

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

COMMISSIONERS: **Joseph J. Simons, Chairman**
 Noah Joshua Phillips
 Rohit Chopra
 Rebecca Kelly Slaughter
 Christine S. Wilson

In the Matter of

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

DOCKET NO. 9373

**ORDER GRANTING NON-PARTY ENDO PHARMACEUTICALS INC.’S
MOTION TO PRODUCE CERTAIN *IN CAMERA* MATERIALS TO MDL PLAINTIFFS**

Non-party Endo Pharmaceuticals, Inc. (“Endo”) moves for leave to produce a copy of the *in camera* testimony of Endo witness, Dr. Robert Cobuzzi, provided in the evidentiary hearing in the above-captioned proceeding, to the MDL Plaintiffs¹ in the litigation pending in the Northern District of Illinois styled as *In re Opana ER Antitrust Litigation*, 14-cv-10150.² Endo explains that Dr. Cobuzzi’s testimony was requested in discovery in that litigation, and that Endo agreed to produce a copy subject to the confidentiality protections of the Protective Order in that case.

Neither Complaint Counsel nor Impax, the only parties in the FTC’s administrative proceeding, objected to Endo’s motion. Although some of the material Endo seeks to release arguably could discuss information Impax regards as confidential, *see* Tr. 2525-26, Impax has had more than ten business days’ notice of Endo’s motion and has raised no objection. *Cf.* 16 C.F.R. § 3.31 at Appendix ¶ 11 (requiring ten business days’ notice before, in response to a discovery request in another matter, a party may produce confidential material submitted by another party or a third party). Under these circumstances, we see no reason to prevent Endo

¹ The MDL Plaintiffs are Direct Purchaser Plaintiffs Value Drug Company; Meijer, Inc. and MeijerDistribution Inc.; End-Payor Plaintiffs Plumbers and Pipefitters Local 178 Health & Welfare Trust Fund, Louisiana Health Service & Indemnity Company, d/b/a Blue Cross and Blue Shield of Louisiana, Fraternal Order of Police, Miami Lodge 20, Insurance Trust Fund, Wisconsin Masons’ Health Care Fund, Pennsylvania Employees Benefit Trust Fund, International Union of Operating Engineers, Local 138 Welfare Fund and Mary Davenport; and Retailer Plaintiffs Rite Aid Corporation, Rite Aid Hdqtrs. Corp., CVS Pharmacy, Inc., Walgreen Co., The Kroger Co., Safeway, Inc., HEB Grocery Company, L.P. and Albertson’s LLC.

² The pertinent testimony appears in the transcript of this administrative proceeding at Tr. 2526:14 through 2538:18 and at Tr. 2608:12 through 2623:19.

from releasing the testimony of its witness as described, and for the purpose set forth, in Endo's motion. Accordingly,

IT IS ORDERED that Non-Party Endo Pharmaceuticals Inc.'s Motion to Produce Certain *In Camera* Materials to MDL Plaintiffs is hereby **GRANTED**; and

IT IS FURTHER ORDERED that orders in this administrative proceeding providing for *in camera* treatment remain in effect for all other purposes.

By the Commission.

Donald S. Clark,
Secretary

SEAL:

ISSUED: November 1, 2018