

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

IN RE OPANA ER ANTITRUST LITIGATION	MDL 2580
THIS RELATES TO:	Case No. 14-cv-10150
ALL END-PAYOR ACTIONS	Hon. Harry D. Leinenweber

MOTION TO AUTHORIZE DISTRIBUTION OF SETTLEMENT FUNDS

1. Co-Lead Counsel for the End-Payor Classes respectfully requests an order authorizing distribution of net settlement funds to members of the End-Payor Classes. In addition, Co-Lead Counsel also seek authorization to withhold a reserve equal to two percent of the net settlement fund (\$130,370.36) for any necessary adjustments in payments upon sufficient proof and/or to pay tax and tax expenses and costs associated with distribution. Any unused portion of this reserved amount shall be redistributed to the classes.

2. On December 15, 2022, the Court granted final approval of End-Payor Plaintiffs' class settlement with Impax Laboratories, Inc. ECF No. 1091. In granting final approval, the Court approved of the Plan of Allocation, which divided the net settlement fund into two settlement pools: one for consumers and another for third-party payors ("TPPs"). ECF No. 1060-

3. The pools were split as follows: 44.26% of the settlement funds would be allocated to pay consumer claims (the "Consumer Pool"); and the remaining 55.74% would be allocated to pay TPP claims (the "TPP Pool"). ECF No. 1060-3, at § I(2)-(3). The deadline for the submission of eligible claims was January 5, 2023.

3. After the January 5, 2023 claim submission deadline, A.B. Data, Ltd., the Court-appointed Claims Administrator (*see* ECF No. 1091, at ¶ 8), reviewed and audited the claims submitted. A.B. Data received and processed a total of 100,176 consumer claims and 1,696 TPP claims. *See* Declaration of Eric J. Miller (“Miller Decl.”) ¶¶ 5, 12, which is attached hereto.

4. ***Consumer Claims.*** All consumer claims were subject to review and/or audit by the Claims and Notice Administrator. A.B. Data actively monitored claims that exhibited indicia of fraud. Although the consumer claim form did not require claimants to submit documentation to verify purchases of brand or generic Opana ER, it advised claimants that such documentation may be required. Given the volume of claims, and in consultation with A.B. Data, Co-Lead Counsel requested proof of at least one purchase of brand or generic Opana ER from consumer claimants who did not include such documentation with their original submission. Miller Decl. ¶ 6. A.B. Data sent letters by email to each consumer claimant that did not provide proof of at least one purchase of brand or generic Opana ER, advising that failure to provide the required information would result in the disallowance of their claim. Over 71,000 letters were sent by A.B. Data, excluding duplicate claims. Miller Decl. ¶ 7.

5. After receiving responses to these letters, A.B. Data reviewed the claims to determine the number of eligible claimants. In addition, in consultation with A.B. Data, Co-Lead Counsel determined that it would be appropriate to accept non-fraudulent consumer claims, without any proof of purchase, of up to \$1,000. After reviewing and processing the claims, A.B. Data determined that there were 1,309 Eligible Consumer Claimants with Qualifying Claim amounts totaling \$616,717.58. Miller Decl. ¶¶ 8, 11; Ex. B.¹

¹ The names of the consumer claimants in the accompanying exhibits to the Miller Declaration are anonymized. Co-Lead Counsel will provide the names of these individuals to the Court upon request.

6. **TPP Claims.** A.B. Data also reviewed and analyzed claims submitted by TPPs. In total, A.B. Data received and processed 1,696 TPP claims. Miller Decl. ¶ 12.

7. As with the consumer claims, A.B. Data reviewed the submissions. A.B. Data audited the submissions from TPPs, and based on the audit, A.B. Data adjusted some TPPs' claim amounts upward or downward. Miller Decl. ¶ 16. A.B. Data also sent deficiency letters when they did not satisfy the requirements of the claim form. Miller Decl. ¶¶ 13-14. A.B. Data sent over 100 deficiency letters to TPPs and reviewed and processed these letters. Miller Decl. ¶¶ 18-19.

8. After reviewing these submissions, A.B. Data determined that there were 1,348 Eligible TPP Claimants have Qualifying Claim amounts totaling \$678,866,791.28. Miller Decl. ¶ 20; Ex. H.

9. Only one entity has objected to any final adjustment or eligibility determination made by A.B. Data on their claims. The entity, a third-party filer, submitted nine consumer claims for hospital clients for their purchases of brand and generic Opana ER. However, A.B. Data informed the entity that because the hospitals' purchases made were for purposes of resale, they are not eligible under the Settlement. A.B. Data further explained that even if the hospitals are not considered resellers, they are not end-payors of Opana ER and generic Opana ER because (1) the drugs are not being used for personal consumption or for consumption by a family member, and (2) the hospitals may seek payment for the administration of drugs either through the patients themselves or their health plans, which are members of the certified classes. That the hospitals may have held expired and unused stocks of Opana ER or generic Opana ER does not change the outcome because pharmacies, like CVS and Walgreens—two plaintiffs in this litigation who were direct purchasers of brand and generic Opana ER—could then make a claim

under the End-Payor Plaintiffs' settlement based on unused or expired stocks. Miller Decl. ¶ 25. Co-Lead Counsel also conferred with the third-party filer and affirmed A.B. Data's decision to deny the claim because the hospitals are not members of the classes.

10. Under the Plan of Allocation, "If the initial proposed distribution to an Allocation Pool would result in all Eligible Claimants in that pool receiving more than all of their Qualifying Claim amounts, then any funds remaining in that pool following such distribution shall be reallocated to the other pool if that other pool does not have sufficient funds to pay all Eligible Claimants in that other pool all of their Qualifying Claim amounts." ECF No. 1060-3, § II(17). Based on the claims received and processed by A.B. Data, this clause of the Plan of Allocation has been triggered because all Eligible Consumer Claimants will receive their Qualifying Claim amounts. Accordingly, the remainder of the Consumer Pool will be used to pay Eligible TPP Claimants up to their Qualifying Claim amounts.

11. Finally, Co-Lead Counsel, in consultation with A.B. Data, have determined that a small percentage of the net settlement fund needs to be withheld to (1) make any payment adjustments that may arise should an Eligible Claimant provide sufficient proof to support such an adjustment, and (2) pay taxes for the year 2023 and costs associated with the distributions. This withholding two percent of the net settlement fund (\$130,370.36). Miller Decl. ¶ 24. This amount is in addition to the \$132,137.52 that has been reserved to pay End-Payor Plaintiffs' pro rata share of defendant Endo's pending bill of costs (ECF No. 1056), which has been stayed by operation of Endo's bankruptcy (ECF No. 1064). Any unused portion of these reserved amounts shall be redistributed to class members.²

² To the extent that it is not feasible to redistribute any unused portion of these reserved amounts, End-Payor Plaintiffs will apply to the Court for permission to distribute the remaining amount *cy pres*. See Plan of Allocation § II(19).

12. Accordingly, for the foregoing reasons, the Court should grant Co-Lead Counsel's motion to authorize distribution of the net settlement funds and to withhold a reserve equal to two percent of the net settlement fund for any necessary adjustments in payments upon sufficient proof and/or to pay tax and tax expenses and costs associated with distribution.

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Respectfully submitted,

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