



## STATEMENT OF POINTS AND AUTHORITIES

The Complaint in this action alleges that the defendant violated a final order of the Federal Trade Commission in FTC Docket No. C-4076 (“Order”), and also violated the provisions of the MMA. The Complaint alleges that BMS filed a certain “settlement agreement” pursuant to the Order and as required by the MMA but failed to disclose certain material facts regarding certain additional understandings that BMS had with the other party to the settlement agreement, Apotex, Inc. The Complaint further alleges that defendant BMS was in violation of the Order and the MMA from at least May 30, 2006, when it filed the settlement agreement, to at least August 31, 2006.

Section 5(l) of the Federal Trade Commission Act, 15 U.S.C. § 45(l), provides that

Any person, partnership, or corporation who violates an order of the Commission after it has become final, and while such order is in effect, shall forfeit and pay to the United States a civil penalty of not more than \$10,000 for each violation, which shall accrue to the United States and may be recovered in a civil action brought by the Attorney General of the United States. Each separate violation of such order shall be a separate offense, except that in the case of a violation through continuing failure to obey or neglect to obey a final order of the Commission, each day of continuance of such failure or neglect shall be deemed a separate offense. In such actions, the United States district courts are empowered to grant mandatory injunctions and such other and further equitable relief as they deem appropriate in the enforcement of such final orders of the Commission.

Pursuant to the Debt Collection Improvement Act of 1996, Pub. L. 104-134, § 31001(s) (amending the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461), and Federal Trade Commission Rule 1.98, 16 C.F.R. § 1.98, the maximum civil penalty for violations that occurred after November 19, 1996, but before February 9, 2009, is \$11,000 per violation or for each day of a continuing violation.

Section 1115(a) of the MMA provides,

Any brand name drug company or generic drug applicant which fails to comply with any provision of this subtitle shall be liable for a civil penalty of not more than \$11,000, for each day during which such entity is in violation of this subtitle. Such penalty may be recovered in a civil action brought by the United States, or brought by the Commission in accordance with the procedures established in section 16(a)(1) of the Federal Trade Commission Act (15. U.S.C. 56(a)).

As the Stipulation and proposed Final Judgment state, the defendants has agreed to pay a civil penalties of \$2,100,000 within thirty days of entry of the Final Judgment.

For the above reasons, the Federal Trade Commission asks the Court to enter the Final Judgment in this case.

Dated: March 26, 2009  
FOR THE FEDERAL TRADE COMMISSION:

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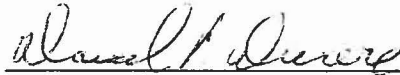
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**CERTIFICATE OF SERVICE**

I hereby certify that on the <sup>12</sup>~~16~~ day of ~~March~~ <sup>March</sup> 2009, I caused a copy of the foregoing Motion of Plaintiff United States For Entry of Final Judgment to be mailed, by U.S. mail, postage prepaid, to the attorneys listed below.



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Daniel P. DuCore

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