JS 44 (Rev. 07/16)

MSG CIVIL COVER SHEET

16 4234

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I. (a) PLAINTIFFS
State of New York, et al.

DEFENDANTS
Cephalon, Inc. et al.

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) Attorneys *(Firm Name, Address, and Telephone Number)*
Office of the Attorney General, Commonwealth of Pennsylvania, 14th Floor Strawberry Square, Harrisburg, PA 17120 (717) 787-4530

Attorneys *(If Known)*
Jay Lefkowitz, Kirkland & Ellis, 601 Lexington Avenue, New York, NY 10022 (212) 446-4800

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question *(U.S. Government Not a Party)*
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*
(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury
- ☐ 362 Personal Injury - Medical Malpractice

PERSONAL INJURY
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- ☐ 830 Patent
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- ☐ 863 DIWC/DIWW (405(g))
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- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ☐ 375 False Claims Act
- ☐ 376 Qui Tam (31 USC 3729(a))
- ☐ 400 State Reapportionment
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- ☐ 891 Agricultural Acts
- ☐ 893 Environmental Matters
- ☐ 895 Freedom of Information Act
- ☐ 896 Arbitration
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- ☐ 950 Constitutionality of State Statutes

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- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

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- ☐ 448 Education

PRISONER PETITIONS

Habeas Corpus:
- ☐ 463 Alien Detainee
- ☐ 510 Motions to Vacate Sentence
- ☐ 530 General
- ☐ 535 Death Penalty

Other:
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition
- ☐ 560 Civil Detainee - Conditions of Confinement

V. ORIGIN *(Place an "X" in One Box Only)*

☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District *(specify)* ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity)*:
15 U.S.C. Sections 1 and 2
Brief description of cause:
Violation of the Sherman Antitrust Act

VII. REQUESTED IN COMPLAINT:
☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.
DEMAND $
CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY *(See instructions)*:
JUDGE MSG DOCKET NUMBER 06-cv-1833

DATE SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

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I.(a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use
(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the
(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment
Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.
Original Proceedings. (1) Cases which originate in the United States district courts.
Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
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Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C.
Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statue.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

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(c) Attorneys *(Firm Name, Address, and Telephone Number)*
Office of the Attorney General, Commonwealth of Pennsylvania, 14th Floor Strawberry Square, Harrisburg, PA 17120 (717) 787-4530

DEFENDANTS
Cephalon, Inc. et al.

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

Attorneys *(If Known)*
Jay Lefkowitz, Kirkland & Ellis, 601 Lexington Avenue, New York, NY 10022 (212) 446-4800

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15 U.S.C. Sections 1 and 2

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VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND $

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE MSG DOCKET NUMBER 06-cv-1833

DATE SIGNATURE OF ATTORNEY OF RECORD

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RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

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Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

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Date and Attorney Signature. Date and sign the civil cover sheet.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CASE MANAGEMENT TRACK DESIGNATION FORM

State of New York, et al.	:	CIVIL ACTION
v.	:	
Cephalon, Inc., et al.	:	NO.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

(a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ( )

(b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ( )

(c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ( )

(d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ( )

(e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ( )

(f) Standard Management – Cases that do not fall into any one of the other tracks. (X)

8/4/2016	James A. Donahue, III	Plaintiffs and Commonwealth of PA
Date	**Attorney-at-law**	**Attorney for**
(717) 787-4530	(717) 705-1190	jdonahue@attorneygeneral.gov
Telephone	**FAX Number**	**E-Mail Address**

(Civ. 660) 10/02

Civil Justice Expense and Delay Reduction Plan
Section 1:03 - Assignment to a Management Track

(a) The clerk of court will assign cases to tracks (a) through (d) based on the initial pleading.

(b) In all cases not appropriate for assignment by the clerk of court to tracks (a) through (d), the plaintiff shall submit to the clerk of court and serve with the complaint on all defendants a case management track designation form specifying that the plaintiff believes the case requires Standard Management or Special Management. In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a case management track designation form specifying the track to which that defendant believes the case should be assigned.

(c) The court may, on its own initiative or upon the request of any party, change the track assignment of any case at any time.

(d) Nothing in this Plan is intended to abrogate or limit a judicial officer's authority in any case pending before that judicial officer, to direct pretrial and trial proceedings that are more stringent than those of the Plan and that are designed to accomplish cost and delay reduction.

(e) Nothing in this Plan is intended to supersede Local Civil Rules 40.1 and 72.1, or the procedure for random assignment of Habeas Corpus and Social Security cases referred to magistrate judges of the court.

SPECIAL MANAGEMENT CASE ASSIGNMENTS
(See §1.02 (e) Management Track Definitions of the Civil Justice Expense and Delay Reduction Plan)

Special Management cases will usually include that class of cases commonly referred to as "complex litigation" as that term has been used in the Manuals for Complex Litigation. The first manual was prepared in 1969 and the Manual for Complex Litigation Second, MCL 2d was prepared in 1985. This term is intended to include cases that present unusual problems and require extraordinary treatment. See §0.1 of the first manual. Cases may require special or intense management by the court due to one or more of the following factors: (1) large number of parties; (2) large number of claims or defenses; (3) complex factual issues; (4) large volume of evidence; (5) problems locating or preserving evidence; (6) extensive discovery; (7) exceptionally long time needed to prepare for disposition; (8) decision needed within an exceptionally short time; and (9) need to decide preliminary issues before final disposition. It may include two or more related cases. Complex litigation typically includes such cases as antitrust cases; cases involving a large number of parties or an unincorporated association of large membership; cases involving requests for injunctive relief affecting the operation of large business entities; patent cases; copyright and trademark cases; common disaster cases such as those arising from aircraft crashes or marine disasters; actions brought by individual stockholders; stockholder's derivative and stockholder's representative actions; class actions or potential class actions; and other civil (and criminal) cases involving unusual multiplicity or complexity of factual issues. See §0.22 of the first Manual for Complex Litigation and Manual for Complex Litigation Second, Chapter 33.

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: Commonwealth of Pennsylvania, Office of the Attorney General, Srawberry Square, 14th Floor, Harrisburg PA 17120

Address of Defendant: Cephalon, Inc., 41 Moores Road, Frazer, Pennsylvania 19355

Place of Accident, Incident or Transaction: Nationwide

(Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?

(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a)) Yes☒ No☐

Does this case involve multidistrict litigation possibilities? Yes☐ No☐

RELATED CASE, IF ANY:

Case Number: 06-cv-1833 Judge MSG Date Terminated:

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?
   Yes☐ No☒
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?
   Yes☒ No☐
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court? Yes☐ No☒
4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?
   Yes☐ No☒

CIVIL: (Place ✔ in ONE CATEGORY ONLY)

A. *Federal Question Cases*:

1. ☐ Indemnity Contract, Marine Contract, and All Other Contracts
2. ☐ FELA
3. ☐ Jones Act-Personal Injury
4. ☒ Antitrust
5. ☐ Patent
6. ☐ Labor-Management Relations
7. ☐ Civil Rights
8. ☐ Habeas Corpus
9. ☐ Securities Act(s) Cases
10. ☐ Social Security Review Cases
11. ☐ All other Federal Question Cases
    (Please specify) _____

B. *Diversity Jurisdiction Cases*:

1. ☐ Insurance Contract and Other Contracts
2. ☐ Airplane Personal Injury
3. ☐ Assault, Defamation
4. ☐ Marine Personal Injury
5. ☐ Motor Vehicle Personal Injury
6. ☐ Other Personal Injury (Please specify)
7. ☐ Products Liability
8. ☐ Products Liability — Asbestos
9. ☐ All other Diversity Cases
   (Please specify) _____

ARBITRATION CERTIFICATION

(Check Appropriate Category)

I, James A. Donahue, III, counsel of record do hereby certify:

☒ Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of $150,000.00 exclusive of interest and costs;

☐ Relief other than monetary damages is sought.

DATE: 8/4/2016 James A. Donahue, III Attorney-at-Law PA 42624 Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 8/4/2016 Attorney-at-Law PA 42624 Attorney I.D.#

CIV. 609 (5/2012)

THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

STATE OF NEW YORK, by Attorney General Eric T. Schneiderman Antitrust Bureau 120 Broadway New York, NY 10271-0332; and STATE OF OHIO, by Attorney General Mike DeWine Antitrust Section 150 East Gay Street, 22nd Floor Columbus, OH 43215; and STATE OF VERMONT, by Attorney General William H. Sorrell 109 State Street Montpelier, VT 05609-1001; and STATE OF INDIANA, by Attorney General Gregory F. Zoeller Indiana Government Center South 302 West Washington Indianapolis, IN 46204; and STATE OF MINNESOTA, by Attorney General Lori Swanson 445 Minnesota Street, Suite 1400 St. Paul, MN 55101-2131; and STATE OF ALABAMA, by Attorney General Luther Strange 501 Washington Avenue Montgomery, AL 36130;	CIVIL ACTION NO. JUDGE COMPLAINT

and

STATE OF ALASKA,
by Acting Attorney James E. Cantor
P. O. Box 110300
Juneau, AK 99811-0300;

and

STATE OF ARIZONA,
by Attorney General Mark Brnovich
1275 West Washington
Phoenix, AZ 85007;

and

STATE OF ARKANSAS,
by Attorney General Leslie Rutledge
Antitrust Division
323 Center Street, Suite 500
Little Rock, AR 72201;

and

STATE OF COLORADO
by Attorney General Cynthia Coffman
Consumer Protection Section
Ralph L. Carr Colorado Judicial Center
1300 Broadway, 7th Floor
Denver, CO 80203;

and

STATE OF CONNECTICUT,
by Attorney General George Jepsen
55 Elm Street
Hartford, CT 06106;

and

STATE OF DELAWARE,
by Attorney General Matthew P. Denn
Department of Justice
820 N. French Street, 5th floor
Wilmington, DE 19801;

and

DISTRICT OF COLUMBIA,
by Attorney General Karl A. Racine
441 Fourth Street, N.W., Suite 600-S
Washington, D.C. 20001;

and

STATE OF FLORIDA,
by Attorney General Pamela Jo Bondi
The Capitol, PL 01
Tallahassee, FL 32399;

and

STATE OF GEORGIA,
by Attorney General Samuel S. Olens
40 Capitol Square, SW
Atlanta, GA 30334-1300;

and

STATE OF HAWAII,
by Attorney General Douglas S. Chin
425 Queen Street
Honolulu, HI 96813;

and

STATE OF IDAHO,
by Attorney General Lawrence G. Wasden
Office of the Attorney General
954 W. Jefferson, 2nd Floor
Boise, ID 83720-0010;

and

STATE OF ILLINOIS,
by Attorney General Lisa Madigan
James R. Thompson Center
100 West Randolph Street
Chicago, IL 60601;

and

STATE OF IOWA,
by Attorney General Tom Miller
Hoover State Office Building
1305 E. Walnut St., 2nd Floor
Des Moines, IA 50319;

and

STATE OF KANSAS,
by Attorney General Derek Schmidt
120 S.W. 10th Avenue, 2nd Floor
Topeka, KS 66612-1597;

and

COMMONWEALTH OF KENTUCKY,
by Attorney General Andy Beshear
700 Capitol Avenue
Capitol Building, Suite 118
Frankfort, KY 40601;

and

STATE OF MAINE,
by Attorney General Janet T. Mills
6 State House Station
Augusta, ME 04333;

and

STATE OF MARYLAND,
by Attorney General Brian Frosh
Antitrust Division
200 St. Paul Place, 19th Floor
Baltimore, MD 21202-2021;

and

COMMONWEALTH OF MASSACHUSETTS,
by Attorney General Maura Healey
Antitrust Division
One Ashburton Place
Boston, MA 02108;

and

STATE OF MICHIGAN,
by Attorney General Bill Schuette
Antitrust Section
G. Mennen Williams Building, 6th Floor
525 W. Ottawa Street
Lansing, MI 48933;

and

STATE OF MISSISSIPPI,
by Attorney General Jim Hood
Consumer Protection Division
P. O. Box 22947
Jackson, MS 39225;

and

STATE OF MISSOURI,
by Attorney General Chris Koster
P. O. Box 899
Jefferson City, MO 65102;

and

STATE OF MONTANA,
by Attorney General Tim Fox
555 Fuller Avenue
Helena, MT 59601;

and

STATE OF NEBRASKA,
by Attorney General Douglas J. Peterson
2115 State Capitol
Lincoln, NE 68509;

and

STATE OF NEVADA,
by Attorney General Adam Paul Laxalt
Bureau of Consumer Protection
100 N. Carson Street
Carson City, NV 89701;

and

STATE OF NEW HAMPSHIRE,
by Attorney General Joseph A. Foster
Consumer Protection and Antitrust Bureau
33 Capitol Street
Concord, NH 03301;

and

STATE OF NEW JERSEY,
by Attorney General Christopher S. Porrino
Division of Law
124 Halsey Street
P. O. Box 45029
Newark, NJ 07101;

and

STATE OF NEW MEXICO
by Attorney General Hector Balderas
P. O. Box 1508
Santa Fe, NM 87504-1508;

and

STATE OF NORTH CAROLINA,
by Attorney General Roy A. Cooper, III
Consumer Protection Division
P.O. Box 629
Raleigh, NC 27602;

and

STATE OF NORTH DAKOTA,
by Attorney General Wayne Stenehjem
Consumer Protection and Antitrust Division
1050 E. Interstate Ave., Ste. 200
Bismarck, ND 58503-5574;

and

STATE OF OKLAHOMA,
by Attorney General E. Scott Pruitt
313 N.E. 21st Street
Oklahoma City, OK 73105;

and

STATE OF OREGON,
by Attorney General Ellen R. Rosenblum
Department of Justice
Justice Building
1162 Court Street NE
Salem, OR 97301;

and

COMMONWEALTH OF PENNSYLVANIA,
by The Office of the Attorney General
Antitrust Section
14th Floor, Strawberry Square
Harrisburg, PA 17120;

and

STATE OF RHODE ISLAND,
by Attorney General Peter F. Kilmartin
150 South Main Street
Providence, RI 02903;

and

STATE OF SOUTH CAROLINA,
By Attorney General Alan Wilson
Rembert C. Dennis Building
1000 Assembly Street, Suite 501
Columbia, SC 29211-1549;

and

STATE OF SOUTH DAKOTA,
by Attorney General Marty J. Jackley
1302 E. Hwy. 14, Suite 1
Pierre, SD 57501-8501;

and

STATE OF TENNESSEE,
by Attorney General Herbert H. Slatery III
500 Charlotte Avenue
Nashville, TN 37243;

and

STATE OF TEXAS,
by Attorney General Ken Paxton
Consumer Protection Division, Antitrust Section
300 W. 15th Street
Austin, TX 78701;

and

STATE OF UTAH,
by Attorney General Sean D. Reyes
Tax, Financial Services and Antitrust Division
160 East 300 South, Fifth Floor
P.O. Box 140874
Salt Lake City, UT 84114-0874;

and

COMMONWEALTH OF VIRIGINA,
by Attorney General Mark R. Herring
Consumer Protection Section
202 North 9th Street
Richmond, VA 23219;

and

STATE OF WASHINGTON,
by Attorney General Robert W. Ferguson
Antitrust Section
800 Fifth Avenue, Suite 2000
Seattle, WA 98104;

and

STATE OF WEST VIRGINIA
by Attorney General Patrick Morrisey
Consumer Protection and Antitrust Division
812 Quarrier Street, 1st Floor
P. O. Box 1789
Charleston, WV 25326-1789;

and

STATE OF WISCONSIN,
by Attorney General Brad D. Schimel
17 W. Main Street
Madison, WI 53707;

and

STATE OF WYOMING
by Attorney General Peter K. Michael
2320 Capitol Avenue
Cheyenne, WY 82002

Plaintiffs,

v.

Cephalon, Inc.,
41 Moores Road
Frazer, PA 19355;

and

Teva Pharmaceuticals Industries, Ltd.,
5 Basel Street
P. O. Box 3190
Petach Tikva 49131, Israel;

and

Teva Pharmaceuticals USA, Inc.,
1090 Horsham Road,
P. O. Box 1090
North Wales, PA 19454;

and

Barr Pharmaceuticals
225 Summit Avenue
Montvale, NJ 10970

Defendants

COMPLAINT

The States and Commonwealths of New York, Ohio, Vermont, Indiana, Minnesota, Alabama, Alaska, Arizona, Arkansas, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, North Carolina, North Dakota, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, West Virginia, Wisconsin, Wyoming and the District of Columbia (collectively "Plaintiff States") by their Attorneys General, and Office of Attorneys General, on behalf of and/or for the benefit of their respective citizens and government agencies, allege the following unlawful conduct ("Complaint") against defendants Cephalon, Inc., ("Cephalon"), Barr Laboratories, Inc. ("Barr"), Teva Pharmaceutical Industries, Ltd., and Teva Pharmaceuticals USA, Inc. (both "Teva") (collectively "Defendants").

I. NATURE OF THE ACTION

1. Plaintiff States seek damages and equitable relief due to Defendants' unlawful anticompetitive conduct to delay generic competition for Modafinil, a drug indicated for the treatment of certain sleep disorders, including narcolepsy, which was and is sold by Defendant Cephalon under the brand name Provigil®.

2. Provigil was an unexpected "blockbuster" drug, achieving annual sales of more than a billion dollars despite being initially approved by the Food and Drug Administration ("FDA") for a rare "orphan" disease. Provigil was Cephalon's most

successful drug, accounting for more than half of its total sales in 2008. Provigil's commercial success invited strong interest from generic competitors, several of which were expected to obtain FDA approval and launch in 2006. To extend its Provigil monopoly profits beyond its lawful exclusivity period, Cephalon engaged in anticompetitive conduct. Rather than compete on the merits after its FDA-granted exclusivity expired in December 2005, Cephalon took anticompetitive measures to delay generic competition for several years, during which time it continued to reap monopoly profits for Provigil.

3. To delay generic competition, Cephalon knowingly enforced an invalid patent on generic competitors that it obtained due to its material omissions and misrepresentation to the Patent & Trademark Office ("PTO"). Despite knowing that the patent was invalid and fraudulently procured, Cephalon filed patent infringement litigation against each and every company seeking to manufacture generic Provigil. Although the infringement suits were baseless, Cephalon knew that merely initiating patent infringement litigation would significantly delay generic entry.

4. Cephalon was able to further extend its Provigil monopoly profits by settling each of the infringement actions, and including in each settlement an agreement to delay generic entry until no earlier than April 2012. In return for their agreement to delay generic entry, each generic competitor obtained a large and unjustified payment. In total, Cephalon compensated generic competitors an excess of $200 million for their "reverse payment" agreements to delay generic competition.

5. Cephalon's plan worked. Due to the anticompetitive settlement agreements,

generic competition did not commence until April 2012 – giving Cephalon six additional years of monopoly profits. And Cephalon shared a part of these additional profits with the generic competitors in exchange for their agreement to delay the launch of their generic Provigil.

6. Had Defendants competed on the merits and not illegally delayed generic competition until 2012, Plaintiff States and consumers could have purchased less expensive generic versions of Provigil beginning in 2006, saving hundreds of millions of dollars – if not more.

7. Defendants conduct to delay generic competition was illegal and anticompetitive in violation of the Sherman Antitrust Act and various state laws.

II. JURISDICTION AND VENUE

8. This Complaint alleges violations of Section 1 and Section 2 of the Sherman Act, 15 U.S.C. §§ 1, 2, and seeks equitable relief as well as recovery of damages and injury to consumers under Section 4 of the Clayton Act, 15 U.S.C. § 15, and Section 16 of the Clayton Act, 15 U.S.C. § 26. This Court has jurisdiction over such claims pursuant to 28 U.S.C. §§ 1331 and 1337(a) and 15 U.S.C. §§ 15, 26. The Complaint also alleges violations of numerous state antitrust and consumer protection laws and seeks equitable relief as well as damages under these laws due to injury to Plaintiff States and their consumers resulting from Defendants' unlawful conduct. The Court has supplemental jurisdiction over such claims under 28 U.S.C. § §1332(d) and 1367 because these claims are so related to the federal claims that they form part of the same case or controversy.

9. Venue is proper within this district because Defendants transact business

within this district, and the interstate trade and commerce, hereinafter described, is carried out, in substantial part, in this district. Venue, therefore, is appropriate within this district under 15U.S.C. § 22, and 28 U.S.C. § 1391(b) and (c).

III. THE PARTIES

10. Plaintiff States are sovereign states or quasi-sovereign[1] entities that bring this action by and through their Attorneys General, and Offices of Attorneys General: (a) in their sovereign or quasi-sovereign capacities as representatives for the benefit of natural persons and/or as *parens patriae* of natural persons under state or federal law; (b) as *parens patriae* in their sovereign capacities to redress injury to their respective states' general economies; (c) in their proprietary capacities, which may include state departments, bureaus, agencies, political subdivisions, and other instrumentalities as purchasers (either directly, indirectly, or as assignees), based on purchases of Provigil; and/or (d) as the chief law enforcement agency of each state, in connection with their role to protect their respective state and its residents from exploitative and anticompetitive conduct as are alleged herein.

11. Defendant Teva Pharmaceutical Industries, Ltd. is an Israeli company with its principal executive offices listed at 5 Basel Street, P.O. Box 3190, Petach Tikva 49131, Israel. Upon information and belief, Teva Pharmaceutical Industries, Ltd is the world's largest generic pharmaceutical company, and markets several branded drugs as well.

[1] References to the States as sovereign must be qualified with respect to the District of Columbia, which is not itself sovereign but does have governmental claims based on its "quasi-sovereign interest in the . . . well-being . . . of its residents in general." *See Alfred L. Snapp & Son, Inc. v. Puerto Rico*, 458 U.S. 592, 607 (1982) (applying analysis to Puerto Rico).

12. Defendant Teva Pharmaceuticals USA, Inc., a wholly-owned subsidiary of Teva Pharmaceutical Industries, Ltd., is a company incorporated under the laws of the State of Delaware, with its principal place of business at 1090 Horsham Road, P.O. Box 1090, North Wales, Pennsylvania 19454. Teva Pharmaceuticals USA, Inc. develops, manufactures, and markets pharmaceuticals and related products in the United States, including Provigil. Teva Pharmaceutical Industries, Ltd. and Teva Pharmaceuticals USA, Inc., will be collectively referred to herein as "Teva."

13. Defendant Cephalon is a company incorporated under the laws of the State of Delaware, with its principal place of business at 41 Moores Road, Frazer, Pennsylvania 19355. Cephalon develops, manufactures, and markets pharmaceuticals and related products in the United States, including Provigil. Cephalon has been a wholly-owned subsidiary of Teva since October 2011.

14. Defendant Barr is a company incorporated under the laws of the State of New York, with its principal place of business at Two Quaker Road, Pomona, New York 10970. Barr principally develops, manufactures and markets generic versions of brand name drugs. Barr has been a wholly-owned subsidiary of Teva since December 2008.

IV. FACTUAL BACKGROUND

A. The Governing Regulatory Background

15. The Federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 301 *et seq.* ("FDCA"), governs, *inter alia*, the manufacturing, sale, and marketing of pharmaceuticals in the United States. Pursuant to the FDCA, a company seeking to bring a new drug to market must submit a New Drug Application ("NDA") with the Food and Drug Administration ("FDA") and provide scientific data demonstrating that the drug is safe and effective for its intended use. 21 U.S.C § 355(b)(1). The process for filing and obtaining FDA approval of an NDA may be costly and time consuming.

16. In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984, Pub. L. No. 98-417, 98 Stat. 1585, commonly referred to as the Hatch-Waxman Act ("Hatch-Waxman" or "Act"), which was intended to encourage and facilitate competition from lower-priced generic drugs, while also providing further incentives for pharmaceutical companies to invest in new drug development. By creating benefits and incentives for both generic and branded pharmaceutical manufacturers, the Act reconciles the competing policy goals of rewarding innovation and expediting access to less expensive generic versions of important, but costly, branded drugs.

17. One means by which Hatch-Waxman expedites generic competition is by creating a simplified, quicker, and less costly process for obtaining FDA approval for generic pharmaceuticals. Under the Act, a company seeking to market a generic version of a drug that has already been approved pursuant to an NDA, may obtain FDA approval by filing an Abbreviated New Drug Application ("ANDA") and demonstrating that its generic version is

"bioequivalent" to the referenced, approved branded drug.[2] By permitting the generic applicant to rely on studies submitted by the NDA applicant (*i.e.*, the branded drug manufacturer), the Act significantly reduces generic drug development costs and speeds up the FDA approval process for generic drugs.

18. To reward generic competition, the Act grants generic exclusivity to the first ANDA(s) challenging all patents referencing the relevant branded drug. The first approved ANDA(s) are awarded 180 days of exclusivity, during which time FDA may not approve any other ANDA for the same drug. 21 U.S.C. § 355(j)(5)(B)(iv). This is typically referred to as "180-day exclusivity" or "First to File" exclusivity. In the case where multiple companies properly and simultaneously challenge all patents referencing the relevant branded drug, exclusivity can be shared.[3]

19. The Act and the FDCA also encourage innovation by branded drug companies, such as by extending exclusivity for specific efforts, *e.g.*, five years for a new chemical entity, seven years for treating rare diseases, and six months for conducting pediatric studies. As detailed below, Cephalon sought and obtained each of these exclusivity extensions, with the net effect of extending Provigil's exclusivity through December 2005.

20. The Act includes provisions benefitting branded drugs claiming patent protection. Thus, for example, a branded drug manufacturer may obtain up to a five-year patent extension to

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[2] A generic is "bioequivalent" to a branded drug when the rate and extent of absorption of the generic drug is not significantly different from the rate and extent of absorption of the branded drug, when administered at the same dosage. *See* 21 C.F.R. §320.1(a).

[3] *FDA Guidance for Industry: 180-day Exclusivity When Multiple ANDAs Are Submitted on the Same Day* (2003), available at http://www.fda.gov/downloads/drugs/guidancecomplianceregulatoryinformation/guidances/ucm072851.pdf

compensate for lost time caused by the FDA regulatory approval process. 35 U.S.C § 156. In addition, the Act provides an expedited, simplified process for branded manufacturers to assert and resolve patent disputes with generic manufacturers. Under this process, a branded drug manufacturer includes in its NDA a list of all patents that it claims covers the drug for which it seeks approval and "with respect to which a claim of patent infringement could reasonably be asserted." 21 U.S.C. § 355(b)(1)(G). The FDA then publishes the claimed patents – without any independent review of the patents – in its "Approved Drug Products with Therapeutic Equivalence Evaluations" (commonly referred to as the "Orange Book"), which is referenced by generic drug manufacturers.

21. Every generic drug manufacturer seeking FDA approval to market a generic version of a drug already approved by an NDA, must affirmatively disclose in its ANDA the effect of its proposed generic drug on any patents listed in the Orange Book. Specifically, the manufacturer in its ANDA must certify that either: (I) no patent information is listed in the Orange Book for the proposed generic drug; (II) the listed patents have expired; (III) the listed patents will expire before the generic product is marketed; or (IV) the patents listed are invalid or will not be infringed by the generic (referred to as "paragraph IV filings"). 21 U.S.C. § 355(j)(2)(A)(vii)(I)-(IV).

22. If a branded drug manufacturer files an infringement action within 45 days after receiving notice of a Paragraph IV filing, FDA approval of the ANDA will be delayed. Specifically, in such cases, FDA must stay its final approval of the ANDA until the earliest of:

(1) patent expiration, (2) resolution of the patent litigation in favor of the generic company, or (3) the expiration of an automatic 30-month waiting period.[4]

23. Although FDA may grant "Tentative Approval" to an ANDA during the 30-month stay when it finds that "the generic drug satisfies the requirements for approval at the time of review, but final approval is blocked by a stay, a marketing exclusivity period, or some other barrier," *Astrazeneca Pharmaceuticals LP v. FDA*, 850 F. Supp. 2d 230,235 (D.D.C. 2012), an ANDA may not launch unless it has Final Approval.

B. Effects and Benefits of Generic Competition

24. Although therapeutically the same as its branded counterpart, the first AB-rated generic equivalent to a branded drug is typically priced significantly lower than the brand.[5] Upon the entry of additional AB-rated generic drugs, generic drug prices fall even more.

25. Because of these price advantages, almost all states and the District of Columbia encourage generic competition through laws that allow pharmacists to dispense an AB-rated generic drug when presented with a prescription for its branded equivalent, unless a physician directs, or the patient requests, otherwise. These state laws facilitate substitution of lower-priced AB-rated generic drugs for higher-priced branded drugs.

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[4] This was altered somewhat by the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Public Law 108-173, but the changes do not apply to the Paragraph IV filings at issue in this litigation.

[5] A generic drug is considered "AB-rated" only if it is therapeutically equivalent (in addition to being bioequivalent) to its branded counterpart. This requires that the generic not only have the same active ingredient, clinical effect and safety profile as the branded drug, but also the same dosage form, strength, and route of administration.

26. Many third party payers of prescription drugs (including commercial insurers and state Medicaid programs) have adopted policies to encourage the substitution of AB-rated generic drugs for their branded counterparts.

27. As a result of lower prices and the ease of substitution, many consumers routinely switch from a branded drug to an AB-rated generic drug upon its introduction. Consequently, AB-rated generic drugs typically capture a significant share of their branded counterparts' sales, causing a significant reduction of the branded drugs' unit and dollar sales. Typically, when the branded manufacturer's exclusivity ends and multiple generic versions of the drug enter the market (as would be the case here), a branded drug loses approximately 90% of its market share within a year.

28. Competition from generic drugs generates large savings for consumers. According to a study commissioned by the Generic Pharmaceutical Association, generic drugs saved the U.S. health system $254 billion in 2014 alone, an average savings of nearly $5 billion per week.[6] According to an FDA study examining average retail drug prices between 1999 and 2004, entry of a second generic version of a drug reduced the average generic price to nearly half of the price of the branded drug, and entry of additional generic versions of a drug reduced prices to 20% of the branded price – in other words, an 80% discount.[7]

29. Generic competition allows consumers and agencies in Plaintiff States to purchase AB-rated generic versions of a branded drug at substantially lower prices. However,

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[6] Generic Pharmaceutical Association, *Generic Drug Savings in the U.S.* (2015), http://www.gphaonline.org/media/wysiwyg/PDF/GPhA_Savings_Report_2015.pdf

[7] FDA, *Generic Competition and Drug Prices* (Mar. 1, 2010), http://www.fda.gov/AboutFDA/CentersOffices/OfficeofMedicalProductsandTobacco/CDER/ucm129385.htm.

until a generic manufacturer enters the market, there is no bioequivalent generic drug which competes with the brand name drug, and therefore, the brand name manufacturer can continue to profitably charge high prices without losing all, or even a substantial portion, of its branded drug sales. Consequently, brand name drug manufacturers have a strong interest to use anticompetitive tactics, such as those alleged, to delay the introduction of generic competition into the market.

C. Provigil and Efforts to Launch Generic Modafinil

30. Provigil promotes wakefulness and is used in the treatment of certain sleep disorders, including narcolepsy and shift work sleep disorder. The active ingredient in Provigil is modafinil.

31. Modafinil is a psychostimulant that enhances wakefulness but its pharmacological profile is significantly different than other drugs used to promote wakefulness, such as amphetamines and methylphenidate. Because of modafinil's unique properties relative to other drugs that promote wakefulness, it is considered to be the "gold standard" for the treatment of excessive sleepiness associated with sleep disorders.

32. Modafinil was first discovered by Laboratoire L. Lafon ("Lafon"), a French pharmaceutical company, in 1976. A drug product containing modafinil has been available in France since 1994.

33. In 1993, Cephalon obtained exclusive U.S. rights to modafinil from Lafon, and acquired Lafon outright in 2001.

34. Cephalon filed an NDA for Provigil in December 1996, and received FDA approval in December 1998. Cephalon commercially launched Provigil in the United States shortly after FDA approval.

35. Cephalon obtained three different types of FDA exclusivities for Provigil. First, because FDA concluded that modafinil constituted a new chemical entity ("NCE"), Cephalon received NCE exclusivity. Second, Cephalon obtained Orphan Drug exclusivity because Provigil has an FDA-approved indication for narcolepsy, a rare disorder. Due to NCE and Orphan exclusivities, FDA was prevented from approving a generic until December 24, 2005. In March 2006, after NCE and Orphan exclusivity expired, Cephalon obtained pediatric extension, granting an additional 180 days of FDA exclusivity, through June 24, 2006.

36. Until it finally faced generic competition in 2012, Provigil was a very profitable drug for Cephalon. Sales and revenues for Provigil grew substantially over the years and until generic entry. In 1999, annual Provigil sales in the U.S. were approximately $25 million. By 2011, however, sales of Provigil exceeded $1 billion, and the drug accounted for more than half of Cephalon's total consolidated net sales.

37. Because of Provigil's commercial success, several generic drug companies filed ANDAs seeking FDA approval to market an AB-rated generic version of Provigil. Specifically, on the same day in December 2002 (the earliest day permitted), Barr Laboratories, Ranbaxy, Teva, and Mylan ("Generic Manufacturers") each filed ANDAs with paragraph IV certifications. As a result, each was expected to share the statutory 180-days of generic exclusivity.

38. On March 28, 2003, Cephalon filed suit in the United States District Court for the District of New Jersey alleging infringement of its Provigil patent by the Generic Manufacturers.

39. Each of the Generic Manufacturers received Tentative Approval from the FDA for its generic version of Provigil before the drug's Orphan Drug exclusivity expired on December 24, 2005: Barr on January 7, 2004; Ranbaxy on February 18, 2004; Mylan on February 9, 2005; and Teva on December 16, 2005.

40. As detailed further below, absent Defendant's wrongful and exclusionary conduct, each of the Generic Manufacturers would have obtained Final Approval from FDA, and would have begun selling its generic version of Provigil – at prices significantly below the price of brand name Provigil – on or shortly after the expiration of Provigil's Orphan Drug exclusivity on December 24, 2005.

V. DEFENDANTS' ANTICOMPETITIVE CONDUCT

A. Cephalon Fraudulently Procured a Second Patent For Provigil

41. Cephalon obtained exclusive U.S. rights to modafinil in 1993. The composition patent for modafinil expired in 2001, and Cephalon expected generic competition for Provigil in 2006, once its FDA exclusivity expired.

42. So as to continue obtaining monopoly profits for Provigil after its composition patent expired in 2001, Cephalon submitted a second patent application for Provigil.

43. On October 6, 1994, Cephalon filed United States Application Serial No. 08,319,124 ("the '124 Application") titled "Acetamide Derivative Having Defined Particle

Size." The '124 Application narrowly claimed a very specific formulation of modafinil consisting of a specified distribution of small particles, as well as certain uses.

44. Cephalon knew that its patent application would not be granted for several reasons, including that Cephalon was not the inventor and because the claimed invention was not sufficiently novel over prior inventions. And in fact, its application was rejected by the patent examiner.

45. Despite knowing that the claimed invention in the '124 Application was not patentable, Cephalon intentionally made material omissions and misrepresentations to the PTO to overcome the examiner's rejections so that the patent would issue. Specifically, Cephalon:

- Intentionally misrepresented that it was the inventor, despite knowing that Lafon not only conceived of the invention, but developed, manufactured, and supplied Cephalon with the very embodiment of the invention that was produced to the PTO as a sample of the invention;

- Intentionally failed to disclose that Lafon provided Cephalon with modafinil product that embodied its claimed invention and that Lafon communicated to Cephalon knowledge and technical information about tests that it had previously performed which demonstrated that ground modafinil with smaller particle sized produced better dissolution rates. This information along with the product sent by Lafon made the claimed invention obvious and thus unpatentable;

- Intentionally failed to disclose that in 1993, Lafon shipped modafinil API and tablets to Cephalon and provided technical information about testing it had done on the benefits of smaller particle sizes. Cephalon made no modification to the product provided by Lafon, but still used it as a sample of an embodiment of its claimed invention to the PTO. Because of this prior disclosure and shipment of modafinil, Cephalon knew that its invention was not patentable because a product embodying all the claims of the invention was the subject of a commercial sale more than one year before the '124 Application was submitted.

46. Because the patent examiner relied on Cephalon's material omissions and misrepresentations, the patent was issued rather than rejected. Specifically, on April 8, 1997,

the '124 Application issued as United States Patent No. 5,618,845, subsequently re-issued in 2002 as U.S. Patent No. RE37,516 (Collectively referred to as the "Formulation Patent"). The Formulation Patent expired in April 2014.

47. By obtaining and enforcing the Formulation Patent, Cephalon was able to delay generic competition until well after its Orphan Drug exclusivity expired in December 2005 (and when generic competition was expected).

48. Due to Cephalon's material omissions and misrepresentations before the PTO, the Formulation Patent was found to be invalid and unenforceable. Specifically, on November 7, 2011, this Court ruled that the Formulation Patent was invalid, in part on the following basis:

- Cephalon was not the inventor of the Formulation Patent, in violation of 35 U.S.C. § 102(f);

- An embodiment of all the claims of the invention was subject to a commercial sale and supply agreement between Cephalon and Lafon more than one year before the filing of the patent application (October 6, 1994), in violation of 35 U.S.C. § 102(b);

- The claimed invention was "obvious" under 35 U.S.C. § 103, in light of: (a) contemporaneous knowledge of modafinil's properties and effectiveness in the treatment of narcolepsy prior to 1994; (b) general knowledge on the importance and role of particle size on dissolution rate and bioequivalence; and (c) Cephalon's receipt of modafinil product from Lafon prior to July 1993 along with specific technical information provided by Lafon on the results of its testing on the modafinil product relating to the effects of smaller particle sizes on modafinil solubility and dissolution rate; and

- The patent application "does not specify the particle size of the modafinil post-tabletting" and "does not provide sufficient information to allow a person skilled in the art to determine the particle size in the finished pharmaceutical composition as claimed," in violation of 35 U.S.C. § 112.

49. This Court also found in its November 7, 2011 decision that Cephalon made numerous intentional and material omissions and misrepresentations to the PTO "relating to Lafon's substantial role in Cephalon's claimed invention." Specifically, this Court stated:

> "I find that the complete concealment of another company's extensive involvement in the product which is the subject of the claimed invention definitively establishes Cephalon's deception by clear and convincing evidence. Further, in addition to concealing Lafon's role as manufacturer and supplier of the product being claimed in the patent, Cephalon affirmatively told the PTO that it had modified particle size when in fact it had done nothing whatsoever to change, modify or improve the modafinil it received from Lafon." *See Apotex v. Cephalon*, 06-cv-2768, 2011 WL 6090696 at * 27 (E.D. Pa. Nov. 7, 2011), *aff'd* 2012-1417 (Fed. Cir. Apr. 8, 2013).

50. Because this Court found that "but for [Cephalon's] omissions or misrepresentations, the PTO would not have issued the patent," it concluded that Cephalon committed inequitable conduct as a matter of law. *Id.* at *25-27. The Federal Circuit affirmed this Court's findings of fact and conclusions of law. *Apotex v. Cephalon*, 2013 LEXIS App. (Fed. Cir. 2013).

B. Cephalon Had the Fraudulently Procured Patent Listed in the FDA Orange Book and Filed Sham Litigation Against Generics for the Purpose of Delaying Generic Competition

51. Despite knowing that the Formulation Patent was invalid and only issued because of its own intentional and material omissions and misrepresentations to the PTO, Cephalon nonetheless had the Formulation Patent listed in the Orange Book in connection with Provigil.

52. Pursuant to the Act, a branded drug company must provide FDA with "the patent number and the expiration date of any patent which claims the drug for which the applicant submitted the application or which claims a method of using such drug and with

respect to which a claim of patent infringement could reasonably be asserted." 21 U.S.C. § 355(b)(1)(G). Because Cephalon knew that the Formulation Patent was invalid and only issued as a result of its intentional and material omissions and misrepresentations to the PTO, it was not a patent "with respect to which a claim of patent infringement could reasonably be asserted" and thus was improperly listed on the Orange Book.

53. Nonetheless, Cephalon intentionally had the fraudulently procured Formulation Patent listed in the Orange Book because it knew that doing so would deter or at least delay competition. First, Cephalon knew that merely listing a patent in the Orange Book might deter a company from attempting to launch a generic before expiration of the Formulation Patent, because pursuant to the Act, in addition to obtaining FDA approval, launching a generic before patent expiration would require submitting a Paragraph IV filing and the likely risk of patent litigation.

54. Second, patent litigation with an ANDA filer seeking to launch an AB-rated generic version of Provigil would almost certainly have delayed generic entry for at least 30 months. Cephalon knew that given the substantial revenues for Provigil, listing of its Formulation Patent in the Orange Book would result in ANDAs submitting Paragraph IV certifications, triggering the 30-month stay of FDA approval upon Cephalon's timely filing of an infringement action. Cephalon also knew that patent litigation with ANDA filers could delay generic competition for even longer than 30 months because FDA is not required to grant Final Approval upon expiration of the 30-month stay. Rather, sometimes FDA waits to grant Final Approval of an ANDA until all patent issues are resolved – which may occur months to years after the 30 month stay expires.

55. And even if FDA were to grant Final Approval for an ANDA immediately after expiration of the 30-month stay (and during ongoing patent litigation), a generic company may nonetheless decide to delay launching its generic until all patent issues are resolved in its favor, so as to avoid the substantial risk of an injunction and damages for infringement. With appeals, this process could take years to complete. As a result, by merely listing the fraudulently procured Formulation Patent in the Orange Book and enforcing the patent thereafter, Cephalon was able to delay or deter generic competition for at least 30 months.

56. And Cephalon did in fact file litigation asserting infringement of its fraudulently procured Formulation Patent against all four Generic Manufacturers. Specifically, in March 2003, Cephalon filed sham litigation in the United States District Court for the District of New Jersey alleging that all four Generic Manufacturers infringed the Formulation Patent. Cephalon's suits were a sham because it knew the Formulation Patent was invalid and only issued due to its intentional and material omissions and misrepresentations made before the PTO. Nonetheless, Cephalon filed the infringement actions because it knew that doing so would delay generic competition.

57. Pursuant to the Act, Cephalon's filing of the four infringement actions against Mylan, Teva, Barr, and Ranbaxy triggered the 30-month stay of FDA approval for each of these ANDAs, thereby delaying FDA approval of generic modafinil.

C. Cephalon Pays off Generic Manufactures to Delay Generic Entry Until April 2012

(i) Cephalon Knew that its Patent Suit was a Sham and Thus Needed Additional Means of Delaying Generic Competition

58. Despite successfully (and illegally) extending its Provigil monopoly profits, Cephalon realized that generic competition was imminent upon expiration of Provigil's Orphan Drug exclusivity on December 24, 2005.

59. There were several indications before December 2005 that generic competition was imminent. First, there was no regulatory bar preventing the FDA from approving generic modafinil after December 2005. The statutory 30-month stays of FDA approval for the Generics Manufacturers (triggered by the filing of the sham litigations), as well as FDA exclusivities that Cephalon obtained for Provigil, all expired by December 2005.[8] Thus, FDA could have approved any or all of the ANDAs shortly after December 2005 – and such approval was likely given that each ANDA had received Tentative Approval from FDA by the end of 2005. Second, Cephalon knew that its Formulation Patent was invalid, and as a consequence, that it would likely lose its sham patent litigation. Third, *even if*, the Formulation Patent were somehow valid and enforceable, there was still a significant likelihood that one or more ANDAs would not infringe the patent given its narrow claims, which covered only a single formulation of modafinil. Indeed, a subsequent ANDA filed by Apotex was in fact found not to infringe the Formulation Patent. *See, Apotex v. Cephalon,* 06-cv-2768 (E.D.Pa. March 28, 2012).

[8] Although Cephalon received an additional 180 days of pediatric exclusivity on March 28, 2006, this would not have any effect on a generic that was approved and launched before that date.

60. In November 2005, Cephalon's management was so convinced that generic competition was imminent, that Cephalon informed the investment community that it projected a substantial reduction of Provigil sales in 2006 due to expected generic competition.

61. To delay the imminent generic competition for Provigil, Cephalon began negotiating settlements of the patent suits with the Generic Manufacturers in 2005. Cephalon's primary goal in these negotiations was to delay generic competition for Provigil for as long as possible.

62. Because Cephalon's patent infringement claims against the Generic Manufacturers were weak, Cephalon realized that the Generic Manufacturers would have to receive substantial value in order to induce them to forego their expected profits from sales of generic Provigil after Cephalon's exclusivity expired.

63. Moreover, to protect and maintain its monopoly profits in the modafinil market, Cephalon would have to induce each and every of the Generic Manufacturers to refrain from selling their generic versions of Provigil, because as a result of generic substitution laws and practices, *the entry of even a single generic product would quickly cause the majority of modafinil purchases to switch* from Cephalon's branded Provigil to the substantially less expensive – but bioequivalent – generic modafinil.

64. By early 2006, Cephalon settled all patent litigation with the four Generic Manufacturers. Each settlement included exclusionary large and unjustified "reverse" payments and side-deals. The side-deals, while often in separate contracts, were not independent business transactions, but were instead inextricably linked with the agreed-upon delayed generic entry date.

65. Cephalon provided an additional incentive to each of the four Generic Manufacturers to settle, by including an acceleration clause in each settlement and by publicizing that provision of each settlement. The clause allowed for accelerated entry by each of the Generic Manufacturers in the event that another generic company entered the market. The clause made continued litigation or launching-at-risk less attractive for each successive Generic Manufacturer because it would automatically permit each Generic Manufacturer to launch upon entry of any other generic competitor, thereby driving down the price of AB-rated generic version(s) of Provigil. The purpose and effect of Cephalon's agreements with the Generic Manufactures was to maintain Cephalon's Provigil monopoly and eliminate potential generic competition to Provigil until April 2012.

(ii) Cephalon's Anticompetitive Settlement with Teva

66. On December 8, 2005, Cephalon and Teva agreed to settle their patent litigation. Under this settlement, Teva agreed that it would not launch any generic version of Provigil before April 2012, unless another generic company launched a generic version of Provigil earlier than that date - in which case Teva also would be allowed to enter at that time. Cephalon and Teva publicized this accelerated entry agreement provision in press releases announcing the settlement.

67. The settlement agreement provided Teva with substantial compensation for its agreed-to delayed launch of generic Provigil. Specifically, Cephalon agreed to pay Teva up to $125 million in royalties based on Cephalon's worldwide sales of Provigil and successor products. Purportedly, these payments were made in exchange for a license to a patent and patent

application Teva held relating to modafinil. However, Cephalon did not need – and had no interest in licensing Teva's modafinil-related patent rights. Cephalon also agreed to purchase active pharmaceutical ingredient ("API") for Provigil from Teva at prices substantially higher than the price Cephalon paid to its existing supplier. The patent license and higher prices that Cephalon paid Teva were merely means by which Cephalon attempted to hide its exclusionary payment to Teva. The compensation that Cephalon agreed to provide Teva was designed to, and did, induce Teva to settle the Provigil patent litigation and agree to refrain from marketing generic Provigil until April 2012.

(iii) Cephalon's Anticompetitive Settlement with Ranbaxy

68. On December 22, 2005, Cephalon and Ranbaxy settled their patent litigation. Under this settlement, Ranbaxy agreed that it would not launch any generic version of Provigil before April 2012, unless another generic company launched a generic version of Provigil earlier than that date.

69. As with Teva, Ranbaxy would not agree to refrain from launching generic Provigil until after April 2012 unless it received substantial compensation. As with Teva, Cephalon agreed to provide Ranbaxy this compensation in the form of an API supply agreement and a license to a patent that Ranbaxy held for modafinil. The exclusionary payments to Ranbaxy were even more pretextual than Teva's since Ranbaxy did not (and does not) even manufacture modafinil API itself, but rather purchases it from a third party. However, the API agreement allowed Teva to compensate Ranbaxy by selling the API at an agreed-to substantial markup. Similarly, the $5 million fee that Cephalon agreed to pay to license Ranbaxy's modafinil patents was clearly pretextual, as Cephalon did not need such a license. The

compensation that Cephalon agreed to provide Ranbaxy under the settlement was designed to, and did induce, Ranbaxy to settle the Provigil patent litigation and agree to refrain from marketing generic Provigil until April 2012.

(iv) Cephalon's Anticompetitive Settlement with Mylan

70. On January 9, 2006, Cephalon and Mylan settled their patent litigation. Pursuant to the settlement, Mylan agreed that it would not launch any generic version of Provigil before April 2012, unless another generic company launched a generic version of Provigil earlier than that date.

71. As with Teva and Ranbaxy, Mylan required significant compensation in exchange for an agreement to refrain from competing until April 2012. To hide its exclusionary payment to Mylan, Cephalon entered into simultaneous product development deals with Mylan that provided Mylan a guaranteed minimum of at least $45 million. Prior to its agreement with Mylan, Cephalon had not sought the technology that Mylan contributed to the product development deals. Rather, the agreement and corresponding compensation provided by Cephalon to Mylan was designed to, and did, induce Mylan to settle the Provigil patent litigation and agree to refrain from marketing generic Provigil until after April 2012.

(v) Cephalon's Anticompetitive Settlement with Barr

72. On February 1, 2006, Cephalon settled patent litigation with Barr and Barr's partner, Chemagis, Ltd. (together with its affiliates, "Chemagis"). Under the settlement, Barr agreed that it would not launch any generic version of Provigil before April 2012, unless another generic company launched a generic version of Provigil earlier than that date.

73. As with the other Generic Manufacturers, Barr was unwilling to refrain from marketing generic Provigil until April 2012 absent substantial compensation. To satisfy Barr and Chemagis, and mask its exclusionary payments to them, Cephalon agreed to the following: (1) paying Barr $1 million for a license to a patent application that Barr held related to modafinil; (2) purchasing modafinil API directly from Chemagis (and indirectly from Barr via Barr's profit-sharing arrangement with Chemagis) at high markup prices; (3) paying Chemagis $4 million in exchange for a license to a patent and patent application that Chemagis held related to modafinil; and (4) paying Chemagis at least $20 million for two product development collaborations. The patent licenses and side-deals were merely means by which Cephalon attempted to hide its exclusionary payment to Barr and Chemagis. The compensation Cephalon agreed to provide Barr and Chemagis was designed to, and did, induce Barr and Chemagis to settle the Provigil patent litigation and agree to refrain from launching generic Provigil until after April 2012.

D. The Effects of Cephalon's Anticompetitive Agreements

74. Cephalon's settlement agreements with the Generic Manufacturers successfully delayed generic entry until April 2012, providing Cephalon with approximately six years of unlawful additional monopoly profits at the expense of purchasers of Provigil – including consumers and Plaintiff States. Indeed, settling the patent litigation with the Generic Manufacturers ensured that the anticompetitive effects were widespread, since *a finding of invalidity would have removed the patent as a barrier to generic entry for all* (not just the Generic Manufacturers).

75. The anticompetitive effects of the settlements were exacerbated due to their "bottleneck" feature, preventing *any* company – not just the Generic Manufacturers – from launching generic modafinil until April 2012. Because the Generic Manufacturers collectively shared First to File exclusivity, FDA was barred from approving *any* other generic version of Provigil until the 180-day exclusivity period expired. And only the commercial marketing of generic Provigil by at least one of the Generic Manufacturers or an appeals court decision declaring the Formulation Patent invalid or not infringed would trigger the 180-day exclusivity period. Cephalon settlements with all the Generic Manufacturers – all which agreed not to launch prior to April 2012 – thus ensured that the 180-day exclusivity would not be triggered until April 2012.

76. Finally, the breadth of the agreements also evinces their anticompetitive effects. Two of the settling Generic Manufacturers (Teva and Mylan) agreed not to develop, market, or sell generic versions of Provigil, but also agreed not to develop, market or sell generic equivalents of *successor products*. Similarly, the remaining settling Generic Manufacturers agreed to not sell generic products *whether or not they infringed the Formulation Patent.* In contrast, Cephalon's patent infringement suits had the potential to restrict only sales of Generic Manufacturers' proposed versions of generic Provigil (*i.e.* the version disclosed in their ANDAs to which FDA gave Tentative Approval).

77. By entering into broad settlement agreements that well exceeded the Formulation Patent's exclusionary rights and restricted Generic Manufacturers' ability to launch non-infringing, competing modafinil products, Cephalon was able to stifle competition for generic modafinil and harm Plaintiffs States and consumers who purchased Provigil for many years.

VI. Cephalon's Conduct Harmed Competition, Consumers, and Plaintiff States

78. Cephalon's enforcement of an invalid and fraudulently procured patent for Provigil created barriers to generic entry that were certain to deter and/or delay generic competition. Cephalon misused the very provisions of the Hatch-Waxman Act that were intended to *encourage* generic competition to instead *delay* it. Cephalon listed its fraudulently procured Formulation Patent in the Orange Book, knowing that it would likely deter generic entry. Thereafter, Cephalon filed suit against the Generic Manufactures, with the understanding and intent that its sham litigation would delay generic completion due to misusing the Act's 30-month stay of FDA approval for generics.

79. In order to favorably end its sham litigation, Cephalon negotiated settlements with each and all of the Generic Manufacturers so as to protect its invalid patent and ensure delayed generic entry. Cephalon realized that because the Generic Manufacturers collectively shared 180-day generic exclusivity, it would have to settle with each to effectively delay generic entry. Thus, by means of four separate settlements with each of the Generic Manufacturers, Cephalon was able to successfully delay generic competition for nearly six years, until April 2012.

80. And Cephalon's anticompetitive settlement agreements *prevented the possibility of generic competition from any source,* not just the settling Generic Manufacturers. As the Generic Manufactures collectively shared 180-day generic exclusivity, the settlements ensured that the 180-day generic exclusivity was not triggered until April 2012, preventing any possibility of generic competition from any source until at least then.

81. Entry of generic Provigil would have given Plaintiffs and consumers the choice between branded Provigil and lower-priced generic modafinil. Indeed, generic entry in early 2006 (as expected) would have quickly and significantly reduced Cephalon's sales of Provigil and led to a significant reduction in the average price that purchasers would have paid for generic Provigil. Plaintiffs and consumers would have saved hundreds of millions of dollars (or more) by purchasing generic versions of Provigil. Instead, via its anticompetitive conduct, Cephalon was able to retain those potential savings for itself (as well as use some to compensate the Generic Manufacturers for their agreement to delay launching generic Provigil).

82. Cephalon used various provisions of the Act to benefit itself, such as receiving extended exclusivity for Provigil. When these benefits were exhausted, Cephalon subverted other benefits of the Act – such as allowing consumers and Plaintiff States to enjoy the full benefits of generic competition. Cephalon listed its fraudulently procured Formulation Patent in the Orange Book, filed sham litigation against the Generic Manufacturers, and entered into anticompetitive settlement agreements. As a result, Cephalon swindled an additional six years of monopoly protection for Provigil. Through its scheme to prevent generic competition, Cephalon abused the Act's regulatory structure and violated the antitrust law at the expense of Plaintiff States and consumers, who were denied the full benefits of generic competition as a consequence of Cephalon's actions.

83. As purchasers of Provigil, Plaintiff States and consumers were harmed by Cephalon's anticompetitive conduct. Rather than having the option of buying less expensive generic modafinil, Plaintiff States and consumers were forced to pay monopoly prices for

Provigil for several additional years. As a result, Plaintiff States spent at least tens of millions of dollars more than they should have to enrich Defendants.

VII. Cephalon's Monopoly Power

84. Cephalon has exercised monopoly power in the United States with respect to Provigil. Direct evidence of this monopoly power includes Cephalon's ability to price Provigil substantially higher than the projected price of competing generic versions of Provigil and to exclude potential competitors by providing substantial compensation to delay competition.

85. Modafinil is its own relevant market. Although other drugs may be used to treat narcolepsy and the other sleep disorders for which Provigil is indicated, these drugs are distinct and thus their availability was not sufficient to prevent the anticompetitive effects of Cephalon's anticompetitive conduct to delay generic modafinil. Cephalon held a 100 percent share of the relevant market until April 2012.

86. All conditions precedent necessary to the filing of this action have been fulfilled, waived or excused.

COUNT I

Monopolization in Violation of Section 2 of the Sherman Act (Against Cephalon Only)

87. Plaintiff States repeat, and incorporates by reference, every preceding allegation above.

88. Cephalon's enforcement of a fraudulently procured patent violated Section 2 of the Sherman Act.

89. Despite knowing that the Formulation Patent was invalid and only issued due to its material misrepresentations and omissions to the PTO, Cephalon used it to maintain its modafinil monopoly after expiration of Orphan Drug exclusivity, when it expected generic entry and corresponding loss of Provigil profits.

90. By listing its fraudulently procured patent in the Orange Book and thereafter filing sham patent litigation against the Generic Manufacturers, Cephalon misused the Act's provision for the sole purpose of delaying generic competition.

91. As a result of Cephalon's enforcement of its fraudulently procured patent, generic competition was delayed by several years, forcing Plaintiff States and consumers to pay more than they would have paid for modafinil, absent Cephalon's illegal conduct. But for Cephalon's illegal conduct, competitors would have begun marketing generic versions of Provigil well before they actually did, and/or would have been able to market such versions more successfully.

92. If manufacturers of generic modafinil entered the market and competed with Cephalon in a full and timely fashion, Plaintiff States and consumers would have substituted lower-priced generic modafinil for the higher-priced brand name Provigil for some or all of their modafinil requirements, and/or would have received lower prices on some or all of their remaining Provigil purchases.

93. During the relevant time period, Plaintiff States and consumers purchased substantial amounts of Provigil. As a result of Cephalon's enforcement of its fraudulently

procured patent, Plaintiffs and consumers were compelled to pay, and did pay, artificially inflated prices for their modafinil requirements.

94. Cephalon's enforcement of its fraudulently procured Formulation Patent had the purpose and effect of delaying generic competition and constitutes monopolization of the market for modafinil in the United States, in violation of Section 2 of the Sherman Act, 15U.S.C. §2.

COUNT II

Restraint of Trade in Violation of Section 1 of the Sherman Act

95. Plaintiffs repeat and incorporate by reference every preceding allegation.

96. Beginning on or about December 9, 2005, Cephalon and each of the Generic Manufacturers entered into contracts in restraint of trade, the purpose and effect of which was to prevent the sale of generic version of modafinil in the United States until April 2012, thereby protecting Provigil from any generic competition for nearly 6 years.

97. By entering into these exclusionary contracts, Defendants have unlawfully conspired in restraint of trade and committed a violation of Section 1 of the Sherman Act, 15 U.S.C. §1. Defendants' agreements are anticompetitive agreements between actual or potential competitors, in violation of Section 1.

98. Plaintiff States and consumers have been injured in their business and property by reason of Defendants' unlawful agreements. Plaintiff States and consumers have paid more for their purchases of Provigil than they would have paid absent Defendants' illegal agreements and were prevented from substituting a cheaper generic for their purchases of the more expensive Provigil.

99. As a result of Defendants' anticompetitive agreements, Plaintiff States and consumers paid more than they would have paid for modafinil, absent Defendants' illegal conduct. But for Defendants' unlawful agreements, generic competition for Provigil would have begun well before April 2012.

100. Had manufacturers of generic modafinil entered the market and competed with Cephalon in a full and timely fashion, Plaintiffs and consumers would have substituted lower-priced generic modafinil for the higher-priced brand name Provigil for some or all of their modafinil requirements, and/or would have received lower prices on some or all of their remaining Provigil purchases.

COUNT III

Violation of Numerous State Antitrust and Consumer Protection Laws

101. Plaintiff State of Alabama repeats and realleges every preceding allegation.

102. The aforementioned act and practices by Defendants constituted unconscionable, false, misleading, or deceptive acts or practices in the conduct or trade or business in violation of the Alabama Deceptive Trade Practice Act, Code of Alabama 1975, 8-19-5 Subsection 27. The Defendants knowingly engaged in these acts and practices.

103. Plaintiff State of Alaska repeats and realleges every preceding allegation.

104. The aforementioned practices by Defendants were in violation of Alaska's Restraint of Trade Act, AS 45.50.562 *et seq.* and Alaska's Unfair Trade Practices and Consumer Protection Act, AS 45.50.471 *et seq.*, and the common law of Alaska.

105. Plaintiff State of Arizona repeats and realleges every preceding allegation.

106. The aforementioned practices by Defendants violate, and Plaintiff State of

Arizona is entitled to relief under, the Arizona State Uniform Antitrust Act, A.R.S. § 44-1401 *et seq.*

107. Plaintiff State of Arkansas repeats and realleges every preceding allegation.

108. The aforementioned practices by Defendants were in violation of Arkansas's Unfair Practices Act, Ark. Code Ann.§ 4-75-201, *et seq.*, Arkansas's Deceptive Trade Practices Act, Ark. Code Ann.§ 4-88-101, *et seq.*, Arkansas's Statute on Monopolies, Ark. Code Ann.§4-75-301, *et seq.*, and the common law of Arkansas.

109. Plaintiff State of Colorado repeats and realleges every preceding allegation.

110. The aforementioned practices by Defendants violate, and Plaintiff State of Colorado is entitled to relief under, the Colorado Antitrust Act of 1992, § 6-4-101, *et seq.*, Colo. Rev. Stat., and the common law of Colorado.

111. Plaintiff State of Connecticut repeats and realleges every preceding allegation.

112. Defendants' actions as alleged herein violate Conn. Gen. Stat. §§ 35-26, 35-28 and 35-29, in that Defendants entered into contracts, combinations or conspiracies for the purpose of, or having the effect of, preventing generic competition for Provigil sold in the State of Connecticut.

113. Defendants' acts and practices as alleged herein also constitute unfair methods of competition, all in violation of the Connecticut Unfair Trade Practices Act, Conn. Gen. Stat. § 42-110a, *et. seq.*

114. Pursuant to Conn. Gen. Stats. §§ 3-125 and 42-110m, the State of Connecticut, represented by George Jepsen, Attorney General at the request of Jonathan Harris,

Commissioner of the Department of Consumer Protection for the State of Connecticut, seeks costs, disgorgement, restitution, and other equitable relief for these violations pursuant to the Connecticut Unfair Trade Practices Act, Conn. Gen. Stat. § 42-110a, *et. seq.*

115. Defendants' actions as alleged herein violate Conn. Gen. Stat.§§ 35-26, 35-28 and 35-29 in that they have the purpose and/or effect of substantially lessening competition and unreasonably restraining trade and commerce within the State of Connecticut and elsewhere.

116. Defendants' actions as alleged herein have damaged, directly and indirectly, the prosperity, welfare, and general economy of the State of Connecticut and the economic well-being of a substantial portion of the People of the State of Connecticut and its citizens and businesses at large. George Jepsen, Attorney General of the State of Connecticut, seeks recovery of such damages as *parens patriae* on behalf of the those persons in the State of Connecticut harmed by Defendants' conduct, pursuant to Conn. Gen. Stat.§ 35-32(c)(l).

117. Defendants' acts and practices as alleged herein constitute unfair methods of competition, all in violation of the Connecticut Unfair Trade Practices Act, Conn. Gen. Stat§ 42- 110b.

118. Plaintiff State of Delaware repeats and realleges every preceding allegation.

119. The aforementioned practices by Defendants were in violation of Section 2103 of the Delaware Antitrust Act, 6 Del. c. § 2101, *et seq.* Accordingly, the Attorney General, on behalf of the State of Delaware in its sovereign and proprietary capacities, and on behalf of natural persons residing in the State of Delaware seeks all relief available under the Delaware Antitrust Act.

120. Plaintiff District of Columbia repeats and realleges every preceding allegation.

121. The aforementioned practices by Defendants were in violation of the District of Columbia Antitrust Act, D.C. Code §§28-4502 and 28-4503.

122. Plaintiff District of Columbia, and its residents who purchased Provigil, have been injured by Defendants' actions. The District of Columbia, on its behalf and as *parens patriae* on behalf of residents of the District of Columbia, as purchasers of Provigil, is entitled to relief pursuant to D.C. Code§§ 28-4507 and 28-4509 by reason of the violations alleged above.

123. Plaintiff State of Florida repeats and realleges every preceding allegation.

124. Defendants' acts violate, and Plaintiff State of Florida is entitled to relief under, the Florida Antitrust Act of 1980, Section 542.15, Florida Statutes, *et seq.*, and the Florida Deceptive and Unfair Trade Practices Act, Section 501.201, Florida Statutes, *et seq.*

125. Plaintiff State of Georgia repeats and realleges every preceding allegation.

126. The aforementioned practices by Defendants violate, and Plaintiff State of Georgia is entitled to relief under, O.C.G.A. §§ 13-8-2(a)(2) and 10-1-390, *et seq.*

127. Plaintiff State of Hawaii repeats and realleges every preceding allegation.

128. The aforementioned practices by Defendants were in violation of Chapter 480, Hawaii Revised Statutes.

129. Plaintiff State of Hawaii, on behalf of itself, its government agencies, and as *parens patriae* on behalf of natural persons residing therein, is entitled to injunctive relief, damages, restitution, disgorgement, treble damages, civil penalties, reasonable attorney fees and costs.

130. Plaintiff State of Idaho repeats and realleges every preceding allegation.

131. Defendant's conduct as alleged had the purpose and effect of suppressing generic competition for Provigil in the State of Idaho and elsewhere, and had a substantial and adverse impact on modafinil prices in Idaho. The violations alleged above unreasonably restrained Idaho commerce (as defined by Idaho Code § 48-103 (1)).

132. Pursuant to Idaho Code § 48-108 of the Idaho Competition Act, Plaintiff State of Idaho, as *parens patriae* on behalf of Idaho persons (as defined by Idaho Code § 48-103(2)), is entitled to monetary relief for injuries suffered by reason of the violations alleged above.

133. Plaintiff State of Idaho is also entitled to and seeks injunctive relief, civil penalties, and attorney fees pursuant to Idaho Code § 48-108(1) of the Act.

134. The activities of Defendants, as alleged above, violate Idaho Code § 48-104 of the Idaho Competition Act. Pursuant to Idaho Code § 48-108(2) of the Act, the Plaintiff State of Idaho as *parens patriae* on behalf of Idaho persons is entitled to treble damages for violations of Idaho Code § 48-104.

135. Plaintiff State of Illinois repeats and realleges every preceding allegation.

136. The Defendants violated section 3 of the Illinois Antitrust Act, 740 ILCS 10/3, by their conduct to prevent generic competition for Provigil having the purpose of raising the price of modafinil.

137. Plaintiff State of Indiana repeats and alleges every preceding allegation.

138. The aforementioned practices are in violation of the Indiana Antitrust Act, Ind. Code §24-1-1-1 and §24-1-2-1, the Indiana Deceptive Consumer Sales Act, I.C. § 24-5-0.5-1, and Indiana common law.

139. Plaintiff State of Iowa repeats and realleges every preceding allegation.

140. The aforementioned practices by Defendants were in violation of Iowa Competition Law, Iowa Code ch. 553.

141. Iowa seeks an injunction, divestiture of profits, and actual damages resulting from these practices pursuant to Iowa Code Section 553.12, and civil penalties pursuant to Iowa Code Section 553.13.

142. Defendants' acts and practices as alleged herein also constitute an unfair practice in violation of the Iowa Consumer Fraud Act, Iowa Code Section 714.16(1)(n).

143. Pursuant to Iowa Code Section 714.16(7), the State of Iowa, seeks disgorgement, restitution, and other equitable relief for these violations. In addition, pursuant to Iowa Code Section 714.16(11) the Attorney General seeks reasonable fees and costs for the investigation and court action.

144. Plaintiff State of Kansas repeats and realleges every preceding allegation.

145. The aforementioned acts and practices by the Defendants were in violation of the Kansas Restraint of Trade Act, Kan. Stat. Ann. §§ 50-101, *et seq.* Defendants' acts and practices as alleged herein have damaged, directly and indirectly, the public welfare of the State of Kansas and its citizens and businesses.

146. Plaintiff State of Kansas seeks relief on behalf of itself and its agencies, and as *parens patriae* on behalf of its residents, pursuant to Kan. Stat. Ann. §§ 50-103 and 50-162.

147. Plaintiff State of Kansas is entitled to injunctive relief, treble damages, civil penalties, attorneys' fees, and reasonable expenses and investigative fees, pursuant to Kan.

Stat. Ann. §§ 50-103, 50-160, and 50-161.

148. Plaintiff Commonwealth of Kentucky repeats and realleges every preceding allegation.

149. The aforementioned acts and practices by the Defendants constituted unfair, false, misleading, or deceptive acts or practices in the conduct or trade or business in violation of Kentucky Consumer Protection Act, Kentucky, Rev. Stat., 367.110 *et seq.* The Defendants willfully engaged in these acts and practices. The Commonwealth of Kentucky is entitled to restorations of money paid pursuant to Kentucky Rev. Stat. 367.200, and penalties pursuant to Kentucky Rev. Stat. 367.990.

150. Plaintiff State of Maine repeats and realleges every preceding allegation.

151. The aforementioned practices by Defendant violate the Maine Monopolies and Profiteering Law, 10 M.R.S. §§ 1101 and 1102.

152. Pursuant to 10 M.R.S. § 1104, Plaintiff State of Maine is entitled to the following relief: (a) treble damages for injuries suffered directly or indirectly on behalf of itself, its state agencies and its citizens as *parens patriae*; (b) injunctive relief to restrain continuing violations of law; (c) civil penalties in the amount of $100,000 for each course of conduct alleged herein that constitutes a violation of 10 M.R.S. §§ 1101 or 1102; and (d) necessary and reasonable costs, expert fees and attorney fees.

153. Plaintiff State of Maryland repeats and realleges every preceding allegation.

154. The aforementioned practices by Defendants were in violation of the Maryland Antitrust Act, Md. Commercial Law Code Ann. § 11-201 *et seq.* In particular, § 11-209(b)(2) provides that the State may maintain an action for damages or for an injunction or both

regardless of whether it dealt directly or indirectly with the person who has committed the violation. If an injunction is issued, the complainant shall be awarded costs and reasonable attorney's fees. § 11-209(b)(3). In an action for damages, the person found to be injured by a violation of the Maryland Antitrust Act shall be awarded three times the amount of actual damages, with costs and reasonable attorney's fees. § 11-209(b)(4).

155. Further, § 11-209(b)(5) provides that the Attorney General may bring an action as *parens patriae* on behalf of persons residing in the State to recover the damages provided for by federal law. In any action brought by the Attorney General under § 11-209 of the Commercial Law Code, a person that sells, distributes or otherwise dispenses any drug or medicine may not assert as a defense that the person did not deal directly with the person on whose behalf the action is brought. Maryland Health-General Code Annotated, §21-1114.

156. Plaintiff Commonwealth of Massachusetts repeats and realleges every preceding allegation.

157. The aforementioned practices by Defendants constitute unfair methods of competition or unfair or deceptive acts or practices in violation of the Massachusetts Consumer Protection Act. M.G.L c. 93A § 2 *et seq.*

158. Defendants have waived the notice and confer requirements of M.G.L. c.93A § 4.

159. Plaintiff State of Michigan repeats and realleges every preceding allegation.

160. The aforementioned practices by Defendants constitute a violation of Section 2 of the Michigan Antitrust Reform Act, MCL 445.772.

161. Plaintiff State of Michigan, on behalf of itself, its state agencies, and as *parens patriae* on behalf of its consumers, is entitled to relief for damages, penalties, disgorgement,

costs and fees under Sections 7 and 8 of the Michigan Antitrust Reform Act, MCL 445.771 *et. seq.*

162. Plaintiff State of Minnesota repeats and realleges every preceding allegation.

163. The aforementioned practices by Defendants violate, and the Plaintiff State of Minnesota on behalf of itself, its state agencies and as *parens patriae* on behalf of its consumers, is entitled to relief under the Minnesota Antitrust Law of 1971, Minn. Stat. §§ 325D.49-.66, the Uniform Deceptive Trade Practices Act of 1973, Minn. Stat. §§ 325D.43-.48, Minn. Stat. Chapter 8, and Minnesota common law for unjust enrichment.

164. Plaintiff State of Minnesota is entitled to treble damages under Minn. Stat. § 325D.57.

165. Plaintiff State of Minnesota is entitled to costs and reasonable attorneys' fees under Minn. Stat.§§ 325D.45 and .57.

166. Plaintiff State of Minnesota is entitled to injunctive relief under Minn. Stat. §§ 325D.45 and .58. Defendants shall be subject to civil penalties under Minn. Stat.§ 325D.56.

167. Plaintiff State of Mississippi repeats and realleges every preceding allegation.

168. The aforementioned practices by Defendants were in violation of, and Plaintiff State of Mississippi is entitled to relief based upon, Miss. Code Ann. §75- 21-1 et seq. and Miss. Code Ann. §75- 24-1 *et seq.*

169. Plaintiff State of Mississippi seeks relief on behalf of the State, its state agencies, and its political subdivisions for: (a) damages sustained by the State, local government and consumers; (b) civil penalties; (c) all available equitable remedies, including injunctive relief; and (d) reimbursement of reasonable fees and costs.

170. Plaintiff State of Missouri repeats and realleges every preceding allegation.

171. The aforementioned practices by Defendants were in violation of the Missouri Antitrust Law, Missouri Rev. Stat. §§ 416.011 *et seq.* and Missouri's Merchandising Practices Act, Missouri Rev. Stat.§§ 407.010 *et seq.*, as further interpreted by 15 CSR 60-8.010 *et seq.* and 15 CSR 60-9.01 *et seq.*, so that the State of Missouri is entitled to injunctive relief and an award of restitution or damages, civil penalties, and the cost of its investigation and prosecution, including reasonable attorney fees.

172. Plaintiff State of Montana repeats and realleges every preceding allegation.

173. The aforementioned practices by Defendants were in violation of Montana's Unfair Trade Practices and Consumer Protection Act, Mont Code Ann. §30-14-101 *et seq.*, and Unfair Trade Practices Generally, Mont. Code Ann. §30-14-201 *et seq.*

174. Plaintiff State of Nebraska repeats and realleges every preceding allegation.

175. The aforementioned practices by Defendants in were violation of Nebraska laws, including the Unlawful Restraint of Trade Act, Neb. Rev. Stat. § 59-801 *et seq.* the Consumer Protection Act, Neb. Rev. Stat. § 59-1601 *et seq.* and common law. Defendants' acts and practices as alleged herein have had an impact, directly and indirectly, upon the public interest of the State of Nebraska. Accordingly, Plaintiff State of Nebraska, on behalf of its state agencies and as *parens patriae* for all citizens within the state, seeks damages, restitution, disgorgement, injunctions, civil penalties, and its costs and attorney's fees pursuant to Neb. Rev. Stat. §§ 59-803, 59-821, 59-1608, 59-1609, 59-1614, and 84-212.

176. Plaintiff State of Nevada repeats and realleges every preceding allegation.

177. Plaintiff State of Nevada represents itself, its state agencies, and its natural

persons as *parens patriae* who purchased Provigil from 2006 through April 2012. The aforementioned practices by Defendants violate the Nevada Unfair Trade Practice Act, Nev. Rev. Stat. § 598A, *et seq.*, including Nev. Rev. Stat. § 598A.060.

178. Plaintiff State of Nevada is entitled to recover aggregate (actual) damages, treble damages, and reasonable attorneys' fees and costs under Nev. Rev. Stat. § 598A.160 and Nev. Rev. Stat. § 598A.200, injunctive relief under Nev. Rev. Stat. § 598A.070, and civil penalties in an amount not to exceed 5 percent of the gross income realized by the sale of Provigil by the Defendants in the State of Nevada in each year in which the prohibited activities occurred pursuant to Nev. Rev. Stat. § 598A.170.

179. Plaintiff State of New Hampshire repeats and realleges every preceding allegation.

180. The aforementioned practices by Defendants were in violation of New Hampshire laws, including the Combinations and Monopolies Act, N.R. RSA 356 and the Consumer Protection Act, N.H. RSA 358-A.

181. Plaintiff State of New Jersey repeats and realleges every preceding allegation.

182. The aforementioned practices by Defendants were in violation of the New Jersey Antitrust Act, N.J.S.A. 56:9-1 *et seq.*

183. Plaintiff State of New Mexico repeats and realleges every preceding allegation.

184. The aforementioned actions and practices by Defendants violated the New Mexico Antitrust Act, N.M. Stat. Ann. § 57-1-1 *et seq.*, and the New Mexico Unfair Practices Act, § 57-12-1 *et seq.* As a result of these anticompetitive actions, unreasonable restraints of trade, and unfair, deceptive, and unconscionable trade practices, the State of New Mexico and its

citizens have been harmed.

185. Accordingly, the State of New Mexico, acting in its sovereign, quasi-sovereign, proprietary, and *parens patriae*, capacity, seeks the remedies available to it under the New Mexico Antitrust Act and the New Mexico Unfair Practices Act, including damages (including treble damages, where permitted), restitution, disgorgement, civil penalties, costs, attorneys' fees, and any other appropriate monetary and injunctive relief. *See* N.M. Stat. Ann. §§ 57-1-3, -7, -8; N.M. Stat. Ann. § 57-12-8, -11.

186. Plaintiff State of New York repeats and realleges every preceding allegation as is fully set forth herein.

187. The aforementioned practices by the Defendants were in violation of New York antitrust law, the Donnelly Act, New York Gen. Bus. Law§§ 340-342c, and constitute both "fraudulent" and "illegal" conduct in violation of New York Executive Law §63(12).

188. Plaintiff State of New York seeks relief for both its consumers as well as New York state entities which purchased Provigil during the relevant period and thereby were forced to pay more due to Defendants' unlawful conduct. Plaintiff State of New York also seeks, and is entitled to, civil penalties, injunctive relief, other equitable relief (including but not limited to disgorgement), and fees and costs.

189. Plaintiff State of North Carolina repeats and realleges every preceding allegation.

190. Defendants' acts violate North Carolina's Unfair and Deceptive Trade Practices Act, N.C. Gen. Stat. § 75-1 *et seq.* Plaintiff State of North Carolina, on behalf of itself, its state agencies and all persons who directly or indirectly purchased Provigil is entitled to relief under N.C. Gen. Stat. §§ 75-1, 75-1.1, 75-2 and 75-2.1 and the common law of North Carolina.

191. Plaintiff State of North Carolina is entitled to a civil penalty under N.C. Gen. Stat.§§ 75-8 and 75-15.2 of up to $5,000.00 for each violation, or each week of Defendants' continuing violation, as Defendants' acts were knowingly violative of North Carolina law.

192. Plaintiff State of North Carolina is entitled to recover its costs and attorneys' fees pursuant to N.C. Gen. Stat.§ 75-16.1 because Defendants have willfully engaged in acts that violate North Carolina law and there has been an unwarranted refusal by Defendants to fully resolve the matter which constitutes the basis of such suit.

193. Plaintiff State of North Dakota repeats and realleges every preceding allegation.

194. The aforesaid practices by Defendants were in violation of North Dakota Century Code (N.D.C.C.), Uniform State Antitrust Act,§ 51-08.1-01 *et seq.*

195. Plaintiff State of Ohio repeats and realleges every preceding allegation.

196. The aforementioned practices by Defendants were in violation of Ohio's antitrust law, the Valentine Act, Ohio Rev. Code§§ 1331.01 *et seq*, and the common law of Ohio.

197. Plaintiff State of Oklahoma repeats and realleges every preceding allegation.

198. The aforementioned practices by Defendants were in violation of the Oklahoma Antitrust Reform Act, 79 O.S. § 201 *et seq*., including 79 O.S. § 205(A)(2) & (3), as well as The Oklahoma Consumer Protection Act, 15 O.S § 751 *et seq*. 15 O.S. § 756.1(B).

199. Plaintiff State of Oregon repeats and realleges every preceding allegation.

200. The aforementioned practices by Defendants were in violation of Oregon's antitrust law, Or. Rev. Stat. 646.705 *et seq.*

201. Plaintiff Commonwealth of Pennsylvania repeats and realleges every preceding allegation.

202. The aforementioned practices by Defendants violate the Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-1, *et seq.* ("PUTPCPL") and Pennsylvania antitrust common law. The Pennsylvania Office of Attorney General has reason to believe that the Defendants have engaged in a method, act or practice declared by 73 P.S. § 201-3 to be unlawful, and that this proceeding would be in the public interest pursuant to 71 P.S. § 201-4.

203. On behalf of the Commonwealth and its citizens pursuant to 71 P.S.A. §732-204 (c), Pennsylvania seeks injunctive relief, restoration and attorneys' fees and costs pursuant to 73 P.S. § 201-4.1 and civil penalties of not exceeding $3,000 for each such willful violation pursuant to 73 P.S. § 201-8 (b). Pennsylvania also seeks injunctive relief and damages under antitrust common law.

204. Plaintiff State of Rhode Island repeats and realleges every preceding allegation.

205. Defendants' acts violate the Rhode Island Deceptive Trade Practices Act, R. I. Gen. Laws § 6-13.1-2, as defined by R.I. Gen. Laws § 6-13.1-1(6) and the State of Rhode Island on behalf of itself, its state agencies, political subdivisions and Rhode Island consumers, is entitled to damages, injunctive relief, attorneys' fees, costs and statutory interest pursuant to R.I. Gen. Laws § 6-13.1-1 *et seq.*

206. Defendants' acts also violate the Rhode Island Antitrust Act, and the State of Rhode Island on behalf of itself, its State Agencies, Political Subdivisions and as *parens patriae* on behalf of persons residing in Rhode Island, is entitled to injunctive relief, restitution (including treble

damages), civil penalties and reasonable attorneys' fees, costs and statutory interest pursuant to R.I. Gen. Laws § 6-36-1 *et seq.*

207. Plaintiff State of South Carolina repeats and realleges every preceding allegation.

208. South Carolina represents the South Carolina Medicaid Program ("South Carolina Medicaid"), the South Carolina Public Employee Benefit Authority ("South Carolina PEBA"), and as *parens patriae* for the citizens of South Carolina in this action.

209. The aforementioned practices by Defendants constitutes "unfair methods of competition and unfair or deceptive acts or practices" under §39-5-20 of the South Carolina Code of Laws. South Carolina Medicaid and South Carolina PEBA are represented in an individual capacity pursuant to §39-5-140(a). Defendants' conduct constitutes a "willful or knowing violation of §39-5-20" under §39-5-140(d), and thus South Carolina seeks to recover treble damages under §39-5-140(a) on behalf of South Carolina Medicaid and South Carolina PEBA for all purchases of Provigil made by South Carolina Medicaid and South Carolina PEBA during the relevant time period.

210. South Carolina consumers are represented in a statutory *parens patriae* capacity under §39-5-50 and a common law *parens patriae* capacity. South Carolina consumers are defined as any natural person, corporate entity, or government entity that purchased Provigil in South Carolina. Pursuant to §39-5-50(b), South Carolina seeks that this Court restore unto South Carolina consumers any ascertainable loss incurred in making any payments for purchases of Provigil. Pursuant to §39-5-50(a), South Carolina seeks injunctive relief to prohibit Defendants from engaging in the conduct described in this complaint.

211. Defendants' conduct constitutes a willful or knowing violation of §39-5-20 under §39-5-110(c). South Carolina seeks an award of civil penalties under §39-5-110(a) in the amount up to $5,000.00 per violation in South Carolina.

212. South Carolina seeks attorneys' fees and costs under §39-5-50(a) and §39- 5-140(a).

213. Plaintiff State of South Dakota repeats and realleges every preceding allegation.

214. The aforementioned practices by Defendants violate certain provisions of the laws of South Dakota, including Chapter 37-1 entitled "Restraint of Trade Monopolies and Discriminatory Trade Practices" and Chapter 37-24 entitled "Deceptive Trade Practices and Consumer Protection Act."

215. Pursuant to South Dakota Codified Law (SDCL) §37-1-3.1, a "contract, combination, or conspiracy between two or persons in restraint of trade or commerce" is unlawful. A person is "any natural person, partnership, limited liability company, corporation, association, or other legal entity."

216. For the aforementioned violations, the Attorney General is authorized on behalf of the State of South Dakota to bring an action for injunctive or other equitable relief, and civil penalties of up to fifty-thousand ($50,000.00) dollars per violation. SDCL §37-1-14.2. Under SDCL §37-1-14.3, in addition to imposition of costs and reasonable attorney fees, the recovery for actual damages shall be increased to three times the damages sustained. These remedies are cumulative and not exclusive. SDCL §37-1-20.

217. The Attorney General is entitled to bring an action, by means of statute and common law, in the name of South Dakota, as *parens patriae*, on behalf of the natural persons

residing in the State of South Dakota for threefold the total of monetary damages arising from the aforementioned intentional conduct, costs, and reasonable attorney's fees. SDCL §37-1-23, §37-1-24, §37-1-32.

218. Pursuant to SDCL §37-24-6, it is a deceptive act or practice for any person to "knowingly act, use, or employ any deceptive act or practice, fraud, false pretense, false promises, or misrepresentation or to conceal, suppress, or omit any material fact in connection with the sale or advertisement of any merchandise, regardless of whether any person has in fact been misled, deceived, or damaged thereby..."

219. The aforementioned practices by Defendants amount to deceptive acts or practices which entitle the Attorney General to seek injunctive relief and civil penalties in the amount of up to two-thousand dollars ($2,000.00) per violation, costs, reasonable attorneys' fees and disgorgement of moneys received as a result of a deceptive act or practice. SDCL §37-24-23, §37-24-27, §37-24-29.

220. Plaintiff State of Tennessee repeats and realleges every preceding allegation.

221. The aforementioned practices by Defendants were in violation of Tennessee's antitrust law, the Tennessee Trade Practices Act, Tenn. Code Ann. §§ 47-25-101 *et seq*.

222. Further, Defendants were engaged in trade or commerce as defined in Tenn. Code Ann. § 47-18-103.

223. Defendants' acts or practices described in this Complaint of failing to disclose material facts regarding their goods constitute violations of § 47-18-104(b)(27) of the Tennessee Consumer Protection Act of 1977.

224. Pursuant to Tenn. Code Ann. § 8-6-109, § 47-18-114, and common law, the

Tennessee Attorney General has authority to bring these antitrust and consumer protection claims.

225. Plaintiff State of Texas repeats and realleges every preceding allegation.

226. The aforementioned practices by Defendants were in violation of Texas Business and Commerce Code §15.01 *et seq.*

227. Plaintiff State of Utah repeats and realleges every preceding allegation.

228. The aforementioned acts by Defendants violate, and Plaintiff State of Utah is entitled to relief under, the Utah Antitrust Act, Utah Code §§ 76-10-31-1 through 76-10-3118 (the "Act"), and Utah common law. Accordingly, Plaintiff State of Utah, by and through the Attorney General of Utah, on behalf of itself, Utah governmental entities, and as *parens patria* for its natural persons, who purchased or paid for Provigil during the relevant period, is entitled to all available relief under the Act and Utah common law, including, without limitation, damages (including treble damages, where permitted), injunctive relief, including disgorgement, restitution, unjust enrichment, and other equitable monetary relief, civil penalties, and its costs and reasonable attorneys' fees.

229. Plaintiff State of Vermont repeats and realleges every preceding allegation.

230. The aforementioned practices by Defendants were in violation of the Vermont Consumer Protection Act, 9 V.S.A § 2453, and Plaintiff State of Vermont is entitled to relief for these violations under 9 V.S.A. § §2458 and 2465.

231. Plaintiff Commonwealth of Virginia repeats and realleges every preceding allegation.

232. Defendant's aforementioned acts violate, and Plaintiff Commonwealth of Virginia is entitled to relief under, the Virginia Antitrust Act, Virginia Code §59.1-9.1 to -9.17, and the common law of Virginia.

233. Plaintiff State of Washington repeats and realleges every preceding allegation.

234. The aforementioned practices by Defendants were, and are in, violation of the Washington Consumer Protection Act, Wash. Rev. Code 19.86 *et seq*.

235. Plaintiff State of Washington, on behalf of its state agencies and as *parens patriae* for all natural persons residing in Washington who purchased Provigil, seeks damages, restitution, disgorgement, injunctions, civil penalties, and its costs and attorney's fees under state law, including Wash. Rev. Code 19.86.080 - .090.

236. Plaintiff State of West Virginia repeats and realleges every preceding allegation.

237. The aforementioned practices by Defendants were in violation of the West Virginia Antitrust Act, W.VA. Code §47-18-1 *et seq*. The State of West Virginia, its state agencies, and political subdivisions, and the natural persons it represents, are all entitled to relief under these statues as a result of Defendants' unlawful conduct.

238. Plaintiff State of Wisconsin repeats and realleges every preceding allegation.

239. The aforementioned practices by Defendants were in violation of Wisconsin's Antitrust Act, Wis. Stat. Ch. §133.03 *et seq*. These violations substantially affected the people of Wisconsin and had impacts within the State of Wisconsin.

240. Plaintiff State of Wisconsin, on behalf of its state governments, who were purchasers of Provigil, is entitled to relief for these violations under Wis. Stat. §§133.14, 133.16, 133.17, and 133.18.

241. Plaintiff State of Wyoming repeats and realleges every preceding allegation.

242. The aforementioned practices by Defendants violated Wyoming antitrust laws, Wyo. Stat. Ann. §§40-4-101 to 40-4-123.

VIII. DEMAND FOR JURY

243. Plaintiff States demand trial by jury on all issue so triable.

IX. PRAYER FOR RELIEF

Accordingly, Plaintiff States request that this Court:

244. Adjudge and decree that Defendants all violated Section 1 of the Sherman Act by entering into anticompetitive agreements;

245. Adjudge and decree that Defendant Cephalon violated Section 2 of the Sherman Act by engaging in anticompetitive conduct that delayed and impaired generic competition, including enforcing a fraudulently procured patent;

246. Adjudge and decree that each of the foregoing activities violated each of the state laws enumerated in this Complaint;

247. Enjoin and restrain, pursuant to federal and state law, the Defendants, their affiliates, assignees, subsidiaries, successors and transferees, and their officers, directors, partners, agents, and employees, and all persons acting or claiming to act on their behalf or in concert with them, from continuing to engage in any anticompetitive conduct (including the conspiracies described herein) and from adopting in the future any practice, plan program or device having a similar purpose or effect to the anticompetitive actions set forth above;

248. Award to Plaintiff States damages, in the amount proven at trial, sustained by

Plaintiffs and those on whose behalf they sue, trebled as provided by law;

249. Award to each Plaintiff state the maximum civil penalties allowed by law;

250. Award to each Plaintiff state any other statutory damages, restitution or equitable disgorgement for the benefit of the state and its consumers as appropriate under each state's law;

251. Award to Plaintiff States any other equitable relief as the Court finds appropriate to redress Defendants' violation of federal and state laws.

Dated: August 4 2016

Respectfully submitted,

COMMONWEALTH OF PENNSYLVANIA
Office of the Attorney General

BRUCE L. CASTOR, JR.
First Deputy Attorney General

JAMES A. DONAHUE, III
Executive Deputy Attorney General
Public Protection Division
Strawberry Square, 14th
Floor
Harrisburg, PA 17120
(717) 787-4530 (phone)
(717) 705-1190 (fax)
jdonahue@attorneygeneral.gov
PA 42624

TRACY W. WERTZ
Chief Deputy Attorney General
Antitrust Section
twertz@attorneygeneral.gov
PA 69164

JENNIFER A. THOMSON
Senior Deputy Attorney General
Antitrust Section
jthomson@attorneygeneral.gov
PA 89360

ATTORNEYS FOR THE COMMONWEALTH
OF PENNSYLVANIA

OF COUNSEL
Saami Zain, Esq.
Robert L. Hubbard, Esq.
Mitchell L. Gentile, Esq.
Jill S. Abrams, Esq.
Amanda Lee, Esq.
Justin R. Erickson, Esq.

Respectfully submitted,

ERIC T. SCHNEIDERMAN
Attorney General of the State of New York

Manisha Sheth
Executive Deputy Attorney General
for Economic Justice

Elinor R. Hoffmann
Deputy Chief, Antitrust Bureau

Robert L. Hubbard
Saami Zain
Assistant Attorneys General

120 Broadway, 26th Floor
New York, NY 10271-0332
Tel: (212) 416-8262
Fax: (212) 416-6015

ATTORNEYS FOR THE STATE OF NEW YORK

Respectfully submitted,

R. MICHAEL DEWINE
Attorney General of Ohio

Jennifer Pratt
Chief, Antitrust Section
Beth A. Finnerty
Assistant Section Chief, Antitrust Section
Mitchell L. Gentile
Principal Attorney, Antitrust Section
Brian F. Jordan
Assistant Attorney General, Antitrust Section
Office of the Ohio Attorney General
Antitrust Section
150 E. Gay St. 22nd Floor
Columbus, OH 43215
Tel: (614) 466-4328
Fax: (614) 995-0269

ATTORNEYS FOR THE STATE OF OHIO

Respectfully submitted,

WILLIAM H. SORRELL
Attorney General of Vermont

Jill S. Abrams
Assistant Attorney General
Office of the Attorney General of Vermont
109 State Street
Montpelier, VT 05609-1001
Tel: 802-828-1106
Fax: 802-828-2154
jill.abrams@vermont.gov

ATTORNEYS FOR THE STATE OF VERMONT

Respectfully submitted,

GREGORY F. ZOELLER
Attorney General of Indiana

Justin Hazlett
Deputy Attorney General
Office of the Attorney General of Indiana
302 W. Washington Street
Indianapolis, IN 46204
Justin.Hazlett@atg.in.gov

Amanda Lee
Deputy Attorney General
Office of the Attorney General of Indiana
219 State House
Indianapolis, IN 46204
amanda.lee@atg.in.gov

ATTORNEYS FOR THE STATE OF INDIANA

Respectfully submitted,

LORI SWANSON
Attorney General of Minnesota

Justin R. Erickson
Assistant Attorney General
Office of the Attorney General of Minnesota
1400 Bremer Tower
445 Minnesota St.
Saint Paul, MN 55101-2131
Tel: 651-757-1119
Fax: 651-296-9663
justin.erickson@ag.state.mn.us

ATTORNEYS FOR THE STATE OF MINNESOTA

Respectfully submitted,

LUTHER STRANGE
State of Alabama Attorney General

Billington M. Garrett
Assistant Attorney General
Office of the Attorney General
501 Washington Avenue
Montgomery, AL 36130
(334) 242-7248
(334) 242-2433 (fax)
bgarrett@ago.state.al.us

ATTORNEYS FOR THE STATE OF ALABAMA

Respectfully submitted,

JAMES E. CANTOR
Acting Attorney General of Alaska

Clyde E. Sniffen, Jr.
Senior Assistant Attorney
Alaska Department of Law
1031W. 4th Ave. #200
Anchorage, AK 99501
Tel: (907) 269-5200
Fax: (907) 276-8554

ATTORNEYS FOR THE STATE OF ALASKA

Respectfully submitted,

MARK BRNOVICH
Attorney General of Arizona

Nancy M. Bonnell
Antitrust Unit Chief
Office of the Arizona Attorney General
Consumer Protection and Advocacy Section
1275 West Washington
Phoenix, AZ 85007
Tel: (602) 542-7728
Fax: (602) 542-9088
nancy.bonnell@azag.gov

ATTORNEYS FOR THE STATE OF ARIZONA

Respectfully submitted,

LESLIE RUTLEDGE
Attorney General of Arkansas

John Alexander
Assistant Attorney General
Arkansas Attorney General's Office
Consumer Protection Division
323 Center Street, Suite 500
Little Rock, AR 72201
Tel: (501) 682-8063
Fax: (501) 682-8118
Email: john.alexander@arkansasag.gov

ATTORNEYS FOR THE STATE OF ARKANSAS

Respectfully submitted,

CYNTHIA H. COFFMAN
Attorney General of Colorado

Abigail L. Smith
Assistant Attorney General
Colorado Department of Law
Consumer Protection Section
Ralph L. Carr Colorado Judicial Center
1300 Broadway, Seventh Floor
Denver, CO 80203
Voice: 720.508.6233
Email: abigail.smith@coag.gov

ATTORNEYS FOR THE STATE OF COLORADO

Respectfully submitted,

GEORGE JEPSEN
Attorney General of Connecticut

Michael E. Cole
Chief, Antitrust Department
Rachel Davis
Assistant Attorney General
55 Elm Street
Hartford, CT 06106
Tel: (860) 808-5040
Fax: (860) 808-5391
Michael.Cole@ct.gov
Rachel.Davis@ct.gov

ATTORNEYS FOR THE STATE OF CONNECTICUT

Respectfully submitted,

MATTHEW P. DENN
Attorney General of Delaware

Michael A. Undorf
Deputy Attorney General
Delaware Department of Justice
Carvel State Office Building
820 N. French St., 5th Floor
Wilmington, DE 19801
Tel: (302) 577-8924
Michael.Undorf@state.de.us

ATTORNEYS FOR THE STATE OF DELAWARE

Respectfully submitted,

KARL A. RACINE
Attorney General for the District of Columbia

Elizabeth Sarah Gere
Deputy Attorney General
Public Interest Division

Catherine A. Jackson
Assistant Attorney General
Public Integrity Unit
Office of the Attorney General
441 Fourth Street, N.W., Ste. 600-S
Washington, DC 20001
(202) 442-9864
(202) 741-0655
catherine.jackson@dc.gov

ATTORNEYS FOR THE DISTRICT OF COLUMBIA

Respectfully submitted,

PAMELA JO BONDI
Attorney General of Florida

Patricia A. Conners
Deputy Attorney General
Nicholas Weilhammer
Assistant Attorney General
The Capitol
PL-01
Tallahassee, FL 32399-1050
Tel: (850) 414-3921

ATTORNEYS FOR THE STATE OF FLORIDA

Respectfully submitted,

SAMUEL S. OLENS
Attorney General of Georgia

Monica Sullivan
Assistant Attorney General
Office of the Attorney General
40 Capitol Square, SW
Atlanta, GA 30334-1300
Tel: 404-651-7675
Fax: 404-656-0677
msullivan@law.ga.gov

ATTORNEYS FOR THE STATE OF GEORGIA

Respectfully submitted,

DOUGLAS S. CHIN
Attorney General of Hawaii

Bryan C. Yee
Rodney I. Kimura
Deputy Attorneys General
Department of the Attorney General
425 Queen Street
Honolulu, HI 96813
Tel: 808-586-1180
Fax: 808-586-1205
bryan.c.yee@hawaii.gov
rodney.i.kimura@hawaii.gov

ATTORNEYS FOR THE STATE OF HAWAII

Respectfully submitted,

LAWRENCE G. WASDEN
Attorney General of Idaho

Brett DeLange
Deputy Attorney General
Consumer Protection Division
Office of the Attorney General
954 W. Jefferson St., 2nd Floor
P.O. Box 83720
Boise, ID 83720-0010
Tel: (208) 334-4114
Fax: (208) 334-4151
Brett.delange@ag.idaho.gov

ATTORNEYS FOR THE STATE OF IDAHO

Respectfully submitted,

LISA MADIGAN
Attorney General of Illinois

Robert W. Pratt
Chief, Antitrust Bureau
Office of the Illinois Attorney General
Antitrust Bureau
100 W. Randolph Street
Chicago, IL 60601
Tel: (312) 814-3722
Fax: (312) 814-4209
rpratt@atg.state.il.us

ATTORNEYS FOR THE STATE OF ILLINOIS

Respectfully submitted,

THOMAS J. MILLER
Attorney General of Iowa

Layne M. Lindebak
Assistant Attorney General
Special Litigation Division
Hoover Office Building-Second Floor
1305 East Walnut Street
Des Moines, IA 50319
Tel: (515) 281-7054
Fax: (515) 281-4902
Layne.Lindebak@iowa.com

ATTORNEYS FOR THE STATE OF IOWA

Respectfully submitted,

DEREK SCHMIDT
Attorney General of Kansas

Lynette R. Bakker
Assistant Attorney General
Consumer Protection & Antitrust Division
Attorney General of Kansas
120 S.W. 10th Avenue, 2nd Floor
Topeka, KS 66612-1597
Tel: (785) 296-3751
Lynette.Bakker@ag.ks.gov

ATTORNEYS FOR THE STATE OF KANSAS

Respectfully submitted,

ANDY BESHEAR
Attorney General of Kentucky

LeeAnne Applegate
Assistant Attorney General
Office of the Attorney General of Kentucky
1024 Capital Center Drive, Suite 200
Frankfort, KY 40601
Tel: 502-696-5300
Fax: 502-573-8317
LeeAnne.Applegate@ky.gov

ATTORNEYS FOR THE STATE OF KENTUCKY

Respectfully submitted,

JANET T. MILLS
Attorney General of Maine

Christina Moylan
Assistant Attorney General
Office of the Attorney General of Maine
6 State House Station
Augusta, ME 04333
Tel: 207-626-8838
Fax: 207-624-7730
christina.moylan@maine.gov

ATTORNEYS FOR THE STATE OF MAINE

Respectfully submitted,

BRIAN E. FROSH
Attorney General of Maryland

Ellen S. Cooper
Chief, Antitrust Division
Gary Honick
Assistant Attorney General
Office of the Maryland Attorney General
Antitrust Division
200 St. Paul Place, 19th Floor
Baltimore, MD 21202
Tel: (410) 576-6470
Fax: (410) 576-6404

ATTORNEYS FOR THE STATE OF MARYLAND

Respectfully submitted,

MAURA HEALEY
Attorney General of Massachusetts

William T. Matlack
Assistant Attorney General
Chief, Antitrust Division
Matthew M. Lyons
Assistant Attorney General
Antitrust Division
One Ashburton Place
Boston, MA 02108
Tel: (617) 727-2200
Fax: (617) 722-0184
William.Matlack@state.ma.us
Matthew.Lyons@state.ma.us

ATTORNEYS FOR THE COMMONWEALTH OF MASSACHUSETTS

Respectfully submitted,

BILL SCHUETTE
Attorney General of Michigan

M. Elizabeth Lippitt
Assistant Attorney General
Michigan Department of Attorney General
Corporate Oversight Division
G. Mennen Williams Building, 6th Floor
525 W. Ottawa Street
Lansing, MI 48933
Tel: (517) 373-1160

ATTORNEYS FOR THE STATE OF MICHIGAN

Respectfully submitted,

JIM HOOD
Attorney General of Mississippi

Crystal Utley Secoy
Assistant Attorney General
Office of the Attorney General of Mississippi
Consumer Protection Division
550 High Street
Jackson, MS 39225
Tel: 601-359-4213
Fax: 601-359-4231
cutle@ago.state.ms.us

ATTORNEYS FOR THE STATE OF MISSISSIPPI

Respectfully submitted,

CHRIS KOSTER
Attorney General of Missouri

Amy Haywood
Assistant Attorney General
Missouri Attorney General's Office
P.O. Box 861
St. Louis, MO 63188
Office: 314-340-4902
Cell: 573-301-8618
amy.haywood@ago.mo.gov

ATTORNEYS FOR THE STATE OF MISSOURI

Respectfully submitted,

TIMOTHY C. FOX
Attorney General of Montana

Chuck Munson
Assistant Attorney General
Office of Consumer Protection
P.O. Box 200151
Helena, MT 59620-0151
(406) 444-4500
(406) 442-1894
cmunson@mt.gov

ATTORNEYS FOR THE STATE OF MONTANA

Respectfully submitted,

DOUGLAS J. PETERSON
Attorney General of Nebraska

Abigail M. Stempson
Collin Kessner
Assistant Attorneys General
Nebraska Attorney General's Office
2115 State Capitol
Lincoln, NE 68509
Tel: 402-471-3833
Fax: 402-471-4725
abigail.stempson@nebraska.gov
collin.kessner@nebraska.gov

ATTORNEYS FOR THE STATE OF NEBRASKA

Respectfully submitted,

ADAM PAUL LAXALT
Attorney General of Nevada

Eric Witkoski
Chief Deputy Attorney General
Consumer Advocate

Lucas Tucker
Senior Deputy Attorney General

Brian Armstrong
Senior Deputy Attorney General
Office of the Nevada Attorney General
Bureau of Consumer Protection
100 N. Carson St.
Carson City, NV 89701
Tel (775) 684-1100
Fax (775) 684-1299
barmstrong@ag.nv.gov

ATTORNEYS FOR THE STATE OF NEVADA

Respectfully submitted,

JOSEPH FOSTER
Attorney General of New Hampshire

James Boffetti
Senior Assistant Attorney General
Chief, Consumer Protection and Antitrust Bureau
New Hampshire Department of Justice
33 Capitol Street
Concord, NH 03301
Tel: 603-271-3641
Fax: 603-223-2110
james.boffetti@doj.nh.gov

ATTORNEYS FOR THE STATE OF
NEW HAMPSHIRE

Respectfully submitted,

CHRISTOPHER S. PORRINO
Attorney General of New Jersey

Labinot A. Berlajolli
Glenn Graham
Deputy Attorneys General
State of New Jersey
Office of the Attorney General
Division of Law
124 Halsey Street
P.O. Box 45029
Newark, NJ 07101
Tel: 973-648-3469
Fax: 973-648-4887
labinot.berlajolli@dol.lps.state.nj.us

ATTORNEYS FOR THE STATE OF NEW JERSEY

Respectfully submitted,

HECTOR H. BALDERAS
Attorney General of New Mexico

Nicholas M. Sydow
Assistant Attorney General
P.O. Box 1508
Santa Fe, NM 87504-1508
(505) 222-9088
(505) 222-9006, facsimile
nsydow@nmag.gov

ATTORNEYS FOR THE STATE OF NEW MEXICO

Respectfully submitted,

ROY COOPER
Attorney General of North Carolina

Kim D'Arruda
Special Deputy Attorney General
North Carolina Department of Justice
P.O. Box 629
Raleigh, NC 27602
Tel: 919-716-6000
kdarruda@ncdoj.gov

ATTORNEYS FOR THE STATE OF NORTH CAROLINA

Respectfully submitted,

WAYNE STENEHJEM
Attorney General of North Dakota

Elin S. Alm
Assistant Attorney General
Consumer Protection and Antitrust Division
Office of Attorney General
Gateway Professional Center
1050 E Interstate Ave, Suite 200
Bismarck, ND 58503-5574
Tel: (701) 328-5570
Fax: (701) 328-5568

ATTORNEYS FOR THE STATE OF
NORTH DAKOTA

Respectfully submitted,

E. SCOTT PRUITT
Attorney General of Oklahoma

Julie Bays
Chief, Consumer Protection Unit
Office of the Attorney General of Oklahoma
313 N.E. 21st St.
Oklahoma City, OK 73105
Tel: 405-522-3082
Fax: 405-522-0085
julie.bays@oag.ok.gov

ATTORNEYS FOR THE STATE OF OKLAHOMA

Respectfully submitted,

ELLEN R. ROSENBLUM
Attorney General of Oregon

Matthew Schrumpf
Assistant Attorney General
Marc Abrams
Senior Assistant Attorney General
Oregon Department of Justice
1162 Court Street NE
Salem, OR 97301
Tel: (503) 934-4400
Fax: (503) 373-7067
Matt.H.Schrumpf@doj.state.or.us
Marc.Abrams@doj.state.or.us

ATTORNEYS FOR THE STATE OF OREGON

Respectfully submitted,

PETER KILMARTIN
Attorney General of Rhode Island

Edmund F. Murray, Jr.
Special Assistant Attorney General
Office of the Attorney General of Rhode Island
150 South Main Street
Providence, RI 02903
Tel: 401-274-4400 ext. 2401
Fax: 401-222-2995
emurray@riag.state.ri.gov

ATTORNEYS FOR THE STATE OF
RHODE ISLAND

Respectfully submitted,

ALAN WILSON
Attorney General of South Carolina

C. Havird Jones, Jr.
Senior Assistant Deputy Attorney General

Jared Q. Libet
Assistant Deputy Attorney General
South Carolina Attorney General's Office
1000 Assembly Street
Rembert C. Dennis Building
Post Office Box 11549
Columbia, SC 29211-1549
Tel: 803-734-3970
Fax: 803-734-3677
sjones@scag.gov
jlibet@scag.gov

ATTORNEYS FOR THE STATE OF SOUTH CAROLINA

Respectfully submitted,

MARTY J. JACKLEY
Attorney General of South Dakota

Richard M. Williams
Deputy Attorney General
Office of the Attorney General of South Dakota
1302 E. Highway 14, Suite 1
Pierre, SD 57501-8501
Tel: 605-773-3215
Fax: 605-773-4106
rich.williams@state.sd.us

ATTORNEYS FOR THE STATE OF
SOUTH DAKOTA

Respectfully submitted,

HERBERT H. SLATERY III
Attorney General and Reporter of Tennessee

Erin Merrick
Assistant Attorney General
Office of the Tennessee Attorney General
P.O. Box 20207
Nashville, TN 37202
Telephone: 615-741-8722
Facsimile: 615-741-1026
Erin.Merrick@ag.tn.gov

ATTORNEYS FOR THE STATE OF TENNESSEE

Respectfully submitted,

KEN PAXTON
Attorney General of Texas

Jeffrey C. Mateer
First Assistant Attorney General

Brantley Starr
Deputy First Assistant Attorney General

James E. Davis
Deputy Attorney General for Civil Litigation

Kim Van Winkle
Chief, Antitrust Section

David M. Ashton
Assistant Attorney General
Office of the Attorney General of Texas
300 W. 15th Street, 7th Floor
Austin, TX 78701
Tel: 512-936-1781
Fax: 512-320-0975
david.ashton@texasattorneygeneral.gov

ATTORNEYS FOR THE STATE OF TEXAS

Respectfully submitted,

SEAN D. REYES
Attorney General of Utah

Ronald J. Ockey
Assistant Attorney General
Antitrust Section Chief
David Sonnenreich
Deputy Attorney General
Edward Vasquez
Assistant Attorney General
Tax, Financial Services and Antitrust Division
Office of the Attorney General of Utah
160 East 300 South, 5th Floor
P.O. Box 140874
Salt Lake City, UT 84114-0874
Tel: 801-366-0359
Fax: 801-366-0315
rockey@utah.gov
dsonnenreich@utah.gov
evasquez@utah.gov

ATTORNEYS FOR THE STATE OF UTAH

Respectfully submitted,

MARK R. HERRING
Attorney General of Virginia

Cynthia E. Hudson
Chief Deputy Attorney General

Rhodes B. Ritenour
Deputy Attorney General

Richard S. Schweiker, Jr.
Senior Assistant Attorney General and Chief
Consumer Protection Section

Sarah Oxenham Allen
Senior Assistant Attorney General

Tyler T. Henry
Assistant Attorney General
Office of the Attorney General of Virginia
202 North 9th Street
Richmond, VA 23219
Tel: 804-692-0485
Fax: 804-786-0122
thenry@oag.state.va.us

ATTORNEYS FOR THE
COMMONWEALTH OF VIRGINIA

Respectfully submitted,

ROBERT W. FERGUSON
Attorney General of Washington

Darwin P. Roberts, WSBA No. 32539
Deputy Attorney General
Jonathan A. Mark, WSBA No. 38051
Chief, Antitrust Division
Attorney General's Office
800 Fifth Avenue, Suite 2000
Seattle, WA 98104
Telephone: 206.389.3806
E-mail: Jonathanm2@atg.wa.gov

ATTORNEYS FOR THE STATE OF WASHINGTON

Respectfully submitted,

PATRICK MORRISEY
Attorney General of West Virginia

Douglas L. Davis
Assistant Attorney General
Office of the West Virginia Attorney General
P.O. Box 1789
Charleston, WV 25326
Tel: (304) 558-8986
Fax: (304) 558-0184
doug.davis@wvago.gov

ATTORNEYS FOR THE STATE OF
WEST VIRGINIA

Respectfully submitted,

BRAD D. SCHIMEL
Attorney General of Wisconsin

Gwendolyn J. Cooley
Assistant Attorney General
Wisconsin Department of Justice
17 W. Main St.
P.O. Box 7857
Madison, WI 53707-7857
Tel: (608) 261-5810
Fax: (608) 267-2778
cooleygj@doj.state.wi.us

ATTORNEYS FOR THE STATE OF WISCONSIN

Respectfully submitted,

PETER K. MICHAEL
Attorney General of Wyoming

Benjamin M. Burningham
Assistant Attorney General
Wyoming Attorney General's Office
Kendrick Building
2320 Capitol Ave.
Cheyenne, WY 82002
Tel: (307) 777-5833
Fax: (307) 777-3435
ben.burningham@wyo.gov

ATTORNEYS FOR THE STATE OF WYOMING