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

In the Matter of	)	
Impax Laboratories, Inc., a corporation,	)	DOCKET NO. 9373
Respondent.	)	

ORDER GRANTING ENDO'S UNOPPOSED MOTION FOR LIMITED INTERVENTION

I.

On January 2, 2018, pursuant to 16 C.F.R. § 3.14(a), non-party Endo Pharmaceuticals Inc. ("Endo") filed an Unopposed Motion for Limited Intervention. ("Motion"). Endo seeks leave to intervene in this action for the limited purpose of participating in post-trial briefing on the narrow issues described below. Endo represents that Respondent Impax Laboratories, Inc. ("Impax" or "Respondent") consents to Endo's request and that Federal Trade Commission Complaint Counsel states that it will not object to the Motion on the condition that Endo files its brief by January 16, 2018. For the reasons set forth below, Endo's Motion is GRANTED.

II.

On January 19, 2017, the Commission issued an administrative complaint ("Complaint") challenging a June 2010 Settlement and License Agreement ("SLA"), which resolved patent litigation between Endo and Impax, and a June 2010 Development and Co-Promotion Agreement between Endo and Impax. Endo agreed to settle the FTC's charges against Endo in a stipulated order entered in federal court. *See* www.ftc.gov/enforcement/cases-proceedings/141-0004/impax-laboratories-inc. Thereafter, this litigation proceeded against Impax.

Endo recites that on August 7, 2017, more than seven years after the SLA, and eight months after the issuance of the Complaint, Endo and Impax entered into an agreement to resolve litigation between Endo and Impax regarding whether the SLA

required Impax to negotiate and pay royalties for later-acquired patents (the "2017 Settlement"). Impax agreed in the 2017 Settlement to pay a royalty to Endo based on its sales of extended release oxymorphone hydrochloride products. Endo states that, Complaint Counsel, in its December 22, 2017 Post-Trial Brief, seeks to expand the scope of this action by requesting relief in Complaint Counsel's proposed order that would "specifically nullify the [2017 Settlement]." Endo asserts that, to date, the 2017 Settlement has not been the subject of any inquiry, investigation, or charge from Complaint Counsel or Commission Staff.

Endo charges that Complaint Counsel is mounting a "back-door," collateral attack on the 2017 Settlement. Thus, Endo seeks to intervene for the limited purpose of responding to Complaint Counsel's Post-Trial Brief and proposed order and opposing (1) any findings related to the alleged competitive effects of the 2017 Settlement, and (2) the nullification of the 2017 Settlement, or any remedy that would affect Endo's rights under that agreement.

III.

The FTC Act provides that any non-party "may be allowed by the Commission to intervene and appear in said proceeding by counsel or in person" upon "good cause shown." 15 U.S.C. § 45(b). Pursuant to Rule 3.14(a) of the Commission's Rules of Practice, the Administrative Law Judge "may by order permit the intervention to such extent and upon such terms as are provided by law or as otherwise may be deemed proper." 16 C.F.R. § 3.14(a). Before the Commission will allow intervention into its proceedings, it must be demonstrated that the persons seeking such intervention desire to raise substantial issues of law or fact which would not otherwise be properly raised or argued; and that the issues raised are of sufficient importance to warrant additional expenditure of Commission resources on a necessarily longer and more complicated proceeding. *In re Kentucky Movers Household Goods Carriers Ass'n*, Dkt. 9309, 2004 FTC LEXIS 84, at *3 (2004) (citing *In re Firestone Tire & Rubber Co.*, Dkt. 8818, 77 F.T.C. 1666 (1970)). In considering a motion to intervene, the Administrative Law Judge shall also take into account the need to conclude the proceedings as expeditiously as possible. *Id.* at *4 (citing *In re Kellogg Co.*, Dkt. 8883, 1979 FTC LEXIS 89, at *3 (1979)).

The circumstances presented by Endo's motion are similar to those presented on a motion to intervene in *In re Polypore*, No. 9327, 2009 WL 3138657 (Sept. 23, 2009). In that case, good cause was found where complaint counsel's proposed order sought, among other things, to "terminate" and "declare null and void" a section of an agreement between the non-party and the respondent. In this case, as in *Polypore*, Endo has demonstrated substantial issues of law or fact which would not otherwise be properly raised or argued; and that the issues raised are of sufficient importance. Accordingly, Endo has demonstrated good cause to intervene, for the limited purpose set forth below. In addition, no party opposes the Motion.

IV.

For the reasons set forth above, Endo's Motion is GRANTED. It is HEREBY ORDERED that Endo is permitted to intervene in this action for the limited purpose of responding to Complaint Counsel's Post-Trial Brief and Proposed Order and opposing (1) any findings related to the alleged competitive effects of the 2017 Settlement and (2) the nullification of the 2017 Settlement, or any remedy that would affect Endo's rights under that agreement. Endo's brief on these issues shall be submitted on or before January 16, 2018.

The Parties shall include any response to Endo's January 16, 2018 brief in their Post-Trial Reply Briefs to be filed on January 26, 2018.

ORDERED:

D. Michael Chappell
Chief Administrative Law Judge

Date: January 5, 2018

Notice of Electronic Service

I hereby certify that on January 05, 2018, I filed an electronic copy of the foregoing Order Granting Endo's Unopposed Motion for Limited Intervention, with:

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Donald Clark
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I hereby certify that on January 05, 2018, I served via E-Service an electronic copy of the foregoing Order Granting Endo's Unopposed Motion for Limited Intervention, upon:

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I hereby certify that on January 05, 2018, I served via other means, as provided in 4.4(b) of the foregoing Order Granting Endo's Unopposed Motion for Limited Intervention, upon:

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