## UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS

MOMENTA PHARMACEUTICALS, INC. AND SANDOZ INC.,	) ) )
Plaintiffs,	) )
v.	CIVIL ACTION NO. 11-cv-11681-NMG
AMPHASTAR PHARMACEUTICALS, INC.,	)
INTERNATIONAL MEDICATION	)
SYSTEMS, LTD., ACTAVIS, INC., AND	)
ACTAVIS PHARMA, INC.,	)
Defendants.	) )

## **NOTICE OF APPEAL**

Notice is hereby given that Momenta Pharmaceuticals, Inc. and Sandoz Inc., plaintiffs in the above-named action, hereby appeal to the United States Court of Appeals for the Federal Circuit from the District Court's July 19, 2013 Order (1) granting Defendants Amphastar Pharmaceuticals, Inc., International Medication Systems, Ltd., Actavis, Inc., and Actavis Pharma, Inc.'s Motion for Summary Judgment; and (2) denying Plaintiffs' Motion for Leave to Amend Infringement Contentions, as well as any and all other orders adverse to Plaintiffs. Although no separate document of final judgment has been entered, December 16, 2013 was 150 days from the date of this Court's July 19, 2013 Memorandum and Order, and this notice is filed within 30 days of that date. *See* Fed. R. Civ. P. 58(c)(2)(B) (explaining that judgment is entered after "150 days have run from the entry in the civil docket"); Fed. R. App. P. 4(a)(7)(A)(ii) (same).

Despite filing this notice, Plaintiffs believe that there is no final judgment yet in this case. The Court's July 19, 2013 Memorandum and Order did not address Amphastar's counterclaims for declaratory judgment of non-infringement and invalidity of the asserted claims of U.S. Patent No. 7,575,886 (the "886 patent") and U.S. Patent No. 7,790,466 (the "466 patent"), and those counterclaims remain unresolved. *See Pause Technology LLC v. TiVo Inc.*, 401 F.3d 1290, 1295 (Fed. Cir. 2005) (final judgment cannot enter until all claims, including invalidity counterclaims, are resolved or dismissed). Nevertheless, out of an abundance of caution and to preserve their right to appeal, Plaintiffs hereby give notice that they appeal from any and all orders issued adverse to them. If judgment is deemed to have entered on December 16, 2013 by operation of Fed. R. Civ. P. 58(c)(2)(B), this notice of appeal is immediately effective; if judgment has not yet entered, this notice of appeal will become effective upon entry of judgment, pursuant to Fed. R. App. P. 4(a)(2).

Respectfully submitted,

SANDOZ INC.,

By its attorneys,

/s/ Thomas P. Steindler

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Dated: January 14, 2014

## **CERTIFICATE OF SERVICE**

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and that paper copies will be sent to those non-registered participants (if any) on January 14, 2014.

/s/ Robert S. Frank, Jr.
Robert S. Frank, Jr.