

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS

IN RE: OPANA ER ANTITRUST LITIGATION	MDL DOCKET NO. 2580
This document relates to:	Lead Case No. 14-cv-10150
END-PAYOR ACTIONS	Hon. Harry D. Leinenweber

**ORDER GRANTING FINAL JUDGMENT AND  
ORDER OF DISMISSAL APPROVING END-PAYOR PLAINTIFFS’  
CLASS SETTLEMENT AND DISMISSING END-PAYOR PLAINTIFFS’  
CLASS CLAIMS AGAINST IMPAX LABORATORIES, INC.**

Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, and in accordance with the terms of the Settlement Agreement dated July 19, 2022 between plaintiffs Plumbers and Pipefitters Local 178 Health & Welfare Trust Fund (“Plumbers”); Louisiana Health Service & Indemnity Company, d/b/a Blue Cross and Blue Shield of Louisiana (“Louisiana Health”); Fraternal Order of Police, Miami Lodge 20, Insurance Trust Fund (“FOP”); Wisconsin Masons’ Health Care Fund (“Wisconsin Masons”); Pennsylvania Employees Benefit Trust Fund (“Pennsylvania Employees”); and International Union of Operating Engineers, Local 138 Welfare Fund (“IUOE”) (collectively “End-Payor Plaintiffs”), on behalf of the Class defined below (along with the End-Payor Plaintiffs, the “Plaintiffs”), and Defendant Impax Laboratories, Inc. (“Impax”), it is hereby ORDERED:

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

2. Given the Court’s previous order dated June 4, 2021, certifying the End-Payor Classes (ECF No. 741) pursuant to Fed. R. Civ. P. 23(a) and (b)(3), as amended by orders dated August 11, 2021, and September 23, 2021 (ECF Nos. 746, 752), the End-Payor Classes in the Impax Settlement are defined as follows:

**Antitrust/Consumer Protection Class:** All persons or entities who indirectly purchased, paid for, and/or provided reimbursement for some or all of the purchase price for brand or generic Opana ER 5 mg, 10 mg, 20 mg, 30 mg, and/or 40 mg sold by Defendants<sup>1</sup>, other than for resale, in the states and commonwealths of Arizona, California, Florida, Hawaii, Iowa, Maine, Michigan, Minnesota, Missouri, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Oregon, South Dakota, Tennessee, Vermont, West Virginia, Wisconsin, and the District of Columbia from April 2011 through September 2018; and

**Unjust Enrichment Subclasses:** All persons or entities who from April 2011 through September 2018 indirectly purchased, paid for, and/or provided reimbursement for some or all of the purchase price for brand or generic Opana ER 5 mg, 10 mg, 20 mg, 30 mg, and/or 40 mg sold by Defendants, other than for resale, in the following states and commonwealths:

**Subclass 1:** Iowa, Michigan, Oregon, West Virginia

**Subclass 2:** Maine, New Mexico, Wisconsin

**Subclass 3:** Hawaii, Massachusetts\*, Mississippi\*, Nebraska, Vermont

**Subclass 4:** Florida, Minnesota, Missouri, Nevada, Pennsylvania, South Dakota, Utah

**Subclass 5:** Arizona\*, North Dakota

*\* With respect to Arizona, Massachusetts, and Mississippi unjust enrichment claims, Class Members must have purchased, paid for, and/or provided reimbursement for some or all the purchase price of brand or generic Opana ER from June 4, 2011 through September 2018.*

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

3. The following persons or entities are excluded from the End-Payor Classes:

(a) Defendants and their counsel, officers, directors, management, employees, subsidiaries, or affiliates;

(b) Persons or entities whose only purchases of or reimbursements or payments for brand or generic Opana ER were of or for the generic Opana ER product sold by Actavis South Atlantic LLC or its successors;

(c) All governmental entities and Medicare Part D plans and beneficiaries, except for non-Medicare Part D government-funded employee benefit plans;

(d) All persons or entities who purchased Opana ER for purposes of resale or directly from Defendants or their affiliates;

(e) Fully-insured health plans (plans that purchased insurance from another third-party payor covering 100 percent of the plan's reimbursement obligations to its members);

(f) Flat co-payers (consumers who paid the same co-payment amount for brand and generic drugs);

(g) Any consumer who purchased only Endo's brand version of Opana ER after the AB-rated generic version became available in January 2013 (i.e., "brand loyalists");

(h) Consumers with copay insurance plans who purchased only generic versions of Opana ER (i.e., "generic-only copay consumers");

(i) Pharmacy Benefit Managers;

(j) All Counsel of Record; and

(k) The Court, Court personnel and any member of their immediate families.

In addition, people who or entities that submitted a valid exclusion request before the December 6, 2021 exclusion deadline described in the previous notice of this Lawsuit sent to all Class Members are also excluded.

4. The Court previously appointed the named plaintiffs as representatives for the End-Payor Classes and DiCello Levitt LLC and Freed Kanner London & Millen LLC as Co-Lead

Counsel (“End-Payor Co-Lead Class Counsel”). The End-Payor Plaintiffs and Co-Lead Class Counsel fairly and adequately represented the interests of the End-Payor Classes and satisfied the requirements of Fed. R. Civ. P. 23(g).

5. The Court has jurisdiction over these actions, each of the parties, and all members of the End-Payor Classes for all manifestations of this case, including this Settlement Agreement.

6. The Notice of Settlement was sufficiently provided to members of the End-Payor Classes in the manner previously approved by the Court. Pursuant to, and in accordance with, Rule 23 of the Federal Rules of Civil Procedure, the Court hereby finds that the Notice provided End-Payor Class members due and adequate notice of the Settlement, the Settlement Agreement, these proceedings, and the rights of End-Payor Class members to object to the Settlement.

7. Due and adequate notice of the proceedings having been given to the End-Payor Classes and a full opportunity having been offered to the End-Payor Classes to participate in the December 15, 2022 Fairness Hearing, it is hereby determined that all End-Payor Class members are bound by this Order and Final Judgment.

6. The Settlement of this Class Action was the result of extensive negotiations conducted in good faith between End-Payor Counsel and counsel for Impax.

7. 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 End-Payor Class members and in their best interests. Accordingly, the Settlement shall be consummated in accordance with the terms and provisions of the Settlement Agreement.

8. The Court hereby approves the Plan of Allocation of the Settlement Fund as proposed by End-Payor Counsel (the “Plan of Allocation”), which was summarized in the Notice of Proposed Settlement and filed with Plaintiffs’ Motion for Preliminary Approval of Settlement (ECF No. 1060),

and directs A.B. Data, Ltd., the firm retained by End-Payor Counsel and previously appointed by the Court as the Claims Administrator, to distribute the Net Settlement Fund as provided in the Plan of Allocation.

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

10. Upon the Settlement Agreement becoming final in accordance with Paragraph 18 of the Settlement Agreement, Impax and its past, present, and future parents, subsidiaries, divisions, affiliates, joint ventures, stockholders, officers, directors, management, supervisory boards, insurers, general or limited partners, employees, agents, attorneys, servants, representatives (and the parents’, subsidiaries’, and affiliates’ past, present, and future officers, directors, employees, agents, attorneys, servants, and representatives), and the predecessors, successors, heirs, executors, administrators and representatives of each of the foregoing (collectively, the “Releasees”) are and shall be unconditionally, fully, and finally released and forever discharged from all manner of claims, debts, obligations, demands, actions, suits, causes of action, damages whenever incurred, liabilities of any nature whatsoever, including costs, expenses, penalties and attorneys’ fees, under federal or state laws, whether known or unknown, foreseen or unforeseen, suspected or unsuspected, contingent or non-contingent, in law or equity, that Plaintiffs and all Class members, whether or not they make a claim upon or participate in the Settlement Fund, on behalf of themselves and their respective past, present, and future parents, subsidiaries, associates, affiliates, officers, directors, employees, insurers, general or limited partners, divisions, agents, attorneys, servants, trustees, joint ventures, heirs, executors, administrators, representatives (and the parents’ subsidiaries’ and affiliates’ past and present officers, directors, employees, agents, attorneys,

servants, and representatives), and their predecessors, successors, heirs, executors, administrators, and representatives (collectively, the “Releasers”), ever had, now has, or hereafter can, shall or may have, directly, representatively, derivatively or in any other capacity, arising out of or relating in any way to all claims related to the End-Payor Plaintiff Class Action that accrued prior to the date of the Settlement Agreement, (collectively, this entire paragraph represents the “Released Claims”).

The Settlement Agreement is not intended to release anyone other than the Releasees and is not on behalf of anyone other than the Releasers. For the avoidance of doubt, the Settlement Agreement shall not be construed to affect a release of any kind of any claim against Endo. Furthermore, Impax represents and warrants that it has assumed no contractual obligation that would, in fact or at law, in the event Plaintiffs prevail against Endo in the End-Payor Class Action, obligate Impax to indemnify, pay contribution to, be liable to, or share in a judgment entered in favor of Plaintiffs against Endo in the End-Payor 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.

11. In addition, the End-Payor Plaintiffs and each Class member, on behalf of themselves and all other Releasers, hereby expressly waive, release and forever discharge, upon the Settlement Agreement 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 Releaser 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 18 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 Classes 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.

12. As set forth in Paragraph 18 of the Settlement Agreement, the release set forth in section B subparagraph 1 of the Settlement Agreement (and in Paragraphs 11 and 12 of this Order) shall not release any claims between Plaintiffs, members of the Classes, 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.

13. End-Payor Co-Lead Class Counsel moved for an award of attorneys' fees equal to 33-1/3% (one-third) of the Settlement amount (including the interest accrued thereon), reimbursement of the reasonable costs and expenses incurred in the prosecution of this action in the amount of \$4,005,833.95, and service awards of \$10,000 for each of the six Class Representatives, with Wisconsin Masons to receive an additional \$5,000.00 (for a total of \$15,000.00). That motion was filed on the public docket on October 11, 2022 (ECF No. 1077).

14. Upon due consideration, Co-Lead Class Counsel are hereby awarded attorneys' fees of \$5,000,000 (representing one third of the Settlement Fund) and costs and expenses totaling \$4,005,833.95, together with a proportionate share of the interest thereon from the date the funds are deposited in the Settlement Escrow Account until payment of such attorneys' fees, costs and expenses, at the rate earned by the Settlement Fund, to be paid solely from the Settlement Fund. The attorneys' fees, costs and expenses authorized and approved by this Final Judgment and Order shall be paid to DiCello Levitt LLC and Freed Kanner London & Millen LLC as follows: Class counsel shall be entitled to payment of attorneys' fees and reimbursement of expenses within fifteen (15) calendar days after this Settlement becomes final pursuant to Section D, Paragraph 7, subparagraph e 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.

15. Upon consideration of Co-Lead Class Counsel's petition for service awards for Class Representatives, each of the six Class Representatives will receive service awards of \$10,000, with Wisconsin Masons to receive an additional \$5,000.00 (for a total of \$15,000.00) to be paid solely from the Settlement Fund immediately after the Settlement becomes final.

16. Co-Lead Class Counsel are authorized to equitably allocate the fee award to Class Counsel in a good faith manner that reflects Co-Lead Counsel's judgment as to each individual



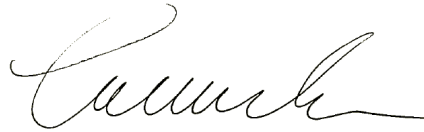
Class Counsel's contribution to the prosecution and resolution of the litigation. The Releasees shall have no responsibility for, and no liability whatsoever with respect to any payment or disbursement of attorneys' fees, expenses, costs or service awards among Class Counsel and/or Class Representatives, nor with respect to any allocation of attorneys' fees, expenses, costs or service awards to any other person or entity who may assert any claim thereto. The attorneys' fees, costs and expenses, and service awards authorized and approved by this Final Judgment and Order shall constitute full and final satisfaction of any and all claims that Plaintiffs and any Class member, and their respective counsel, may have or assert for reimbursement of fees, costs, and expenses, and service awards, and Plaintiffs and members of the End-Payor Classes, 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 Classes) 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.

SO ORDERED this 15<sup>th</sup> day of December 2022

A handwritten signature in black ink, appearing to read "Leinenweber", written in a cursive style.

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The Honorable Harry D. Leinenweber  
United States District Judge