

UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION  
OFFICE OF ADMINISTRATIVE LAW JUDGES



In the Matter of

Impax Laboratories, Inc.,  
a corporation.

Docket No. 9373

COMPLAINT COUNSEL'S MOTION  
TO COMPEL DEMIR BINGOL'S COMPLIANCE WITH THE  
SUBPOENA *AD TESTIFICANDUM*

Complaint Counsel moves the Court for an order compelling Demir Bingol, a non-party, to comply with the subpoena *ad testificandum* issued by Complaint Counsel on October 3, 2017. Rule 3.42; *see also* Rule 3.38; 15 U.S.C. § 49. This subpoena commands Mr. Bingol to appear for trial testimony in *In the Matter of Impax Laboratories, Inc.*, Docket No. 9373. In support of this motion, Complaint Counsel states as follows:

1. Mr. Bingol is Endo's former Senior Director, Oral Pain Solutions. Complaint Counsel anticipates that Mr. Bingol will testify about, among other things, Endo's expectations for the entry of Impax's oxymorphone ER product as early as June 2010, and Endo's plans for reformulation of the Opana ER product.
2. On October 2, 2017, Mr. Bingol's attorney, Christine C. Levin, agreed to accept service of a trial subpoena on behalf of Mr. Bingol. *See* Declaration of Bradley S. Albert, Ex. A.

3. On October 3, 2017, Complaint Counsel served Ms. Levin with a subpoena *ad testificandum* for Mr. Bingol's appearance in the above-referenced matter in Washington, D.C. *See* Declaration of Bradley S. Albert, Ex. B.
4. The October 3, 2017 subpoena *ad testificandum* required Mr. Bingol's attendance beginning on October 24, 2017, the first day of the trial. At the request of Mr. Bingol's counsel that we narrow the dates that we might need Mr. Bingol, we advised that, "Mr. Bingol will be notified in advance of the precise date he will be scheduled to testify." *Id.*; *see also* Declaration of Bradley S. Albert, Ex. A.
5. On October 26, 2017, Complaint Counsel informed Mr. Bingol's counsel that Mr. Bingol was required to be available to testify on October 31, 2017, starting at 2:00 PM. *See* Declaration of Bradley Albert, Ex. C.
6. On October 27, 2017, Mr. Bingol's attorney responded that Mr. Bingol would not be present to testify on October 31, 2017. *See id.*

Based on the forgoing, Complaint Counsel respectfully requests that the Court compel Mr. Bingol's counsel to respond by Monday, October 30, 2017 at 12:00 PM. Furthermore, Complaint Counsel requests the Court compel Mr. Bingol to comply with the issued subpoena *ad testificandum* and appear for trial testimony on Tuesday, October 31, 2017.

Dated: October 27, 2017

Respectfully submitted,

/s/ Bradley S. Albert

Bradley S. Albert  
Federal Trade Commission  
600 Pennsylvania Ave, NW  
Washington, DC 20580

UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION  
OFFICE OF ADMINISTRATIVE LAW JUDGES

**In the Matter of**

**Impax Laboratories, Inc.,  
a corporation.**

**Docket No. 9373**

**[PROPOSED] ORDER**

Having carefully considered Complaint Counsel's Motion to Compel Demir Bingol's Compliance With The Subpoena *Ad Testificandum*, Respondent's opposition thereto, all supporting evidence, and the applicable law, it is hereby ORDERED that Complaint Counsel's Motion to Compel Demir Bingol's Compliance With The Subpoena *Ad Testificandum* is GRANTED and it is hereby ORDERED that:

Demir Bingol shall appear for trial testimony on October 31, 2017.

SO ORDERED:

\_\_\_\_\_  
D. Michael Chappell  
Chief Administrative Law Judge

Date: \_\_\_\_\_

**STATEMENT REGARDING MEET AND CONFER**

The undersigned counsel certifies that Complaint Counsel met and conferred with the counsel for non-party Demir Bingol in a good faith effort to resolve by agreement the issues discussed above. Counsel could not agree that Demir Bingol would appear for trial testimony on October 31, 2017.

Dated: October 27, 2017

By: /s/ Bradley S. Albert  
Attorney

**CERTIFICATE OF SERVICE**

I hereby certify that on October 27, 2017, I filed the foregoing documents electronically using the FTC's E-Filing System, which will send notification of such filing to:

Donald S. Clark  
Secretary  
Federal Trade Commission  
600 Pennsylvania Ave., NW, Rm. H-113  
Washington, DC 20580

The Honorable D. Michael Chappell  
Administrative Law Judge  
Federal Trade Commission  
600 Pennsylvania Ave., NW, Rm. H-110  
Washington, DC 20580

I also certify that I delivered via electronic mail a copy of the foregoing documents to:

Edward D. Hassi  
Michael E. Antalics  
Benjamin J. Hendricks  
Eileen M. Brogan  
O'Melveny & Myers, LLP  
1625 Eye Street NW  
Washington, DC 20006  
ehassi@omm.com  
mantalics@omm.com  
bhendricks@omm.com  
ebrogan@omm.com

Anna Fabish  
Stephen McIntyre  
O'Melveny & Myers, LLP  
400 South Hope Street  
Los Angeles, CA 90071  
afabish@omm.com  
smcintyre@omm.com

*Counsel for Respondent Impax Laboratories, Inc.*

Christine Levin  
Dechert LLP  
Cira Centre  
2929 Arch Street  
Philadelphia, PA 19104  
christine.levin@dechert.com

*Counsel for Third Party Endo Pharmaceuticals, Inc. and Demir Bingol*

Dated: October 27, 2017

By: /s/ Rebecca E. Weinstein  
Attorney

**CERTIFICATE FOR ELECTRONIC FILING**

I certify that the electronic copy sent to the Secretary of the Commission is a true and correct copy of the paper original and that I possess a paper original of the signed document that is available for review by the parties and the adjudicator.

October 27, 2017

By: /s/ Rebecca E. Weinstein  
Attorney

1410004

UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION  
OFFICE OF ADMINISTRATIVE LAW JUDGES

In the Matter of

Impax Laboratories, Inc.,  
a corporation.

Docket No. 9373

**DECLARATION OF BRADLEY S. ALBERT**

I, Bradley S. Albert, declare under the penalty of perjury that the following is true and correct:

1. I am an attorney at the Federal Trade Commission and Complaint Counsel in this proceeding. Attached to this declaration are the exhibits submitted in support of Complaint Counsel's Motion to Compel Demir Bingol's Compliance With The Subpoena *Ad Testificandum*.
2. I have personal knowledge of the facts set forth in this declaration and, if called as a witness, I could and would testify competently under oath to such fact.
3. Exhibit A is a true and correct copy of an email from Christine C. Levin to me and others, dated October 2, 2017.
4. Exhibit B is a true and correct copy of a letter from Charles A. Loughlin to Demir Bingol c/o Ms. Levin enclosing a subpoena *ad testificandum*, dated October 3, 2017.
5. Exhibit C is a true and correct copy of an email chain between Ms. Levin and me, dated October 26, 2017 through October 27, 2017.

Executed this 27th day of October, 2017 in Washington, D.C.

/s/ Bradley S. Albert

Bradley S. Albert  
Federal Trade Commission  
600 Pennsylvania Ave., NW  
Washington, DC 20580  
Telephone: (202) 326-3670  
Facsimile: (202) 326-3384  
Email: balbert@ftc.gov

*Counsel Supporting the Complaint*



# **EXHIBIT A**

**From:** [Albert, Bradley Scott](mailto:Albert.Bradley.Scott)  
**To:** [Weinstein, Rebecca](mailto:Weinstein.Rebecca)  
**Subject:** FW: Opana ER  
**Date:** Friday, October 27, 2017 11:06:59 AM

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**From:** Levin, Christine [mailto:christine.levin@dechert.com]  
**Sent:** Monday, October 02, 2017 2:21 PM  
**To:** Albert, Bradley Scott  
**Cc:** Gordon, George; Clark, Alexandra; Loughlin, Chuck; Schmidt, J. Maren  
**Subject:** RE: Opana ER

Brad,

We will accept service of the subpoenas on behalf of Messrs. Cuca and Bingol. It would be most helpful if we could narrow down the prospects for when you might want to call them. They are both fairly busy. Thanks.

Best,  
Chris

**Christine C. Levin**  
Partner

Dechert LLP  
Cira Centre  
2929 Arch Street  
Philadelphia, PA 19104  
215-994-2421 Direct  
215-994-2222 Fax  
[christine.levin@dechert.com](mailto:christine.levin@dechert.com)  
[www.dechert.com](http://www.dechert.com)

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**From:** Albert, Bradley Scott [mailto:ALBERT@ftc.gov]  
**Sent:** Thursday, September 28, 2017 9:21 AM  
**To:** Levin, Christine <[christine.levin@dechert.com](mailto:christine.levin@dechert.com)>  
**Cc:** Gordon, George <[george.gordon@dechert.com](mailto:george.gordon@dechert.com)>; Clark, Alexandra <[aclark1@ftc.gov](mailto:aclark1@ftc.gov)>; Loughlin, Chuck <[cloughlin@ftc.gov](mailto:cloughlin@ftc.gov)>; Schmidt, J. Maren <[mschmidt@ftc.gov](mailto:mschmidt@ftc.gov)>  
**Subject:** Opana ER

Chris –

Will you agree to accept service of trial subpoenas on behalf of Roberto Cuca and Demir Bingol?

Thanks  
Brad

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This e-mail is from Dechert LLP, a law firm, and may contain information that is confidential or privileged. If you are not the intended recipient, do not read, copy or distribute the e-mail or any attachments. Instead, please notify the sender and delete the e-mail and any attachments. Thank you.

# **EXHIBIT B**



UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, DC 20580

Charles A. Loughlin

(202) 326-2114  
cloughlin@ftc.gov

October 3, 2017

**Via Federal Express**

Demir Bingol  
c/o Christine C. Levin, Esq.  
Dechert LLP  
Cira Centre  
2929 Arch Street  
Philadelphia, PA 19104

Re: *In the Matter of Impax Laboratories, Inc.*, Docket No. 9373

Dear Ms. Levin:

Enclosed is a Subpoena *Ad Testificandum* issued for Mr. Bingol's appearance to testify in the above-referenced matter in Washington, DC. Please note that the date in box 5 of the subpoena reflects the date and time of the start of the adjudicative hearing. Mr. Bingol will be notified in advance of the precise date he will be scheduled to testify.

Please have Mr. Bingol contact Ossie Neal at (202) 326-2358 to make all travel reservations and for information on how to complete and submit the forms necessary for reimbursement.

Enclosed are two forms related to travel and reimbursement. The first form, Witness Invitational Vendor Reimbursement, is to establish Mr. Bingol's travel profile to designate delivery of electronic reimbursement of expenses. This form should be completed and returned *immediately* to Ms. Mashean Harrison by fax at (202) 326-2285.

The second form is Claims for Witness Attendance Fees, Travel, and Miscellaneous Expenses (FTC Form 1157). Mr. Bingol will need to complete Part I and Part II of the claim form, including his social security number, and sign the form in block nine under Witness Certification at the bottom. Although this form is being sent in advance, FTC Form 1157 should be filled out **after** the scheduled appearance at the Federal Trade Commission. In order for the claim to be processed properly, original documentation **must** accompany the reimbursement form, such as taxi receipts, parking, mileage, etc.

Please note that Mr. Bingol is also entitled to a \$40.00 per day witness appearance fee.

Mr. Bingol should direct all questions related to his travel reservations and reimbursement, and return FTC Form 1157 (after travel), to Ossie Neal at:

Federal Trade Commission  
Attn: Ossie Neal  
600 Pennsylvania Avenue, NW  
H-359  
Washington, DC 20580  
[oneal@ftc.gov](mailto:oneal@ftc.gov)  
(202) 326-2358

For all other questions, please contact J. Maren Schmidt at (202) 326-3084.

Sincerely,

A handwritten signature in black ink, appearing to read 'C. Loughlin', written in a cursive style.

Charles A. Loughlin

Enclosures



# SUBPOENA AD TESTIFICANDUM<sup>PUBLIC</sup> ADJUDICATIVE HEARING

Provided by the Secretary of the Federal Trade Commission, and  
Issued Pursuant to Rule 3.34(a), 16 C.F.R. § 3.34(a) (2010)

<p>1. TO Demir Bingol c/o Christine C. Levin, Esq. Dechert LLP Cira Centre 2929 Arch Street Philadelphia, PA 19104</p>	<p>2. FROM  <b>UNITED STATES OF AMERICA FEDERAL TRADE COMMISSION</b></p>
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This subpoena requires you to attend and give testimony at an adjudicative hearing, at the date and time specified in Item 5, and at the request of Counsel listed in Item 8, in the proceeding described in Item 6.

<p>3. PLACE OF ADJUDICATIVE HEARING  Federal Trade Commission Hearing Room H-532 600 Pennsylvania Avenue, NW Washington, DC 20580</p>	<p>4. YOUR APPEARANCE WILL BE BEFORE The Honorable D. Michael Chappell</p> <hr/> <p>5. DATE AND TIME OF ADJUDICATIVE HEARING October 24, 2017 at 10:00am</p>
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6. SUBJECT OF PROCEEDING

In the Matter of Impax Laboratories, Inc., Docket No. 9373

<p>7. ADMINISTRATIVE LAW JUDGE  The Honorable D. Michael Chappell  Federal Trade Commission Washington, D.C. 20580</p>	<p>8. COUNSEL AND PARTY ISSUING SUBPOENA  Charles A. Loughlin, or designee Federal Trade Commission 400 7th Street, SW Washington, DC 20024 (202) 326-2114</p>
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<p>DATE SIGNED  10-3-2017</p>	<p>SIGNATURE OF COUNSEL ISSUING SUBPOENA  </p>
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### GENERAL INSTRUCTIONS

#### APPEARANCE

The delivery of this subpoena to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply.

#### MOTION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any motion to limit or quash this subpoena must comply with Commission Rule 3.34(c), 16 C.F.R. § 3.34(c), and in particular must be filed within the earlier of 10 days after service or the time for compliance. The original and ten copies of the petition must be filed before the Administrative Law Judge and with the Secretary of the Commission, accompanied by an affidavit of service of the document upon counsel listed in Item 8, and upon all other parties prescribed by the Rules of Practice.

#### TRAVEL EXPENSES

The Commission's Rules of Practice require that fees and mileage be paid by the party that requested your appearance. You should present your claim to Counsel listed in Item 8 for payment. If you are permanently or temporarily living somewhere other than the address on this subpoena and it would require excessive travel for you to appear, you must get prior approval from Counsel listed in Item 8.

A copy of the Commission's Rules of Practice is available online at <http://bit.ly/FTCsRulesofPractice>. Paper copies are available upon request.

This subpoena does not require approval by OMB under the Paperwork Reduction Act of 1995.

**RETURN OF SERVICE**

*I hereby certify that a duplicate original of the within subpoena was duly served: (check the method used)*

- in person.*
- by registered mail.*
- by leaving copy at principal office or place of business, to wit:*

via FedEx

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*on the person named herein on:*

October 3, 2017

(Month, day, and year)

Charles A. Loughlin

(Name of person making service)

Attorney

(Official title)



**CERTIFICATE OF SERVICE**

I hereby certify that I delivered via FedEx and electronic mail a copy of the foregoing document to:

Christine C. Levin  
Dechert LLP  
Cira Centre  
2929 Arch Street  
Philadelphia, PA 19104

*Counsel for Endo Pharmaceuticals Inc.*

I hereby certify that I delivered via electronic mail a copy of the foregoing document to:

Edward D. Hassi  
Michael E. Antalics  
Benjamin J. Hendricks  
Eileen M. Brogan  
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ehassi@omm.com  
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Stephen McIntyre  
O'Melveny & Myers, LLP  
400 South Hope Street  
Los Angeles, CA 90071  
afabish@omm.com  
smcintyre@omm.com

*Counsel for Respondent Impax Laboratories, Inc.*

October 3, 2017

By: /s/ Charles A. Loughlin  
Charles A. Loughlin  
Federal Trade Commission  
Bureau of Competition  
400 7<sup>th</sup> Street SW  
Washington, DC 20024  
cloughlin@ftc.gov  
Telephone: (202) 326-2114

*Counsel Supporting the Complaint*

# EXHIBIT C

**From:** [Albert, Bradley Scott](#)  
**To:** [Weinstein, Rebecca](#)  
**Subject:** FW: In re Impax (Bingol)  
**Date:** Friday, October 27, 2017 11:07:19 AM

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**From:** Levin, Christine [mailto:[christine.levin@dechert.com](mailto:christine.levin@dechert.com)]  
**Sent:** Friday, October 27, 2017 9:23 AM  
**To:** Albert, Bradley Scott  
**Subject:** Re: In re Impax (Bingol)

Brad

Tuesday morning is really no better given his commitments Tuesday afternoon. As I said before we worked to arrange his schedule around testifying on Thursday morning.

**Christine C. Levin**

Partner

Dechert LLP  
Cira Centre  
[2929 Arch Street](#)  
[Philadelphia, PA 19104](#)  
[215-994-2421](#) Direct  
[215-994-2222](#) Fax  
[christine.levin@dechert.com](mailto:christine.levin@dechert.com)  
[www.dechert.com](http://www.dechert.com)

On Oct 27, 2017, at 8:49 AM, Albert, Bradley Scott <[BALBERT@ftc.gov](mailto:BALBERT@ftc.gov)> wrote:

Chris

How about Tuesday morning? We could put him on first.

Brad.

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On: 27 October 2017 07:05, "Levin, Christine"  
<[christine.levin@dechert.com](mailto:christine.levin@dechert.com)> wrote:

Brad

Tuesday afternoon is problematic for Mr Bingol. He has work commitments and as you know has worked hard to be available Thursday morning. That is what we agreed upon. Surely you have another witness such as an expert or an Impax witness that you could

slot in for that time?

**Christine C. Levin**  
Partner

Dechert LLP  
Cira Centre  
[2929 Arch Street](#)  
[Philadelphia, PA 19104](#)  
[215-994-2421](#) Direct  
[215-994-2222](#) Fax  
[christine.levin@dechert.com](mailto:christine.levin@dechert.com)  
[www.dechert.com](http://www.dechert.com)

On Oct 26, 2017, at 6:41 PM, Albert, Bradley Scott  
<[BALBERT@ftc.gov](mailto:BALBERT@ftc.gov)> wrote:

Chris –

Chris –

We have been instructed by the Court to ensure that we have witnesses available so that we can continue the hearing until the end of each day. I have included below the relevant portion of the rough transcript from the hearing today.

Based on our current schedule and our best estimate of trial time, we do not expect to have a full day of testimony on Tuesday, October 31. Mr. Bingol is the next witness scheduled. We ask that Mr. Bingol be available to testify on Tuesday afternoon, starting at 2:00pm.

Please let us know by Friday at noon whether Mr. Bingol will be available to testify on Tuesday. If he is not, we may need to file a motion with the Court to enforce the trial subpoena.

Regards

Brad

\*\*\*\*\*

**JUDGE CHAPPELL: Hold on a second.**

**Mr. Loughlin, have you issued subpoenas to these witnesses.**

MR. LOUGHLIN: We did.

JUDGE CHAPPELL: Have you released anyone from subpoena.

MR. LOUGHLIN: No, Your Honor.

JUDGE CHAPPELL: Then they should be here.

MR. LOUGHLIN: Understood, Your Honor. We are working with them to try to get them here on a schedule that is -- that works for them and works for us.

JUDGE CHAPPELL: Subpoena doesn't leave wiggle room unless you give wiggle room, sir. You know what a subpoena you know you don't need to give them wiggle room when you issue a subpoena, they shall be here.

MR. LOUGHLIN: Your Honor, we're working with counsel to try to make that happen, but we don't have the power to send deputies to drag them to court.

JUDGE CHAPPELL: You bring it to me and I'll get you a deputy involved. There are ways to force subpoenas if you don't believe it, look at the rules. I'm not saying you don't have a deputy, but there will be a deputy. There will be a marshal involved if someone doesn't honor a subpoena you know that; correct?

MR. LOUGHLIN: Your Honor, yes and that's wonderful to hear. We would like nothing more than to have witnesses lined up. We have not been able to make that happen. But we will try harder.

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