



IN THE DISTRICT COURT OF CLEVELAND COUNTY
STATE OF OKLAHOMA

STATE OF OKLAHOMA, ex rel.,
MIKE HUNTER,
ATTORNEY GENERAL OF OKLAHOMA,

Plaintiff,

v.

- (1) PURDUE PHARMA L.P.;
 - (2) PURDUE PHARMA, INC.;
 - (3) THE PURDUE FREDERICK COMPANY;
 - (4) TEVA PHARMACEUTICALS USA, INC.;
 - (5) CEPHALON, INC.;
 - (6) JOHNSON & JOHNSON;
 - (7) JANSSEN PHARMACEUTICALS, INC.;
 - (8) ORTHO-McNEIL-JANSSEN
PHARMACEUTICALS, INC., n/k/a
JANSSEN PHARMACEUTICALS, INC.;
 - (9) JANSSEN PHARMACEUTICA, INC.,
n/k/a JANSSEN PHARMACEUTICALS, INC.;
 - (10) ALLERGAN, PLC, f/k/a ACTAVIS PLC,
f/k/a ACTAVIS, INC., f/k/a WATSON
PHARMACEUTICALS, INC.;
 - (11) WATSON LABORATORIES, INC.;
 - (12) ACTAVIS LLC; and
 - (13) ACTAVIS PHARMA, INC.,
f/k/a WATSON PHARMA, INC.,
- Defendants.

**For Judge Balkman's
Consideration**

Case No. CJ-2017-816
Honorable Thad Balkman

William C. Hetherington
Special Discovery Master

STATE OF OKLAHOMA }
CLEVELAND COUNTY } S.S.

FILED

APR 2 2019

In the office of the
Court Clerk MARILYN WILLIAMS

**TEVA DEFENDANTS' AND ACTAVIS DEFENDANTS'
MOTION IN LIMINE #5 TO EXCLUDE EVIDENCE REGARDING
OR REFERENCES TO ALLEGED CRIMINAL CONDUCT OR PRIOR BAD ACTS**

Teva Pharmaceuticals, USA, Inc. ("Teva USA") and Cephalon, Inc. ("Cephalon") and
Watson Laboratories, Inc. ("Watson"), Actavis LLC ("Actavis LLC"), and Actavis Pharma, Inc.
("Actavis Pharma"),¹ move this Court to preclude the State from referring to or otherwise offering

¹ Cephalon and Teva USA are referred to as the "Teva Defendants." Watson, Actavis LLC, and Actavis Pharma are referred to as the "Actavis Defendants."

at trial, information or evidence in any form regarding alleged criminal conduct or prior acts of the Teva or Actavis Defendants, including but not limited to the following:

1. Any evidence, comments, or questioning regarding Cephalon's 2008 misdemeanor plea agreement in the Eastern District of Pennsylvania;
2. Any comments or questioning implying "criminal conduct" or asking witnesses if they feel they need "criminal counsel"; and
3. Any other evidence used by the State which directly violates the protections set out in 12 O.S. § 2404 in an effort to use prior acts to show actions in conformity with these acts.

INTRODUCTION

Throughout this case, the State has made repeated references to Cephalon's 2008 misdemeanor plea (the "Plea"), offering testimony, commentary, and anecdotes related to the Plea at every opportunity. It suggests—without any basis—that this Cephalon Plea implicates all the Teva and Actavis Defendants and establishes causation within the instant case. This is irrelevant and highly prejudicial character evidence being offered—in direct violation of the Oklahoma Evidence Code—to show a propensity to commit another unlawful act. Any reference to the Plea should be excluded from the case.

Seizing upon this irrelevant and inadmissible Plea, the State often refers to all Defendants as "criminals" and harasses witnesses by suggesting they should retain criminal defense attorneys. These types of baseless comments have no place in any trial—and certainly not in a televised trial that will receive nationwide press coverage. Counsel should be admonished to refrain from making these types of serious and unfounded suggestions of criminal conduct.

ARGUMENT AND AUTHORITIES

I. THE COURT SHOULD EXCLUDE ANY REFERENCE TO THE PLEA.

In 2008, Cephalon pled guilty to a single misdemeanor in the Eastern District of Pennsylvania. *See* Ex. 1. The conduct underlying the Plea related to an eight-month period in 2001 and involved off-label promotion of three Cephalon products: Provigil, Gabitril and Actiq. The Plea contained *no* finding or admission that Cephalon made any false representations regarding opioids, overstated the benefits of opioids, or understated their risks. *Id.* In fact, even entirely truthful statements can violate FDA’s regulations regarding off-label promotion if they deviate from what the FDA has specifically approved for inclusion on the label.² In the Plea, Cephalon plead guilty to promoting Actiq for additional uses which were not approved by the FDA. Ex. 1 at 6. This included use for non-cancer pain. *Id.* Subsequent to the Plea, Cephalon operated under a five-year Corporate Integrity Agreement with the Department of Health and Human Services, Office of the Inspector General. The agreement “impose[d] a strict compliance program to ensure that the conduct [did] not recur.” *Id.* at 7. Cephalon fully complied with the program, and no other criminal charges have been filed against it.

Despite the fact that the Plea occurred over ten years ago and involved conduct (*i.e.*, violations of FDA regulations) not at issue in this case, the State seeks to introduce evidence and innuendo regarding the Plea. Its argument is simple: because Cephalon plead guilty to a misdemeanor in that instance, it, and the other Teva and Actavis Defendants, also likely engaged in other criminal conduct relating to this case. *See* Aug. 24, 2018 Hr’g Tr. at 18:15-25 (discussing a Purdue plea and indicating it intends to argue that “past conduct often repeats itself, and it is

² Further, it is well-established that “off-label” prescribing by a physician is entirely legal. *See, e.g., Buckman Co. v. Plaintiffs’ Legal Comm.*, 531 U.S. 341, 351 n.5 (2001) (recognizing that off-label prescribing and use “often is essential to giving patients optimal medical care”); *Use of Approved Drugs for Unlabeled Indications*, FDA Drug Bulletin, Vol. 12, No. 1, at 4–5 (Apr. 1982) (“accepted medical practice often includes drug use that is not reflected in approved drug labeling”).

repeating itself here”), Ex. 2. Not only is this evidence irrelevant and highly prejudicial, but it is precisely the type of character evidence 12 O.S. § 2404 was intended to exclude.

A. THE PLEA IS NOT RELEVANT TO THIS PUBLIC NUISANCE CASE.

The Plea related to off-label promotion occurring over an eight-month period in 2001. It did not involve any of the alleged false representations claimed by the State in this case. Nor does it provide any proof that Cephalon products caused adverse events in Oklahoma. It is simply not relevant to the issues to be tried in this case and should be excluded under 12 O.S. § 2402.

B. THE PROBATIVE VALUE OF PRIOR ACT EVIDENCE IS SUBSTANTIALLY OUTWEIGHED BY THE DANGER OF UNFAIR PREJUDICE.

Even if the Plea were relevant to the State’s public nuisance claim, the Court should still exclude any reference to it because any such relevance is clearly outweighed by the risks of unfair prejudice. *See* 12 O.S. § 2403; *see Strubhart v. Perry Mem’l Hosp. Tr. Auth.*, 1995 OK 10, ¶¶ 16, 17, 21-23, 44, 903 P.2d 263, 271-72 (affirming trial court’s decision that new trial was required because the plaintiffs’ heavy emphasis at trial on evidence of the hospital’s prior acts unduly prejudiced the hospital). Although the Plea has no connection to the State’s public nuisance claim, the State has fixated on the Plea as if it were wholly dispositive of the case. The Court may well be able to disregard these inflammatory and repeated references that do not relate to the elements of the State’s claim. However, the public—whether watching the trial on TV or following extensive press accounts—is much less likely to understand the extremely limited relevance of the Plea (if any) or to distinguish Cephalon’s technical violation of federal labeling regulations from the conduct alleged here. Additionally, permitting evidence and references to the Plea would unduly delay an already long (*i.e.*, two-month) trial. Evidence and statements related to the Plea should be excluded because any limited probative value it may have is substantially outweighed by the dangers of unfair prejudice and undue delay.

C. THE STATE CANNOT USE THE PLEA TO SUGGEST THAT CEPHALON ENGAGED IN UNLAWFUL CONDUCT RELATING TO THIS CASE.

The State plainly seeks to use the fact that Cephalon plead guilty to an unrelated misdemeanor to portray Cephalon (and, by mere association, the other Defendants) as bad actors who break the law and thus probably acted unlawfully in connection with opioid sales in Oklahoma. Oklahoma law clearly bars this use of the evidence.

The Oklahoma Evidence Code provides, “Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith.”

12 O.S. § 2404. Such evidence

“distract[s] the trier of fact from the main question of what actually happened on the particular occasion. It subtly permits the trier of fact to reward the good man and to punish the bad man because of their respective characters despite what the evidence in the case shows actually happened.”

See Advisory Committee’s Note to Fed. R. Evid., Rule 404, in Whinery, 3A Oklahoma Practice: Oklahoma Evidence Appendix II (2d ed.) (discussing the substantially similar federal provision).

Under section 2404(B), evidence of prior “crimes, wrongs, or acts” may be admissible only if the party proffering the evidence can show it will be used for some reason *other than* showing action in conformity with the character of a party. *See Tansy v. Dacomed Corp.*, 1994 OK 146, ¶¶ 24-26, 890 P.2d 881, 888-89; *see also In re J.K.T.*, 2013 OK CIV APP 70, ¶ 30, 308 P.3d 183, 190, *abrogated on other grounds by In re T.T.S.*, 2015 OK 36, ¶ 30, 373 P.3d 1022 (Hetherington, concurring). Because the State has identified no reason for introducing the Plea other than to paint Cephalon and other Defendants as “criminals,” section 2404 precludes the State from making any reference to the Plea at trial.

II. THE STATE SHOULD BE PRECLUDED FROM ACCUSING WITNESSES OR DEFENDANTS OF CRIMINAL CONDUCT.

The State's attorneys have missed no opportunity to characterize all Defendants and their employees as "criminals." Plaintiff's counsel have claimed that "Defendants" plead guilty to crimes and repeatedly suggested—with no factual basis whatsoever—that individual witnesses in this case are criminals or should retain criminal counsel. For example, the State badgered a Janssen witness with repeated questions implying criminal liability such as:

- "Do you have your own independent counsel?"
- "Do you have a criminal defense attorney?"
- "Has Janssen ever offered you a criminal defense attorney?"
- "Has Janssen ever offered you at any time during your employment or after your resignation from the company a criminal defense attorney?"
- "Do you have the means to pay for independent counsel?"
- "Has anyone told you about your due process rights against self-incrimination?"

Diesselhorst Dep. at 136:3-138:19, Ex. 3. The State has used the same intimidating rhetoric when questioning Teva witnesses. *See* Baeder Dep. at 322:8-22 ("You've never told anyone, 'We shouldn't buy [Cephalon] because they're criminals?'"), Ex. 4; Hassler Dep. (12/11/18) at 96:19-21 ("And Cephalon pled guilty to federal crimes for failing to do exactly what you just said sales reps should do?"), Ex. 5. It has also peppered its arguments to the Court with repeated references to alleged criminal misconduct. *See e.g.*, Apr. 11, 2019 Hr'g Tr. at 99:1-12 ("[N]ever once did [Janssen say to Cephalon] . . . we're not going to do business with you because you're a criminal. Never. Never. Never."), Ex. 6; Aug. 24, 2018 Hr'g Tr. at 18:23-25 ("Shouldn't be a loss to anyone that they're represented by former U.S. attorneys here and other places."), Ex. 2.

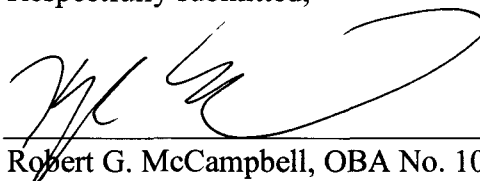
This type of inflammatory rhetoric goes beyond the pale of acceptable courtroom questioning. The State should not be permitted to accuse witnesses or Defendants of criminal conduct during a televised trial where (1) there are no facts showing the witnesses or any Defendant other than Cephalon committed any type of crime, (2) the Cephalon Plea is inadmissible for the reasons shown above, and (3) even if these unsupported allegations of criminal conduct against witnesses and the other Defendants were true, they would be inadmissible for the same reasons articulated in Part I above.

CONCLUSION

The Court should reject the State's baseless attempts to smear the characters of the Teva and Actavis Defendants and the witnesses in this case. For the foregoing reasons, the Teva and Actavis Defendants ask that the Court grant this Motion in Limine and instruct the State and all counsel not to mention, refer to, interrogate about, or attempt to convey in any manner, either directly or indirectly, any of these matters, and further instruct the State and all counsel to warn and caution each of their witnesses to follow the same instructions.

Dated: April 26, 2019

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was emailed this 26th day of April, 2019, to the following:

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EXHIBIT 1

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

UNITED STATES OF AMERICA	:	
v.	:	CRIMINAL NO.
CEPHALON, INC.	:	

GUILTY PLEA AGREEMENT

Under Federal Rule of Criminal Procedure 11(c)(1)(C), the government, the defendant, Cephalon, Inc. (hereinafter "Cephalon"), and Cephalon's counsel enter into the following guilty plea agreement. Any reference to the United States or the government in this agreement shall mean the Office of the United States Attorney for the Eastern District of Pennsylvania, and the Office of Consumer Litigation of the Department of Justice.

1. Cephalon agrees to plead guilty to Count One of an Information, waiving prosecution by indictment, charging it with the introduction into interstate commerce of drugs that were misbranded through off-label promotion, a misdemeanor, in violation of 21 U.S.C. §§ 331(a), 333(a)(1) and 352(f)(1), and not to contest forfeiture as set forth in the notice of forfeiture seeking criminal forfeiture of \$10,000,000 in substitute assets, in lieu of the drugs which were promoted off-label and are no longer available, all arising from Cephalon's off-label promotion of its drugs Provigil, Gabitril, and Actiq between January 2001 and October 1, 2001. Cephalon further acknowledges its waiver of rights, as set forth in the attachment to this agreement.

2. The parties agree that this plea agreement is made pursuant to Fed.R.Crim.P. 11(c)(1)(C) and that the following specific sentence is the appropriate disposition

of this case. If the Court rejects this plea agreement, the parties further agree that this agreement shall automatically convert to a plea agreement pursuant to Fed.R.Crim.P. 11(c)(1)(B), and this specific sentence shall be the joint recommendation of the parties, although not binding on the Court. The agreed upon sentence is as follows:

A. Cephalon agrees to pay the special assessment in the amount of \$125 on the date of sentencing.

B. Cephalon agrees to pay \$50,000,000 to resolve this Information, of which \$40,000,000 will be applied to a criminal fine, and \$10,000,000 will be applied as substitute assets to satisfy the forfeiture obligation. Cephalon will pay these amounts within 10 business days of the date of sentencing. Cephalon and the government agree that this fine and forfeiture represent a fair and just resolution of all issues associated with loss, fine and forfeiture calculations.

C. Cephalon agrees that as a result of its acts or omissions, the forfeitable property, that is the drugs which were promoted off-label, are no longer available for forfeiture as they cannot be located or have been transferred, sold or deposited with a third party, or otherwise disposed of, within the meaning of federal law. As a result, Cephalon agrees to the entry and satisfaction of a judgment and preliminary order of forfeiture on the date of the guilty plea, forfeiting to the United States the sum of \$10,000,000 as substitute assets for the pertinent drugs. Cephalon agrees that, within 10 business days of the date of sentencing, Cephalon will make payment to the United States, by means of a wire transfer to the United States Marshal Service or check payable to same, in the amount of \$10,000,000, this amount representing

substitute assets of the offense for which it is pleading guilty, subject to forfeiture in full satisfaction of the judgment and preliminary order of forfeiture.

D. The government agrees that, in light of the Corporate Integrity Agreement executed contemporaneously with this guilty plea agreement, Cephalon will not be placed on probation.

3. In a separate civil settlement among Cephalon, the United States and various States, executed contemporaneously with this guilty plea agreement, Cephalon will pay \$375,000,000. Cephalon waives any and all defenses and objections in this matter or in that civil proceeding which might be available under the Double Jeopardy and Excessive Fines clauses of the Eighth Amendment. The parties agree that, in light of this civil settlement, and to avoid complicating and prolonging the sentencing process, the appropriate disposition of this case does not include a restitution order.

4. Cephalon waives any claim under the Hyde Amendment, 18 U.S.C. § 3006A (Statutory Note), for attorney's fees and other litigation expenses arising out of the investigation or prosecution of this matter.

5. Cephalon understands, agrees and has had explained to it by counsel that the Court may impose the following statutory maximum sentence: a fine of \$200,000, or twice the gross gain or gross loss, whichever is greater; a special assessment of \$125; restitution as ordered by the Court; and a five-year term of Court supervision; in addition, forfeiture may be ordered. Cephalon further understands that the terms and conditions of any Court supervision may be changed, and extended, by the Court if Cephalon violates any of the terms and conditions of that supervision.

6. With respect to Cephalon's conduct:

A. The parties stipulate to the following facts and basis for the plea, criminal fine and forfeiture:

- (1) Cephalon marketed Provigil, Gabitril, and Actiq, which were drugs within the meaning of 21 U.S.C. § 321(g)(1).**
- (2) Shipments of a drug in interstate commerce must be accompanied by labeling bearing adequate directions for use for each of the drug's intended uses.**
- (3) In 1998, Provigil was approved by the FDA to treat excessive daytime sleepiness associated with narcolepsy.**
- (4) Between January 2001 and October 1, 2001, Cephalon promoted Provigil for uses not approved by the FDA, including as a daytime stimulant to treat sleepiness, tiredness, decreased activity, lack of energy and fatigue. Cephalon's promotion of Provigil for these additional intended uses violated 21 U.S.C. § 352(f)(1), because Provigil's labeling did not bear adequate directions for each of the drug's intended uses.**
- (5) In 1997, Gabitril was approved by the FDA as an anti-epilepsy drug indicated as adjunctive therapy in adults and children 12 years and older in the treatment of partial seizures.**
- (6) Between January 2001 and October 1, 2001, Cephalon promoted Gabitril for certain uses not approved by the FDA, including as an**

agent for anxiety, insomnia, and pain. Cephalon's promotion of Gabitril for these additional intended uses violated 21 U.S.C. § 352(f)(1), because Gabitril's labeling did not bear adequate directions for each of the drug's intended uses.

(7) In 1998, Actiq was approved by the FDA for breakthrough cancer pain for patients with malignancies who were already tolerant to opioid therapy for their cancer pain.

(8) Between January 2001 and October 1, 2001, Cephalon promoted Actiq for uses not approved by the FDA, including for non-cancer pain uses, such as injuries and migraines. Cephalon's promotion of Actiq for these additional intended uses violated 21 U.S.C. § 352(f)(1), because Actiq's labeling did not bear adequate directions for each of the drug's intended uses.

(9) Between 2001 through October 1, 2001, Cephalon profited by misbranding Provigil, Gabitril and Actiq, and distributing these drugs in interstate commerce.

B. The United States contends that, as a matter of relevant conduct, the conduct which forms the basis for this plea agreement, as set forth in subsection (A) above, continued past October 1, 2001. Cephalon does not admit that this conduct extended past October 1, 2001.

7. Cephalon and the United States retain the right to withdraw from this guilty plea agreement, and this plea agreement will be null and void, if the civil settlement

agreement and Corporate Integrity Agreement are not executed contemporaneously with this plea agreement.

8. The government agrees that, other than the charges in the Information in this case, it will not bring any other criminal charges against Cephalon for conduct which (a) falls within the scope of the grand jury investigation in the Eastern District of Pennsylvania relating to Cephalon's drugs Provigil, Gabitril, and Actiq; or (b) was known to the United States Attorney's Office for the Eastern District of Pennsylvania and the Office of Consumer Litigation of the Department of Justice as of the date of the execution of this plea agreement, and which concerned the sale, promotion, or marketing of these three drugs in the United States. The non-prosecution provisions of this paragraph are binding on the Office of the United States Attorney for the Eastern District of Pennsylvania, the Office of Consumer Litigation of the Department of Justice, the United States Attorney's Offices for each of the other 93 judicial districts of the United States, and the Criminal Division of the United States Department of Justice. Attached as Exhibit B is a copy of the letter to United States Attorney Laurie Magid from the Assistant Attorney General, Criminal Division, Department of Justice, authorizing this agreement.

9. Cephalon understands that this guilty plea agreement does not bind any other government agency, or any component of the Department of Justice except as specified in paragraph 8 of this guilty plea agreement. Further, Cephalon understands that the United States takes no position as to the proper tax treatment of any of the payments made by Cephalon pursuant to this plea agreement, the civil settlement agreement, or the Corporate Integrity Agreement referenced in this plea agreement.

10. Cephalon agrees to waive the statute of limitations, and any other time-related defense, to the charge to which it is agreeing to plead guilty under this plea agreement. Cephalon understands and agrees that, should it seek to withdraw its plea, it may then be prosecuted for any criminal violation of which the United States has knowledge arising out of this investigation, subject to any applicable statute of limitation or other time-related protection not waived in this paragraph. Cephalon agrees that if it does not enter its plea, or withdraws its plea, after signing this agreement, the time period between the signing of this agreement and its withdrawal shall be excluded from calculation of the limitations or time period.

11. In exchange for the undertakings made by the government in entering this plea agreement, Cephalon voluntarily and expressly waives all rights to appeal or collaterally attack the defendant's conviction, sentence, or any other matter relating to this prosecution, whether such a right to appeal or collateral attack arises under 18 U.S.C. § 3742, 28 U.S.C. § 1291, 28 U.S.C. § 2255, or any other provision of law. This waiver is not intended to bar the assertion of constitutional claims that the relevant case law holds cannot be waived.

If this plea agreement converts to a plea agreement pursuant to Fed.R.Crim.P.

11(c)(1)(B):

- A. Notwithstanding the waiver provision above, if the government appeals from the sentence, then the defendant may file a direct appeal of its sentence.
- B. If the government does not appeal, then notwithstanding the waiver provision set forth in this paragraph, the defendant may file a direct appeal but may raise only claims that:

- (1) the defendant's sentence on any count of conviction exceeds the statutory maximum for that count as set forth in this plea agreement;
- (2) the sentencing judge erroneously departed upward pursuant to the Sentencing Guidelines; and/or
- (3) the sentencing judge, exercising the Court's discretion pursuant to United States v. Booker, 543 U.S. 220 (2005), imposed an unreasonable sentence above the final Sentencing Guideline range determined by the Court.

If the defendant does appeal pursuant to this paragraph, no issue may be presented by the defendant on appeal other than those described in this paragraph.

12. Cephalon also waives all rights, whether asserted directly or by a representative, to request or receive from any department or agency of the United States any records pertaining to the investigation or prosecution of this case, including without limitation any records that may be sought under the Freedom of Information Act, 5 U.S.C. § 552, or the Privacy Act, 5 U.S.C. § 552a.

13. Cephalon is satisfied with the legal representation provided by its lawyers; Cephalon and its lawyers have fully discussed this guilty plea agreement; and Cephalon is agreeing to plead guilty because Cephalon admits that it is guilty.

14. Cephalon will acknowledge acceptance of this guilty plea agreement by the signature of its counsel and of a responsible corporate officer. Cephalon shall provide to the government for attachment to this plea agreement a notarized resolution by Cephalon's Board of


Directors authorizing the corporation to enter a plea of guilty, and authorizing that responsible corporate officer to execute this agreement.

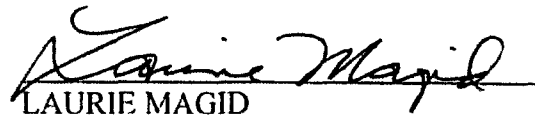
15. If acceptable to the Court, the parties agree to waive the presentence investigation and report pursuant to Rule 32(c)(1) of the Federal Rules of Criminal Procedure, and ask that Cephalon be sentenced at the time the guilty plea is entered.


16. It is agreed that the parties' guilty plea agreement contains no additional promises, agreements or understandings other than those set forth in this written guilty plea agreement, and that no additional promises, agreements or understandings will be entered into unless in writing and signed by all parties.

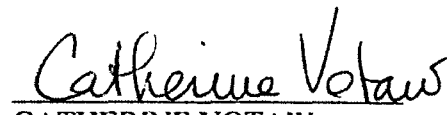
SIGNATURES FOR THE UNITED STATES

GREGORY G. KATSAS
Assistant Attorney General
Civil Division
United States Department of Justice


EUGENE THIROLF
Director, Office of Consumer Litigation
United States Department of Justice


LAURIE MAGID
Acting United States Attorney



JEFFREY STEGER
Trial Attorney
Office of Consumer Litigation
United States Department of Justice


CATHERINE VOTAW
Chief, Health Care Fraud
Assistant United States Attorney

DATED: Sept. 26, 2008


SIGNATURE FOR CEPHALON

DATE: 9/15/08


GERALD J. PAPPERT
Executive Vice President and General
Counsel
Cephalon, Inc.

SIGNATURES OF CEPHALON'S ATTORNEYS

DATE: 9/10/08


ERIC W. SITARCHUK, Esquire
Morgan, Lewis & Bockius LLP
Counsel for Defendant

J. SEDWICK SOLLERS III, Esquire
MARK A. JENSEN, Esquire
King & Spalding, LLP
Counsel for Defendant

- f. that through Cephalon's lawyer Cephalon would have the right to confront and cross-examine the witnesses against Cephalon;
- g. that Cephalon could call witnesses to testify in its defense if Cephalon wanted to, and Cephalon could subpoena witnesses for this purpose if Cephalon wanted to; and
- h. that Cephalon would not have to call witnesses to testify or otherwise present any defense if Cephalon did not want to, and that if Cephalon did not present any evidence, the jury could not hold that against Cephalon.

4. Cephalon understands that if Cephalon pleaded guilty, there will be no trial and Cephalon would be giving up all of the rights listed above, as well as any other rights associated with the trial process arising under statute, common-law, or judicial precedent.

5. Cephalon understands that if Cephalon decides to enter a plea of guilty, the judge will ask Cephalon representatives questions under oath, and that if any of those representatives lie on behalf of Cephalon in answering those questions, those persons could be prosecuted for the crime of perjury, that is, for lying under oath.

6. Cephalon understands that if Cephalon pleads guilty, Cephalon has waived its right to appeal, except as set forth in appellate waiver provisions of the plea agreement.

7. Understanding that Cephalon has all these rights and that by pleading guilty Cephalon is giving them up, Cephalon still wishes to plead guilty.


GERALD J. PAPPERT

Exec. Vice President and General Counsel
for Cephalon, Inc, the Defendant

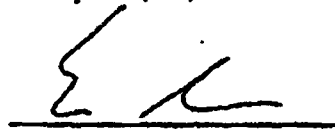

ERIC SITARCHUK, Esquire
Morgan, Lewis & Bockius LLP
Counsel for Defendant.

EXHIBIT 2

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IN THE DISTRICT COURT OF CLEVELAND COUNTY
STATE OF OKLAHOMA

STATE OF OKLAHOMA, ex rel.,)
MIKE HUNTER)
ATTORNEY GENERAL OF OKLAHOMA,)

Plaintiff,)

vs.)

Case No. CJ-2017-816

- (1) PURDUE PHARMA L.P.;)
- (2) PURDUE PHARMA, INC.;)
- (3) THE PURDUE FREDERICK)
COMPANY;)
- (4) TEVA PHARMACEUTICALS)
USA, INC;)
- (5) CEPHALON, INC.;)
- (6) JOHNSON & JOHNSON;)
- (7) JANSSEN PHARMACEUTICALS,)
INC.;)
- (8) ORTHO-McNEIL-JANSSEN)
PHARMACEUTICALS, INC.,)
- n/k/a JANSSEN PHARMACEUTICALS;)
- (9) JANSSEN PHARMACEUTICA, INC.)
- n/k/a JANSSEN PHARMACEUTICALS,)
INC.;)
- (10) ALLERGAN, PLC, f/k/a)
ACTAVIS PLC, f/k/a ACTAVIS,)
- INC., f/k/a WATSON)
PHARMACEUTICALS, INC.;)
- (11) WATSON LABORATORIES, INC.;
- (12) ACTAVIS LLC; AND)
- (13) ACTAVIS PHARMA, INC.,)
f/k/a WATSON PHARMA, INC.,)

Defendants.)

**TRANSCRIPT OF PROCEEDINGS
HAD ON AUGUST 24, 2018
AT THE CLEVELAND COUNTY COURTHOUSE
BEFORE THE HONORABLE THAD BALKMAN
DISTRICT JUDGE**

REPORTED BY: ANGELA THAGARD, CSR, RPR

1 them. It's a sacrifice for all of us. We would like to see
2 our families. I would like to be at my daughter's stuff today
3 that I'm missing. But that's the job.

4 One of the things they brought up in this motion is that
5 they have a witness who's going on a vacation. You know what?
6 They've known about this deposition since April 4th. They've
7 had plenty of time to schedule around it.

8 And everybody on their side bought themselves a 10- to
9 12-week vacation with their removal. They didn't have to be
10 here doing things. I'm sorry if somebody has to miss a
11 vacation. I don't want that.

12 But you know what? There are people like Craig Box and
13 many of the other victims of this crisis who have lost children
14 and have lost family members that don't get to go on vacations
15 anymore. And we are dealing with a company that pled guilty to
16 criminal misbranding.

17 It wasn't just the company. It was their general counsel.
18 It was their head medical officer. It was their CEO, all three
19 of them. While they pled in 2007 to those federal crimes, they
20 did not stop doing it.

21 Now, they're entitled to a fair trial too. But past
22 conduct often repeats itself, and it is repeating itself here.
23 This is truly a company that believes it is above the law. It
24 does. Shouldn't be a loss to anyone that they're represented
25 by former U.S. attorneys here and other places.

EXHIBIT 3

1 THE WITNESS: I don't know how Janssen
2 comes up with their list.

3 Q (BY MS. BALDWIN) I understand you're
4 represented by Janssen's counsel today for
5 purposes of this deposition, but do you have
6 your own independent counsel?

7 MR. SPARKS: Object to the form.

8 THE WITNESS: I do not.

9 Q (BY MS. BALDWIN) Do you have a criminal
10 defense attorney?

11 MR. SPARKS: Object to the form.
12 Argumentative.

13 Q (BY MS. BALDWIN) Has Janssen ever
14 offered you a criminal defense attorney?

15 MR. SPARKS: Object to the form.
16 Argumentative, you know, and also objection also
17 to the extent that it's privileged information.

18 THE WITNESS: Okay.

19 MR. SPARKS: Remember, you -- so I'm
20 instructing you not to discuss anything we spoke
21 about.

22 THE WITNESS: Okay.

23 MR. SPARKS: But if there's information
24 beyond what we spoke about that you think is
25 responsive to that question, you can -- you can

1 answer if you know.

2 THE WITNESS: They are my attorneys. I
3 don't have another attorney.

4 Q (BY MS. BALDWIN) Has Janssen ever
5 offered you at any time during your employment
6 or after your resignation from the company a
7 criminal defense attorney?

8 MR. SPARKS: Same objections as to form
9 and as to privilege, attorney-client privilege.

10 THE WITNESS: I do not have another
11 attorney besides the attorneys that are here
12 present with me.

13 Q (BY MS. BALDWIN) Did they ever offer
14 you one?

15 MR. SPARKS: Same objections.

16 THE WITNESS: They did not.

17 Q (BY MS. BALDWIN) Do you have the means
18 to pay for independent counsel?

19 MR. SPARKS: Object to the form.

20 THE WITNESS: I am -- these are
21 attorneys that are representing me today.

22 Q (BY MS. BALDWIN) You understand you
23 have the right to counsel that's also not
24 represented by Janssen -- not also representing
25 Janssen?

1 MR. SPARKS: Object to the form.

2 THE WITNESS: These are my attorneys
3 that are with me today.

4 Q (BY MS. BALDWIN) Has anyone told you
5 about your due process rights against
6 self-incrimination?

7 MR. SPARKS: Object to the form. That
8 I'm instructing you not to answer. That would
9 directly be protected by attorney-client
10 privilege.

11 MS. BALDWIN: Are you instructing her
12 not to answer?

13 MR. SPARKS: I'm instructing her not to
14 answer.

15 MS. BALDWIN: Are you going to follow
16 your attorney's instruction?

17 THE WITNESS: I'm going to follow my
18 attorney's instructions. Are we done with this
19 one?

20 MR. SPARKS: Probably. I don't know.
21 Is that Number 6? Just leave that in the stack
22 over there to the left.

23 THE WITNESS: Okay.

24 MR. SPARKS: Watch out. It's going to
25 get under the exhibit sticker here.

EXHIBIT 4

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IN THE DISTRICT COURT OF CLEVELAND COUNTY
STATE OF OKLAHOMA

-----x
STATE OF OKLAHOMA, ex rel.,
MIKE HUNTER, ATTORNEY GENERAL
OF OKLAHOMA,

Plaintiff,

No. CJ-2017-816

vs.

- (1) PURDUE PHARMA, L.P.;
- (2) PURDUE PHARMA, INC.;
- (3) THE PURDUE FREDERICK COMPANY;
- (4) TEVA PHARMACEUTICALS USA, INC.;
- (5) CEPHALON, INC.;
- (6) JOHNSON & JOHNSON;
- (7) JANSSEN PHARMACEUTICALS, INC.;
- (8) ORTHO-McNEIL-JANSSEN
PHARMACEUTICALS, INC. n/k/a
JANSSEN PHARMACEUTICALS, INC.;
- (9) JANSSEN PHARMACEUTICA, INC.,
n/k/a JANSSEN PHARMACEUTICALS, INC.;
- (10) ALLERGAN, PLC, f/k/a ACTAVIS, PLC,
f/k/a ACTAVIS, INC., f/k/a WATSON
PHARMACEUTICALS, INC.;
- (11) WATSON LABORATORIES, INC.;
- (12) ACTAVIS, LLC; and
- (13) ACTAVIS PHARMA, INC.;
- f/k/a WATSON PHARMA, INC.;

Defendants.

-----x

Videotaped deposition of CHRISTINE BAEDER,
taken pursuant to Notice, was held at the Law Offices of
MORGAN LEWIS & BOCKIUS, LLP, 1702 Market Street,
Philadelphia, Pennsylvania, commencing January 23, 2019,
9:26 a.m., on the above date, before Amanda McCredo, a
Court Reporter and Notary Public in the Commonwealth of
Pennsylvania.

1 A Teva continues to sell Actiq.

2 Q You never told anyone at your company to
3 stop selling Actiq, have you?

4 MS. HILLYER: Objection; asked and
5 answered.

6 A I have never told anyone to stop selling
7 Actiq.

8 Q You've never told anyone, "We shouldn't buy
9 this company because they're criminals"?

10 MS. HILLYER: Objection; asked and
11 answered.

12 A I've never made a recommendation on
13 acquisition strategy.

14 Q You've never told anybody, "Let's get rid
15 of Cephalon because they're not in compliance with
16 our code of conduct."

17 MS. HILLYER: Objection.

18 Q "They're criminals"?

19 MS. HILLYER: Objection to form, and
20 assumes facts not in evidence.

21 A Yeah, I -- I've never made any statements
22 about Cephalon and criminal activity.

23 Q Well, let's talk about Purdue.

24 Are you aware that they pled guilty to a
25 crime -- you've learned about it recently,

EXHIBIT 5

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IN THE DISTRICT COURT OF CLEVELAND COUNTY

STATE OF OKLAHOMA

STATE OF OKLAHOMA, ex rel.,
MIKE HUNTER,
ATTORNEY GENERAL OF OKLAHOMA,

Plaintiff,

vs. Case No. CJ-2017-816

- (1) PURDUE PHARMA, L.P.;
- (2) PURDUE PHARMA, INC.;
- (3) THE PURDUE FREDERICK COMPANY;
- (4) TEVA PHARMACEUTICALS USA, INC.;
- (5) CEPHALON, INC.;
- (6) JOHNSON & JOHNSON;
- (7) JANSSEN PHARMACEUTICALS, INC.;
- (8) ORTHO-McNEIL-JANSSEN
PHARMACEUTICALS, INC., n/k/a
JANSSEN PHARMACEUTICALS, INC.;
- (9) JANSSEN PHARMACEUTICA, INC.;
- N/k/a JANSSEN PHARMACEUTICALS, INC.;
- (10) ALLERGAN, PLC, f/k/a ACTAVIS PLC,
f/k/a ACTAVIS, INC., f/k/a WATSON
PHARMACEUTICALS, INC.;
- (11) WATSON LABORATORIES, INC.;
- (12) ACTAVIS, LLC; and
- (13) ACTAVIS PHARMA, INC.,
f/k/a WATSON PHARMA, INC.,

Defendants.

3230(C) (5) VIDEOTAPED DEPOSITION

OF THE TEVA/CEPHALON DEFENDANTS

BY AND THROUGH CORPORATE REPRESENTATIVE JOHN HASSLER

TAKEN ON BEHALF OF THE PLAINTIFF

ON DECEMBER 11, 2018, BEGINNING AT 9:07 A.M.

IN OKLAHOMA CITY, OKLAHOMA

VIDEOTAPED BY: C. J. Shelton
REPORTED BY: D. Luke Epps, CSR, RPR

1 share; right?

2 MR. FIORE: Objection to the form.

3 THE WITNESS: It may be market share or it
4 may be volume.

5 Q (BY MR. DUCK) In either case, sales
6 representatives are incentivized to approach their
7 targets in a manner that is most likely to lead to
8 increased prescribing of Cephalon's products; right?

9 MR. FIORE: Objection to the form.
10 Outside the scope. If you can answer in your
11 individual capacity, you can do so.

12 THE WITNESS: Within the constraints that
13 are set by the company of prescribing information
14 that is on label, scientifically rigorous, fair,
15 balanced, to physicians who are likely to have
16 patients in their practice who can be treated on
17 indications and those doctors are likely to treat on
18 indication.

19 Q (BY MR. DUCK) And Cephalon pled guilty to
20 federal crimes for failing to do exactly what you
21 just said sales reps should do?

22 MR. FIORE: Objection to the form of the
23 question.

24 THE WITNESS: Cephalon pled guilty to
25 communicating information beyond the label for a

EXHIBIT 6

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IN THE DISTRICT COURT OF CLEVELAND COUNTY
STATE OF OKLAHOMA

STATE OF OKLAHOMA, ex rel.,)
MIKE HUNTER)
ATTORNEY GENERAL OF OKLAHOMA,)
)
Plaintiff,)

VS

Case No. CJ-2017-816

- (1) PURDUE PHARMA L.P.;)
- (2) PURDUE PHARMA, INC.;/)
- (3) THE PURDUE FREDERICK)
- COMPANY;)
- (4) TEVA PHARMACEUTICALS USA,)
- INC.;)
- (5) CEPHALON, INC.;)
- (6) JOHNSON & JOHNSON;)
- (7) JANSSEN PHARMACEUTICALS,)
- INC.;)
- (8) ORTHO-MCNEIL-JANSSEN)
- PHARMACEUTICALS, INC.,)
- n/k/a JANSSEN PHARMACEUTICALS;)
- (9) JANSSEN PHARMACEUTICA,)
- INC.)
- n/k/a JANSSEN PHARMACEUTICALS,)
- INC.;)
- (10) ALLERGAN, PLC, f/k/a)
- ACTAVIS PLC, f/k/a ACTAVIS,)
- INC., f/k/a WATSON)
- PHARMACEUTICALS, INC.;)
- (11) WATSON LABORATORIES,)
- INC.;)
- (12) ACTAVIS LLC; AND)
- (13) ACTAVIS PHARMA, INC.,)
- f/k/a WATSON PHARMA, INC.,)
-)
- Defendants.)
-)

**PORTIONS OF THE TRANSCRIPT ARE COVERED UNDER THE
PROTECTIVE ORDER**

TRANSCRIPT OF MOTIONS HEARING
HAD ON THE 11TH DAY OF APRIL, 2019,
BEFORE THE HONORABLE
THAD BALKMAN, DISTRICT JUDGE
AND WILLIAM C. HETHERINGTON, JR.,
RETIRED ACTIVE JUDGE AND SPECIAL DISCOVERY MASTER

REPORTED BY: Tanya Burcham, CSR, RPR

1 going to do business with you. And Cephalon
2 specifically was part of the Pain Care Forum
3 collaboration that J & J said from its original
4 inception, and never once did they ever go to Cephalon
5 or Purdue and say we're not going to continue in this
6 with you guys. We're not going to collaborate, we're
7 not going to lobby, we're not going to play on the
8 media, we're not going to employ SWAT teams in the
9 state to get what we want, we're not going to do
10 business with you because you're a criminal. Never.
11 Never. Never. That comes up in a J & J trial, it comes
12 up in a Teva trial.

13 Can we go to the next one? So this next
14 one, you're going to see some of this is relevant to the
15 summary judgment motion we have before us. They have
16 this promotion, extended-release opioids, and yes,
17 Mr. Brody is in the room. Nobody took a crack at that.
18 They also had immediate release. And then with Watson
19 or Actavis we'll show that's not true. Both did promote
20 directly or indirectly. And this deal about selecting a
21 generic opioid is not true. There will be quite a bit
22 of evidence that, especially with Purdue -- and again,
23 they were selling -- in a way Teva's generic OxyContin,
24 that one of the things they went in there and tried to
25 get the doctors to write prescriptions a certain way,