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HIGHLY CONFIDENTIAL

November 27, 2009

By Hand Delivery
Mr. Donald S. Clark
Secretary
Federal Trade Commission
600 Pennsylvania Avenue, NW
Room H135
Washington, DC 20580

Re: FTC File No. 0610182

Dear Mr. Clark:

I write on behalf of Mr. Paul M. Bisaro, President and Chief Executive Officer of Watson Pharmaceuticals, Inc. ("Watson" or the "Company"), and Watson to request review by the full Federal Trade Commission ("FTC" or the "Commission") of the Petition to Quash Subpoena *Ad Testificandum* dated July 22, 2009 (the "Petition") filed in connection with the matter referenced above. A copy of the Petition is attached as Appendix A.

Acting as the Commission's delegate, Commissioner Pamela Jones Harbour denied the Petition by letter dated November 13, 2009 (attached as Appendix B). Pursuant to 16 C.F.R. § 2.7(f), a request for review of this matter by the full Commission must be filed with the Secretary of the Commission within three business days after service of the letter ruling. The letter ruling was received by counsel for Mr. Bisaro via hand delivery on November 23, 2009.

We believe that the Commission's ruling overlooks the key basis for the Petition: that Watson has already responded fully to the Commission's inquiries, and the subpoena issued to Mr. Bisaro is not calculated to obtain additional relevant information. In particular, the Commission seeks information regarding: (i) whether Watson's settlement agreement with Cephalon prevented it from relinquishing

exclusivity relating to the '346 Patent; and (ii) whether Watson has agreed with a third party to relinquish its exclusivity, and if not, why not.¹ Watson has repeatedly stated – including through the sworn testimony of its General Counsel – that there is no agreement preventing Watson from relinquishing any exclusivity associated with the '346 Patent, and that the Company has not reached any agreements with third parties to relinquish such exclusivity.² Moreover, Watson's General Counsel has fully explained the Company's business rationale for not unilaterally relinquishing its rights.

The Commission disregards these responses in its letter ruling, characterizing Mr. Bisaro's testimony on these issues as "necessary" despite the fact that Mr. Bisaro has *no* responsive documents and *no* contacts with any third party regarding relinquishment,³ and indeed was not even employed by Watson at the time the Company entered into its settlement agreement with Cephalon. Enforcement of the subpoena under these circumstances is not calculated to yield information that the FTC does not already possess.

Thus, notwithstanding the General Counsel's testimony that Watson is free to relinquish any exclusivity, but has not made a decision regarding whether to relinquish its rights, the Commission's letter ruling strongly suggests that the Commission is entitled to something more than this information – *i.e.*, Watson's detailed legal interpretation of various provisions of the settlement agreement. This type of legal analysis is protected by privilege and its disclosure is not an appropriate goal of the Commission's investigatory process.⁴ Likewise, to the extent they implicate legal analysis, Watson's internal deliberations regarding relinquishment (to the extent they occurred) are not appropriate subjects of the FTC's subpoena power. As the Commission's letter ruling makes clear, these are the only conceivable topics remaining for the Commission to attempt to probe. Under these circumstances, the Commission's continued insistence on deposing Mr. Bisaro, together with the circumstances and staff communications with Watson surrounding the issuance and enforcement of compulsory process as detailed in the Petition, leads to a strong inference that the subpoena was issued for an improper purpose.

¹ See Letter dated November 13, 2009 at 4.

² See Petition at 11, 16-17. See also Letter dated November 13, 2009 at 4, n. 10.

³ See Petition at 10.

⁴ See Letter dated November 13, 2009 at 5, n. 16, stating that the Commission has a right to obtain information regarding "Watson's understanding" of provisions of the contract. See also *id.* at 7, stating that because "Mr. Bisaro is an attorney" he can answer questions regarding the Cephalon settlement agreement.

Accordingly, we request full Commission review of the entire Petition and all the issues presented therein (which are hereby incorporated by reference), including Petitioner's arguments that:

(i) the subpoena demands information that the Commission already possesses;

(ii) the subpoena unreasonably seeks testimony from the Chief Executive Officer of Watson when the information it demands has already been obtained elsewhere;

(iii) the Commission resolution authorizing compulsory process in connection with the above-referenced matter has already culminated in a lawsuit, and may not now be resurrected to burden Watson with additional process;

(iv) the subpoena was likely issued for an improper purpose as described in the Petition; and

(v) compelling Petitioner to travel to Washington, D.C. to undergo an investigational hearing under these circumstances would be unduly burdensome.

Please do not hesitate to contact me if you should have any questions regarding this request for review by the full Commission.

Very truly yours,

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Steven C. Sunshine

cc: Saralisa Brau, Esq.

Enclosures

Appendix A

Appendix A is Respondent's Petition to Quash, which is Petition Exhibit 4

Appendix B

**Appendix B is the Commission decision of November 13, 2009
denying Respondent's Petition to Quash, which is Petition Exhibit
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