UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

FEDERAL TRADE COMMISSION, Plaintiff, **v.** **CEPHALON, INC.** Defendant.	Case Number: 2:08-CV-2141-MSG

JOINT MOTION FOR ENTRY OF STIPULATED REVISED ORDER FOR PERMANENT INJUNCTION AND EQUITABLE MONETARY RELIEF

The Federal Trade Commission ("FTC"), Cephalon, Inc. ("Cephalon") and Teva Pharmaceutical Industries, Ltd. ("Teva"), by their respective attorneys, respectfully move this Court to enter the proposed Stipulated Revised Order for Permanent Injunction and Equitable Monetary Relief ("Revised Order"), a copy of which is attached as Exhibit A. As grounds for this request, the parties state as follows:

1. On June 17, 2015, this Court entered a Stipulated Order for Permanent Injunction and Equitable Monetary Relief ("Original Order") to resolve litigation between the FTC and Cephalon relating to the FTC's allegations that Cephalon violated Section 5 of the FTC Act by entering into reverse-payment settlements relating to generic versions of Provigil. Teva agreed to be bound by the terms of the Original Order.

2. This Court "retain[ed] jurisdiction of this matter for purposes of construction, modification, and enforcement of this Order." Original Order at VI.

3. The FTC and Teva have now reached a settlement to resolve claims in three federal court actions relating to the FTC's allegations that Teva, or one of its current subsidiaries, violated Section 5 of the FTC Act by entering reverse-payment agreements relating to other drug

products. These cases are (1) *FTC v. Actavis, Inc.*, Civ. Action No. 09-cv-955 (N.D. Ga.) (set for trial on March 4, 2019); (2) *FTC v. AbbVie, Inc.*, (Nos. 18-2621, 18-2748, 18-2758 (3d. Cir.); and (3) *FTC v. Allergan plc*, Civ. Action No. 17-cv-312 (N.D.Cal.) (collectively, "the Settled Cases"). In each of these actions, the FTC seeks a permanent injunction to prevent defendants from engaging in similar and related conduct in the future.

4. To resolve the claims in the Settled Cases, the FTC and Teva have agreed to the proposed Revised Order. The proposed Revised Order expands the general conduct prohibition in the Original Order to prevent Cephalon or Teva from entering into alleged reverse-payment agreements similar to those challenged in the Settled Cases. Specifically, the proposed Revised Order would prohibit Cephalon or Teva from entering into agreements that include a "No-AG Commitment," which is a commitment by the brand company not to sell its own authorized generic version of the brand product for some period of time. *See King Drug Co. of Florence, Inc. v. Smithkline Beecham Corp.*, 791 F.3d 388 (3d Cir. 2015).

5. The Original Order also included terms relating to equitable monetary relief. 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.

6. The proposed Revised Order provides for the parties to bear their respective costs in the Settled Cases. The proposed Revised Order will last for ten years after the date that it is entered by the Court.

8. On February 13, 2019, the FTC, Teva, and Cephalon signed the proposed Revised Order. On February 19, 2019 the Federal Trade Commission voted unanimously (with one Commissioner recused) to accept the proposed Revised Order.

7. The FTC, Cephalon, and Teva request that the Court enter the attached proposed Revised Order so that the FTC can then dismiss its claims in the Settled Cases.

Respectfully submitted

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