

D-1-GN-09-002880

NO. _____

GREG LEE MINCKLEY

§

IN THE DISTRICT COURT

Plaintiff,

§

419

§

JUDICIAL DISTRICT

v.

§

§

Cephalon, Inc.

§

OF TRAVIS COUNTY, TEXAS

Filed in The District Court of Travis County, Texas
SP 10/1/09
4:45 P
At
Algebra Rodriguez, Texas Clerk

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES Greg Lee Minckley, hereinafter called Plaintiff, complaining of and about Cephalon, Inc., and for cause of action shows unto the Court the following:

DISCOVERY CONTROL PLAN LEVEL

1. Plaintiff intends that discovery be conducted under Discovery Level 3.

PARTIES AND SERVICE

2. Plaintiff, Greg Lee Minckley, is an individual whose address is 9800 Zyle Road, Austin, Texas 787³⁷~~35~~.



CLM

John K. Dietz
cl to file

3. Defendant, Cephalon, Inc., is a corporation incorporated under the laws of the state of Delaware and may be served with process at C. T. Corporation Systems, 350 North Saint Paul Street, Dallas, Texas 75201. Cephalon, Inc. does business and transactions in the state of Texas, but does not have a registered agent for service of process listed with the Texas Secretary of State. At this time, Cephalon, Inc. is with and in good standing with the office of the Texas Comptroller.

JURISDICTION AND VENUE

4. The subject matter in controversy is within the jurisdictional limits of this court.

5. This court has jurisdiction over the parties because Plaintiff is a Texas resident and the Defendant has substantial contacts with persons within the state of Texas.

6. Venue in Travis County is proper in this case under Section 15.002(1)(a) of the Texas Civil Practice and Remedies Code because all or a part of the events giving rise to this lawsuit occurred in this county.

FACTS

7. On or about August, 2007, Actiq fentanyl lollipops were prescribed for Greg Minckley for breakthrough severe pain for his pancreatitis. This was an "off-label" prescription as the lollipops were to be prescribed for patients with severe pain from cancer. The insert stated the lollipops were full of sugar and should be held against the gum , but

failed to warn Greg Minckley of the severe and debilitating damage to his teeth as a result of using the lollipop.

**PLAINTIFF'S CLAIM OF NEGLIGENCE
AGAINST CEPHALON, INC.**

8. Defendant Cephalon, Inc. had a duty to properly and reasonably warn Greg Minckley of the fact his teeth could probably crack off at the gum with use of Actiq lollipops and reports of other such cases had occurred.

9. Plaintiff's injuries were proximately caused by Defendant Cephalon, Inc.'s negligent, careless and reckless disregard of said duty.

10. The negligent, careless and reckless disregard of duty of Defendant Cephalon, Inc. consisted of, but is not limited to the following acts and omissions;

A. In that Defendant Cephalon, Inc. failed to provide Plaintiff with reasonably clear notice and warning of the danger to his teeth from use of Actiq lollipops.

B. In that Defendant Cephalon, Inc. failed to report other cases of severe damage and cracking off at the gum of teeth as a result of use of the Actiq lollipops in a timely and appropriate manner to the patient or through the required chain of responsibility for information for drug safety to the public.

C. In that Cephalon developed a sugar-free variety of Actiq lollipops, but failed to market it to the public.

DAMAGES FOR PLAINTIFF, GREG LEE MINCKLEY

11. As a direct and proximate cause of the occurrences made the basis of this lawsuit, Plaintiff Greg Minckley was caused to suffer mental anguish, pain and suffering and to incur the following damages;

A. Reasonable dental expenses in the past. These expenses were incurred by Plaintiff Greg Minckley for the necessary care and treatment of the dental injuries resulting from the use of Actiq lollipops complained of herein and such charges are reasonable and were usual and customary charges for such services in Travis County, Texas;

B. Reasonable and necessary costs for dental implants to prevent further damage to his mouth and provide a more permanent and workable solution for teeth that were required to be pulled once his teeth began cracking off and for the teeth that cracked off at the gum. These costs are estimated to be between \$27,000 and \$37,000 by two independent dentists and are the usual and customary charges in Travis County, Texas. Future maintenance costs will probably be incurred in the future.

C. Loss of earning capacity as a teacher/tutor during the period of time his lack of teeth interfered with his pronunciation and giving him an uneducated appearance.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff, Greg minckley respectfully prays that the Defendant be cited to appear and answer herein, and that upon a final hearing o the cause judgment for the plaintiff against Defendant for damages in the amount within the jurisdictional limits of the Court; together with pre-judgment interest (from the date of injury through the date of judgment) at the maximum rate allowed by law; post-judgment interest at the legal rate, costs of court; and such other relief to which the Plaintiff may be entitled at law or in equity.

Respectfully submitted,



Lynn R. Langley

2410 Kathy Cove

Austin, Texas 78704

By; Lynn R. Langley

Texas Bar Number ~~1~~1920500

August 31, 2009

Austin, Travis County, Texas