

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

FEDERAL TRADE COMMISSION	
	Plaintiff,
v.	
CEPHALON, INC.	
	Defendant.

Civil Action No.
08-cv-00244 (JDB)

DECLARATION OF BARRY S. TAUS, ESQ.

I, Barry S. Taus, Esq., submit this declaration upon personal knowledge or information and belief:

1. I am an attorney, a member of the bar of New York, and a partner with the law firm of Garwin Gerstein & Fisher LLP.

2. King Drug Company of Florence, Inc. (“King Drug”), a direct purchaser of the brand name drug Provigil, filed a complaint against Cephalon, Inc., Teva Pharmaceuticals USA, Inc. (and Teva Pharmaceutical Industries, Ltd.), Ranbaxy Pharmaceuticals, Inc. (and Ranbaxy Laboratories, Inc.), Mylan Laboratories, Inc., and Barr Laboratories, Inc. (collectively, the “Defendants”) in the United States District Court for the Eastern District of Pennsylvania on April 27, 2006, after learning of the settlement of the Provigil patent infringement litigation.

3. Numerous additional plaintiffs subsequently filed complaints as putative class actions against the Defendants in the Eastern District of Pennsylvania between April 27, 2006

and August 4, 2006. On August 8, 2006, Judge R. Barclay Surrick consolidated these private actions into two classes – Direct Purchaser Class Actions (“Direct Purchaser Class”) and End-Payor Class Actions (“End-Payor Class”) (collectively, the “Plaintiffs”) – and ordered that the classes be coordinated for pre-trial purposes only.

4. Two non-class private actions have also been filed against Defendants in the Eastern District of Pennsylvania: an excluded competitor, Apotex, Inc., filed a complaint against Defendants on June 26, 2006; and an individual end-payor, Avmed, Inc., filed a complaint against Defendants on September 12, 2007.

5. Garwin Gerstein & Fisher LLP represents King Drug in the above-referenced case and has been appointed lead counsel for the Direct Purchaser Class by the Court.

6. All private complaints filed in the Eastern District of Pennsylvania – the Direct Purchaser Class complaint (i.e., the King Drug Complaint), the End-Payor Class Complaint, and the two non-class private complaints – name as Defendants Cephalon as well as each of the four generic companies that had entered into patent litigation settlements with Cephalon.

7. The Direct Purchaser Class Complaint (as well as the End-Payor Class Complaint) alleges antitrust violations under both Section 1 and Section 2 of the Sherman Antitrust Act, and seeks class certification, and monetary damages. The Apotex Complaint alleges antitrust violations under both Section 1 and Section 2 of the Sherman Antitrust Act, and seeks monetary damages. The Avmed Complaint alleges antitrust violations under both Section 1 and Section 2 of the Sherman Antitrust Act, and seeks equitable, injunctive, and declaratory relief, and damages.

8. The Defendants filed motions to dismiss the King Drug Complaint (as well as the End-Payor Complaint) on November 3, 2006. On December 14, 2006, the Plaintiffs filed their

oppositions to the Defendants' motions to dismiss, and requested oral hearings on the matter. The Defendants filed replies to the Plaintiffs' opposition briefs on January 11, 2007. In addition, Defendants filed motions to dismiss Apotex's Complaint on September 29, 2006. The parties in the Avmed case stipulated that Defendants need not respond to Avmed's Complaint until after the Court resolves the pending motions to dismiss against the Direct Purchaser Class, the End-Payor Class, and Apotex, Inc. The Court has not yet ruled on the motions to dismiss, nor has an oral hearing been scheduled.

9. Defendants have raised numerous defenses that, in the view of counsel for the Direct Purchaser Class, will take substantial discovery to resolve, including defenses that I understand are not issues in the Federal Trade Commission case, such as issues relating to antitrust injury and damages. I also expect Defendants to vigorously oppose class certification. Though it is not possible to specify how long the Direct Purchaser Class case will take to resolve, historically, private antitrust actions have taken a number of years to reach their conclusions.

10. Discovery has not yet begun in any of the private class actions. The Plaintiffs moved to compel discovery on January 24, 2007, but this motion has not been resolved yet. The Defendants have refused to turn over any documents – including the Provigil patent litigation settlement agreements giving rise to these lawsuits – until the motions to dismiss have been resolved. The Court has yet to enter a protective order or a scheduling order regarding discovery.

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

Executed on: March 5, 2008



Barry S. Taus, Esq.