Supply Agreement in which a Cephalon Party is a Generic Party shall also be considered a Qualified Agreement if it complies with subsections (a) to (d) above ***and***:

i) if a Materials Agreement, the Cephalon Parties submit to the Monitor within 30 days of beginning to receive the materials, a verified written statement containing (i) the Cephalon Parties' best estimate of what would be the Fully Allocated Manufacturing Cost per unit for the materials if manufactured or sourced by the Generic Party, including a separate estimate of each cost component on a per-unit basis, and (ii) a description of the terms and conditions of any agreement(s), offer(s), purchase order(s) or price quote(s) a Cephalon Party has entered into or received for supply of the materials in connection with manufacture of the Subject Drug Product and other facts and circumstances, if any, that the Cephalon Parties deem relevant to understanding such terms and conditions; and

ii) if a Supply Agreement, it is a Contingent Supply Agreement and the Cephalon Parties submit to the Monitor within 30 days of beginning to receive the Authorized Generic, a verified written statement containing (i) the Cephalon Parties' best estimate of what would be the Fully Allocated Manufacturing Cost per unit for the Subject Drug Product if manufactured by a Generic Party and (ii) a detailed breakdown of that best estimate, including an estimate of each cost component on a per-unit basis.

40. "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 Revised Order, the Drug Product of the NDA Holder and the Generic Filer to the same Brand/Generic Settlement shall be considered to be the same Subject Drug Product.

41. "Supply Agreement" means provisions in, or incorporated into, a Brand/Generic Settlement Agreement providing for the supply of the Subject Drug Product to the a Generic Party by an NDA Party for the Marketing by the Generic Party of an Authorized Generic on or after the Generic Entry Date, including the terms and conditions of any such supply.

42. "Supply Price" means the total actual per-unit price charged by the NDA Holder for supply provided through a Supply Agreement, including any transfer price and royalty or profit-share payments to be made by the Generic Filer, for the right to sell an Authorized Generic of the Subject Drug Product, net of any discounts, allowances, rebates or other reductions.

43. "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.

FINDINGS

1. This Court has jurisdiction over the parties and the subject matter of this action. Teva has stipulated that, for purposes of this Revised 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 Cephalon Parties admit the facts necessary to establish the personal and subject matter jurisdiction of this Court to enter and enforce the Original Order and this Revised Order.

4. The Commission and Cephalon agreed to stipulate to entry of the Original Order to resolve the litigation *FTC v. Cephalon, Inc.*, 08-cv-2141 (E.D. Pa.).

5. The Commission and the Cephalon Parties now have agreed to stipulate to entry of this Revised Order to resolve the litigations *FTC v. AbbVie Inc.*, Nos. 18-2621, 18-2748, 18-2758 (3d Cir.), *Federal Trade Commission v Actavis.*, Civ. Action No. 09-cv-955 (N.D. Ga.), *FTC v. Allergan PLC*, Civ. Action No. 17-cv-312 (N.D. Cal.); and *Endo Pharmaceuticals Inc. v. FTC*, Civ. Action No. 16-cv-5599 (E.D. Pa.).

6. The Cephalon Parties waive any claim that they may have under the Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the prosecution of the actions identified in Finding No. 5 through the date of this Revised Order, and agree to bear their own costs and attorney fees in those actions.

7. The Cephalon Parties waive all rights to appeal or otherwise challenge or contest the validity of this Revised Order.

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

9. Entry of the Revised Order satisfies the requests for relief made by the FTC in its complaints in the foregoing actions 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 Revised Order.
2. Teva stipulates that it will not object to the Commission's right to seek relief under this Revised 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 Revised 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, Teva Pharmaceuticals USA, Actavis, and Watson.
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 Revised Order pending its entry by the Court.

8. Watson stipulates that, upon entry of this Revised Order, it will not file – or, if already filed, will voluntarily dismiss within one day of the entry of this Revised Order – any appeal of the order dismissing the action *Endo Pharmaceuticals Inc. v. FTC*, Civ. Action No. 16-cv-5599 (E.D. Pa.), with the parties agreeing to bear their own costs.

9. The Commission stipulates that, within one day of the entry of this Revised Order, the Commission will file motions for voluntary dismissals with prejudice of its claims against Teva Pharmaceuticals USA in *FTC v. AbbVie Inc.*, Nos. 18-2621, 18-2748, 18-2758 (3d Cir.); Actavis and Allergan Finance, LLC in *Federal Trade Commission v Actavis.*, Civ. Action No. 09-cv-955 (N.D. Ga.); and Watson in *FTC v. Allergan PLC*, Civ. Action No. 17-cv-00312 (N.D. Cal.) in the forms provided in Exhibit 1.

10. The Commission and the Cephalon Parties stipulate that upon entry of the Revised Order, the Commission and the Cephalon Parties each release the other from any and all claims, causes of actions and demands, including any claim for attorney fees, costs, sanctions or other expenses that are in existence as of the date of entry of the Revised Order in any of the following actions: *FTC v. AbbVie Inc.*, Nos. 18-2621, 18-2748, 18-2758 (3d Cir.); *Federal Trade Commission v Actavis.*, Civ. Action No. 09-cv-955 (N.D. Ga.); *FTC v. Allergan PLC*, Civ. Action No. 17-cv-00312 (N.D. Cal.); *Endo Pharmaceuticals Inc. v. FTC*, Civ. Action No. 16-cv-5599 (E.D. Pa.); and *Federal Trade Commission v. Endo Pharmaceuticals Inc.*, Civ. Action No. 16-cv-1440 (E.D. Pa.).

11. The Commission and the Cephalon Parties stipulate that the Original Order will remain in full force and effect until entry of the Revised Order. The Commission further stipulates that it releases the Cephalon Parties from claims for violation of the Original Order that are based on conduct that does not also violate the Revised Order, including claims

related to entry of a Supply Agreement or Material Agreement where the pricing in the relevant agreement is consistent with the pricing requirements (price at or above cost) for a Qualified agreement under the Revised Order.

ORDER

I. Prohibited Agreements

IT IS ORDERED that

A. From the date the Revised Order is signed by Teva, the Cephalon Parties are prohibited from, together or separately, entering into any Brand/Generic Settlement that includes:

1. a Payment from an NDA Party to a Generic Party and an agreement by the Generic Filer not to research, develop, manufacture or Market the Subject Drug Product for any period of time; or
2. a No-AG Commitment and an agreement by the Generic Filer not to research, develop, manufacture or Market 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 Revised Order;

provided further, that the Cephalon Parties may enter into any written agreement that receives the prior approval of the Commission. Within 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 Revised Order shall be deemed not to preclude the requesting party from entering into the subject written agreement.

B. Nothing in this Revised 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 Revised Order proposed by the Cephalon Parties.

II. Equitable Monetary Relief

IT IS FURTHER ORDERED that

A. Under the Original Order, the Cephalon Parties paid, for purposes of settlement only (no portion of the payment was made in lieu of treble damages, fines, penalties, punitive damages or forfeitures), One Billion and Two Hundred Million Dollars (US$ 1,200,000,000) as equitable monetary relief, to be used for a settlement fund ("Settlement Fund") in accordance with the terms of the Original Order, including the Settlement Fund Disbursement Agreement, attached to the Original Order as Exhibit A. Those terms of the Original Order, and the Settlement Fund Disbursement Agreement, shall continue to govern in regards to the administration and disposition of the Settlement Fund.

III. Monitor

IT IS FURTHER ORDERED that:

A. The Commission may appoint a Monitor to ensure that any Materials Agreement or Supply Agreement that the Cephalon Parties assert is a Qualified Materials Agreement or Qualified Supply Agreement complies with the definition of Qualified. The Commission shall select the Monitor, subject to the consent of the Cephalon Parties, which consent shall not be unreasonably withheld. If the Cephalon Parties have not opposed, in writing, including the reasons for opposing, the selection of any proposed Monitor within 14 days after notice by the staff of the Commission to the Cephalon Parties of the identity of any proposed Monitor, the Cephalon Parties shall be deemed to have consented to the selection of the proposed Monitor.

B. The Monitor shall serve, without bond or other security, at the expense of the Cephalon Parties, on such reasonable and customary terms and conditions to which the Monitor and the Cephalon Parties agree and that the Commission approves.

C. The Monitor's duties and responsibilities shall include the following:

1. the Monitor shall have the power and authority to perform his/her duties under this Paragraph. The Monitor shall exercise his/her power and authority and carry out his/her duties and responsibilities in a manner consistent with the purposes of this Revised Order and in consultation with the Commission;
2. the Monitor shall have authority to employ, at the expense of the Cephalon Parties, such consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities; and

3. Thirty days after the Cephalon Parties have submitted to the Monitor information described in definition 38 (Qualified) regarding a Materials Agreement or Supply Agreement, the Monitor shall provide the Commission with a written report describing the facts relevant to determining whether the agreement is a Qualified Materials Agreement or a Qualified Supply Agreement.

D. The Cephalon Parties shall grant and transfer to the Monitor, and such Monitor shall have, all rights, powers, and authority necessary to carry out the Monitor's duties and responsibilities under this Revised Order, including but not limited to, the following:

1. the Cephalon Parties shall cooperate with any reasonable request of the Monitor and shall take no action to interfere with or impede the Monitor's ability to perform his/her duties as provided in this paragraph;

2. subject to any demonstrated legally recognized privilege, the Cephalon Parties shall provide the Monitor full and complete access to personnel, books, documents, records kept in the ordinary course of business, facilities and technical information, and such other relevant information as the Monitor may reasonably request to perform his/her duties under this paragraph;

3. the Cephalon Parties shall indemnify the Monitor and hold the Monitor harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Monitor's duties, including all reasonable fees of counsel, and other reasonable expenses incurred in connection with the preparations for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from gross negligence, willful or wanton acts, or bad faith by the Monitor; and

4. the Cephalon Parties may require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign an appropriate confidentiality agreement related to Cephalon Parties' materials and information received in connection with the performance of the Monitor's duties,

provided, however, such agreement shall not restrict the Monitor from providing any information to the Commission or require the Monitor to report to the Cephalon Parties the substance of communications to or from the Commission or any party to a Brand/Generic Settlement Agreement other than the Cephalon Parties.

E. The Commission may require that the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants sign an appropriate confidentiality agreement related to Commission materials and information received in connection with the performance of the Monitor's duties.

F. The Commission may on its own initiative, or at the request of the Monitor, issue such additional orders or directions as may be necessary or appropriate.

G. If the Commission determines that the Monitor has ceased to act or failed to act diligently, the Commission may appoint a substitute Monitor. The Commission shall select the substitute Monitor, subject to the consent of the Cephalon Parties, which consent shall not be unreasonably withheld. If the Cephalon Parties have not opposed, in writing, including the reasons for opposing, the selection of any proposed substitute Monitor within fourteen (14) days after notice by the staff of the Commission to the Cephalon Parties of the identity of any proposed substitute Monitor, the Cephalon Parties shall be deemed to have consented to the selection of the proposed substitute Monitor.

IV. 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 60 days after entry of this Revised Order, although such report need only address whether any Supply Agreements and/or Materials Agreements executed by the Cephalon Parties after the Original Order was entered, but before this Revised Order was entered, are consistent with this Revised Order's pricing requirements (price at or above cost) for a Qualified Agreement; and
2. On June 17, 2019, and annually thereafter until this Revised Order expires.

B. The Cephalon Parties shall include with each verified written report required by this provision:

1. A copy of any additional agreement, other than a Minor Purchase Order, with a party to a Brand/Generic Settlement to which a Cephalon Party is also a signatory if:

   a. the relevant Brand/Generic Settlement Agreement includes an agreement by the Generic Filer not to research, develop, manufacture, or Market the Subject Drug Product for any period of time, and

   b. the relevant additional agreement was entered during a 150-day period starting 75 days before entering the Brand/Generic Settlement Agreement and ending 75 days after entering the Brand/Generic Settlement Agreement,

   provided that, the Cephalon Parties do not need to provide any additional agreement that they submitted to the Commission with a prior verified written report required by this provision, and *provided further that,* as concerns Brand/Generic Settlement Agreements that were entered into after the Original Order was entered but before the Cephalon parties submitted to the Commission their most recent verified written report under that Original Order, on June 15, 2018, the Cephalon Parties do not need to provide any additional agreement that they would not have been required to submit to the Commission under the Original Order; and

2. A description of information provided to the Monitor since submission of the most recent prior verified written report, and, if not previously submitted to the Monitor, information sufficient to show that any agreement Cephalon contends should be considered a Qualified Supply Agreement or Qualified Materials Agreement meets the pricing requirements (price at or above cost) for a Qualified agreement,

provided that, Cephalon Parties do not need to provide materials they submitted to the Commission with a prior verified written report required by this provision.

C. 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 Revised Order, or as otherwise required by law.

D. This Revised 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.

V. Change of Corporate Control

IT IS FURTHER ORDERED that

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

B. No information or documents submitted to the Commission 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 Revised Order, or as otherwise required by law.

VI. Access to Information

IT IS FURTHER ORDERED that

A. For the purpose of determining or securing compliance with this Revised 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 Revised 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 Revised Order, or as otherwise required by law.

VII. Retention of Jurisdiction

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

VIII. Expiration of Revised Order

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

SO ORDERED this 21st day of Feb., 2019.

M. Hall

Hon. Mitchell S. Goldberg
UNITED STATES DISTRICT JUDGE

SO STIPULATED AND AGREED:

FOR PLAINTIFF FEDERAL TRADE COMMISSION:

Mark Meier Date: 2/13/19

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

FOR TEVA PHARMACEUTICAL INDUSTRIES LTD.:

_____ Date: _____

Michael McClellan
Executive Vice President, Chief Financial Officer

_____ Date: _____

Dov Bergwerk
Senior VP & General Counsel—Corporate & Company Secretary

_____ Date: _____

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

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 TEVA PHARMACEUTICAL INDUSTRIES LTD.:

_____ Date: 2/12/2019

Michael McClellan
Executive Vice President, Chief Financial Officer

_____ Date: 2/12/2019

LEGAL AFFAIRS DS

Dov Bergwerk
Senior VP & General Counsel—Corporate & Company Secretary

_____ Date: _____

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

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 TEVA PHARMACEUTICAL INDUSTRIES LTD.:

_____ Date: _____

Michael McClellan
Executive Vice President, Chief Financial Officer

_____ Date: _____

Dov Bergwerk
Senior VP & General Counsel—Corporate & Company Secretary

_____ Date: 2/20/19

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

FOR CEPHALON, INC.:

Brendan O'Grady Date: 2/12/2019

Brendan O'Grady
Executive Vice President, North America Commercial

Brian Savage Date: 2/12/2019

LEGAL AFFAIRS

Brian Savage
General Counsel, US Generics

Date: _____

Mark A. Ford
Wilmer Cutler Pickering Hale and Dorr LLP
COUNSEL FOR CEPHALON, INC.

FOR CEPHALON, INC.:

_____ Date: _____

Brendan O'Grady
Executive Vice President, North America Commercial

_____ Date: _____

Brian Savage
General Counsel, US Generics

Date: 2-12-19

Mark A. Ford
Wilmer Cutler Pickering Hale and Dorr LLP
COUNSEL FOR CEPHALON, INC.

EXHIBIT 3

ESCROW AGREEMENT

THIS ESCROW AGREEMENT, dated as of June 19, 2019 ("Escrow Agreement"), is entered into by the State of California ("State"), and The Huntington National Bank, an Ohio banking corporation, as Escrow Agent hereunder ("Escrow Agent"). The parties hereto may sometimes be collectively referred to as "Parties" or individually as "Party."

RECITAL

A. The State, on the one hand, and Teva Pharmaceutical Industries Ltd. ("Teva") on behalf of itself and its wholly-owned subsidiaries Cephalon, Inc., Barr Laboratories, Inc., and Teva Pharmaceuticals USA, Inc. (hereinafter, "Defendants") have entered into a Settlement Agreement (copy of which is attached hereto as Exhibit A and the terms and definitions of which are incorporated herein), pursuant to which the Provigil litigation to be filed by the State against the Defendants will be resolved, upon the Effective Date of the Settlement Agreement within the meaning of Section I, Paragraph I of the Settlement Agreement. The Settlement Agreement provides that the Defendants 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). The Disbursement Request will request disbursement in the total amount of $69,000,000.00 ("Settlement Amount") to be paid to the Escrow Agent for the benefit of the State. In the event the FTC rejects the Defendants' Disbursement Request, Teva shall remain responsible for the Settlement Payment and will pay the Settlement Amount to the State by wire transfer to the Escrow Agent within the time period prescribed by Section II, Paragraph A.4 of the Settlement Agreement. These monies will be distributed to various Settlement Accounts and otherwise in accordance with the terms of this Escrow Agreement.

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

C. The State agrees to appoint The Huntington National Bank as the Escrow Agent and The Huntington National 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 Counsel for the State, in the form attached hereto as Exhibit B. Each Written Direction shall include a certification by Counsel for the State that the instructions in the notification are being made

pursuant to the Settlement Agreement and this Escrow Agreement and that such Counsel for the State is authorized to act on behalf of the State or other authority in accordance with the terms of this Escrow Agreement.

c. "Escrow Funds" shall mean the $69,000,000.00 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. "Counsel for the State" shall mean, for purposes of this Escrow Agreement, the State's Senior Assistant Attorney General Kathleen E. Foote or Deputy Attorney General Cheryl L. Johnson and any other designated representatives about which the Escrow Agent is notified in writing.

e. "Settlement Administration Costs" shall mean 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 the State.

f. "Claims Administrator" shall mean a neutral third-party that the State will appoint pursuant to the Settlement Agreement for the administration of the Escrow Funds with the Escrow Agent. The identity of the Claims Administrator shall be identified by Counsel for the State in a Written Direction to the Escrow Agent.

2. Appointment of and Acceptance by Escrow Agent. The State hereby appoints The Huntington National 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 Paragraph 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 $25,250,000.00. The Consumer Compensation Account shall be used to fund the Consumer Fund, as described in Section II, Paragraph B.1 of the Settlement Agreement. The Escrow Agent shall only distribute funds in the Consumer Compensation Account pursuant to a Court-approved Distribution Plan upon the Effective Date of the Settlement Agreement within the meaning of Section I, Paragraph I, Section II, Paragraph B.1, and Section IV, Paragraph A of the Settlement Agreement. Any and all interest earned on the Consumer Compensation Account shall accrue to and become a part of the Consumer Fund.

i. Defendants will submit a Disbursement Request to the Federal Trade Commission as described in Paragraph A in order to effectuate the transfer of 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 CA Provigil Consumer Compensation Account
A/C # 1087247303

b. State Compensation, Disgorgement, Costs, and Fees Account: The Escrow Agent will establish one State Compensation, Disgorgement, Costs, and Fees Account, in the Amount of $43,750,000.00. The State Compensation, Disgorgement, Costs, and Fees Account shall be used to fund the State Proprietary Fund, as described in Section II, Paragraph B.2 of the Settlement Agreement. Any and all interest earned on the State Compensation, Disgorgement, Costs, and Fees Account shall accrue to and become a part of the State Proprietary Fund and shall be used to pay the Settlement Administration Costs. Upon the Effective Date of the Settlement Agreement, all funds remaining in the State Compensation, Disgorgement, Costs, and Fees Account shall be disbursed to the State.

i. Defendants will submit a Disbursement Request to the Federal Trade Commission as described in Paragraph A in order to effectuate the transfer of 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 CA Provigil State Compensation, Disgorgement, Cost, and Fees Account
A/C # 1087247358

iii. If, after final distribution of all funds in the Consumer Compensation 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 Counsel for the State 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 Counsel for the State or by order of the Court. The Escrow Agent shall not disburse Escrow Funds except pursuant to Written Directions from Counsel for the State 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, or to Teva if the Disbursement Request was rejected by the FTC, 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 Counsel for the State, the Escrow Agent shall invest the Escrow Funds exclusively in instruments or accounts backed by the full faith and credit of the United States Government or fully insured by the United States Government or an agency

thereof, including a U.S. Treasury Fund or a bank account that is either (a) fully insured by the Federal Deposit Insurance Corporation ("FDIC") or (b) secured by instruments backed by the full faith and credit of the United States Government. The Escrow Agent 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 Escrow Funds in accordance with the provisions of this Escrow Agreement. The Escrow Agent will be indemnified by the Escrow Funds[1], 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 upon execution of the Settlement Agreement, a "qualified settlement fund" within the meaning of Treas. Reg.§ 1.468B-l(a). In addition, the Claims Administrator, and, as required, settling parties shall jointly and timely make such elections as necessary or advisable to fulfill the requirements of such Treasury Regulation, including the "relation-back election" (as defined in Treas. Reg. § 1.468B-l(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 Claims Administrator. 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 1)). 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, Paragraph B 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 the Defendants 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 Defendants 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 State Compensation, Disgorgement, Costs, and Fees 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 the State 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)).

[1] The State shall not be liable for anything pertaining to this agreement and furthermore, shall not indemnify anyone with respect to this agreement

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 Counsel for the State or may be removed, with or without cause, by the Counsel for the State, 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 Counsel for the State 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 Counsel for the State) 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 C. 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 State Compensation, Disgorgement, Costs, and Fees Account on a monthly basis, thirty (30) days after giving written notice, consisting of an itemization of compensation earned, to the Counsel for the State.

b. The Escrow Agent understands and agrees that all payments to the Escrow Agent will be made from the State Compensation, Disgorgement, Costs, and Fees Account. The Escrow Agent understands and agrees that the Counsel for the State is not responsible or liable for payments under this Escrow Agreement and that the Escrow Agent will look solely to the State Compensation, Disgorgement, Costs, and Fees Account for payment, pursuant to the payment procedures set forth in this Escrow Agreement.

10. Reports and Accounting. Escrow Agent will provide monthly reports to the Counsel for the State and to the Claims Administrator, in a form that is acceptable to the State, 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 State; and such other reports as the Counsel for the State may reasonably require from time to time. Reports and the status of all Settlement Accounts shall be accessible to the Counsel for the State online. 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 Counsel to the State.

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 California 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 the State at:

Kathleen E. Foote
Senior Assistant Attorney General
Cheryl Lee Johnson
Deputy Attorney General
California Department of Justice
Office of the Attorney General
ANTITRUST LAW SECTION
455 Golden Gate, Suite 11000
San Francisco, CA 94102
Email: Kathleen.Foote@doj.ca.gov

Cheryl Lee Johnson
Deputy Attorney General
California Department of Justice
Office of the Attorney General
ANTITRUST LAW SECTION
300 S. Spring Street, Suite 1700
Los Angeles, California 90013
Email: Cheryl.Johnson@doj.ca.gov

If to Escrow Agent at:

THE HUNTINGTON NATIONAL BANK
Attention: Liz Lambert, Senior Vice President
1150 First Avenue, Suite 501
King of Prussia, PA 19406
Telephone: (215) 568-2382
E-mail: liz.lambert@huntington.com

Susan Brizendine, Trust Officer
Huntington National Bank
7 Easton Oval – EA5W63
Columbus, Ohio 43219
Telephone: (614) 331-9804
E-mail: susan.brizendine@huntington.com

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 Counsel for the State 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 California 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 is attached as Exhibit A, should not be disclosed until the preliminary approval order is filed with the Court. Prior to any disclosure, notification must be made in writing to Counsel for the State and counsel for Defendants.

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 Escrow Agreement will become effective upon signature by the Parties.

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

STATE OF CALIFORNIA

XAVIER BECERRA
Attorney General of California

By: _____
Cheryl Lee Johnson
Deputy Attorney General

THE HUNTINGTON NATIONAL BANK, as Escrow Agent

By: _____
Liz Lambert
Senior Vice President

EXHIBIT A

Settlement Agreement

EXHIBIT B

JOINT WRITTEN DIRECTION
EXAMPLE

STATE OF CALIFORNIA V.
TEVA PHARMACEUTICAL INDUSTRIES LTD, ET AL.,
IN RE PROVIGIL ANTITRUST LITIGATION
ESCROW # _____

In accord with the Escrow Agreement, dated {xx, xx, 2019} and the Settlement Agreement referenced in the Escrow Agreement, the Counsel for the State, all of whom are authorized, directs The Huntington National 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: _____, 2019

STATE OF CALIFORNIA

XAVIER BECERRA
Attorney General of California

By:_____

Title:_____

EXHIBIT C

Fees of Escrow Agent

Acceptance Fee: **Waived**

The Acceptance Fee includes the review of the Escrow Agreement, acceptance of the role as Escrow Agent, establishment of Escrow Account(s), and receipt of funds.

Annual Administration Fee: **Waived**

The Annual Administration Fee includes the performance of administrative duties associated with the Escrow Account including daily account management, generation of account statements to appropriate parties, and disbursement of funds in accordance with the Escrow Agreement. Administration Fees are payable annually in advance without proration for partial years.

Out of Pocket Expenses: **Waived**

Out of pocket expenses include postage, courier, overnight mail, wire transfer, and travel fees.

EXHIBIT 4

Exhibit #4
Provigil® Consumer Distribution Plan

The State of California's Eligible Consumers may be eligible to receive a distribution from the State's Consumer Fund, from the Class Consumer Fund, or from both, as explained below. 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.

I. DIRECT DISTRIBUTION TO ELIGIBLE CONSUMERS

A. Payment from the State's Consumer Fund

Upon final execution of the Settlement Agreement, the State will instruct its Escrow Agent to establish and administer a Consumer Compensation Account and upon receiving Teva's Settlement Payment, to transfer the Consumer Settlement in the amount of U.S. Dollars $25,250,000 (Twenty-Five Million Two Hundred and Fifty Thousand Dollars) to said account. The funds deposited into the Consumer Compensation Account and any accrued interest after deposit shall be referred to as the State's Consumer Fund. Upon the Effective Date, the State's Consumer Fund shall be available for distributions to Eligible Consumers and as otherwise permitted by this Distribution Plan, subject to deductions for payments of taxes payable on the State's Consumer Fund.

An Eligible Consumer will be entitled to recovery for purchases of Provigil®, Nuvigil®, and/or generic versions of Provigil® (modafinil) from June 24, 2006 through December 31, 2012 made in the District of Columbia or any state provided that the Eligible Consumer must have resided in the State of California at the time of the purchase ("California Eligible Consumers"). Proof of purchase will not be required for a payment from the State's Consumer Fund. The purchase need not have been made out-of-pocket. Insured consumers are also entitled to recovery from the State's Consumer Fund. The State's Claims Administrator will vet the consumer claims for legitimacy.

The State's Consumer Fund will be distributed to California Eligible Consumers. Each California Eligible Consumer that submits a Claim Form for payment from the State's Consumer Fund shall be referred to as a California Claimant. The $25.25 million dollars in overcharges recovered by the Attorney General on behalf of all California Eligible Consumers shall be apportioned equally across approximately 1,182,690 total prescriptions dispensed to Californians ("Total California Prescriptions") during the relevant period, or $21.34 in recovered overcharges per prescription ("Recovery Per Prescription"). Each California Claimant shall be entitled to claim the Recovery Per Prescription for each prescription filled as reported on that claimant's Claim Form and vetted for legitimacy by the Claims Administrator. To more fully compensate California Eligible Consumers and incentivize them to submit claims, if the proportion of Total California Prescriptions submitted for claims (the "Claims Rate") is 20% or less, each California Claimant shall be entitled to receive 200% of his or her Recoveries Per Prescription, or $42.68 per prescription. If the Claims Rate is between 20% and 40%, each California Claimant shall be entitled to receive 150% of his or her Recoveries Per Prescription, or $32.01. If the Claims Rate is 40% or greater, each California Claimant shall receive 100% of his or her Recoveries Per Prescription.

B. Payment from the Class Consumer Fund

A settlement in *In re Modafinil Antitrust Litigation, Vista Health Plan Inc. v. Cephalon Inc. et al.* 2:06-cv-01833 (E.D. Penn.) also provides a monetary distribution to consumers represented by the class ("Class Consumer Fund"), which class has been defined to include California Eligible Consumers. Thus, in addition to receiving a payment from the State's Consumer Fund, a California Eligible Consumer could also receive a payment from the Class Consumer Fund if that consumer meets the class requirements for payment as set forth on the Claim Form.

C. Separate Payment Checks to be Issued by Claims Administrator

In all instances, California Eligible Consumers will receive one check from the State's Consumer Fund and a separate check from the Class Consumer Fund.

II. *CY PRES* DISTRIBUTION OF RESIDUE CORPUS

If, following the State's distribution to California Eligible Consumers (as described above under Section I, Paragraph A), any funds remain in the State's Consumer Fund (the "Remaining Settlement Funds"), the funds will be distributed *cy pres* to public interest organizations following a competitive grant-making process. This process will ensure that the grantees will use the funds for a purpose that aligns with the purpose of the litigation and harm incurred by California Eligible Consumers. To ensure that the grant-making process is as transparent and competitive as possible, the Attorney General will engage qualified neutral third-party administrator(s) ("*Cy Pres* Administrator") to administer the *cy pres* distribution of the Remaining Settlement Funds. The *Cy Pres* Administrator will solicit, evaluate, and select grant applicants under the Attorney General's supervision.

The Attorney General, which has overseen the *cy pres* distribution of residual funds from several antitrust settlements obtained on behalf of consumers previously in its role as *parens patriae*, will ensure the grant-making process aligns with its internal guidelines for approving payment of funds to non-parties, and will retain supervision over the Remaining Settlement Funds and their distribution. With regard to settlements that involve payments to non-parties, the relevant portion of the Attorney General's guidelines provide:

> The non-party recipient of a payment arising out of a settlement must be identified in the settlement agreement, if the recipient is known at the time of the settlement. If the recipient is not known at the time of settlement, the method of selecting the recipient must be set forth in the settlement agreement or in a separate public document referenced in the agreement. The identity of the recipient is public information.
>
> Settlement funds that are directed to a non-party to fund a beneficial project or service must be spent in a manner that has a nexus to the basis for the litigation. (*See, e.g., Lane v. Facebook, Inc.* (9th Cir. 2012) 696 F.3d 811,

821 [in class-action context, the "nexus" requirement means that a "*cy pres* remedy 'must account for the nature of the plaintiffs' lawsuit, the objectives of the underlying statutes, and the interests of the [plaintiffs]'"].)

Any non-party recipient of a payment under a settlement agreement must be a non-profit organization, a government entity, or an entity subject to court supervision. The recipient must agree and be able to demonstrate how the funds will be spent and to ensure that the funds are being spent for that purpose. Attorneys responsible for negotiating the settlement should consider whether it is appropriate for the agreement to require that the non-party recipient periodically report on its use of settlement funds.

Based on the Attorney General's previous experience supervising the distribution of *cy pres* funds in similar cases, this Office believes that any decision pertaining to the solicitation and selection of grantees, as well as the amount of money to be given to each, should be deferred until the claims process has concluded. At that point, it will be known whether there are Remaining Settlement Funds, their extent, and when they can be made available for distribution. Without that information, the grant-making process would be unduly speculative and burdensome to potential grant applicants.

The Attorney General will seek the court's approval of its plan to distribute the Remaining Settlement Funds *cy pres* in its Motion for Preliminary Approval of the Consumer Settlement.