

NEWS RELEASE

# Luther Strange

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FOR IMMEDIATE RELEASE

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## AG STRANGE SECURES RECOVERY FOR CONSUMERS AND STATE FOR CEPHALON EFFORTS TO DELAY PROVIGIL COMPETITION

### *Anticompetitive Conduct Delayed Generic Competition, Causing States and Consumers to Pay More for Provigil*

(MONTGOMERY)--Attorney General Luther Strange today announced a \$125 million, 48-state settlement with Cephalon and affiliated companies ("Cephalon"). The settlement ends a multistate investigation into anticompetitive conduct by Cephalon to protect the monopoly profits it earned from its landmark wakefulness drug, Provigil. That conduct delayed generic versions of Provigil from entering the market for several years.

As patent and regulatory barriers that prevented generic competition to Provigil neared expiration, Cephalon intentionally defrauded the Patent and Trademark Office to secure an additional patent, which a court subsequently deemed invalid and unenforceable. Before that court finding, Cephalon was able to delay generic competition for more than a decade by filing patent infringement lawsuits against all potential generic competitors. Cephalon settled those lawsuits in 2005 and early 2006 by paying the generic competitors to delay sale of their generic versions of Provigil until at least April 2012. Because of that delayed entry, consumers, states, and others paid hundreds of millions more for Provigil than they would have done if generic versions of the drug had launched by early 2006, as expected.

The settlement includes \$35 million for distribution to consumers who bought Provigil. Alabama's total recovery will be more than \$1 million including: (1) funds to compensate for Provigil purchases by certain state entities or authorized purchases off state contracts; (2) funds for distribution to Alabama consumers for payments for Provigil; and (3) Alabama's share of the company's repayment of wrongful gains and the states' costs of investigation and litigation.

This multistate settlement was facilitated by litigation brought against Cephalon by the Federal Trade Commission. In May of 2015, the FTC settled its suit against Cephalon for injunctive relief and \$1.2 billion, which was paid into an escrow account. The FTC settlement allowed for those escrow funds to be distributed for settlement of certain related cases and government investigations, such as those of the 48 states.

The settlement is subject to court review, including providing consumers with notice and an opportunity to participate in, object to, or opt out of settlement. The states expect court review will be provided by Judge Mitchell Goldberg of the Eastern District of Pennsylvania, who is currently overseeing other litigation concerning Provigil against Cephalon and others.

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