

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

**FEDERAL TRADE
COMMISSION,**

Plaintiff,

vs.

ACTAVIS, INC., et al.,

Defendants.

Case Number: 1:09-cv-955-TWT

**Stipulation and Order Dismissing with Prejudice as to Defendants
Actavis, Inc. and Actavis Holdco US, Inc.**

WHEREAS, on February 21, 2019, Judge Goldberg in the Eastern District of Pennsylvania entered a Stipulated Revised Order for Permanent Injunction and Equitable Monetary Relief in the case styled *Federal Trade Commission v. Cephalon, Inc.*, No. 08-cv-2141 (E.D. Pa.). A copy of the Stipulated Revised Order for Permanent Injunction and Equitable Monetary Relief (“Permanent Injunction”) is attached as Exhibit A;

WHEREAS, as of August 2, 2016, Actavis Holdco US, Inc. (“Actavis Holdco”) is a wholly-owned indirect subsidiary of Teva Pharmaceutical Industries, Ltd. (“Teva”);

WHEREAS, under the Permanent Injunction, Teva and its subsidiaries, including Actavis Holdco, are prohibited from entering into agreements similar to those challenged in this case. (Permanent Injunction § I.) The scope of this prohibition is consistent with the relief the FTC seeks in this case. *See* Federal Trade Commission’s Third Supplemental Response to Actavis Inc.’s First Set of Interrogatories (Sept. 8, 2016). Entry of the Permanent Injunction, therefore, adequately addresses the alleged anticompetitive conduct at issue in this case with respect to Actavis Holdco;

WHEREAS Actavis, Inc. (“Actavis”)—the initial holder of the relevant ANDA for generic AndroGel and now known as Allergan Finance, LLC—is no longer engaged in the manufacture or sale of pharmaceutical products and no longer controls the assets or entities involved in the alleged anticompetitive conduct;

WHEREAS Actavis Holdco and Actavis covenant that they will cooperate with the FTC in certain litigation activities remaining in this proceeding; and

WHEREAS there is good cause for the relief requested in this stipulation;

IT IS HEREBY ORDERED that:

1. Plaintiff Federal Trade Commission's claims in the above-captioned action against Defendants Actavis, Inc. and Actavis Holdco US, Inc. (collectively, the "Actavis Defendants") are hereby dismissed with prejudice pursuant to Rule 41(a) of the Federal Rules of Civil Procedure and the remaining terms of this Order;

2. In connection with this proceeding, the Actavis Defendants or their counsel of record shall:

- a. Agree to accept service of process of all FTC subpoenas issued under Rule 45 of the Federal Rules of Civil Procedure upon the Actavis Defendants;
- b. Respond to the FTC's requests for production of documents as though the Actavis Defendants were parties to this proceeding;
- c. Limit their objections to any FTC requests for production of documents to those available to a party to such litigation;
- d. Use reasonable best efforts to provide, upon the FTC's request, a declaration, affidavit, and/or sponsoring witness, if necessary, to establish the authenticity of (i) any documents and/or data that the Actavis Defendants have produced to the FTC in connection with this proceeding and (ii) any documents and/or data created by the

Actavis Defendants that any other defendant has produced to the FTC in connection with this proceeding. The Actavis Defendants agree to use reasonable best efforts to authenticate any such documents and/or data pursuant to the requirements of Federal Rule of Evidence 902(11) by certifying, to the extent accurate and correct, that the records: (1) are genuine, true, and correct copies of original records; (2) were made at or near the time of the occurrence of the matters set forth in the document; (3) were made by, or from information transmitted by, someone with knowledge of those matters; (4) were kept in the course of regularly conducted activity of the Actavis Defendants' business; and (5) were made as a regular practice of that business activity; and

- e. Use reasonable best efforts to make David Buchen, Edward Tykot, and a custodian of record (to the extent such custodian is necessary to authenticate documents or provide related testimony) available to provide live testimony at trial in this proceeding as requested by the FTC. Reasonable best efforts include making available to Mr. Buchen, Mr. Tykot, and a custodian of record all logistical, travel, and other assistance that was, or would be, available to the Actavis

Defendants' witnesses for trial in which the Actavis Defendants were parties.

3. Each party is to bear its own attorneys' fees and costs.

ENTERED and **ORDERED** this 25th day of February, 2019.

/s/Thomas W. Thrash
Honorable Thomas W. Thrash, Jr.

/s/ Markus H. Meier

Markus H. Meier
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580
Tel: 202-326-3759
*Counsel for Plaintiff Federal Trade
Commission*

/s/ Paul M. Eckles

Paul M. Eckles
Skadden, Arps, Slate, Meagher &
Flom LLP
4 Times Square
New York, NY 10036
Tel: 212-735-2578
*Counsel for Defendants Actavis, Inc.
(n/k/a Allergan Finance, LLC) and
Actavis Holdco US, Inc.*