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

KING DRUG COMPANY OF FLORENCE, INC., et al., Plaintiffs,	:	CIVIL ACTION
v.	:	No. 2:06-cv-1797
CEPHALON, INC., et al., Defendants.	:	

ORDER

AND NOW, this 27th day of July, 2015, upon consideration of "Direct Purchaser Class Plaintiffs' Unopposed Motion for Certification of a Settlement Class, Appointment of Class Counsel, Preliminary Approval of Proposed Settlement, Approval of the Form and Manner of Notice to the Class and Proposed Schedule for a Fairness Hearing" (Doc. No. 795) and the exhibits thereto, it is hereby **ORDERED** that the motion is **GRANTED** as follows:

1. This Order hereby incorporates by reference the definitions in the Settlement Agreement among the Cephalon Defendants, Plaintiffs, and the Direct Purchaser Class, and all capitalized terms used and not otherwise defined herein shall have the meanings set forth in the Settlement Agreement.

2. This Court has jurisdiction over each of the Named Plaintiffs, King Drug Co. of Florence, Inc. ("King Drug"), Rochester Drug Co-Operative, Inc. ("RDC"), Burlington Drug Company, Inc. ("Burlington"), J.M. Smith Corp. d/b/a Smith Drug Co. ("Smith Drug"), Meijer, Inc. and Meijer Distribution, Inc. ("Meijer"), Stephen L. LaFrance Pharmacy d/b/a SAJ Distributors, Inc. and Stephen L. LaFrance Holdings, Inc. ("SAJ") (collectively the "Named Plaintiffs" or "Direct Purchaser Class Plaintiffs") and Defendants, Cephalon,

Inc., Teva Pharmaceutical Industries, Ltd., Teva Pharmaceuticals USA, Inc., and Barr Pharmaceuticals, Inc. (collectively the "Cephalon Defendants") and jurisdiction over the litigation to which Direct Purchaser Class Plaintiffs and the Cephalon Defendants are parties.

Certification of the Proposed Class

3. For the reasons set forth in this Court's Memorandum Opinion and Order of July 27, 2015 (Doc. Nos. 829, 830) certifying the Direct Purchaser Class for purposes of litigation, I hereby grant the unopposed motion for certification of the settlement class.

4. Pursuant to Rule 23(c)(1)(B), the Class, which shall hereinafter be denominated "the Class," is defined as follows:

> All persons or entities in the United States and its territories who purchased Provigil in any form directly from Cephalon at any time during the period from June 24, 2006 through August 31, 2012. Excluded from the Class are Defendants and their officers, directors, management, employees, subsidiaries, or affiliates, and all federal governmental entities.
>
> Also excluded from the Class are: Rite Aid Corporation, Rite Aid HDQTRS. Corp., JCG (PJC) USA, LLC, Eckerd Corporation, Maxi Drug, Inc. d/b/a Brooks Pharmacy, and CVS Caremark Corporation, Walgreen Co., The Kroger Co., Safeway Inc., American Sales Co., Inc., HEB Grocery Company, LP, Supervalu, Inc., and Giant Eagle, Inc. and their officers, directors, management, employees, subsidiaries, or affiliates in their own right and as assignees from putative Direct Purchaser Class members as more fully described in Paragraph 10 of the Settlement Agreement ("Opt Out Plaintiffs").

5. Pursuant to Rule 23(a)(1), the Court determines that the Class is so numerous and geographically dispersed that joinder of all members is impracticable. According to data produced by the Cephalon Defendants, the Class has (at least) twenty-two (22) members geographically dispersed throughout the United States, which is sufficient to satisfy the impracticability of joinder requirement of Rule 23(a)(1).

6. Pursuant to Rule 23(c)(1)(B), the Court determines that the following issues relating to claims and/or defenses (expressed in summary fashion) present common, class-wide questions, and thus should be subject to class treatment:

    a. Whether the conduct challenged by the Class as anticompetitive in the Second Consolidated Amended Class Action Complaint filed June 6, 2012 ("the Complaint") constituted a conspiracy to monopolize or monopolization in violation of Section 2 of the Sherman Act, 15 U.S.C. § 2;

    b. Whether the conduct challenged by the Class as anticompetitive in the Complaint constituted conspiracies in restraint of trade and violated Section 1 of the Sherman Act, 15 U.S.C. § 1;

    c. Whether the challenged conduct caused antitrust injury-in-fact to the Class, in the nature of overcharges; and

    d. The amount of overcharge damages, if any, owed to the Class in the aggregate under Section 4 of the Clayton Act, 15 U.S.C. § 4.

7. The Court determines that the foregoing class-wide issues relating to claims and/or defenses are questions of law or fact common to the Class that satisfy Rule 23(a)(2).

8. The Named Plaintiffs are hereby appointed as representatives of the Class for the following reasons:

    a. The Named Plaintiffs allege, on behalf of the Class, the same manner of injury from the same course of conduct that they themselves complain of, and assert on their own behalf the same legal theory that they assert for the Class. The Court therefore determines that the Named Plaintiffs' claims are typical of the claims of the proposed Class within the meaning of Rule 23(a)(3); and

b. Pursuant to Rule 23(a)(4), the Court determines that the Named Plaintiffs will fairly and adequately protect the interests of the Class. The Named Plaintiffs' interests do not conflict with the interests of absent members of the Class. All of the members of the Class share a common interest in proving the Cephalon Defendants' alleged anticompetitive conduct, and all Class members share a common interest in recovering the overcharge damages sought in the Complaint. Moreover, the Class is made up of business entities and any Class member that wishes to opt out will be given the opportunity to do so. Furthermore, the Named Plaintiffs are well qualified to represent the Class in this case, given their experience in prior cases, and the vigor with which they have prosecuted this action thus far.

9. Pursuant to Rule 23(b)(3), the Court determines that, in connection with and for the purposes of settlement, common questions of law and fact predominate over questions affecting only individual members. In light of the class-wide claims, issues, and defenses set forth above, the issues in this action that are subject to generalized proof, and thus applicable to the Class as a whole, predominate over those issues that are subject only to individualized proof. See In re Hydrogen Peroxide Antitrust Litig., 552 F.3d 305, 310-11 (3d Cir. 2008).

10. Also pursuant to Rule 23(b)(3), the Court determines that, in connection with and for the purposes of settlement, a class action is superior to other available methods for the fair and efficient adjudication of this action. The Court finds it is desirable, for the purposes of judicial and litigation efficiency, to concentrate the claims of the Class in a single action. The Court also believes that there are few manageability problems presented by a

case such as this, particularly in light of the Settlement preliminarily approved in this Order.

11. Pursuant to Rule 23(c)(1)(B) and 23(g), the Court having considered the factors provided in Rule 23(g)(1)(A), the Court appoints Lead Counsel, Liaison Counsel and an Executive Committee ("Class Counsel") for the Direct Purchaser Class, consistent with the Court's Order dated August 18, 2009 (Doc. No. 196), and the duties and responsibilities described in that Order.

Preliminary Approval of the Proposed Settlement

12. The ultimate approval of a class action settlement requires a finding that the settlement is fair, adequate, and reasonable. Walsh v. Great Atl. & Pac. Tea Co., 726 F.2d 956, 965 (3d Cir. 1983). "In evaluating a proposed settlement for preliminary approval, however, the Court is required to determine only whether 'the proposed settlement discloses grounds to doubt its fairness or other obvious deficiencies such as unduly preferential treatment of class representatives or segments of the class, or excessive compensation of attorneys, and whether it appears to fall within the range of possible approval.'" Mehling v. New York Life Ins. Co., 246 F.R.D. 467, 472 (E.D. Pa. 2007) (quoting Thomas v. NCO Fin. Sys., Inc., 2002 WL 1773035, at *5 (E.D. Pa. July 31, 2002)). The proposed settlement satisfies this standard.

13. The Court finds that the proposed settlement, which includes a cash payment of $512 million by the Cephalon Defendants into an escrow account for the benefit of the Class (the "Settlement Fund") in exchange for, inter alia, dismissal of the litigation between Direct Purchaser Class Plaintiffs and the Cephalon Defendants with prejudice and the release of certain claims against the Cephalon Defendants by Direct Purchaser Class

Plaintiffs and the Class, as set forth in the Settlement Agreement, was arrived at by arm's-length negotiations by highly experienced counsel after years of litigation, falls within the range of possibly approvable settlements, and is hereby preliminarily approved, subject to further consideration at the Fairness Hearing provided for below.

Approval of the Plan of Notice to the Class

14. The proposed form of Notice to Class Members of the pendency of this Class Action and the proposed Settlement thereof (annexed as Exhibit B to the Settlement Agreement) satisfies the requirements of Rule 23(e) and due process, is otherwise fair and reasonable, and therefore is approved. Class Counsel shall cause the Notice substantially in the form attached to the Settlement Agreement to be disseminated by **August 17, 2015** via first-class mail to the last known address of each entity that purchased Provigil directly from Cephalon during the Class Period.

15. Members of the Class may request exclusion from the Class or object to the Settlement no later than **October 1, 2015**. Class Counsel or their designee shall monitor and record any and all opt-out requests that are received.

16. The Court appoints Berdon Claims Administration LLC to serve as claims administrator and to assist Class Counsel in disseminating the Notice. All expenses incurred by the claims administrator must be reasonable, are subject to Court approval, and shall be payable solely from the Settlement Fund.

17. The Court appoints Morgan Stanley Smith Barney LLC to serve as Escrow Agent for the purpose of administering the escrow account holding the Settlement Fund. All expenses incurred by the Escrow Agent must be reasonable, are subject to Court approval, and shall be payable solely from the Settlement Fund. A copy of the Escrow Agreement

executed by Morgan Stanley Smith Barney LLC and counsel is annexed as Exhibit D to the Settlement Agreement.

Final Fairness Hearing

18. A hearing on final approval (the "Fairness Hearing") shall be held before this Court on **Thursday, October 15, 2015** at **10:00 a.m.** at the United States District Court for the Eastern District of Pennsylvania, James A. Byrne United States Courthouse, 601 Market Street, Courtroom 4B, Philadelphia, PA 19106. At the Fairness Hearing, the Court will consider, inter alia: (a) the fairness, reasonableness and adequacy of the Settlement and whether the Settlement should be finally approved; (b) whether the Court should approve the proposed plan of distribution of the Settlement Fund among Class members; (c) whether the Court should approve awards of attorneys' fees and reimbursement of expenses to Class Counsel; (d) whether incentive awards should be awarded to the Named Plaintiffs; and (e) whether entry of a Final Judgment and Order terminating the litigation between Direct Purchaser Class Plaintiffs and the Cephalon Defendants should be entered. The Fairness hearing may be rescheduled or continued; in this event, the Court will furnish all counsel with appropriate notice. Class Counsel shall be responsible for communicating any such notice promptly to the Class by posting a conspicuous notice on the following website of Class Counsel: www.garwingerstein.com.

19. Class members who wish to: (a) object with respect to the proposed Settlement; and/or (b) wish to appear in person at the Fairness Hearing, must first send an Objection and, if intending to appear, a Notice of Intention to Appear, along with a Summary Statement outlining the position(s) to be asserted and the grounds therefore together with copies of any supporting papers or briefs, via first class mail, postage prepaid, to the Clerk of the

United States District Court for the Eastern District of Pennsylvania, James A. Byrne United States Courthouse, 601 Market Street, Philadelphia, PA 19106, with copies to the following counsel:

On behalf of Direct Purchaser Class Plaintiffs and the Class:

Bruce E. Gerstein, Esq.
Joseph Opper, Esq.
Garwin Gerstein & Fisher LLP
88 Pine St., 10th Floor
New York, NY 10005
Tel: 212-398-0055
www.garwingerstein.com

On behalf of the Cephalon Defendants:

Jay P. Lefkowitz, P.C.
Kirkland & Ellis LLP
601 Lexington Avenue
New York, NY 10022-4611
Tel: 212-466-4970
lefkowitz@kirkland.com

James C. Burling
Wilmer Cutler Pickering Hale and Dorr LLP
60 State Street
Boston, MA 02109
Tel: 617-526-6416
james.burling@wilmerhale.com

Gregory L. Skidmore
Kirkland & Ellis LLP
655 15th Street, N.W.
Suite 1200
Washington, DC 20005
Tel: 202-879-5246
greg.skidmore@kirkland.com

Joseph E. Wolfson
Stevens & Lee, P.C.
620 Freedom Business Center
Suite 200
King of Prussia, PA 19406
Tel: 610-205-6001
jwo@stevenslee.com

To be valid, any such Objection and/or Notice of Intention to Appear and Summary statement must be postmarked no later than **October 1, 2015**. Except as herein provided, no person or entity shall be entitled to contest the terms of the proposed Settlement. All persons and entities who fail to file an Objection and/or Notice of Intention to Appear as well as a Summary Statement as provided above shall be deemed to have waived any such objections by appeal, collateral attack or otherwise and will not be heard at the Fairness Hearing.

20. All briefs and materials in support of the final approval of the settlement and the entry of Final Judgment proposed by the parties to the Settlement Agreement shall be filed with the Court by **October 8, 2015**.

21. All briefs and materials in support of the application for an award of attorneys' fees and reimbursement of expenses, and incentive awards for the Named Plaintiffs, shall be filed with the Court by **October 8, 2015**.

22. All proceedings in the action between the Direct Purchaser Class Plaintiffs and the Cephalon Defendants are hereby **STAYED** until such time as the Court renders a final decision regarding the approval of the Settlement and, if the Court approves the Settlement, enters Final Judgment and dismisses such actions with prejudice.

23. Neither this Order, nor the Settlement Agreement, nor any other Settlement-related document, nor anything contained herein or therein or contemplated hereby or thereby, nor any proceedings undertaken in accordance with the terms of the Settlement Agreement or herein or in any other Settlement-related document, shall constitute, be construed as or be deemed to be evidence of an admission or concession by the Cephalon Defendants as to the validity of any claim that has been or could have been asserted by Direct Purchaser Class Plaintiffs against the Cephalon Defendants or as to any liability by the Cephalon Defendants as to any matter set forth in this Order, or as to whether any class, in this case or others, may be certified for purposes of litigation and trial.

BY THE COURT:

/s/ Mitchell S. Goldberg

Mitchell S. Goldberg, J.