EXHIBIT I

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

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

SETTLEMENT AGREEMENT

This Settlement Agreement is made and entered into on July 15, 2022, by and between Impax Laboratories, Inc. ("Impax"), by and through its counsel Kirkland & Ellis LLP, and Value Drug Company ("Value Drug") and Meijer, Inc. and Meijer Distribution, Inc. ("Meijer") (collectively, "Plaintiffs"), individually and on behalf of the certified direct purchaser class (as defined in Paragraph 1 below, the "Direct Purchaser Class" or "Class"), by and through Garwin Gerstein & Fisher LLP and Berger Montague PC, in their capacity as co-lead counsel for the Direct Purchaser Class ("Plaintiffs' Counsel") in the above-captioned litigation. This Settlement Agreement is intended to, and upon occurrence of the Effective Date will, fully, finally, and forever resolve, compromise, discharge, and settle the claims of the Direct Purchaser Class against Impax in the above-captioned litigation, subject to the terms and conditions set forth herein.

WHEREAS, Plaintiffs each filed lawsuits alleging that Impax entered into an agreement in restraint of trade in violation of the Sherman Act, 15 U.S.C. § 1, with respect to brand and generic Opana ER (extended release oxymorphone hydrochloride) tablets;

WHEREAS, Plaintiffs' claims were consolidated under the caption *In re: Opana ER Antitrust Litigation*, MDL No. 2580, No. 14-cv-10150 (HDL), before the United States District Court for the Northern District of Illinois (the "Court") as a putative class action on behalf of the

Direct Purchaser Class, as defined in Paragraph 1 below (the "Direct Purchaser Class Action" or the "Action");

WHEREAS, the Court has certified a Direct Purchaser Class under Fed. R. Civ. P. 23(b)(3), as defined in Paragraph 1 below;

WHEREAS, Impax denies each and every one of Plaintiffs' allegations and does not concede or admit any liability, and Plaintiffs and Impax agree that this Settlement Agreement shall not be deemed or construed to be an admission or evidence of any violation of any statute or law or of any liability or wrongdoing by Impax, or of the truth of any of the claims or allegations alleged in the Direct Purchaser Class Action or a waiver of any defenses thereto;

WHEREAS, Plaintiffs' Counsel have concluded, after extensive discovery and investigation of the facts and after fully preparing for and commencing trial, and after carefully considering the circumstances of the Direct Purchaser Class Action, including the claims asserted in this action, and the possible and asserted legal and factual defenses thereto, that it would be in the best interests of the Direct Purchaser Class to enter into this Settlement Agreement in order to avoid the uncertainties of litigation, particularly complex litigation such as this, and to assure a benefit to the Direct Purchaser Class and further, that Plaintiffs' Counsel consider the Settlement set forth in this Settlement Agreement to be fair, reasonable, and adequate within the meaning of Fed. R. Civ. P. 23 and in the best interests of the Direct Purchaser Class;

WHEREAS, Impax has concluded, despite its belief that it is not liable for the claims asserted and that it has good defenses thereto, that it would be in its best interests to enter into this Settlement Agreement to avoid the uncertainties and additional costs of further litigation and to finally put to rest all claims against Impax relating to the Action;

WHEREAS, Plaintiffs' Counsel, on behalf of themselves and the Direct Purchaser Class, on the one hand, and counsel for Impax on the other, have engaged in arm's-length settlement negotiations, entered into a Memorandum of Understanding dated June 8, 2022 that contemplates this Settlement Agreement, and have reached this Settlement Agreement, subject to Court approval, which embodies all of the terms and conditions of the settlement between Plaintiffs, both individually and on behalf of the Direct Purchaser Class, and Impax;

NOW THEREFORE, it is agreed by the undersigned, on behalf of Plaintiffs and the Direct Purchaser Class, on the one hand, and Impax, on the other, that the Direct Purchaser Class Action and all claims of Plaintiffs and the Direct Purchaser Class be settled, compromised and dismissed with prejudice as to Impax (and, except as hereinafter provided, without costs as to Plaintiffs, the Direct Purchaser Class, or Impax), subject to Court approval, on the following terms and conditions:

1. **Direct Purchaser Class.** The Court has certified the following class ("Direct Purchaser Class" or "Class"), which certification Impax shall not oppose in any court, including on appeal:

> 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 Defendants[1] at any time during the period from April 1, 2011 until August 31, 2017 (the "Class"). 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 for purposes of this Settlement Agreement are: all Retailer Plaintiffs that have opted out of the Class, including CVS Pharmacy, Inc., Rite Aid Corporation,

[1] "Defendants" are Endo Health Solutions Inc., Endo Pharmaceuticals Inc., Penwest Pharmaceuticals Co. (collectively, "Endo") and Impax.

Rite Aid Hdqtrs. Corp., Walgreen Co., The Kroger Co., Albertsons LLC, Safeway Inc. and H-E-B L.P. ("Retailer Plaintiffs").

2. **Reasonable Best Efforts to Effectuate This Settlement.** Counsel for the Plaintiffs and Impax agree to recommend approval of this Settlement Agreement to the Court and to undertake their reasonable best efforts, including undertaking all actions contemplated by and steps necessary to effectuate this Settlement Agreement, to carry out the terms of this Settlement Agreement and to secure the prompt, complete, and final dismissal with prejudice of all claims in the Direct Purchaser Class Action against Impax. This includes Impax serving notice on those entities required to receive notice pursuant to 28 U.S.C. § 1715.

3. **Motion for Preliminary Approval of the Settlement.** Plaintiffs shall submit to the Court—and Impax shall not oppose in any court, including on appeal—a motion (the "Motion") requesting entry of an order preliminarily approving the settlement, and authorizing dissemination of notice to the Direct Purchaser Class (the "Preliminary Approval Order") substantially in the form of Exhibit A hereto. The Motion shall, *inter alia*:

a. request preliminary approval of the Settlement set forth in this Settlement Agreement as fair, reasonable, and adequate within the meaning of Fed. R. Civ. P. 23, and in the best interests of the Direct Purchaser Class;

b. request a stay of all proceedings against Impax in the Direct Purchaser Class Action until such time as the Court renders a final decision regarding the approval of the Settlement as described below in Paragraph 7, except those proceedings provided for or required by this Settlement Agreement;

c. seek approval of an escrow agreement regarding the Settlement consideration described below in Paragraph 8;

d. seek approval for notice to the Class by means of direct first-class United States mail notice in the form substantially in the form attached hereto as Exhibit B; and

e. include a proposed form of order (substantially in the form attached as Exhibit A), which includes such provisions as are typical in such orders, including a finding that the proposed plan of notice complies with Rule 23 and the requirements of due process.

4. No Second Notice Period.

a. In the Motion seeking preliminary approval, Plaintiffs will recommend to the Court that a second, discretionary opt-out period pursuant to Rule 23(e)(4) is unnecessary. In the event that the Court allows such a second, discretionary opt-out period and additional Class members (*i.e.*, those beyond the Retailer Plaintiffs described in Paragraph 1 above) opt out of the Class and the Settlement is approved by the Court and becomes final as described in Paragraph 7, a *pro rata* adjustment to the Settlement Amount will be made (*i.e.*, a reduction in the Settlement Amount of the opt out Class members' *pro rata* share of net direct unit purchases of brand and generic Opana ER of all Class member purchases during the Class Period). Pursuant to the terms of a confidential supplemental agreement between Plaintiffs and Impax, if additional Class members totaling more than a designated *pro rata* share of the Class opt out, Impax has the right to terminate this Settlement whereby all funds paid by Impax, less any expenses incurred pursuant to Paragraph 9(a), will be returned to Impax with interest.

b. Nothing herein will preclude a Class member(s) who has sought exclusion from the Class from seeking leave of court to rescind its (their) decision to exclude itself (themselves) from the Class until such time as the Settlement becomes final pursuant to Paragraph 7. Nothing precludes Plaintiffs' Counsel from contacting such Class member(s) concerning its (their) decision to opt out of the Class.

5. Contingency in the Event the Class is Decertified by the Seventh Circuit or the Settlement is Not Approved For Reasons Other Than Fairness.

(a) In the event that the Class is decertified by the Seventh Circuit Court of Appeals at any time, or the Settlement is disapproved by the Court for any reason other than that the Settlement is not fair, reasonable or adequate, Impax agrees to offer, within twenty-one (21) calendar days of the Class being decertified or the settlement not being so approved, each member of the Class at least its *pro rata* share of the Settlement (as defined below in Paragraph 5(c)), net of all known assignments to the Retailer Plaintiffs, in exchange for a release of claims substantially similar to the one set forth in Paragraphs 14-16 below. Such offers may be contingent on Impax receiving such releases from at least ninety (90) percent of Class members' damages.

(b) For any settlement offer made pursuant to Paragraph 5(a) above that is accepted, Impax agrees to place forty percent (40%) of any such accepted offer into escrow to cover that Class member's(s) proportionate share of Plaintiffs' counsel's attorneys' fees, costs and expenses, and service awards. The amount of any such attorneys' fees, costs and expenses, and service awards shall be determined by the Court, or as may be agreed. Any funds placed into escrow pursuant to this paragraph that exceed the amount of attorneys' fees, costs and expenses, and service awards awarded by the Court, or as may be agreed, shall be paid out to the Class member(s).

(c) The amount of each Class Member's *pro rata* share of the Settlement, and any changes or adjustments thereto that may be required at any time, shall be based on a schedule prepared by Dr. Jeffrey J. Leitzinger, which schedule shall be based on each Class member's net unit purchases of brand and generic Opana ER during the Class Period, based on the best information available at the time such a schedule is prepared.

(d) The Class representatives hereby agree to accept any such *pro rata* offer in exchange for the release described in Paragraphs 14-16 below.

(e) Nothing contained herein in any part of this Settlement Agreement shall affect or limit Plaintiffs' right to appeal any class decertification by the Court of Appeals for the Seventh Circuit or otherwise seek to certify a direct purchaser class based on changed circumstances.

(f) The parties will use their best efforts to implement this Paragraph 5.

6. **Motion for Final Approval and Entry of Final Judgment.** If the Court preliminarily approves this Settlement Agreement, Plaintiffs shall submit—and Impax shall not oppose in any court, including on appeal—a motion for final approval by the Court of this Settlement Agreement ("Final Approval Motion") after notice has been disseminated to the Class pursuant to the Preliminary Approval Order. The Final Approval Motion shall seek entry of an order and final judgment ("Final Approval Order") substantially in the form attached hereto as Exhibit C:

a. finding this Settlement Agreement and its terms to be a fair, reasonable, and adequate settlement as to Plaintiffs and the Direct Purchaser Class within the meaning of Rule 23 of the Federal Rules of Civil Procedure and directing its consummation pursuant to its terms;

b. finding that all members of the Class ("Class Members") shall be bound by this Settlement Agreement, including the release provisions and covenant not to sue set forth in this Settlement Agreement;

c. finding that the notice given constitutes due, adequate, and sufficient notice and meets the requirements of due process and the Federal Rules of Civil Procedure;

d. incorporating the release set forth in Paragraphs 14-16 of this Settlement Agreement, and forever barring the Releasors from asserting any Released Claims against any of the Releasees as defined below;

e. providing for the payment of reasonable attorneys' fees and reimbursement of costs and expenses solely from the Settlement Fund;

f. providing for payment solely from the Settlement Fund of service awards in the amount of $150,000 each to the named plaintiffs Value Drug and Meijer, in addition to whatever monies each may receive from the Settlement Fund pursuant to a Court-approved plan of allocation;

g. directing that the Direct Purchaser Class Action be dismissed with prejudice as to Impax and, except as provided for herein, without costs or attorney's fees recoverable under 15 U.S.C. § 15(a);

h. retaining exclusive jurisdiction over the Settlement and the Settlement Agreement, including the administration and consummation of the Settlement; and

i. directing that the judgment of dismissal with prejudice of all Direct Purchaser Class claims against Impax shall be final and appealable pursuant to Fed. R. Civ. P. 54(b), there being no just reason for delay.

7. **Finality of Settlement.** This Settlement Agreement shall become final upon the occurrence of all of the following (the "Effective Date"):

a. The Settlement is not terminated pursuant to Paragraph 4(a) or Paragraph 17;

b. The Settlement is finally approved by the Court as required by Rule 23(e) of the Federal Rules of Civil Procedure;

c. The Court enters the Final Approval Order described in Paragraph 6, entering a final judgment of dismissal with prejudice against Plaintiffs and the Class; and

d. The time for appeal from the Court's signing of the Final Approval Order has expired or, if the Final Approval Order is appealed, it has been resolved by agreement and withdrawn by the appealing party, or it has been affirmed by the court of last resort to which an appeal of such Final Approval Order may be taken.

8. **Settlement Payments.** Impax shall pay the aggregate amount of one hundred and forty-five million dollars ($145,000,000) (the "Settlement Amount"). The Settlement Amount shall be paid in three (3) installments as follows: fifty-eight million dollars ($58,000,000) no later than June 22, 2022; and eighty-seven million dollars ($87,000,000) plus interest of 3.0% annualized via two additional installments of fifty-eight million dollars ($58,000,000) no later than January 17, 2023 and twenty-nine million dollars ($29,000,000) no later than January 17, 2024. The first payment of $58,000,000 has been timely paid. If either of the remaining two (2) installments is not paid on time, then Impax shall pay double the agreed interest rate on the unpaid, late balance until payment is made. In the event that Impax is unable or fails to make a required payment, then Amneal Pharmaceuticals, LLC, the parent company of Impax, and Amneal Pharmaceuticals, Inc. shall make such required payment no later than thirty (30) calendar days after the required payment was first due.

Each installment shall be placed in a designated account (the "Settlement Fund"), which shall be held in escrow subject to the terms and conditions of the escrow agreement attached hereto as Exhibit D (the "Escrow Agreement"). All interest accumulated in the Settlement Fund shall remain part of the Settlement Fund.

Beyond the Settlement Payments described in this Paragraph 8, Impax shall not pay any additional amount at any time. The total consideration that Impax will pay for this Settlement shall be the Settlement Amount only. Impax shall have no rights to reversion, except as provided in Paragraph 18 of this Settlement Agreement.

9. **The Settlement Fund.**

a. Before the Court issues the Final Approval Order, disbursements for expenses associated with providing notice of the Settlement to the Class, claims analysis and other expenses associated with administering the Settlement including but not limited to escrow costs, and any payments and expenses incurred in connection with taxation matters relating to the Settlement and this Settlement Agreement (collectively, "Administration Expenses") may be made from the Settlement Fund up to the sum of one hundred thousand dollars ($100,000) without approval from the Court or Impax. Additional expenditures beyond that sum before the Court issues the Final Approval Order, if any, are subject to Impax's consent, which shall not be unreasonably withheld. Otherwise, no disbursement from or distribution of the Settlement Fund shall be made without prior approval of the Court.

b. At all times prior to the Effective Date, the Settlement Fund shall be invested as set forth in Paragraph 3(b) of the Escrow Agreement, in instruments backed by the full faith and credit of the United States Government or fully insured by the United States Government or an agency thereof, including a U.S. Treasury Money Market Fund or a bank account insured by the Federal Deposit Insurance Corporation ("FDIC") up to the guaranteed FDIC limit. After the Effective Date, the Settlement Fund shall be invested pursuant to Paragraph 3(b) of the Escrow Agreement as directed in writing by Plaintiffs' Counsel. All interest and dividends earned on the Settlement Fund shall become and remain part of the Settlement Fund. Any losses on the Settlement Fund shall be borne by the Settlement Fund and shall not be recoverable from Impax.

Impax shall have no liability, obligation, or responsibility of any kind in connection with the investment, disbursement, or other oversight of the Settlement Fund.

c. Except as otherwise expressly permitted by the Escrow Agreement, the Escrow Agent shall disburse funds from the Settlement Fund only pursuant to and consistent with the express terms of this Settlement Agreement, the Preliminary Approval Order, the Final Judgment and Order, and/or as expressly authorized by the Court.

d. The Settlement Fund shall be available for distribution to Class members upon the Settlement becoming final pursuant to Paragraph 7, subject to deductions for payments of: (1) reasonable attorneys' fees, and costs and expenses, approved by the Court (and any interest awarded thereon); (2) any Court-approved service awards to the Class representatives; (3) taxes payable on the Settlement Fund; and (4) any and all administrative and notice expenses association with the Settlement.

10. **Cooperation**. Impax agrees to cooperate with Plaintiffs at any trial in the Direct Purchaser Class Action by providing certifications pursuant to Federal Rule of Evidence 902(11) concerning the authenticity or admissibility of documents and data produced or created by Impax and/or by agreeing to provide a custodian of records, or other witness testimony at trial, if required by the Court to lay a foundation for the admission of any documents or data produced or created by Impax.

11. **No Injunctive Relief.** This Settlement Agreement does not include any provisions for injunctive relief.

12. **Full Satisfaction; Limitation of Interest and Liability.** Class Members shall look solely to the Settlement Fund for settlement and satisfaction against Impax of all claims that

are released hereunder. Except as provided herein or by order of the Court, no Class Member shall have any interest in the Settlement Fund or any portion thereof.

13. **Attorneys' Fees, Expenses and Costs, and Service Awards.** Plaintiffs' Counsel intend to seek, solely from the Settlement Fund, attorneys' fees of up to 40% of the Settlement Fund plus the reimbursement of reasonable costs and expenses incurred in the prosecution of the Action, and service awards of $150,000 to each of the named Plaintiffs ("Fee and Expense Award"). Impax agrees not to oppose in any court, including on appeal, such an application by Plaintiffs' Counsel. Any attorneys' fees, expenses, costs and service awards approved by the Court, or as may be agreed, shall be payable solely out of the Settlement Fund, and Plaintiffs' Counsel shall not seek payment of same from any source other than the Settlement Fund.

14. **Releases.** Upon the occurrence of the Effective Date, Plaintiffs and all Class Members, whether or not they object to the Settlement and 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 "Releasors"), hereby release and forever discharge, and covenant not to sue, 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") 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 arise out of or relate, in whole or in part in any manner, to:

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

This Settlement Agreement is not intended to release anyone other than the Releasees, and is not on behalf of anyone other than the Releasors. For the avoidance of doubt, nothing herein shall be construed to effect 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 over 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 this Settlement Agreement.

15. 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.

16. **Reservation of Claims.** The intent of this Settlement is to effect a complete and total resolution of this Action to the extent of the claims of the Direct Purchaser Class that are related to the Direct Purchaser Class Action, but is not intended to release any claims: (1) arising in the ordinary course of business between Releasors and the Releasees arising 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; (2) 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 (3) of any sort that do not relate specifically to brand or generic Opana ER.

17. **Effect of Disapproval.** If the Court declines to finally approve this Settlement because it is not fair, reasonable or adequate, or any appellate court determines that this Settlement is not fair, reasonable or adequate, then the Settlement and this Settlement Agreement, shall be terminated.

18. **Termination.** If this Settlement Agreement is terminated pursuant to the provisions of Paragraphs 4(a) or 17 above, then (a) this Settlement Agreement shall be of no force and effect, (b) the amount of the Settlement Fund, including any and all interest earned thereon, but less the costs described in Paragraph 9(a), shall be returned to Impax within 14 calendar days after the Escrow Agent receives notice of termination as provided for in this Paragraph 18, less any funds already expended on settlement administration costs, and (c) any release pursuant to Paragraphs 14 and 15 shall be of no force and effect. If this Settlement Agreement is terminated for any reason, Plaintiffs' Counsel shall be responsible for notifying the Escrow Agent of such termination within three (3) calendar days of such termination.

19. **Resumption of Litigation.** The parties agree, subject to the approval of the Court, that in the event that the Settlement Agreement does not become final pursuant to Paragraph 7 or Impax does not perform under Paragraph 5 herein, litigation of the Direct Purchaser Class Action against Impax will resume in a reasonable manner to be approved by the Court upon joint application by the parties hereto, subject to Impax's reservation of rights to assert all substantive and procedural claims and defenses that might be available to it.

20. **Preservation of Rights.** The parties hereto agree that this Settlement Agreement, whether it becomes final or not, and any and all negotiations, documents and discussions associated with it shall be without prejudice to the rights of any party (except to the extent provided herein), shall not be deemed or construed to be an admission or evidence of any violation of any statute or law (or lack thereof), of any liability or wrongdoing by Impax (or lack thereof), or of the truth (or lack thereof) of any of the claims or allegations contained in the Complaint or any other pleading or document, and evidence thereof shall not be discoverable or used directly or indirectly, in any way (other than to effectuate or enforce the terms of this Settlement Agreement). The parties expressly reserve all of their rights if the Settlement does not become final in accordance with the terms of this Settlement Agreement.

21. **Taxes.**

a. The parties to this Settlement Agreement and their counsel shall treat, and shall cause the Escrow Agent to treat, the Settlement Fund as being at all times a "qualified settlement fund" within the meaning of Treas. Reg. § 1.468B-1. The parties, their counsel, and the Escrow Agent agree that they will not ask the Court to take any action inconsistent with the treatment of the Settlement Fund in this manner. In addition, the Escrow Agent and, as required, the parties shall timely make such elections as necessary or advisable to carry out the provisions of this Paragraph, including the "relation-back election" (as defined in Treas. Reg. § 1.468B-l(j)) back to the earliest permitted date. Such elections shall be made in compliance with the procedures and requirements contained in such regulations. It shall be the responsibility of the Escrow Agent to timely and properly prepare and deliver the necessary documentation for signature by all necessary parties and thereafter to cause the appropriate filing to occur. All provisions of this Settlement Agreement shall be interpreted in a manner that is consistent with the Settlement Fund being a "qualified settlement fund" within the meaning of Treas. Reg. § 1.468B-1.

b. For the purpose of § 468B of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, the "Administrator" of the Settlement Fund shall be the Claims Administrator, who shall timely and properly file or cause to be filed on a timely basis, all tax returns necessary or advisable with respect to the Settlement Fund (including without limitation all income tax returns, all informational returns, and all returns described in Treas. Reg. § 1.468B-2(1)).

c. Any taxes (including estimated taxes, interest or penalties) arising with respect to the income earned by the Settlement Fund will be paid from the Settlement Fund including any taxes or tax detriments that may be imposed upon Impax or its counsel with respect to any income earned by the Settlement Fund for any period during which the Settlement Fund does not qualify as a "qualified settlement fund" for tax purposes. Plaintiffs' Counsel shall be solely responsible for directing the Escrow Agent to file all informational and other tax returns necessary to report any taxable and/or net taxable income earned by the Settlement Fund. Further, Plaintiffs' Counsel shall be solely responsible for directing the Escrow Agent to make any tax payments, including interest and penalties due, on income earned by the Settlement Fund. Plaintiffs' Counsel shall be entitled to direct the Escrow Agent to pay from the Settlement Fund all customary and reasonable tax expenses, including professional fees and expenses incurred in connection with carrying out the Escrow Agent's or tax preparer's responsibilities as set forth in this Paragraph. Impax shall have no responsibility to make any tax filings related to the Settlement, this Settlement Agreement, or the Settlement Fund, and shall have no responsibility to pay taxes on any income earned by the Settlement Fund, or to pay taxes with respect thereto unless the settlement is not consummated and the Settlement Fund is returned to Impax. Other than as specifically set forth in the preceding sentence, Impax shall have no

responsibility for the payment of taxes or tax-related expenses. If, for any reason, for any period of time, Impax is required to pay taxes on income earned by the Settlement Fund, the Escrow Agent shall, upon written instructions from Impax with notice to Plaintiffs' Counsel, timely pay to Impax sufficient monies from the Settlement Fund to enable it to pay all taxes (state, federal, or other) on income earned by the Settlement Fund.

22. **Binding Effect.** This Settlement Agreement shall be binding upon, and inure to the benefit of, the parties hereto and to the Releasees. Without limiting the generality of the foregoing, each and every covenant and agreement herein by the Plaintiffs and their counsel shall be binding upon all Class members.

23. **Integrated Agreement.** This Settlement Agreement, together with the schedules and exhibits hereto and the documents incorporated herein by reference, contains an entire, complete, and integrated statement of each and every term and provision agreed to by and among the parties hereto with respect to the transactions contemplated by this Settlement Agreement, and supersedes all prior agreements or understandings, whether written or oral, between or among any of the parties hereto with respect to the subject matter hereof. This Settlement Agreement shall not be modified in any respect except by a writing executed by all of the parties hereto.

24. **Independent Settlement.** This Settlement of the Direct Purchaser Class Action is not conditioned on the settlement of any other case.

25. **Headings.** The headings used in this Settlement Agreement are intended for the convenience of the reader only and shall not affect the meaning or interpretation of this Settlement Agreement.

26. **No Party is the Drafter.** None of the parties hereto shall be considered to be the drafter of this Settlement Agreement or any provision hereof for the purpose of any statute, case law or rule of interpretation or construction that would or might cause any provision to be construed against the drafter hereof.

27. **Choice of Law.** All terms of this Settlement Agreement shall be governed by federal common law.

28. **Consent to Jurisdiction.** Impax and each Class member hereby irrevocably submit to the exclusive jurisdiction of the United States District Court for the Northern District of Illinois for any suit, action, proceeding, or dispute arising out of or relating to this Settlement Agreement or the applicability of this Settlement Agreement, including, without limitation, any suit, action, proceeding, or dispute relating to the release provisions herein. Nothing in this paragraph shall prohibit (a) the assertion in any forum in which a claim is brought that any release herein is a defense, in whole or in part, to such claim or (b) in the event that such a defense is asserted in such forum, the determination of its merits in that forum.

29. **Representations and Warranties.** Each party hereto represents and warrants to each other party hereto that it has the requisite authority (or in the case of natural persons, the legal capacity) to execute, deliver, and perform this Settlement Agreement and to consummate the transactions contemplated hereby.

30. **No Admission.** Nothing in this Settlement Agreement, nor in any document related to this Settlement Agreement, nor anything contained herein or therein or contemplated hereby or thereby, nor any proceedings undertaken in accordance with the terms set forth in the Settlement Agreement or herein, shall be construed as an admission or concession in any action 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, by Impax, including, without limitation, that Impax has engaged in any conduct or practices that violate any antitrust statute or other law.

31. **Notice.** Notice to Impax pursuant to this Settlement Agreement shall be sent by United States mail and electronic mail to:

Jay P. Lefkowitz
Devora Allon
KIRKLAND & ELLIS LLP
601 Lexington Avenue
New York, NY 10022
lefkowitz@kirkland.com
devora.allon@kirkland.com

Notice to the Plaintiffs pursuant to this Settlement Agreement shall be sent by United States mail and electronic mail to Plaintiffs' Counsel:

David F. Sorensen
Andrew C. Curley
BERGER MONTAGUE PC
1818 Market Street
Suite 3600
Philadelphia, PA 19103
dsorensen@bm.net
acurley@bm.net

Bruce E. Gerstein
Jonathan M. Gerstein
GARWIN GERSTEIN & FISHER, LLP
Wall Street Plaza
88 Pine Street, 10th Floor
New York, NY 10005
bgerstein@garwingerstein.com
jgerstein@garwingerstein.com

Any of the parties may, from time to time, change the address to which such notices, requests, consents, directives, or communications are to be delivered, by giving the other parties

prior written notice of the changed address, in the manner hereinabove provided, ten (10) calendar days before the change is effective.

32. **Execution in Counterparts.** This Settlement Agreement may be executed in counterparts, and a facsimile or .pdf signature shall be deemed an original signature for purposes of executing this Settlement Agreement.

IN WITNESS WHEREOF, the parties hereto through their fully authorized representatives have agreed to this Settlement Agreement as of the date first herein above written.

By: _____
Jay P. Lefkowitz, P.C.
KIRKLAND & ELLIS LLP
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EXHIBIT A

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

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

[PROPOSED] ORDER GRANTING DIRECT PURCHASER CLASS PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF PROPOSED SETTLEMENT, APPROVAL OF THE FORM AND MANNER OF NOTICE TO THE CLASS AND PROPOSED SCHEDULE FOR A FAIRNESS HEARING

Upon review and consideration of Direct Purchaser Class Plaintiffs' Motion for Preliminary Approval of Proposed Settlement, Approval of the Form and Manner of Notice to the Class, and Proposed Schedule for a Fairness Hearing, the exhibits thereto, and any hearing thereon, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said motion is GRANTED as follows:

Jurisdiction

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

[1] 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 Defendants at any time during the period from April 1, 2011 until August 31, 2017 (the "Class").
>
> 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.

2. This Court has jurisdiction over each of the named plaintiffs, Value Drug Company ("Value Drug") and Meijer, Inc. and Meijer Distribution, Inc. ("Meijer") (Value Drug and Meijer collectively, with the Class, "Plaintiffs"); and Impax Laboratories, Inc. ("Impax"), and jurisdiction over the litigation to which Plaintiffs and Impax are parties.

Preliminary Approval of the Proposed Settlement

3. A court may finally approve a class action settlement "only after a hearing and only on finding that it is fair, reasonable, and adequate" after considering a variety of factors. Fed. R. Civ. P. 23(e)(2). "At the preliminary approval stage, however, the purpose of the inquiry is only to 'ascertain whether there is any reason to notify the class members of the proposed settlement and to proceed with a fairness hearing' [and] "'not to conduct a full-fledged inquiry into whether the settlement meets Rule 23(e)'s standards.'" *In re TikTok, Inc., Consumer Privacy Litig.*, 2021 U.S. Dist. LEXIS 188949, at *20 (N.D. Ill. Sep. 30, 2021) (internal citations omitted). Nonetheless, this District typically performs "'a more summary version' of the final fairness inquiry at the preliminary approval stage.'" *Am. Int'l Group, Inc. v. ACE INA Holdings, Inc.*, 2011 U.S. Dist. LEXIS 84219, at *33 (N.D. Ill. Jul. 26, 2011) (internal citation omitted). "Ultimately, preliminary approval requires only that the settlement figure is within a reasonable range..." *Id.* at *36.

4. For the reasons outlined in Plaintiffs' Motion for Preliminary Approval, all factors weigh in favor of preliminarily approving the settlement. The Court finds that the proposed settlement - which includes aggregate cash payments of $145,000,000 by Impax into an escrow account for the benefit of the Class (the "Settlement Fund") in exchange for, *inter alia,* dismissal of the litigation between Plaintiffs and Impax with prejudice and releases of certain claims, as set forth in the Settlement Agreement - was arrived at by arm's-length negotiations by highly

experienced counsel after mediation, approximately eight years of litigation, and as a jury trial was beginning, falls within a reasonable range. The proposed settlement is therefore hereby preliminarily approved, subject to further consideration at the Fairness Hearing provided for below.

Approval of the Plan of Notice to the Class and Plan of Allocation

5. Members of the Class have previously been given notice of the pendency of the litigation and the opportunity to exclude themselves from the Class. *See* ECF No. 768. The following entities requested exclusion from the Class: 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. *Id.* at ¶ 9.

6. The proposed form of Notice to Class Members of the proposed Settlement (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. Plaintiffs' Counsel shall cause the Notice substantially in the form attached to the Settlement Agreement to be disseminated within twenty-one (21) days of this Order via first-class mail to the last known address of each member of the Class.

7. The Court finds that because the prior notice of class certification, disseminated by first class mail to all members of the Class on October 7, 2021 satisfied the requirements of Fed. R. Civ. P. 23(c)(2)(B) and due process, and because the prior notice of class certification provided an opt-out period that closed on November 22, 2021, there is no need for an additional opt-out period pursuant to Fed. R. Civ. P. 23(e)(4).

8. Pursuant to the Class Action Fairness Act of 2005 ("CAFA") Impax shall serve notices as required under CAFA no later than ten (10) days from the date Plaintiffs file the Settlement Agreement and Motion for Preliminary Approval with the Court.

9. Members of the Class may object to the Settlement no later than _____, 2022 (45 days from the dissemination of the Notice). Plaintiffs' Counsel shall monitor and record any and all objections that are received.

10. The Court previously appointed RG/2 Claims Administration LLC ("RG/2") to serve as the Notice Administrator (*see* ECF No. 751) and now appoints RG/2 to also serve as claims administrator to assist Plaintiffs' Counsel in disseminating the Notice and process claims. All expenses incurred by the claims administrator must be reasonable, are subject to Court approval, and shall be payable solely from the Settlement Fund, as outlined by the Settlement Agreement.

11. The proposed Plan of Allocation satisfies the requirements of Rule 23(e), is otherwise fair and reasonable, and is, therefore, preliminarily approved, subject to further consideration at the Final Fairness Hearing.

12. The Court appoints First State Trust Company 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, as outlined by the Settlement Agreement. A copy of the Escrow Agreement executed by First State Trust Company and counsel is annexed as Exhibit D to the Settlement Agreement.

13. The Court approves the establishment of the Settlement Fund under the Settlement Agreement as a qualified settlement fund ("QSF") pursuant to Internal Revenue Code Section 468B and the Treasury Regulations promulgated thereunder, and retains continuing

jurisdiction as to any issue that may arise in connection with the formation and/or administration of the QSF. Plaintiffs' Counsel are, in accordance with the Settlement Agreement, authorized to expend funds from the QSF for the payment of the costs of notice, payment of taxes, and settlement administration costs.

Final Fairness Hearing

14. A hearing on final approval (the "Fairness Hearing") shall be held before this Court at _____ on _____, 2022[2] in Courtroom ___ of the United States District Court for the Northern District of Illinois, Dirksen U.S. Courthouse, 219 S. Dearborn Street, Chicago, Illinois, 60604.

15. 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 Plaintiffs' Counsel; (d) whether service awards should be awarded to the named plaintiffs; and (e) whether entry of a Final Judgment and Order terminating the litigation between Plaintiffs and Impax should be entered. The Fairness Hearing may be rescheduled or continued; in this event, the Court will furnish all counsel with appropriate notice. Plaintiffs' Counsel shall be responsible for communicating any such notice promptly to the Class by posting a conspicuous notice on the respective websites of Plaintiffs' Counsel: www.garwingerstein.com; and www.bergermontague.com.

[2] The Fairness Hearing is 90 (ninety) days from the service of the CAFA notice described above in Paragraph 8.

16. 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 Northern District of Illinois, Dirksen U.S. Courthouse, 219 S. Dearborn Street, Chicago, Illinois, 60604, with copies to the following counsel:

On behalf of Plaintiffs:

Bruce E. Gerstein, Esq.
Jonathan Gerstein, Esq.
Garwin Gerstein & Fisher LLP
88 Pine St., 10th Floor
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Tel: 212-398-0055
bgerstein@garwingerstein.com
jgerstein@garwingerstein.com

David F. Sorensen, Esq.
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On behalf of Impax:

Jay P. Lefkowitz
Devora Allon
KIRKLAND & ELLIS LLP
601 Lexington Avenue
New York, NY 10022
lefkowitz@kirkland.com
devora.allon@kirkland.com

To be valid, any such Objection and/or Notice of Intention to Appear and Summary statement must be postmarked no later than _____ (45 days from the date of mailing of

notice to the Class). 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.

17. 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 _____ (21 days after the expiration of the deadline for Class members to object to the Settlement and/or attorney's fees, expenses and service awards for the named plaintiffs).

18. All briefs and materials in support of the application for an award of attorneys' fees and reimbursement of expenses, and service awards for the named plaintiffs, shall be filed with the Court by _____ (14 days prior to the expiration of the deadline for Class members to object to the Settlement and/or attorney's fees, expenses and service awards for the named plaintiffs).

19. All proceedings in the action between Plaintiffs and Impax 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.

20. 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 set forth in the Settlement Agreement or herein or in any other Settlement-related document, shall constitute, be construed as or be deemed to be evidence of or an admission or concession by Impax as to the validity of any claim that has

been asserted by Plaintiffs against Impax or as to any liability by Impax as to any matter set forth in this Order.

SO ORDERED this ____ day of _____, 2022

_____
The Honorable Harry D. Leinenweber
United States District Judge

EXHIBIT B

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS

If you purchased brand or generic Opana ER® (oxymorphone hydrochloride extended-release) 5, 10, 20, 30, and/or 40 mg tablets directly from Endo Health Solutions Inc., Endo Pharmaceuticals Inc., Penwest Pharmaceuticals Co., or Impax Laboratories, Inc., your rights may be affected by the settlement of a class action lawsuit.

A federal court authorized this notice. It is not a solicitation from a lawyer. You are not being sued.

Value Drug Company ("Value Drug") and Meijer, Inc. and Meijer Distribution, Inc. ("Meijer") (collectively "Plaintiffs" or "Class Representatives") have reached a proposed settlement with one of the defendants in their class action suit against Endo Health Solutions Inc., Endo Pharmaceuticals Inc., Penwest Pharmaceuticals Co. (collectively "Endo") and Impax Laboratories, Inc. ("Impax") (together, "Defendants"). The settlement is only with Impax. You previously received a notice about the pendency of this class action lawsuit. The purpose of this notice is to alert you to the existence of and provide important details about the proposed settlement and to inform you of your rights under the proposed settlement.

- The proposed settlement is with Impax and related entities and will provide $145,000,000 in cash to resolve the Direct Purchaser Class's claims against Impax (the "Settlement Fund").
- The Court has scheduled a hearing to decide on final approval of the settlement, the plan for allocating the Settlement Fund to Direct Purchaser Class Members (summarized in the responses to Questions 6 and 7 below), and Class Counsel's request for settlement administration costs, attorneys' fees, reimbursement of Class Counsel's out-of-pocket expenses and costs, and service awards to the Class Representatives. That hearing is scheduled for _____, 2022 before U.S. District Court Judge Harry D. Leinenweber in Courtroom 1941 of the United States District Court for the Northern District of Illinois, Everett McKinley Dirksen U.S. Courthouse, 219 South Dearborn Street, Chicago, IL 60604.

YOUR LEGAL RIGHTS ARE AFFECTED WHETHER YOU ACT OR DO NOT ACT, SO PLEASE READ THIS NOTICE CAREFULLY.

Judge Harry D. Leinenweber of the United States District Court for the Northern District of Illinois allowed this antitrust lawsuit to proceed as a class action. In allowing this lawsuit to proceed as a class action, Judge Leinenweber certified the following class:

> 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 Defendants at any time during the period from April 1, 2011 until August 31, 2017 (the "Class" or "Direct Purchaser Class"). Excluded from the Class are Defendants and their officers,

directors, management, employees, subsidiaries, or affiliates, and all federal governmental entities.

At their request, also excluded from the Class for purposes of this Settlement Agreement 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.

The proposed settlement will affect the rights of all members of the Class, as defined above, unless they have previously excluded themselves from the Class.

The Court in charge of this case still has to decide whether to approve the settlement. If it does not, the lawyers will need to prove the claims against Impax at trial.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
WHEN YOU RECEIVE A CLAIM FORM, PROMPTLY COMPLETE AND RETURN IT	You do not need to do anything now to remain a member of the Direct Purchaser Class. If the settlement with Impax is approved and you are a member of the Class, and have not previously excluded yourself from the Class, you will receive a Claim Form by mail to complete, sign, and return to obtain a share of the Settlement Fund.
OBJECT TO THE SETTLEMENT	Write to the Court about why you do not like the settlement.
GO TO A HEARING	Ask to speak to the Court about the fairness of the settlement.
GET MORE INFORMATION	If you would like to receive more information about the proposed settlement, you can send questions to the lawyers identified in this notice and/or attend the hearing at which the Court will evaluate the proposed settlement.

These rights and options—and the deadlines to exercise them—are explained in this notice.

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BASIC INFORMATION

1. Why Did I Get This Notice?

You received this notice because, according to sales data produced by the Defendants, you may have purchased brand Opana ER 5, 10, 20, 30, and/or 40 mg tablets directly from Endo and/or generic Opana ER 5, 10, 20, 30, and/or 40 mg tablets directly from Impax during the period from April 1, 2011 through August 31, 2017.

A prior notice about the lawsuit and the Court's decision to certify the Class was mailed on or about October 7, 2021.

A federal court authorized this second notice because you have a right to know about the proposed settlement and about all of your options before the Court decides whether to grant final approval of the settlement. This notice explains the lawsuit, the settlement, your legal rights, what benefits are available, and eligibility for those benefits. Note that you may have received this notice in error; simply receiving this notice does not mean you are definitely a member of the Direct Purchaser Class. You may confirm that you are a member of the Direct Purchaser Class by reviewing the criteria set forth in Question 5 below. You may also call or write to the lawyers in this case at the telephone numbers or addresses listed in Question 9 below.

2. What Is This Lawsuit About?

Plaintiffs filed lawsuits individually and as representatives of all persons or entities in the U.S. and its territories, including Puerto Rico, who purchased brand or generic Opana ER 5, 10, 20, 30, and/or 40 mg tablets directly from Defendants at any time during the period from April 1, 2011 until August 31, 2017 (the "Class"). Excluded from the Class are the Defendants and their officers, directors, management, employees, subsidiaries, or affiliates, and all federal governmental entities. Also excluded from the Class for purposes of this Settlement Agreement 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. The lawsuit asserts that, as a result of the Defendants' alleged unlawful conduct, the prices paid for brand Opana ER and generic Opana ER (oxymorphone hydrochloride extended-release) were higher than they otherwise would have been. The Plaintiffs seek to recover damages in the form of overcharges on direct purchases of brand and generic Opana ER 5, 10, 20, 30, and/or 40 mg tablets from the Defendants. Plaintiffs allege the overcharges were caused by Defendants' conduct. Under federal antitrust law, any damages awarded at trial are automatically trebled (that is, tripled). Plaintiffs also seek to recover attorneys' fees and costs.

The lawsuit alleges that the Defendants violated federal antitrust laws by unlawfully impairing and delaying the introduction of generic versions of the prescription drug Opana ER into the United States market. The Plaintiffs allege that in June 2010, the manufacturer of brand Opana ER, Endo, and a generic pharmaceutical company, Impax, entered into a "pay for delay" or "reverse payment" agreement in violation of the federal antitrust laws. A "pay for delay" or

"reverse payment" agreement, generally speaking, is an agreement in which a brand name drug company provides compensation to a generic competitor, and in return, the generic competitor agrees to stop challenging, or stop trying to invent around, the brand company's patent and agrees to delay launching its generic product. Absent the alleged "pay for delay" agreement, the Plaintiffs claim, Impax would have launched generic Opana ER earlier than January 2013, the date on which Impax actually launched generic Opana ER. The Plaintiffs also claim that Endo would have launched their own competing generic version of Opana ER, an "authorized generic," at or about the same time. The Plaintiffs allege that the prices for Opana ER and generic Opana ER were higher than they would have been absent the Defendants' alleged unlawful conduct.

Impax denies all these allegations, including that the Plaintiffs or Class members are entitled to damages or other relief.

There has been no determination by the Court or a jury that the allegations against Impax have been proven or that, if proven, Impax's conduct caused harm to the Class. However, a jury did find for Endo in a trial that concluded on July 1, 2022. Post-trial briefing, including any appeal as to the verdict, has not yet commenced.

Judge Harry D. Leinenweber of the United States District Court for the Norther District of Illinois is overseeing this class action and the settlement. The lawsuit is known as *In re: Opana ER Antitrust Litigation*, MDL No. 2580, No. 14-cv-10150 (HDL).

3. Why Is This Lawsuit A Class Action?

In a class action lawsuit, one or more persons or entities sue on behalf of others who have similar claims. Together, all these entities make up the "Class" and are called "Class members." The companies that filed suit are called the "Plaintiffs" (or "Class Representatives"). The companies that are sued are called the "Defendants."

In a class action lawsuit, one court resolves the issues for everyone in the class, except for those class members who exclude themselves from the class.

In certifying the Class, the Court decided that this lawsuit can proceed as a class action because it meets the requirements of Federal Rule of Civil Procedure 23, which governs class actions in federal courts. The common legal and factual questions include:

- Whether the Defendants conspired to suppress generic competition to Opana ER;
- Whether the Defendants' conduct caused the Plaintiffs and members of the Class to pay higher prices than they otherwise would have; and
- Whether the alleged reverse payment agreement is illegal under the antitrust laws.

The members of the certified class are "Direct Purchaser Class Members." A copy of the Court's order is available at https://www.garwingerstein.com and https://www.bergermontague.com.

4. Why Is There A Settlement?

Plaintiffs and Defendants commenced trial on June 9, 2022 but, at about that time, Plaintiffs and Impax agreed to a settlement. By settling, Plaintiffs and Impax avoided the risk of trial and the continued costs of litigation. Plaintiffs and Class Counsel believe that the proposed settlement is fair, adequate, reasonable, and in the best interests of the Class.

WHO IS INCLUDED IN THE CLASS AND THE SETTLEMENT

5. Am I Part Of The Class And The Settlement?

Judge Harry D. Leinenweber of the United States District Court for the Northern District of Illinois allowed this antitrust lawsuit to proceed as a class action, and certified the following class:

> 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 Defendants at any time during the period from April 1, 2011 until August 31, 2017 (the "Class"). Excluded from the Class are Defendants and their officers, directors, management, employees, subsidiaries, or affiliates, and all federal governmental entities.

At their request, also excluded from the Class for purposes of this Settlement Agreement 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.

If you fit within the definition of the Class, unless you previously asked to be excluded from the Class, you are a member of the Class for purposes of the settlement.

If you are not sure whether you are included, you may call or write to the lawyers in this case at the telephone numbers or addresses listed in Question 9 below.

THE SETTLEMENT BENEFITS: WHAT YOU GET

6. What Does The Settlement Provide?

Impax has agreed to pay $145,000,000 in cash into an interest-bearing escrow account ("Settlement Fund") for the benefit of the Direct Purchaser Class. The money is to be paid in three installments as follows: fifty-eight million dollars ($58,000,000) was paid on June 22, 2022; fifty-eight million dollars ($58,000,000) plus interest to be paid no later than January 17, 2023; and twenty-nine million dollars ($29,000,000) plus interest to be paid no later than January 17, 2024. If approved by the Court, the Settlement Fund, minus any Court-awarded fees and expenses to Class Counsel, the cost of settlement notice and administration, and service awards to the Class Representatives (the "Net Settlement Fund") will be distributed to Direct Purchaser Class Members who return valid and timely Claim Forms. The distribution will be made on a pro rata basis, consistent with each Direct Purchaser Class Member's aggregate weighted share of the total

Direct Purchaser Class purchases of brand and generic Opana ER 5, 10, 20, 30, and/or 40mg tablets. The Allocation Plan utilizes the weighted totals of each Direct Purchaser Class Member's purchases of brand and generic Opana ER 5, 10, 20, 30, and/or 40mg tablets to account for the different amount of alleged overcharge associated with purchases of brand and generic products, with brand unit purchases weighted more than generic unit purchases.

Transactional sales data from the Defendants will be used to make these calculations. Direct Purchaser Class Members will be given the opportunity to provide data or information to supplement or correct this information if they choose. Each Direct Purchaser Class Member will receive a Claim Form pre-populated with information about their purchases for review and signature.

Plaintiffs' Counsel will ask for a service award for the Class Representatives of up to $150,000 each from the Settlement Fund in recognition of their efforts to date on behalf of the Class.

In exchange for the Settlement Fund, Impax will be released and discharged from all antitrust and similar claims relating to Opana ER and the generic forms of these products ("Releasees" and "Released Claims" as defined in the Settlement Agreement). The full text of the release is included in the Settlement Agreement, available at https://www.garwingerstein.com and https://www.bergermontague.com. This Notice is a summary only and is not intended to, and does not, vary the terms of the actual Settlement Agreement.

7. When Would I Get My Payment And How Much Would It Be?

Each Direct Purchaser Class Member's proportionate, weighted pro rata recovery will be determined using a Court-approved Plan of Allocation. The detailed Plan of Allocation is posted and can be reviewed at https://www.garwingerstein.com and https://www.bergermontague.com. Under the proposed Plan of Allocation, your share of the Net Settlement Fund will depend on the total amount of brand and generic Opana ER 5, 10, 20, 30, and/or 40mg tablets that you purchased from Defendants from April 1, 2011 until December 31, 2017 ("Class Purchases") weighted to account for the different amount of alleged overcharge associated with purchases of brand and generic products, with brand units weighted more than generic unit purchases. Generally, those who purchased more will get a higher recovery, and those who purchased brand Opana ER 5, 10, 20, 30, and/or 40mg tablets will get more than those who purchased only generic Opana ER 5, 10, 20, 30, and/or 40mg tablets from Impax, as alleged overcharge damages on purchases of generic Opana ER were lower than alleged overcharges on purchases of brand Opana ER.

Your share of the Net Settlement Fund will also depend on the number of valid claim forms that Class Members submit. If fewer than 100% of the Class Members send in a claim form, you could get a larger pro rata share.

Money from the settlement will only be distributed to Class Members if the Court grants final approval of the settlement. Payment is conditioned on several matters, including the Court's approval of the settlement and such approval no longer being subject to any appeals to any court or, if there is an appeal, such appeal being final and no longer subject to any further appeal.

The Settlement Agreement may be terminated if the Court does not approve the settlement or materially modifies it. If the Settlement Agreement is terminated, the lawsuit will proceed against Impax as if such settlement had not been reached.

Depending on the timing of the events described above, there may be more than one distribution to Class Members from the Net Settlement Fund.

8. How Can I Get A Payment?

If the settlement is approved by the Court, all Direct Purchaser Class Members will receive a Claim Form by mail to request a pro rata share of the Net Settlement Fund. Court-approved fees and expenses for the attorneys and service awards to the Class Representatives will also be paid by the Settlement Fund. Transactional sales data from the Defendants will be used to make the pro rata share calculations. You will be asked to verify the accuracy of the information in the Claim Form that will be mailed to you if the Court approves the settlement, and to sign and return the form according to the directions on the form. Class Members will be given the opportunity to provide data or information to supplement or correct this information.

Claim forms must be postmarked (with any necessary supporting documentation if the claimant disagrees with the information contained in its claim form) within forty-five (45) days of the date the claim forms are mailed.

THE LAWYERS REPRESENTING YOU

9. Do I Have A Lawyer In This Case?

The Court previously appointed two law firms to serve as lead class counsel to represent you and all Class members. Their contact information is as follows:

David F. Sorensen
Andrew C. Curley
BERGER MONTAGUE PC
1818 Market Street
Suite 3600
Philadelphia, PA 19103
T: (215) 875-3000
F: (215) 875-4604
dsorensen@bm.net
acurley@bm.net

Bruce E. Gerstein
Jonathan M. Gerstein
GARWIN GERSTEIN & FISHER, LLP
Wall Street Plaza
88 Pine Street, 10th Floor
New York, NY 10005
T: (212) 398-0055
F: (212) 764-6620
bgerstein@garwingerstein.com
jgerstein@garwingerstein.com

10. Should I Get My Own Lawyer?

You do not need to hire your own lawyer if you are in the Class because the lawyers appointed by the Court are working on your behalf. You may hire a lawyer and enter an appearance through your lawyer at your own expense if you so desire.

11. How Will The Lawyers Be Paid?

The Court will be asked to approve reasonable fees and expenses for the lawyers who worked on the case and for reimbursement of the litigation expenses they have advanced on behalf of the Class. Class Counsel intend to seek attorneys' fees of up to forty percent of the Settlement Fund less court-approved expenses and service awards. If the Court grants Class Counsel's requests, fees and expenses would be deducted from the Settlement Fund. Members of the Class will not have to pay any attorneys' fees or expenses out of their own pockets.

Any application by Class Counsel for an award of attorneys' fees, reimbursement of expenses and service awards to the Class Representatives will be filed with the Court and made available for download and/or viewing on or before _____ at https://www.garwingerstein.com and https://www.bergermontague.com, as well as the offices of the Clerk of Court for the United States District Court for the Northern District of Illinois, Everett McKinley Dirksen U.S. Courthouse, 219 South Dearborn Street, Chicago, IL 60604, during normal business hours.

OBJECTING TO THE SETTLEMENT

12. How Do I Tell The Court That I Do Not Like The Settlement?

If you are a member of the Direct Purchaser Class, you can object to the settlement or any part of it if you do not like it. The Court will consider your views. To object, you must send a letter via First Class U.S. Mail saying that you object to the settlement in *In re Opana ER Antitrust Litigation*, MDL No. 2580, Case No. 14 C 10150 (N.D. Ill.). Be sure to include your name, address, telephone number, your signature, and the reasons why you object to the settlement. Mail the objection to all of the following:

Counsel for Impax	Class Counsel
Jay P. Lefkowitz Devora Allon KIRKLAND & ELLIS LLP 601 Lexington Avenue New York, NY 10022	David F. Sorensen Andrew C. Curley BERGER MONTAGUE PC 1818 Market Street Suite 3600 Philadelphia, PA 19103 Bruce E. Gerstein Jonathan M. Gerstein GARWIN GERSTEIN & FISHER, LLP Wall Street Plaza 88 Pine Street, 10th Floor New York, NY 10005
Clerk of the Court	
Clerk of the United States District Court for the Norther District of Illinois Everett McKinley Dirksen U.S. Courthouse 219 South Dearborn Street, Chicago, IL 60604	

Your objection **must be postmarked no later than _____.**

THE COURT'S FINAL FAIRNESS HEARING

The Court will hold a hearing to decide whether to approve the settlement. You may attend, and you may ask to speak, but you do not have to.

13. When And Where Will The Court Decide Whether To Approve The Settlement?

The Court will hold a Fairness Hearing at _____ on _____, in Courtroom 1941 of the United States District Court for the Norther District of Illinois, Everett McKinley Dirksen U.S. Courthouse, 219 South Dearborn Street, Chicago, IL 60604. At this hearing, the Court will consider whether the settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. After the hearing, the Court will decide whether to approve the settlement. We do not know how long these decisions will date. The date and time of the hearing

is subject to change. Notice of such change will be posted at https://www.garwingerstein.com and https://www.bergermontague.com.

14. Do I Have To Come To The Hearing?

No, you do not have to attend the hearing. Class Counsel will answer any questions that Judge Leinenweber may have. You are welcome to attend at your own expense, however.

If you send an objection, you do not have to come to Court to talk about it. So long as you mail your written objection on time, the Court will consider it. You may also pay your own lawyer to attend, but it is not necessary for you to do so to receive a pro rata share of the Net Settlement Fund.

15. May I Speak At The Hearing?

If you are a member of the Direct Purchaser Class, you may ask the Court for permission to speak at the Fairness Hearing. To do so, you must send a letter via First Class U.S. Mail saying that it is your "Notice of Intention to Appear in *In re: Opana ER Antitrust Litigation*, MDL No. 2580, No. 14-cv-10150 (HDL)." Be sure to include your name, address, telephone number, and your signature, as well as a summary statement outlining your positions and the reasons for them, and copies of any supporting documents or briefs you want the Court to consider. Your Notice of Intention to Appear must be postmarked no later than _____, and must be sent to the Clerk of the Court, Class Counsel and Counsel for Impax, at the addresses set forth in the responses to Question 12.

You cannot speak at the hearing if you do not send a Notice of Intention to Appear.

IF YOU DO NOTHING

16. What Happens If I Do Nothing At All?

If you are a member of the Direct Purchaser Class and you do nothing, and the Court approves the settlement, then you will remain in the Direct Purchaser Class and be eligible to participate in the settlement as described in this Notice and you will release your claims against Impax as described in the Settlement Agreement. However, you will need to complete, sign and return the Claim Form (once it is sent to you) within thirty days in order to obtain a payment.

GETTING MORE INFORMATION

17. How Do I Get More Information?

For more detailed information about this litigation, please refer to the papers on file in this litigation, which may be inspected at the Office of the Clerk, United States District Court for the Northern District of Illinois, Everett McKinley Dirksen U.S. Courthouse, 219 South Dearborn Street, Chicago, IL 60604 during regular business hours of each business day. You may also get additional information about the settlement by calling or writing to Class Counsel as indicated above, or by visiting https://www.garwingerstein.com and https://www.bergermontague.com, or by writing to the Notice Administrator, RG/2 Claims Administration, at the following address:

RG/2 Claims Administration
P.O. Box 59479
Philadelphia, PA 19102-9479

PLEASE DO NOT WRITE TO OR CALL THE COURT OR THE CLERK'S OFFICE FOR INFORMATION. INSTEAD, PLEASE DIRECT ANY INQUIRIES TO ANY OF THE CLASS COUNSEL LISTED ABOVE.

DATE: _____, 2022

BY THE COURT

_____
The Honorable Harry D. Leinenweber
United States District Judge

EXHIBIT C

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

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

[PROPOSED] ORDER GRANTING FINAL JUDGMENT AND ORDER OF DISMISSAL APPROVING DIRECT PURCHASER CLASS SETTLEMENT AND DISMISSING DIRECT PURCHASER CLASS CLAIMS

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"), and 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, 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 Defendants[1] 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 _____, 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 is attached to Plaintiffs' Motion for Final Approval of Settlement, 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.

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 "Releasors"), 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 Releasors. For the avoidance of doubt, the Settlement Agreement shall not be construed to effect 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 over 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 _____% 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 $ _____, and service awards of $150,000 each to the two Class Representatives, and such motion has been on the docket and otherwise publicly available since _____, 20__.

15. Upon consideration of Class Counsel's petition for fees, costs and expenses, Class Counsel are hereby awarded attorneys' fees totaling _____ (representing _____ % of the Settlement Fund) and costs and expenses totaling _____, 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 and only if and after the Settlement becomes final in accordance with paragraph 7 of the Settlement Agreement.

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 and only if and 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 be paid to Berger Montague PC and Garwin Gerstein & Fisher LLP 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. 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

EXHIBIT D

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

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

ESCROW AGREEMENT

1. This escrow agreement (the "Escrow Agreement") by and among (a) Jay P. Lefkowitz, P.C., on behalf Defendant Impax Laboratories, Inc. ("Impax"); (b) David F. Sorensen and Bruce E. Gerstein, Direct Purchaser Class Plaintiffs' Co-Lead Counsel, on behalf of Plaintiffs Value Drug Company ("Value Drug"), Meijer, Inc. and Meijer Distribution, Inc. ("Meijer"), and all members of the direct purchaser class (collectively "Direct Purchaser Class Plaintiffs"), in *In re: Opana Antitrust Litig.*, MDL No. 2580, No. 14-cv-10150 (N.D. Ill.) (the "Direct Purchaser Class Action"); and (c) First State Trust Company, as directed escrow agent (the "Directed Escrow Agent") is entered into on July 15, 2022, in connection with a Settlement Agreement dated July 15, 2022 (the "Settlement Agreement"). Capitalized terms not defined herein shall have the meanings specified in the Settlement Agreement. Co-Lead Counsel (on behalf of Plaintiffs and the Direct Purchaser Class) and Impax, by and through their respective counsel, have entered into the Settlement Agreement wherein they agreed, subject to the final approval of the Court in the Direct Purchaser Class Action (the "Court"), that the Direct Purchaser Class Action be dismissed with prejudice as to Impax in exchange for payments by Impax of the Settlement Fund, consisting of a total of $145,000,000.00 (one hundred and forty-five million dollars and no/100) in cash, to be paid in 3 (three) installments in accordance with the Settlement Agreement.

2. The Directed Escrow Agent was selected by Direct Purchaser Class Plaintiffs' Co-Lead Counsel, to which selection Impax consented. The parties hereto are entering into this Escrow Agreement in order to effectuate certain of the terms of the Settlement Agreement. Jay P. Lefkowitz, P.C. of Kirkland & Ellis LLP is signing on behalf of Impax, and David F. Sorensen of Berger Montague PC and Bruce E. Gerstein of Garwin Gerstein & Fisher LLP, Direct Purchaser Class Plaintiffs' Co-Lead Counsel, are signing on behalf of the Direct Purchaser Class Plaintiffs.

3. NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and considerations herein, the parties agree as follows:

(a) Pursuant to and in accordance with the Settlement Agreement, Impax shall deposit with the Directed Escrow Agent the Settlement Amount of $145,000,000.00 (one hundred and forty-five million dollars and no/100) in cash, to be paid in three (3) installments as follows, in accordance with the terms of the Settlement Agreement: Impax has already paid the first installment of $58,000,000.00 (fifty-eight million dollars and no/100) in cash, and shall pay the remaining $87,000,000.00 (eighty-seven million dollars and no/100) in cash plus interest of 3.0% annualized in two additional installments as follows: $58,000,000.00 (fifty-eight million dollars and no/100) no later than January 17, 2023 and $29,000,000.00 (twenty-nine million dollars and no/100) no later than January 17, 2024. If any payment required is not paid on time, then Impax shall pay double the agreed interest rate on the unpaid, late balance until payment is made. In the event that Impax is unable or fails to make a requirement payment, then Amneal Pharmaceuticals, LLC, the parent company of Impax, and Amneal Pharmaceuticals, Inc. shall make such required payment, no later than thirty (30) calendar days after the required payment first was due.

(b) The Directed Escrow Agent shall be directed to invest and reinvest the Settlement Fund in instruments backed by the full faith and credit of the United States Government or fully insured by the United States Government or an agency thereof, including a U.S. Treasury Money Market Fund or a bank account insured by the Federal Deposit Insurance Corporation ("FDIC") up to the guaranteed FDIC limit, until the Settlement becomes final pursuant to paragraph 7 of the Settlement Agreement. Subsequent to the Settlement becoming final, the Settlement Fund shall be invested as directed in writing by Co-Lead Counsel for the Direct Purchaser Class Plaintiffs, David F. Sorensen, Esq. of Berger Montague PC, 1818 Market Street, Suite 3600, Philadelphia, PA 19103 and Bruce E. Gerstein, Esq., Garwin Gerstein & Fisher LLP, 88 Pine Street, 10th Floor, New York, NY 10005 ("Authorized Plaintiffs' Counsel"). The term of any such investment directed by Authorized Plaintiffs' Counsel shall not exceed ninety (90) days. All interest earned on the Settlement Fund shall become part of the Settlement Fund. Any losses on the Settlement Fund shall be borne by the Settlement Fund and shall not be recoverable from Impax. Impax shall have no liability, obligation, or responsibility of any kind in connection with the investment, disbursement, or other oversight of the Settlement Fund.

(c) Upon written authorization as described below in this paragraph, the Directed Escrow Agent may withdraw from the Settlement Fund disbursements sufficient for the Claims Administrator to pay costs associated with notice to the Direct Purchaser Class and taxes or estimated taxes payable by the Claims Administrator on behalf of the Settlement Fund and related expenses in accordance with paragraph 3(d)(4) herein, except that such withdrawals, before the Settlement becomes final, may not exceed one hundred thousand dollars ($100,000.00), with any further expenditures beyond that sum subject to Impax's approval.

Before the Settlement becomes final, the written authorization required by this paragraph shall be granted by Authorized Plaintiffs' Counsel, with copies to Jay P. Lefkowitz, P.C. of Kirkland & Ellis LLP acting on behalf of Impax. After the Settlement becomes final, the written authorization required by this paragraph shall be granted by Authorized Plaintiffs' Counsel alone. Authorized Plaintiffs' Counsel is authorized, after obtaining approval of Counsel for Impax, to appoint an administrator (and any successors) for the Settlement Fund within the meaning of Treasury Regulation § 1.468B-2(k)(3) (the "Claims Administrator"). Authorized Plaintiffs' Counsel shall be responsible for assuring that the Claims Administrator qualifies as an "administrator" of the Settlement Fund within the meaning of Treasury Regulation Section 1.468B-2(k)(3) and is performing its duties hereunder. Impax shall have no responsibility for any fees or the performance of the Claims Administrator.

(d) Provided the Court preliminarily approves the Settlement, the Claims Administrator shall, within thirty (30) days after the date thereof, take all steps necessary for qualifying the Settlement Fund as a "Qualified Settlement Fund" within the meaning of Section 1.468B-1 of the Treasury Regulations. These obligations include, without limitation, the following:

(1) The Claims Administrator will prepare a "Regulation Section 1.468B-3 Statement" pursuant to Treasury Regulation Section 1.468B-3(e) on behalf of Impax and provide copies to Counsel for Impax for review and approval.

(2) The Claims Administrator will prepare and attach to the Settlement Fund's first income tax return a "Regulation Section 1.468B-1 Relation Back Election" pursuant to Treasury Regulation Section 1.468B-1(j) for execution by Impax and the Claims Administrator. The Claims Administrator will promptly forward a copy of the "Regulation

Section 1.468B-1 Relation Back Election" to Counsel for Impax within thirty (30) days after the date hereof.

(3) The Claims Administrator will timely prepare and file on behalf of the Settlement Fund (i) federal tax returns in accordance with Section 1.468B-2 of the Treasury Regulations and the other provisions of the Internal Revenue Code of 1986, as amended (the "Code"), and (ii) all necessary state, local and foreign tax returns.

(4) Notwithstanding any effort, or failure, of the Claims Administrator and the parties hereto to treat the Settlement Fund as a "Qualified Settlement Fund" within the meaning of Section 1.468B-1 of the Treasury Regulations effective as of the date hereof, any additional tax liability or penalties incurred by Impax resulting from income earned by the Settlement Fund (or the receipt of any payment under this paragraph 3(d)(4)) shall be reimbursed from the Settlement Fund in the amount of such additional tax liability or penalties upon written request from Impax to the Directed Escrow Agent. The Directed Escrow Agent shall withdraw from the Settlement Fund (i) at the request of the Claims Administrator, monies to pay all applicable federal, state, local and foreign taxes which the Settlement Fund owes or is estimated to owe, as well as related expenses, and (ii) monies to pay any reimbursements to Impax as described in this subparagraph (4).

(e) The Directed Escrow Agent shall be paid the fees described in Exhibit A. The Annual Escrow Fees described in Exhibit A shall be paid for by RBC WEALTH MANAGEMENT Financial Services Inc. and its affiliates ("RBC WEALTH MANAGEMENT"). In addition, the Directed Escrow Agent shall be reimbursed for reasonable, out-of-pocket expenses, including attorneys' fees arising from the Directed Escrow Agent's management of the fund, telephone and facsimile transmission costs, postage (including express

mail and overnight delivery charges), copying charges and the like. All such fees and expenses shall constitute a direct charge against the Settlement Fund.

The Directed Escrow Agent is authorized to, and may, disburse to itself, from the Settlement Fund, from time to time, the amount of reimbursement of out-of-pocket expenses due and payable hereunder. Prior to the Settlement becoming final, the Directed Escrow Agent shall notify, and obtain approval from, Authorized Plaintiffs' Counsel and Counsel for Impax of any disbursement from the Settlement Fund to itself and provide copies of all related invoices and other statements. After the Settlement becomes final, such notification need be provided to, and approval obtained from, only Authorized Plaintiffs' Counsel. If there is any dispute as to entitlement to out-of-pocket expenses or attorneys' fees as described above, it will be submitted to the Court, which shall maintain continuing jurisdiction over the operation and effectuation of this Escrow Agreement and the escrowed funds.

(f) Upon authorization as described below in this paragraph, the Directed Escrow Agent may sell or present for redemption any investment described in paragraph 3(b) above, whenever it shall be necessary in order to provide funds to meet any payment required pursuant to this Escrow Agreement or the Settlement Agreement. Before the Settlement Agreement becomes final, the authorization required by this paragraph shall be granted by Authorized Plaintiffs' Counsel and Counsel for Impax acting jointly. After the Settlement becomes final, the authorization required by this paragraph shall be granted by Authorized Plaintiffs' Counsel alone.

(g) Only upon the Settlement becoming final, may distributions (other than those contemplated herein to pay taxes and costs of notice and administration) be made as authorized by Court order. Upon the Settlement becoming final, Authorized Plaintiffs' Counsel

shall have the authority to appoint a Successor Escrow Agent and direct that all funds be transferred to the Successor Escrow Agent, which Successor Escrow Agent shall not be Impax or an affiliate of Impax. Upon the Settlement becoming final, the interest of Impax in the Settlement Fund shall cease in its entirety. Upon final approval of the Settlement, Impax shall be relieved of any responsibility for directing investments of the funds or disbursements from it, and shall have no liability whatsoever with respect to any investments, expenditures of the fund, taxes and/or tax filings, administrative costs or fees, all of which shall be the responsibility of Direct Purchaser Class Plaintiffs' Co-Lead Counsel.

(h) In the event the Settlement Agreement is terminated pursuant to Paragraph 18 of the Settlement Agreement, the Directed Escrow Agent shall, within fourteen (14) calendar days, return the remaining Settlement Fund including all interest thereon, less any costs and expenses referred to in ¶¶ 3(c), 3(d)(4), and 3(e), to Impax.

(i) The Directed Escrow Agent may rely upon any notice, certificate, instrument, request, paper or other documents reasonably believed by it to be genuine and to have been made, sent or signed by counsel for the respective party or parties in accordance with this Escrow Agreement, and shall not be liable for any action taken or omitted by it, consistent with the terms hereof, in connection with the performance by it of its duties pursuant to the provisions of this Escrow Agreement, except for its own default, negligence or breach of the terms of this Escrow Agreement.

(j) The Directed Escrow Agent's acceptance and administration of the Settlement Fund shall constitute the submission of the Directed Escrow Agent to the jurisdiction of the Court in the above-described litigation for the purpose of carrying out this Escrow Agreement pursuant to the Settlement Agreement.

(k) The Directed Escrow Agent has been appointed in compliance with the Settlement Agreement and is subject to the orders of the Court.

(l) This Escrow Agreement shall be governed by and interpreted according to the substantive laws of the State of New York, without reference to choice-of-law principles.

(m) The Directed Escrow Agent is and shall be independent, provided that as parties hereto, Plaintiffs and Impax shall be entitled to institute actions to compel or require performance by the Directed Escrow Agent of its obligations hereunder. The Directed Escrow Agent hereby agrees to submit to the jurisdiction and venue of the Court with respect to issues relating to the Settlement Fund for purposes of enforcement, clarification, or amendment of the provisions of this Escrow Agreement, and to comply with all directions given by that Court.

(n) The following authorizations, directions and acknowledgements are made by Plaintiffs through its authorized counsel.

1. Plaintiffs wish to engage RBC WEALTH MANAGEMENT as the broker for this relationship and authorize Directed Escrow Agent to open an account with RBC WEALTH MANAGEMENT to effectuate the trading and investments for the Settlement Fund, to which engagement Impax through its authorized counsel consents; and

2. Plaintiffs direct and authorize Directed Escrow Agent to enter into a RBC WEALTH MANAGEMENT Client Relationship Agreement as agent for the Settlement Fund, to which Impax through its authorized counsel consent; and

3. Plaintiffs and Impax acknowledge that Directed Escrow Agent will be appointing RBC WEALTH MANAGEMENT as sub-custodian with respect to the assets for the Settlement Fund; and

4. Plaintiffs and Impax acknowledge that RBC WEALTH MANAGEMENT will be directed to invest the settlement proceeds per the requirements of ¶ 3(b) as the brokerage agent; and any commissions and/or brokerage expenses will be disclosed on a per trade basis and will be within RBC WEALTH MANAGEMENT firm guidelines and in accordance with account opening documentation.

(o) Upon sixty (60) days prior written notice to Authorized Plaintiffs' Counsel and, only if such prior written notice is sent prior to the Settlement becoming final, Counsel for Impax, the Directed Escrow Agent may resign and be discharged from its duties and responsibilities under this Agreement for any reason, and shall promptly deposit the Escrow Amount (Redemption Value) with a successor escrow agent pursuant to and in accordance with written instructions from Authorized Plaintiffs' Counsel and, only if prior to the Settlement becoming final, Counsel for Impax. If the Directed Escrow Agent is compelled to resign to comply with action by the government or self-regulating organizations (such as FINRA), the notice requirement set forth in this paragraph may be a reasonable time shorter than 60 days. If no successor escrow agent shall have been appointed by the effective date of the Directed Escrow Agent's resignation, the Directed Escrow Agent's sole responsibility shall thereafter be to hold the Escrow Amount (Redemption Value), invested until receipt of designation of a successor escrow agent or the disbursement of the Escrow Amount (Redemption Value) in accordance with written instructions from Authorized Plaintiffs' Counsel and, only if prior to the Settlement becoming final, Counsel for Impax; provided, however, that the Directed Escrow Agent may petition the Court to name a successor, or may deposit the Escrow Amount (Redemption Value) in the registry of the Court having general jurisdiction.

(p) The Directed Escrow Agent may be removed from this Escrow Agreement at any time and thereby become discharged from the obligations hereby created subsequent to the date of discharge, by notice in writing given to the Directed Escrow Agent not less than thirty (30) days before such removal is to take effect. Prior to the Settlement becoming final, such notice must be given by Authorized Plaintiffs' Counsel and Counsel for Impax acting jointly; after the Settlement becomes final, such notice may be given by Authorized Plaintiffs'

Counsel alone. Upon approval of the Court, and subject to arrangements being made for a replacement Escrow Agent as specified in the next sentence, the Directed Escrow Agent may terminate this Escrow Agreement, by notice in writing given to the undersigned counsel not less than thirty (30) days before such termination is to take effect, and thereby become discharged from the obligations hereby created subsequent to the date of termination. In the event that the Directed Escrow Agent is removed or terminates this Escrow Agreement, arrangements shall be made for a replacement Escrow Agent, who shall assume the Directed Escrow Agent's duties hereunder as of the date and time that the replacement is to take effect. Prior to the Settlement becoming Final, such arrangements must be made by Authorized Plaintiffs' Counsel and Counsel for Impax acting jointly; after the Settlement becomes final, such arrangements may be made by Authorized Plaintiffs' Counsel alone.

(q) Copies of all notices and correspondence sent pursuant to this Escrow Agreement shall be served by mail upon Authorized Plaintiffs' Counsel, Counsel for Impax, and the Directed Escrow Agent. After the Settlement becomes final, such notices and correspondence need only be provided to Authorized Plaintiffs' Counsel.

(r) The Directed Escrow Agent shall, upon request as described below in this paragraph, advise counsel for the parties of any maturities, conversion privileges, and other matters of a like manner concerning the investments held in accordance with this Escrow Agreement. Before the Settlement becomes final, the request required by this paragraph shall be made by Authorized Plaintiffs' Counsel and Counsel for Impax acting jointly. After the Settlement becomes final, the request required by this paragraph shall be made by Authorized Plaintiffs' Counsel alone.

(s) The Directed Escrow Agent shall, upon request as described below in this paragraph, furnish to undersigned counsel the monthly Escrow Account statements or confirmations of transactions. Before the Settlement becomes final, the request required by this paragraph shall be made by Authorized Plaintiffs' Counsel and Counsel for Impax acting jointly. After the Settlement becomes final, the request required by this paragraph shall be made by Authorized Plaintiffs' Counsel alone.

(t) The parties reserve the right to modify this Escrow Agreement upon written agreement of all parties, subject to approval of the Court.

(u) The failure of any of the parties hereto to enforce any provision hereof on any occasion shall not be deemed to be a waiver of any preceding or succeeding breach of such provision or any other provision.

(v) The Directed Escrow Agent shall treat the fact of the Settlement and the Settlement Agreement referred to herein, as well as all facts or other information pertaining to the Settlement and the Settlement Agreement, as confidential and shall not disclose or use such information in any way other than as necessary to fulfill its role as Directed Escrow Agent and/or comply with any laws or regulations, including those of self-governing organizations, such as FINRA.

(w) This Escrow Agreement may be signed by all parties on separate copies, including by facsimile or other electronic means, and shall have full force and effect when all parties have signed one of the copies.

IN WITNESS WHEREOF, the undersigned have executed and delivered this Escrow Agreement as of the date first written above.

By:_____
First State Trust Company
1 Righter Pkwy #120
Wilmington, DE 19803

Directed Escrow Agent

By: Bruce E. Gerstein/cl.
Bruce E. Gerstein, Esq.
Garwin, Gerstein & Fisher, L.L.P.
88 Pine Street, 10th Floor
New York, NY 10005
(212) 398-0055
bgerstein@garwingerstein.com

By:_____
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Co-Lead Counsel for Direct Purchaser Class Plaintiffs

By:_____
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601 Lexington Avenue
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Counsel for Impax Laboratories, Inc., Amneal Laboratories, LLC, and Amneal Pharmaceuticals, Inc.

By:_____
First State Trust Company
1 Righter Pkwy #120
Wilmington, DE 19803

Directed Escrow Agent

By:

_____
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Co-Lead Counsel for Direct Purchaser Class Plaintiffs

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lefkowitz@kirkland.com

Counsel for Impax Laboratories, Inc., Amneal Laboratories, LLC, and Amneal Pharmaceuticals, Inc.

EXHIBIT A
TO
ESCROW AGREEMENT

Escrow Fees to be paid by RBC

Escrow Holder Fees [1]	*Rate*
$58,000,000 first installment	
Annual Escrow Fee	
(payable annually in advance)	$11,500
Escrow Value	Annual Fee
Up to $15,000,000	$6,500
Over $15,000,000 to $50,000,000	$9,000
Over $50,000,000 to $100,000,000	$11,500
Over $100,000,000 quoted upon request	

[1] The annual escrow fee is payable in advance upon acceptance of the escrow account. Fees paid in advance will not be prorated. After the first twelve (12) months, the fee is prorated and charged quarterly.

Activity Fees	*Per Item Charge*
Disbursement Request	$25
Per Outgoing US Wire (in addition to above)	$15
Stop Payment Request	$20

Other Services & Fees

- FSTC reserves the right to refer any or all escrow documents for legal review before execution. Legal fees (billed on an hourly basis) and expenses for this service will be billed to, and paid by, the customer. If appropriate and upon request by the customer, FSTC will provide advance estimates of these legal fees.
- Other extraordinary services, including tax preparation and filing, will be quoted separately based on the scope of the activity
- Out-of-Pocket expenses will pass through to the accounts, including, but not limited to, overnight mail, replacement tax forms, external legal or professional costs, and other extraordinary services for which compensation is not expressly stated.

Authorization and Direction

The individual(s) signing Escrow Agreement:

- Wish to engage RBC WEALTH MANAGEMENT as the broker for this relationship and authorize FSTC to open an account with RBC WEALTH MANAGEMENT to effectuate the trading and investments for the escrow account; and

- Direct and authorize FSTC to enter into the RBC WEALTH MANAGEMENT Account Application and Client Agreement with respect to the escrow account; and
- Have reviewed the terms of the RBC WEALTH MANAGEMENT Account Application and Client Agreement and determined that it is appropriate to enter into the RBC WEALTH MANAGEMENT Account Application and Client Agreement on behalf of the relationship; and
- Acknowledge that FSTC will be appointing RBC WEALTH MANAGEMENT as sub-custodian with respect to the assets for the escrow account; and
- Have determined that the brokerage fees and/or commissions associated with any trades directed to RBC WEALTH MANAGEMENT as the brokerage agent are acceptable.

Fee Disclosure

The Department of Labor (DOL) issued new rules that require certain types of ERISA retirement plan service providers to disclose new fee information directly to plans. First State Trust Company (FSTC) has incorporated a new disclosure to provide details related to direct revenue paid to FSTC. FSTC maintains standard fee schedules for each service/product offered to clients which is executed at account opening. FSTC mails fee disclosure information annually to clients pertaining to indirect revenue which FSTC may collect based upon the investments of the trust account(s).

First State Trust Company provides a daily "sweep" process for the investment of cash assets in FSTC Accounts. Cash can be either invested in an Institutional Money Market fund managed by Northern Trust (NT) such as the NT Institutional US Government Select Portfolio or an Insured Deposit Program (IDP) provided by Total Bank Solutions (TBS) or both. FSTC will receive 0.06% on assets invested in the NT US Government Select Portfolio or 0.10% on assets invested in the IDP as part of a service fee and daily processing.

FSTC fees are either invoiced or directly charged to the accounts. The primary method is direct charge. If you have any questions regarding FSTC fees (direct or indirect), please contact your Trust Officer at 800.554.1364.

Disclosure Regarding Retention of Float

The Department of Labor field bulletin 2002-3 requires that service providers to plan clients, such as banks, broker dealers and record keepers, provide their clients with adequate information regarding float. Our policy of requiring the use of a sweep vehicle minimizes or eliminates the amount of float earned on un-invested cash contributed to the plan. Where FSTC provides you with distribution services, an FSTC agent earns float on money set aside for payment of outstanding but uncashed benefit distribution checks, generally from the date on the face of the checks to participants until the date that either the recipient cashes the check or the check is cancelled and the underlying funds are returned to the trust. FSTC or its agent generally mails checks in advance of the date on the face of the checks, with the intention that the payees receive the checks by such date. The float rate of return is currently based upon and generally approximates the then applicable federal funds rate (a publicly available average rate of all federal funds transactions entered into by traders in the federal funds market on a given date). The federal funds rate is published in the business press. If, in the future, a different rate is more appropriate, FSTC will notify you of any changes. Additional information is available to you upon request. If you have any questions about the float, please contact your FSTC Trust Officer.

Mutual Fund Disclosure

Mutual funds are sold by prospectus. You may obtain a prospectus from your Financial Advisor or the fund company. Please read the prospectus and all other fund materials carefully before investing. Be advised that depending upon the share class, FSTC may collect a portion of the annual distribution (12b-1) and or service and service related fees from the fund company. FSTC sends a service provider information worksheet annually to each ERISA plan sponsor regarding the summary of eligible mutual fund indirect fees and revenue. All ETF trades placed through FSTC are subject to a transaction fee (presently $.01 per share) that is paid to our ETF trading vendor and the fees are assessed directly against the respective trades.

Privacy Promise

The success of FSTC begins with a relationship of trust between our company and you, our valued client. The FSTC team of professionals takes confidentiality and privacy very seriously. We maintain physical, electronic and procedural safeguards that are reasonably designed to guard your nonpublic personal information. We want to share with you our commitment to maintaining client information in a secure environment.

FSTC limits the collection of client information to the minimum we require in order to allow us to deliver superior service to our clients.

FSTC permits only authorized employees who have been trained in the proper handling of client information to have access to that information.

FSTC will not reveal non-public personal client information to any external company unless we have been authorized by the client to do so or are required by law or our regulators to do so.

When engaging other companies to provide support services, FSTC requires that their privacy standards meet or exceed those of FSTC. FSTC will not sell client information to third parties.

We also remind our clients that non-public personal information such as Social Security Numbers or account numbers should not be sent to FSTC via e-mail since it is not a secure means of communication unless encryption or another method is used. FSTC also will not include non-public personal information in an e-mail to clients or other parties unless the proper steps are taken to secure the information.

FSTC is strongly committed to our relationship with you and want to be sure you understand the steps we have taken to protect your personal information. If you have any questions or comments, please call us at 800.554.1364.