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For Immediate Release
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Attorney General Settles Antitrust Investigation into Anticompetitive Conduct by Manufacturer of Provigil

(Boise)- Attorney General Lawrence Wasden 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 wakefulness drug, Provigil.

Wasden said holding companies accountable for these types of transgressions is important because the huge profit yielded by this type of illegal conduct is coming directly from pockets of consumers and taxpayer funded state programs.

Idaho will receive approximately \$574,000. “Engaging in anti-competitive practices violates state and federal law and raises costs for customers,” Wasden said. “It also harms the marketplace. Today’s settlement paves the way for restitution payments to consumers and the State of Idaho harmed by the scheme.”

The alleged anticompetitive conduct involved delaying generic versions of Provigil from entering the market for several years. The delay permitted Cephalon to charge higher prices for Provigil without competition from lower priced generics.

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. Through this fraudulent conduct, Cephalon was able to delay generic competition for nearly six years by filing patent infringement lawsuits against all potential generic competitors.

Cephalon subsequently 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 had generic versions of the drug launched by early 2006, as expected.

The settlement includes a total of \$35 million for distribution to consumers who bought Provigil. Idaho’s total consists of:

- \$247,000 to compensate for Provigil purchases by certain state entities or authorized purchases off state contracts;
- an estimated \$175,000 for distribution to Idaho consumers for payments for Provigil; and
- \$327,000 for Idaho’s share of the ill-gotten gains and costs.

The settlement will be paid out of escrow fund created by a 2015 settlement in a related litigation brought by the Federal Trade Commission against Cephalon. A separate, private class action lawsuit against Cephalon for related conduct may supplement consumer recovery. A settlement has not been reached in the private class action.

The settlement will be filed in the U.S. Court of the Eastern District of Pennsylvania for court review and approval. Once approved, eligible consumers will be provided with notice and an opportunity to participate in, object to, or opt out of settlement. Presently, there is no timetable to predict when the court will approve the settlement.

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