

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

IN RE: OPANA ER ANTITRUST LITIGATION	MDL DOCKET NO. 2580 Case No. 1:14-cv-10150 (HDL)
THIS DOCUMENT RELATES TO: All Direct Purchaser Class Actions	

**[PROPOSED] ORDER GRANTING FINAL JUDGMENT AND
ORDER OF DISMISSAL APPROVING DIRECT PURCHASER
CLASS SETTLEMENT AND DISMISSING DIRECT
PURCHASER CLASS CLAIMS AGAINST IMPAX LABORATORIES, INC.**

Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, and in accordance with the terms of the Settlement Agreement dated July 15, 2022 between plaintiffs Value Drug Company (“Value Drug”) and Meijer, Inc. and Meijer Distribution, Inc. (“Meijer”) (collectively, the “Class Representatives”), on behalf of the Class defined below (together with the Class Representatives, the “Plaintiffs”), and Defendant Impax Laboratories, Inc. (“Impax”), it is hereby ORDERED, ADJUDGED AND DECREED as follows:

1. This Final Judgment and Order of Dismissal hereby incorporates by reference the definitions in the Settlement Agreement among Plaintiffs and Impax, and all capitalized terms used and not otherwise defined herein shall have the meanings set forth in the Settlement Agreement.

2. The following class (the “Class” or “Direct Purchaser Class”) has been certified under Fed. R. Civ. P. 23(b)(3):

All persons or entities in the United States and its territories, including Puerto Rico, who purchased brand or generic Opana ER 5, 10, 20, 30, and/or 40mg tablets directly from Defendants¹ at any time during the period from April 1, 2011 until August 31, 2017 (the “Class”).

¹ “Defendants” are Endo Health Solutions Inc., Endo Pharmaceuticals Inc., Penwest Pharmaceuticals Co. (collectively, “Endo”), and Impax Laboratories, Inc.

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: all Retailer Plaintiffs that have opted out of the Class, including CVS Pharmacy, Inc., Rite Aid Corporation, Rite Aid Hdqtrs. Corp., Walgreen Co., The Kroger Co., Albertsons LLC, Safeway Inc. and H-E-B L.P.

3. The Court previously appointed the Class Representatives. The Court previously appointed Bruce E. Gerstein of Garwin Gerstein & Fisher, LLP and David F. Sorensen of Berger Montague PC as Co-Lead Counsel for the Class (“Class Counsel”). The Class Representatives and Class Counsel have fairly and adequately represented the interests of the Class and satisfied the requirements of Fed. R. Civ. P. 23(g).

4. The Court has jurisdiction over these actions, each of the parties, and all members of the Class for all manifestations of this case, including this Settlement.

5. The notice of settlement (substantially in the form presented to this Court as Exhibit B to the Settlement Agreement) (the “Notice”) directed to the members of the Class via First Class Mail, constituted the best notice practicable under the circumstances. In making this determination, the Court finds that the Notice provided for individual notice to all members of the Class who were identified through reasonable efforts. Pursuant to, and in accordance with, Rule 23 of the Federal Rules of Civil Procedure, the Court hereby finds that the Notice provided Class members due and adequate notice of the Settlement, the Settlement Agreement, these proceedings, and the rights of Class members to object to the Settlement.

6. Due and adequate notice of the proceedings having been given to the Class and a full opportunity having been offered to the Class to participate in the November 3, 2022 Fairness Hearing, it is hereby determined that all Class members are bound by this Order and Final Judgment.

7. The Settlement of this Class Action was not the product of collusion between the Class Representatives and Impax or their respective counsel, but rather was the result of *bona fide*

and extensive arm's-length negotiations conducted in good faith between Class Counsel and counsel for Impax, with the assistance of a mediator, Jonathan B. Marks.

8. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, this Court hereby approves the Settlement and finds that the Settlement is, in all respects, fair, reasonable and adequate to Class members and in their best interests. Accordingly, the Settlement shall be consummated in accordance with the terms and provisions of the Settlement Agreement.

9. The Court hereby approves the Plan of Allocation of the Settlement Fund as proposed by Class Counsel (the "Plan of Allocation"), which was summarized in the Notice of Proposed Settlement and filed with Plaintiffs' Motion for Preliminary Approval of Settlement (ECF No. 1043-2), and directs RG/2 Claims Administration, the firm retained by Class Counsel and previously appointed by the Court as the Claims Administrator, to distribute the Net Settlement Fund as provided in the Plan of Allocation. RG/2 shall distribute 80% of each Claimant's share of the Net Settlement Fund after Impax's second installment payment (to be paid no later than January 17, 2023). RG/2 shall distribute the remainder of each Claimant's share of the Net Settlement Fund after Impax's third installment payment (to be paid no later than January 17, 2024).

10. All claims against Impax in *In re: Opana ER Antitrust Litigation*, MDL No. 2580, No. 14-cv-10150 (HDL) (the "Class Action") are hereby dismissed with prejudice, and without costs (other than as provided herein).

11. Upon the Settlement Agreement becoming final in accordance with Paragraph 7 of the Settlement Agreement, Impax and its past, present, and future parents, subsidiaries, divisions, affiliates, joint ventures, stockholders, officers, directors, management, supervisory boards, insurers, general or limited partners, employees, agents, attorneys, servants, representatives (and the parents', subsidiaries', and affiliates' past, present, and future officers, directors, employees,

agents, attorneys, servants, and representatives), and the predecessors, successors, heirs, executors, administrators and representatives of each of the foregoing (collectively, the “Releasees”) are and shall be unconditionally, fully, and finally released and forever discharged from all manner of claims, debts, obligations, demands, actions, suits, causes of action, damages whenever incurred, liabilities of any nature whatsoever, including costs, expenses, penalties and attorneys’ fees, under federal or state laws, whether known or unknown, foreseen or unforeseen, suspected or unsuspected, contingent or non-contingent, in law or equity, that Plaintiffs and all Class members, whether or not they make a claim upon or participate in the Settlement Fund, on behalf of themselves and their respective past, present, and future parents, subsidiaries, associates, affiliates, officers, directors, employees, insurers, general or limited partners, divisions, agents, attorneys, servants, trustees, joint ventures, heirs, executors, administrators, representatives (and the parents’ subsidiaries’ and affiliates’ past and present officers, directors, employees, agents, attorneys, servants, and representatives), and their predecessors, successors, heirs, executors, administrators, and representatives (collectively, the “Releasers”), ever had, now has, or hereafter can, shall or may have, directly, representatively, derivatively or in any other capacity, arising out of or relating in any way to:

- (a) all claims related to the Direct Purchaser Class Action that accrued prior to the date of the Settlement Agreement, (collectively, this entire paragraph represents the “Released Claims”).

The Settlement Agreement is not intended to release anyone other than the Releasees and is not on behalf of anyone other than the Releasers. For the avoidance of doubt, the Settlement Agreement shall not be construed to affect a release of any kind of any claim against Endo. Furthermore, Impax represents and warrants that it has assumed no contractual obligation that would, in fact or at law, in the event Plaintiffs prevail against Endo in the Direct Purchaser Class

Action, obligate Impax to indemnify, pay contribution to, be liable to, or share in a judgment entered in favor of Plaintiffs against Endo in the Direct Purchaser Class Action, and agrees that Plaintiffs justifiably rely on this representation and warranty and that it is material to Plaintiffs' decision to enter into the Settlement Agreement.

12. In addition, Plaintiffs and each Class member, on behalf of themselves and all other Releasors, hereby expressly waive, release and forever discharge, upon the Settlement becoming final, any and all provisions, rights and/or benefits conferred by § 1542 of the California Civil Code, which reads:

Section 1542. General Release; extent. A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor;

or by any law of any state or territory of the United States, or principle of common law, which is similar, comparable or equivalent to § 1542 of the California Civil Code. Each Releasor may hereafter discover facts other than or different from those which he, she or it knows or believes to be true with respect to the claims which are the subject matter of Paragraph 14 of the Settlement Agreement, but each Releasor hereby expressly waives and fully, finally and forever settles, releases, and discharges, upon this Settlement becoming final, any known or unknown, foreseen or unforeseen, suspected or unsuspected, asserted or unasserted, contingent or non-contingent claim that would otherwise fall within the definition of Released Claims, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts. Each Plaintiff and member of the Class also hereby expressly waives and fully, finally and forever settles, releases, and discharges any and all claims that are the subject matter of Paragraph 14 of the Settlement Agreement that it may have against any Releasees under § 17200, et seq., of the California Business and Professions Code or any similar comparable or equivalent provision of the

law of any other state or territory of the United States or other jurisdiction.

13. As set forth in Paragraph 16 of the Settlement Agreement (with subheading “Reservation of Claims”), the release set forth in Paragraphs 14 and 15 of the Settlement Agreement (and in Paragraphs 11 and 12 of this Order) shall not release any claims between Plaintiffs, members of the Class, and the Releasors, on the one hand, and Impax and the Releasees, on the other (a) arising in the ordinary course of business between Releasors and Releasees under Article 2 of the Uniform Commercial Code (pertaining to Sales), the laws of negligence or product liability or implied warranty, breach of contract, breach of express warranty, or personal injury; (b) arising out of or in any way relating to any alleged price-fixing agreement between or among manufacturers of generic pharmaceutical products, including but not limited to Impax, including claims alleged in *In re: Generic Pharmaceuticals Pricing Antitrust Litig.*, MDL No. 2724, Case No. 16-MD-2724 (E.D. Pa.); and/or (c) of any sort that do not relate specifically to brand or generic Opana ER.

14. Class Counsel have moved for an award of attorneys’ fees, reimbursement of expenses and service awards for the Class Representatives. Class Counsel request an award of attorneys’ fees of 36% of the Settlement amount (including the interest accrued thereon), reimbursement of the reasonable costs and expenses incurred in the prosecution of this action in the amount of \$4,343,137.06, and service awards of \$150,000 for each to the two Class Representatives, and such motion has been on the docket and otherwise publicly available since September 19, 2022.

15. Upon consideration of Class Counsel’s petition for fees, costs and expenses, Class Counsel are hereby awarded attorneys’ fees totaling \$50,528,470.66 (representing 36% of the Settlement Fund, net of reimbursed costs and expenses and service awards) and costs and expenses totaling \$4,343,137.06, together with a proportionate share of the interest thereon from the date the

funds are deposited in the Settlement Escrow Account until payment of such attorneys' fees, costs and expenses, at the rate earned by the Settlement Fund, to be paid solely from the Settlement Fund. The attorneys' fees, costs and expenses authorized and approved by this Final Judgment and Order shall be paid to Berger Montague PC and Garwin Gerstein & Fisher LLP as follows: Class counsel shall be entitled to reimbursement of expenses within five (5) business days after this Settlement becomes final pursuant to Paragraph 7 of the Settlement Agreement or as soon thereafter as is practical and in accordance with the terms of the Settlement Agreement and the Escrow Agreement and shall receive 80% of the total attorneys' fees awarded after Impax's second installment payment and the remaining 20% of attorneys' fees awarded after Impax's final settlement payment.

16. Upon consideration of Class Counsel's petition for service awards for Class Representatives, Value Drug and Meijer are each hereby awarded \$150,000, to be paid solely from the Settlement Fund immediately after the Settlement becomes final in accordance with Paragraph 7 of the Settlement Agreement. Class Counsel David F. Sorensen and Bruce E. Gerstein shall allocate and distribute such attorneys' fees, costs and expenses among the various Class Counsel which have participated in this litigation. The Releasees shall have no responsibility for, and no liability whatsoever with respect to any payment or disbursement of attorneys' fees, expenses, costs or service awards among Class Counsel and/or Class Representatives, nor with respect to any allocation of attorneys' fees, expenses, costs or service awards to any other person or entity who may assert any claim thereto. The attorneys' fees, costs and expenses, and service awards authorized and approved by this Final Judgment and Order shall constitute full and final satisfaction of any and all claims that Plaintiffs and any Class member, and their respective counsel, may have or assert for reimbursement of fees, costs, and expenses, and service awards, and Plaintiffs and members of the Class, and their respective counsel, shall not seek or demand payment

of any fees and/or costs and/or expenses and/or service awards from Impax other than from the Settlement Fund.

17. The Court retains exclusive jurisdiction over the Settlement and the Settlement Agreement as described therein, including the administration and consummation of the Settlement, and over this Final Judgment and Order.

18. The Court finds that this Final Judgment and Order adjudicates all of the claims, rights and liabilities of the parties to the Settlement Agreement (including the members of the Class) and is final and shall be immediately appealable. Neither this Order nor the Settlement Agreement nor any other Settlement-related document shall constitute any evidence, admission, or concession by Impax or any other Releasee, in this or any other matter or proceeding of any kind whatsoever, civil, criminal or otherwise, before any court, administrative agency, regulatory body, or any other body or authority, present or future, nor shall either the Settlement Agreement, this Order, or any other Settlement-related document be offered in evidence or used for any other purpose in this or any other matter or proceeding except as may be necessary to consummate or enforce the Settlement Agreement, the terms of this Order, or if offered by any Releasee in responding to any action purporting to assert Released Claims, or if offered by any Releasor in asserting that a claim is not a Released Claim, including because such claim is covered by Paragraph 16 of the Settlement Agreement (“Reservation of Claims”).

SO ORDERED this ____ day of _____, 2022

The Honorable Harry D. Leinenweber
United States District Judge