

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



\_\_\_\_\_  
In the Matter of )

Impax Laboratories, Inc., )  
a corporation, )

Respondent )  
\_\_\_\_\_ )

DOCKET NO. 9373

COMPLAINT COUNSEL'S MOTION TO COMPEL  
PRODUCTION OF PERFORMANCE REVIEWS FOR IMPAX WITNESSES

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Dated: July 28, 2017

**COMPLAINT COUNSEL'S MOTION TO COMPEL PRODUCTION OF  
PERFORMANCE REVIEWS FOR IMPAX WITNESSES**

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

Please take notice that, pursuant to Federal Trade Commission Rule of Practice 3.38(a), Complaint Counsel hereby respectfully requests an order compelling Respondent to produce performance reviews for current and former employees appearing on Impax's preliminary witness list in response to Request for Production No. 2 from Complaint Counsel's Third Set of Requests for Production. For the reasons set forth in the accompanying Memorandum, this motion should be granted.

This Motion is supported by the accompanying Memorandum and the authorities cited therein. A Proposed Order is attached.

Respectfully submitted,

/s/ Nicholas A. Leefer

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*Counsel Supporting the Complaint*

Dated: July 28, 2017

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

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**In the Matter of**

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

**Respondent**

---

**DOCKET NO. 9373**

**MEMORANDUM OF LAW IN SUPPORT OF COMPLAINT COUNSEL'S  
MOTION TO COMPEL PRODUCTION OF PERFORMANCE REVIEWS FOR IMPAX  
WITNESSES**

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Dated: July 28, 2017

This motion seeks performance reviews for thirteen current or former Impax employees identified by Impax as potential trial witnesses. Impax cannot seriously dispute the relevance of these performance reviews; they contain Impax's contemporaneous assessments of its employees' accomplishments in the time period around the reverse-payment agreement that is the subject of this litigation. This information bears on various factual issues in dispute, including (1) Impax's readiness to launch generic Opana ER in 2010; (2) the value of the reverse-payment agreement to Impax; and (3) efforts to develop the drug that was the subject of the side deal between Impax and Endo. Instead, Impax asserts that producing these performance reviews is unduly burdensome because they are maintained in off-site storage. Complaint Counsel's request, however, is narrowly tailored to minimize any possible burden.

Accordingly, the Court should order Impax to produce these performance reviews in response to Request for Production No. 2 from Complaint Counsel's Third Set of Requests for Production.

## **I. FACTUAL BACKGROUND**

This case challenges an anticompetitive reverse-payment agreement between Impax and Endo to obstruct lower-cost generic competition to Opana ER, a pain-relief medication. Under this agreement, Impax accepted large payments in cash and other valuable consideration in exchange for its commitment not to launch its generic version of Opana ER for two and a half years.

On January 19, 2017, Complaint Counsel filed its Complaint in this case. The Complaint alleges that Endo was willing to pay to eliminate the risk of competition from Impax, at least in part, because Impax was preparing to launch its generic version of Opana ER upon receiving final FDA approval in June 2010:

Throughout the first half of 2010, Impax prepared to launch its generic version of Opana ER at the expiration of the Hatch-Waxman 30-month stay on June 14, 2010, even if the patent challenge remained unresolved. Such generic entry is commonly referred to as an “at-risk launch.”

Complaint ¶ 41. On February 7, 2017, Impax served its Answer to the Complaint, in which it denied that it was preparing to launch at-risk. *See* Answer ¶ 41.

At the initial Case Scheduling Conference in this case, Impax’s counsel emphatically doubled down on its position that Impax never would have launched its generic version of Opana ER at-risk.

What you heard Complaint Counsel say is we would have launched at risk, which a small company like Impax doesn’t do. . . . The idea that we were going to launch at risk is folly. . . . So I look forward to how they are going to prove that we would have launched at risk.<sup>1</sup>

February 16, 2017 Hearing Transcript at 61:16-63:4.

To gather additional evidence that Impax was prepared to launch its generic Opana ER in June 2010, Complaint Counsel issued Request for Production No. 2 from its Third Set of Requests for Production. This request sought relevant performance reviews for Impax document custodians and witnesses:

For any current or former Impax employee identified by Impax as a custodian in the FTC Endo Investigation or noticed or subpoenaed for a deposition by the FTC in this proceeding, all documents containing or reflecting personnel reviews or evaluations (whether in draft or final form) that relate to oxymorphone ER, Opana ER, IPX-066, IPX-066a, IPX-203, the Opana ER Settlement and License Agreement (including but not limited to the Endo Credit), or the Development and Co-Promotion Agreement.

Declaration of Nicholas Leefer (“Leefer Declaration”) Exhibit A at 11. These performance reviews are likely to be a reliable source of information about the accomplishments of Impax’s

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<sup>1</sup> To be clear, Complaint Counsel does not need to prove that Impax would have launched its generic Opana ER product in 2010 to demonstrate that Impax’s agreement with Endo was anticompetitive. In *FTC v. Actavis*, the Supreme Court explained that “[t]he relevant anticompetitive harm” from a reverse-payment agreement is the elimination of the “risk of competition.” 133 S.Ct. 2223, 2236 (2013). Here, evidence about Impax’s readiness and capacity to launch its generic product prior to 2013 is relevant to showing that potential competition from Impax posed a substantial risk to Endo’s lucrative drug franchise.

employees, including accomplishments relating to generic Opana ER launch preparations. Nevertheless, Impax refused to produce responsive documents, objecting that the requested documents were not relevant and that finding responsive documents would be unduly burdensome because personnel records predating 2016 are stored “in hard copy only, including in offsite facilities.” *Id.*

During the parties’ meet and confer communications, Complaint Counsel offered to limit its request to performance reviews from 2009 to 2013 for current and former employees that appeared on Impax’s witness list. *See* Leefer Declaration Exhibit B at 1. Under this compromise, Impax would need only to produce documents from thirteen individuals, each of whom Impax may call at trial. Impax rejected this proposed compromise on July 21, 2017. *See id.*

## **II. ARGUMENT**

### **A. Performance reviews are relevant to the allegations of the complaint**

“Parties may obtain discovery to the extent that it may be reasonably expected to yield information relevant to the allegations of the complaint, to the proposed relief, or to the defenses of any respondent.” 16 C.F.R. § 3.31(c)(1). The requested performance reviews and associated documents of the current and former employees on Impax’s witness list are likely to have information relevant to the complaint allegations. Because employees typically have a financial incentive to be forthcoming and complete in detailing their accomplishments in a particular year, performance reviews often provide a candid and thorough description of an employee’s accomplishments. Here, the requested performance reviews are relevant to at least three contested issues:

(1) *June 2010 launch preparations*: Complaint Counsel has alleged, and Impax has denied, that Impax was preparing to launch its generic version of Opana ER upon final FDA

approval in June 2010. In a draft 2010 evaluation, however, the Senior Vice President of Operations touted the completion of launch preparations for oxymorphone (the generic name for the active ingredient of Opana ER) as a significant accomplishment for 2010. *See* Leefer Declaration Exhibit C at 2. Complaint Counsel is entitled to the final version of this review, as well as similar documents for this employee and others on Impax's preliminary witness list.

(2) *Value of the settlement agreement*: Complaint Counsel and Impax disagree about the value of the settlement agreement to Impax at the time it was executed, and whether Impax employees viewed any provisions as a payment. Impax employees responsible for the negotiation likely would have included statements about their role, and the impact of the agreement on the company, in performance reviews. Such evidence could shed light on the value of the agreement to Impax at the time it was executed, as well as whether Impax employees viewed any provisions as a payment.

(3) *Lack of development of IPX-203*: Complaint Counsel has alleged, and Impax has denied, that development of IPX-203 (the code name for a subject drug of the side deal between Impax and Endo) was delayed and that the side deal was terminated without completion of a single clinical trial. *See* Complaint ¶ 76(g); *see also* Answer ¶ 76 ("Impax denies the allegations in paragraph 76."). Performance reviews of Impax employees involved in the side deal or development of IPX-203 would likely identify any related accomplishments. Conversely, the absence of any mention of IPX-203 or the side deal in such employees' performance reviews would be evidence showing the lack of any significant development of the product.

Impax should not be permitted to deny the factual allegations in the complaint with one hand, while refusing to produce documents likely to contain information relevant to these allegations with the other.

**B. Producing performance evaluations for thirteen potential Impax witnesses is not unduly burdensome**

Although the initial burden to show relevance of information in a discovery request lies with the moving party, “parties resisting discovery of relevant information carry a heavy burden of showing why discovery should be denied.” *In the Matter of ECM BioFilms, Inc.*, FTC Dkt. No. 9358, 2014 FTC LEXIS 47, at \*3 (F.T.C. March 18, 2014). Courts routinely reject claims that discovery is unduly burdensome unless the responding party has provided sufficient evidence to justify resisting discovery. *See, e.g., In re In-Store Advertising Securities Litigation*, 163 F.R.D. 452, 455 (S.D.N.Y. 1995) (“If a party resists production on the basis of claimed undue burden, it must establish the factual basis for that assertion through competent evidence.”) (*quoting Fletcher v. Atex, Inc.*, 156 F.R.D. 45, 54 (S.D.N.Y.1994)); *U.S. E.E.O.C. v. ABM Industries Inc.*, No. 1:07-cv-01428, 2008 WL 5385618 at \*8 (E.D. Cal. Dec. 23, 2008) (“A bare assertion of undue burden without factual allegations does not suffice.”).

Impax’s conclusory assertion that production of performance evaluations is too difficult because it may require searching hard copy documents or offsite archives is unavailing. First, courts have rejected a party’s attempt to claim undue burden based on its own inadequate storage system. *See Kozłowski v. Sears, Roebuck & Co*, 73 F.R.D. 73, 76 (D. Mass. 1976) (“To allow a defendant whose business generates massive records to frustrate discovery by creating an inadequate filing system, and then claiming undue burden, would defeat the purposes of the discovery rules.”). Second, even if searching for, and producing a discrete and easily identified set of archived documents from storage could be considered burdensome, court often require their production when such documents are the only available means of discovering relevant information. *See In re Sulfuric Acid Antitrust Litigation*, 231 F.R.D. 351, 361-62 (N.D. Ill. 2005) (requiring defendants to re-review 350 boxes of documents to comply with document requests



did not impose an undue burden). *C.f., American Intern. Specialty Lines Ins. Co. v. NWI-I, Inc.*, 240 F.R.D. 401, 412-13 (N.D. Ill. 2007) (notwithstanding the burden of reviewing 19,000 boxes of documents in storage, ordering the parties to work together to create a discovery plan to review those documents). Impax has not explained why searching thirteen employees' personnel files from a limited time period to locate responsive performance reviews is unduly burdensome in view of the highly relevant nature of those documents.

Finally, Complaint Counsel's request does not raise undue privacy concerns. Complaint Counsel is not seeking the employees' entire personnel files for these thirteen witnesses. *See generally Regan–Touhy v. Walgreen Co.*, 526 F.3d 641, 648 (10th Cir. 2008) ("Personnel files often contain sensitive personal information . . . and it is not unreasonable to be cautious about ordering their entire contents disclosed willy-nilly."). Instead, this request is narrowly tailored to seek only relevant performance reviews, only from those current and former employees that Impax may call to testify at trial, and only from the most relevant time period. Courts have granted similar focused requests for performance reviews. *See Gessling v. Group Long Term Disability Plan*, 639 F. Supp. 2d 947, 948 (S.D. Ind. 2009) ("The Plan has cited a few decisions that deny discovery of reviewing employees' *personnel files*, based on undue burden and intrusiveness. The request for evaluations and reviews is more focused, however . . .") (*emphasis in original*); *Zewdu v. Citigroup Long Term Disability Plan*, 264 F.R.D. 622, 629 (N.D. Cal. 2010) (ordering production of "performance evaluations of medical professionals involved in the handling of Plaintiff's claim"). *See also Regan–Touhy*, 526 F.3d at 648 ("This is not to say personnel files are categorically out-of-bounds . . . had Ms. Touhy issued a more narrowly targeted request . . . we would face a very different question.").<sup>2</sup>

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<sup>2</sup> In any case, Impax could designate such documents as confidential under the protective order, which would suffice to protect any sensitive information.

## CONCLUSION

For the reasons stated above, Complaint Counsel's Motion to Compel should be granted.

Respectfully submitted,

/s/ Nicholas A. Leefer

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Bradley S. Albert  
Charles A. Loughlin  
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Alpa D. Davis  
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James H. Weingarten  
Rebecca Weinstein

*Counsel Supporting the Complaint*

Dated: July 28, 2017

**STATEMENT REGARDING MEET AND CONFER**

The undersigned counsel certifies that Complaint Counsel conferred with Respondent's counsel in a good faith effort to resolve by agreement the issues raised by Respondent's Objections and Responses to Complaint Counsel's Third Set of Requests for Production. On July 7, 2017, Complaint Counsel (Nicholas Leefer) responded to Impax's objections and asked to meet and confer. On July 12, 2017, Complaint Counsel (Nicholas Leefer) and Respondent's Counsel (Anna Fabish) met and conferred, at which point Complaint Counsel proposed a compromise. And on July 21, 2017, Respondent's Counsel (Anna Fabish) communicated by email to Complaint Counsel (Nicholas Leefer) that Complaint Counsel's proposed compromise was rejected.

Dated: July 28, 2017

Respectfully submitted,

/s/ Nicholas A. Leefer

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Federal Trade Commission  
600 Pennsylvania Ave, NW  
Washington, DC 20580

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

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

**[PROPOSED] ORDER**

Having carefully considered Complaint Counsel's Motion to Compel Production of Performance Reviews for Impax Witnesses, Respondent's Opposition thereto, all supporting evidence, and the applicable law, it is hereby ORDERED that Complaint Counsel's Motion to Compel Production of Performance Reviews for Impax Witnesses is GRANTED and it is hereby ORDERED that, no later than August 11, 2017, Respondent shall produce personnel reviews responsive to Request for Production No. 2 from Complaint Counsel's Third Set of Requests for Production for current and former employees on Impax Laboratories, Inc.'s preliminary witness list.

ORDERED:

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

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

**CERTIFICATE OF SERVICE**

I hereby certify that on July 28, 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:

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*Counsel for Respondent Impax Laboratories, Inc.*

Dated: July 28, 2017

By: /s/ Nicholas A. Leefer  
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.

July 28, 2017

By: /s/ Nicholas A. Leefer  
Attorney

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

---

**In the Matter of**

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

**Respondent**

---

**DOCKET NO. 9373**

**DECLARATION OF NICHOLAS A. LEEFER**

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 Memorandum in Support of its Motion to Compel Production of Performance Reviews for Impax Witnesses.
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 facts.
3. Exhibit A is a true and correct copy of Respondent Impax Laboratories, Inc.'s Objections and Responses to Complaint Counsel's Third Set of Requests for Production of Documents.
4. Exhibit B is a true and correct copy of an email exchange consisting of an email from Anna Fabish to Nicholas Leefer and others, dated July 12, 2017, an email from Nicholas Leefer to Anna Fabish and others, dated July 13, 2017, an email from Anna Fabish to Nicholas Leefer and others, dated July 18, 2017, an email from Nicholas Leefer to Anna Fabish and others dated July 19, 2017, and an email from Anna Fabish to Nicholas Leefer and others dated July 21, 2017.

5. Exhibit C is a true and correct copy of a document used at the deposition of Mr. Chuck Hildenbrand, marked as exhibit number CX2899, and bearing bates numbers Impax\_Opana\_PartIII\_0024286-88.

I declare under the penalty of perjury that the foregoing is true and correct. Executed this 28th day of July, 2017 in Washington, DC.

/s/ Nicholas A. Leefer

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*Counsel Supporting the Complaint*



# Exhibit A

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

In the Matter of:

IMPAX LABORATORIES, INC.,  
  
a corporation.

**Docket No. 9373**

**RESPONDENT IMPAX LABORATORIES, INC.'S OBJECTIONS AND RESPONSES  
TO COMPLAINT COUNSEL'S THIRD SET OF REQUESTS FOR PRODUCTION OF  
DOCUMENTS**

Pursuant to the Federal Trade Commission's Rules of Practice, 16 C.F.R. §3.37, Respondent Impax Laboratories, Inc. ("Impax") hereby objects and responds to Complaint Counsel's Requests for Production of Documents ("Requests") dated May 30, 2017. Impax's objections and responses are based upon information presently known to Impax. Impax reserves the right to amend, modify, or supplement these objections and responses, and therefore the absence of an objection to any Request does not constitute a waiver of any general or specific objection or privilege.

### **GENERAL OBJECTIONS**

These objections apply to all document Requests as though set out as specific objections immediately following each document Request:

1. Impax objects to each Request to the extent it is vague, ambiguous, overbroad, unduly burdensome, and/or fails to describe the information sought with reasonable particularity.
2. Impax objects to the Requests to the extent they require the disclosure of information that is neither relevant to the parties' claims or defenses in this action nor reasonably calculated to lead to the discovery of admissible evidence. Further, Impax objects to the Requests to the extent they seek documents, the potential relevance of which is not proportional to the needs of the case.
3. Impax objects to each Request to the extent it requires the disclosure of any information or document that is a matter of public record, is equally available to Complaint Counsel, or is already in Complaint Counsel's possession, custody, or control.
4. Impax objects to each Request to the extent it seeks documents or information not in Impax's possession, custody, and control. None of the responses to these Discovery

Requests constitutes an admission that any responsive documents are within the possession, custody, or control of Impax.

5. Impax's agreement to search for and make available any particular document or documents shall not be construed as or deemed to be a representation either that responsive information exists or that such information is in Impax's possession, custody, or control.
6. Impax objects to each Request to the extent it does not contain reasonable time limits.
7. Impax objects to the Requests to the extent they call for information that is protected by the attorney-client privilege, the joint prosecution privilege, the joint defense privilege, the work-product doctrine, or any other privileges, protections, or doctrines of similar effect. To the extent Impax inadvertently produces any information protected by the attorney-client privilege, the joint prosecution privilege, the joint defense privilege, the work-product doctrine, or any other privilege or protection, such production is not intended to and shall not operate as a waiver of any applicable privilege or protection with respect to that document and/or information, or any other document and/or information. Impax reserves the right to demand that Complaint Counsel return any such information and/or documents or copies thereof. If Impax notifies Complaint Counsel that an inadvertent disclosure has occurred, Complaint Counsel must immediately return the inadvertently produced privileged material to Impax, including any copies, must not use or disclose the information, and must take reasonable steps to retrieve the information if Complaint Counsel disclosed such information before being notified. If the production or identification of a document is deemed by this Court to be a waiver of any privilege or immunity, the waiver shall be a limited waiver pertaining to that document only.

8. Impax objects to each Request to the extent that it requires or purports to require Impax to locate and produce “all” documents. Subject to its objections, Impax will respond to the Requests by conducting a reasonable search of those files at Impax that are reasonably believed to possess potentially responsive documents.
9. Impax objects to the Requests to the extent that the burden or expense of the proposed discovery outweighs its likely benefit.
10. Impax objects to the Requests to the extent they seek to impose obligations different from, or in excess of, those required or authorized by the Federal Trade Commission’s Rules of Practice or any applicable order or rule of this Court.
11. Impax’s discovery and investigation into the matters specified are continuing.

Accordingly, Impax reserves its right to supplement, alter, or change its responses and objections to the Requests and to provide additional responsive documents that Impax has in its possession, custody, or control at the time the Requests were propounded, in the manner and to the extent required by the Federal Trade Commission’s Rules of Practice. Furthermore, Impax reserves the right, during any proceedings in this action, to rely on documents, evidence, and other matters in addition to the information provided in response to the Requests, whether or not such documents, evidence, or other matters are newly discovered or are now in existence but have not been located despite diligent and good faith efforts.

12. Impax’s production of any documents is not a waiver of any of the objections set forth herein or an admission or acknowledgment that such information is relevant to the subject matter of this action. Further, these responses are without prejudice to and not a waiver of (a) Impax’s right to contend at any proceeding in this action that such

information is inadmissible, irrelevant, immaterial, or not a proper basis for discovery; and (b) any objection by Impax to any future use of such information that Complaint Counsel may attempt to make. Impax construes the Requests as requiring it to engage in, and it has engaged in, reasonable inquiry about the specific matters referenced therein.

13. Impax objects to each and every Request to the extent that it seeks Impax's proprietary, confidential, financial, trade secret, or commercially-sensitive information, the disclosure of which would unduly and improperly invade its protected rights. Impax similarly objects to each and every Request to the extent it seeks third-party proprietary, confidential, financial, trade secret, or commercially-sensitive information, the disclosure of which could harm third parties' competitive or business positions or result in a breach of Impax's obligation to maintain the confidentiality of such information. Impax will thus produce such documents and information as necessary subject to the Protective Order entered by the Court.

14. Impax objects to each Request to the extent it requires or purports to require Impax to review and produce electronic documents that cannot be reviewed in an efficient and cost-effective manner, or to the extent that it seeks discovery of electronically stored information from sources that Impax identifies as not reasonably accessible because of undue burden or cost pursuant to Rule §3.37 of the Federal Trade Commission's Rules of Practice. Impax's production of documents will be made from reasonably accessible, non-archived sources only.

15. Impax's responses, and its production of any document or documents, do not in any way constitute an adoption of Complaint Counsel's purported Definitions of words or phrases. Impax objects to the Definitions to the extent they (i) are unclear, ambiguous, overly

broad, or unduly burdensome; (ii) are inconsistent with the ordinary and customary meaning of the words or phrases they purport to define; and (iii) seek to impose obligations different from, or in excess of, those created by the Federal Trade Commission's Rules of Practice. Without limiting the generality of this objection, Impax specifically objects to the following:

- A. Impax objects to the definition of the terms "Impax" and "the Company" in Definition 1 to the extent they purport to include third-party "agents," "consultants," "representatives," or "affiliates" on the grounds that the definition is vague, ambiguous, overly broad, and/or unduly burdensome.
- B. Impax objects to the definition of the term "agreement" in Definition 3 to the extent it purports to include any "oral or written . . . understanding," even if informal, on the grounds that the definition is vague, ambiguous, overly broad, and/or unduly burdensome.
- C. Impax objects to the definition of "At Risk" in Definition 5 to the extent the definition is vague and ambiguous.
- D. Impax objects to the definition of the term "Endo" in Definition 14 to the extent it purports to include third-party "agents," "consultants," "representatives," or "affiliates" on the grounds that the definition is vague, ambiguous, overly broad, and/or unduly burdensome.
- E. Impax objects to the definition of the term "Generic Opana ER" in Definition 16 to the extent it purports to include any ANDA product that references Reformulated Opana ER (NDA No. 201655) and thus does not discriminate between different formulations of Opana ER.

- F. Impax objects to the definition of the term “Opana ER” in Definition 18 to the extent it purports to include both Reformulated Opana ER (NDA No. 201655) and Opana ER and thus does not discriminate between different formulations of Opana ER.
  - G. Impax objects to the definition of the term “Penwest” in Definition 22 to the extent it purports to include third-party “agents,” “consultants,” “representatives,” or “affiliates” on the grounds that the definition is vague, ambiguous, overly broad, and/or unduly burdensome.
  - H. Impax objects to the definition of the term “Opioid Products” to the extent that the definition is vague, ambiguous, and potentially under-inclusive, and to the extent it purports to define any market, sub-market, or market segment.
16. To the extent that Impax adopts any term defined by Complaint Counsel, it is adopted solely for convenience in responding to Complaint Counsel’s Requests for Production of Documents, and Impax does not accept or concede that any of the terms or definitions contained therein are appropriate, descriptive, or accurate.
17. Impax objects to Complaint Counsel’s Instructions to the extent that they purport to impose burdens and requirements upon Impax that exceed or differ from the requirements of the Federal Trade Commission’s Rules of Practice. Without limiting the generality of this objection, Impax specifically objects to the following:
- A. Impax objects to Complaint Counsel’s Instruction 1 to the extent that it does not contain reasonable time limits.



- B. Impax objects to Complaint Counsel's Instruction 2 to the extent Complaint Counsel's instruction to produce "all other responsive documents" demands that Impax produce documents protected by the attorney-client privilege, work product doctrine, or any other privilege or immunity. Impax interprets all requests contained herein that are duplicative of requests reflected in the Civil Investigative Demand Impax received in the prior investigation, FTC No. 141-0004, to be modified per agreements reached during that investigation between Impax Counsel and FTC Staff regarding the respective duplicative CID request or the respective duplicative portion or portions of the CID requests.
- C. Impax objects to Complaint Counsel's assertion in Instruction 3 that their Discovery Requests are "continuing in nature," thereby obligating Impax to produce subsequently discovered documents. Impax will supplement its responses pursuant to the requirements set forth in Rule §3.31(e) of the Federal Trade Commission's Rules of Practice.
- D. Impax objects to Complaint Counsel's Instruction 4 because Impax is under no obligation pursuant to the Federal Trade Commission's Rules of Practice to produce documents in the fashion specified by Complaint Counsel. Except where indicated otherwise, Impax will produce non-objectionable responsive documents as they are kept or maintained in the usual course of business. Impax will seek to meet and confer with Complaint Counsel regarding its objections to Instructions 4 and 7(a) and possible redactions or excerpting of certain types of documents based on relevance.

- E. Impax objects to Instruction 5 to the extent it requires Impax to search or otherwise gather documents from all personal devices or files of its employees, former employees, directors, or officers, as such materials are not reasonably accessible.
- F. Impax objects to Complaint Counsel's Instructions 6 and 7 on the grounds that they are overbroad and burdensome, and purport to impose duties or obligations on Impax that are greater than or inconsistent with the applicable requirements of the Federal Trade Commission's Rules of Practice. When both reasonable and possible, Impax will produce metadata coextensive and consistent with the metadata produced in prior productions to the Federal Trade Commission.
- G. Impax further objects to Instructions 6 and 7 to the extent they require Impax to adjust in any way to form of documents previously produced to the Commission in the prior investigation, FTC No. 141-0004.
- H. Impax objects to Complaint Counsel's Instructions 6(c) and 11 on the grounds that they purport to impose duties or obligations on Impax that are greater than, inconsistent with, and/or not required by the Federal Trade Commission's Rules of Practice governing discovery.
- I. Impax objects to Instruction 8 to the extent it requires Impax to adjust in any way privilege logs previously produced to the Commission in the prior investigation, FTC No. 141-0004, or to provide additional privilege or redaction logs for documents listed in the privilege logs previously produced.
- J. Impax objects to Plaintiffs' Instruction 10 to the extent it requests information about documents that are lost, destroyed, or otherwise missing. Impax is under no obligation to produce documents that are not in its possession, custody, or control, or

that are not reasonably accessible. Moreover, there is no requirement under the Federal Trade Commission's Rules of Practice for Impax to undertake a costly and time-consuming investigation to provide the information requested in Instruction 10.

18. The general objections set forth above are incorporated in each response below and shall be deemed to be continuing even if not specifically referred to in responses to individual Requests. Any responses to these Requests are made without waiver of, or prejudice to, any objections Impax may raise now or in the future and all such objections are hereby expressly preserved.

### **SPECIFIC OBJECTIONS AND RESPONSES**

In addition to the General Objections, Impax responds as follows:

#### **Document Request No. 1:**

For the products buprenorphine and hydrocodone bitartrate, submit separately, by branded and generic versions of each drug, on a monthly basis for each month from January 2009 to present: a. IMS National Sales Perspective (Retail and Non-Retail) data, or the equivalent thereof, by product form and by dosage strength, separately by customer channel, for total sales in dollars and extended units; and

b. IMS National Prescription Audit data, or the equivalent thereof, by product form and by dosage strength, separately by customer channel, for newly dispensed prescriptions, refill dispensed prescriptions, and total dispensed prescriptions.

#### **Response to Document Request No. 1:**

The data described in Request No. 1 do not exist in Impax's files. Data on the products buprenorphine and hydrocodone bitartrate are not included in Impax's existing IMS data subscription. Thus, the only means by which Impax could obtain such data would be to purchase

it from IMS. Because Complaint Counsel can purchase this data, Request No. 1 seeks discovery that Complaint Counsel may seek from another source that is less burdensome.

**Document Request No. 2:**

For any current or former Impax employee identified by Impax as a custodian in the FTC Endo Investigation<sup>1</sup> or noticed or subpoenaed for a deposition by the FTC in this proceeding, all documents containing or reflecting personnel reviews or evaluations (whether in draft or final form) that relate to oxymorphone ER, Opana ER, IPX-066, IPX-066a, IPX-203, the Opana ER Settlement and License Agreement (including but not limited to the Endo Credit), or the Development and Co-Promotion Agreement.

**Response to Request No. 2:**

Impax objects to Request No. 2 vague, ambiguous, and overbroad in as far as it seeks documents that “relate to” any of the topics listed, which include several Impax products or product candidates without qualification. Impax interprets the phrase “relate to” in this context as meaning the documents refer explicitly to any of the products or agreements listed in Request No. 2.

Impax further objects to Request No. 2 as seeking documents that cannot be reasonably expected to yield information relevant to the allegations of the complaint, the proposed relief, or to any defenses. To the extent any such documents are at all relevant, that relevance is not proportional to the needs of the case.

Moreover, the burden of responding to Request No. 2 far outweighs any potential benefit. Impax maintains its personnel records prior to 2016 in hard copy only, including in offsite facilities. Thus, the only means of determining whether any of the above products or agreements may been mentioned in any way in the evaluations of the over 30 current and former Impax

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<sup>1</sup> See Impax Custodian List, June 19, 2014, FTC File No. 1410004.

employees covered by Request No. 2 would be to manually review those 33 individuals' hard copy personnel files, dating back as many as seven years in many instances, which is unduly burdensome as compared to any potential relevant information that may be contained in these files.

**Document Request No. 3:**

Documents sufficient to show when development of IPX-066a and IPX-203 began, when the name IPX-203 was assigned, and the work that had been completed on IPX-066a and IPX-203 as of June 8, 2010.

**Response to Request No. 3:**

Impax has produced or will produce documents responsive to Request No. 3.

**Document Request No. 4:**

Unredacted transcripts from the court proceedings on June 3, 4, and 7, 2010 in *Endo Pharmaceuticals Inc. v. Impax Laboratories, Inc.*, Civil Action Nos. 09-831, 09-832, and 09-833 (D.N.J.).

**Response to Request No. 4:**

Impax never ordered or received the transcripts from the court proceedings on June 3, 4, and 7, 2010 in *Endo Pharmaceuticals Inc. v. Impax Laboratories, Inc.*, Civil Action Nos. 09-831, 09-832, and 09-833 (D.N.J.), and thus the requested documents are not in Impax's possession, custody or control.

**Document Request No. 5:**

All documents memorializing any agreement between Impax or its counsel and any fact witness in this proceeding that would result in any compensation to the fact witness for their preparation or time spent at a deposition.

**Response to Request No. 5:**

Impax objects to Request No. 5 on the grounds that it cannot be reasonably expected to yield information relevant to the allegations of the complaint, the proposed relief, or to any defenses. Subject to and without waiving the foregoing objections, Impax will produce documents responsive to Request No. 5.

**Document Request No. 6:**

For January 1, 2007 through December 31, 2011, all documents reflecting forecasts, projections, or budgets and documents sufficient to show actual expenditures relating to *Endo Pharmaceuticals Inc. v. Impax Laboratories, Inc.*, Civil Action Nos. 09-831, 09- 832, and 09-833 (D.N.J.), and any anticipated or potential appeal thereof.

**Response to Request No. 6**

Impax objects to Request No. 6 as seeking documents that cannot be reasonably expected to yield information relevant to the allegations of the complaint, the proposed relief, or to any defenses. To the extent any such documents are at all relevant, that relevance is not proportional to the needs of the case. Impax further objects to request No. 6 to the extent it seeks privileged material or attorney work product.

Subject to and without waiving the foregoing objections, Impax responds as follows: Impax will produce documents sufficient to show the legal fees and costs Impax has paid to date in connection with *Endo Pharmaceuticals Inc. v. Impax Laboratories, Inc.*, Civil Action Nos. 09-831, 09- 832, and 09-833 (D.N.J.).

**Document Request No. 7:**

For January 1, 2016 to present, all documents reflecting forecasts, projections, or budgets and documents sufficient to show actual expenditures relating to *Endo Pharmaceuticals Inc. v.*

*Impax Laboratories, Inc.*, Civil Action No. 2:16-2526 (D.N.J.), and any anticipated or potential appeal thereof.

**Response to Request No. 7**

Impax objects to Request No. 7 as seeking documents that cannot be reasonably expected to yield information relevant to the allegations of the complaint, the proposed relief, or to any defenses. To the extent any such documents are at all relevant, that relevance is not proportional to the needs of the case. Impax further objects to request No. 7 to the extent it seeks privileged material or attorney work product.

Subject to and without waiving the foregoing objections, Impax responds as follows: Impax will produce documents sufficient to show the legal fees and costs Impax has paid to date in connection with *Endo Pharmaceuticals Inc. v. Impax Laboratories, Inc.*, Civil Action Nos. 09-831, 09-832, and 09-833 (D.N.J.).

**Document Request No. 8:**

All documents on which Impax expects to rely at the evidentiary hearing in this proceeding.

**Document Request No. 8:**

Impax objects to Request No. 8 on the grounds that it is premature. Impax has not determined what documents it will rely on at the evidentiary hearing. Subject to and without waiving the foregoing objections, Impax has or will produce all documents responsive to Request No. 8.

**Document Request No. 9:**

All documents from the custodial files of any current Impax employee that Impax identifies as a potential witness in this proceeding pursuant to Paragraph 13 of Impax's Preliminary Witness List concerning any of the topics identified in Paragraph 13, including:

Impax's generic oxymorphone ER sales, the patent litigation regarding oxymorphone ER and its effects on Impax's sales and other Opana ANDA filers, the current market conditions for oxymorphone ER, or the Settlement and License Agreement's pro-competitive effects.

**Document Request No. 9:**

Impax objects to Request No. 9 as overbroad, unduly burdensome, and unreasonably cumulative or duplicative. Impax further objects to Request No. 9 as vague and ambiguous as to "custodial files." The burden to Impax of identifying any responsive documents not yet produced or collected to be produced far outweighs the potential relevance of any such documents. Subject to and without waiving the foregoing objections, Impax has produced or will produce documents responsive to Request No. 9.



### CERTIFICATE OF SERVICE

I, the undersigned, declare:

I am and was, at all times mentioned herein, a resident of the United States, over the age of 18 years, and neither a party nor interested in the above-captioned action. My business address is O'Melveny & Myers LLP, 1625 Eye St. NW, Washington, DC 20006. On June 29, 2017, I served via electronic mail a true copy of **Respondent Impax Laboratories, Inc.'s Objections and Responses to Complaint Counsel's Third Set of Requests For Production of**

**Documents** on the following parties:

Bradley S. Albert  
balbert@ftc.gov

Nicholas Leefer  
nleefer@ftc.gov

Jamie Towey  
jtowey@ftc.gov

Maren J. Schmidt  
mschmidt@ftc.gov

Eric M. Sprague  
esprague@ftc.gov

*Complaint Counsel*

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct, and that this declaration was executed this 29th day of June, 2017, in Washington, DC.

Dated: June 29, 2017

By: /s/ Anna Fabish  
Anna Fabish

# Exhibit B

**From:** [Fabish, Anna](#)  
**To:** [Leefer, Nicholas](#); [Hendricks, Benjamin J.](#); [Schmidt, J. Maren](#); [Meier, Markus H.](#); [Albert, Bradley Scott](#); [Butrymowicz, Daniel W.](#); [Mark, Synda](#); [Towey, Jamie](#); [Sprague, Eric M.](#); [Loughlin, Chuck](#); [Weinstein, Rebecca](#); [Clark, Alexandra](#); [Allen, Devon](#); [Wint, Corene](#); [Martin, Teresa](#); [Weingarten, James](#); [Peay, Lauren](#)  
**Cc:** [Hassi, Ted](#); [Clark, Alexandra](#); [Antalics, Michael E.](#); [McIntyre, Stephen](#); [Brogan, Eileen M.](#)  
**Subject:** RE: Docket 9373 - Inadvertently produced non-responsive forecasts  
**Date:** Friday, July 21, 2017 12:59:55 AM

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Nicholas -

The list of forecasts discussed below was sent under separate cover a moment ago.

I can also respond regarding the remaining open items from our meet and confer last week:

Regarding your question on Request No. 7 of Complaint Counsel's Third Set of Requests for Production: The case number referenced in Impax's response is a typographical error. The response should refer to the case noted in Request No. 7, *Endo Pharmaceuticals Inc. v. Impax Laboratories, Inc.*, Civil Action No. 2:16-2526 (D.N.J.).

Regarding Request No. 2 of Complaint Counsel's Third Set of Requests for Production (personnel reviews or evaluations): Impax continues to view the request as objectionable, even when limited to the 13 current and former Impax employees on Impax's witness list, as you proposed. Impax continues to view any potential relevance from such documents as outweighed by the burden of identifying them, and stands on its objections.

Best,  
Anna

**O'Melveny**

**Anna M. Fabish**

Counsel  
[afabish@omm.com](mailto:afabish@omm.com)  
O: +1-213-430-7512

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400 South Hope Street, 18<sup>th</sup> Floor  
Los Angeles, CA 90071  
[Website](#) | [LinkedIn](#) | [Twitter](#)

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**From:** Leefer, Nicholas [mailto:[nleefer@ftc.gov](mailto:nleefer@ftc.gov)]  
**Sent:** Wednesday, July 19, 2017 10:30 AM  
**To:** Fabish, Anna; Hendricks, Benjamin J.; Schmidt, J. Maren; Meier, Markus H.; Albert, Bradley Scott; Butrymowicz, Daniel W.; Mark, Synda; Towey, Jamie; Sprague, Eric M.; Loughlin, Chuck; Weinstein, Rebecca; Clark, Alexandra; Allen, Devon; Wint, Corene; Martin, Teresa; Weingarten, James; Peay, Lauren  
**Cc:** Hassi, Ted; Clark, Alexandra; Antalics, Michael E.; McIntyre, Stephen; Brogan, Eileen M.  
**Subject:** RE: Docket 9373 - Inadvertently produced non-responsive forecasts

Anna,

We are still considering the issue of your non-privilege related clawback. During our call last week, you indicated that you would be providing us with a list of the final forecasts supporting board presentations – in other words those forecasts that you believe were properly produced. We would like to review that list before making a decision on these other forecasts.

With respect to Interrogatory No. 21, I believe we have reached an understanding. We are asking you to reproduce the identified documents with summary sheets included. We do not need the underlying detail sheets that solely concern non-oxymorphone products.

Best Regards,

Nicholas Leefer  
Federal Trade Commission  
Bureau of Competition, Health Care Division  
202-326-3573  
[nleefer@ftc.gov](mailto:nleefer@ftc.gov)

---

**From:** Fabish, Anna [<mailto:afabish@omm.com>]  
**Sent:** Tuesday, July 18, 2017 7:42 PM  
**To:** Leefer, Nicholas; Hendricks, Benjamin J.; Schmidt, J. Maren; Meier, Markus H.; Albert, Bradley Scott; Butrymowicz, Daniel W.; Mark, Synda; Towey, Jamie; Sprague, Eric M.; Loughlin, Chuck; Weinstein, Rebecca; Clark, Alexandra; Allen, Devon; Wint, Corene; Martin, Teresa; Weingarten, James; Peay, Lauren  
**Cc:** Hassi, Ted; Clark, Alexandra; Antalics, Michael E.; McIntyre, Stephen; Brogan, Eileen M.  
**Subject:** RE: Docket 9373 - Inadvertently produced non-responsive forecasts

Nicholas -

I look forward to hearing back from you regarding the non-responsive forecasts. My responses to your questions are below in yellow.

In addition, during our meet and confer last week, you asked that I confirm that Impax's outside counsel does not have the patent litigation transcripts requested in Complaint Counsel's Third Set of Interrogatories. I have confirmed that they do not.

We are still looking into the additional questions I agreed to follow-up on during our meet and confer (related to Request Nos. 2 and 6/7).

Best,

Anna

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**From:** Leefer, Nicholas [<mailto:nleefer@ftc.gov>]  
**Sent:** Thursday, July 13, 2017 9:41 AM  
**To:** Fabish, Anna; Hassi, Ted; Antalics, Michael E.; Parker, Richard; McIntyre, Stephen; Hendricks, Benjamin J.; Brogan, Eileen M.; Meier, Markus H.; Butrymowicz, Daniel W.; Mark, Synda; Schmidt, J. Maren; Towey, Jamie; Sprague, Eric M.; Loughlin, Chuck; Weinstein, Rebecca; Clark, Alexandra; Albert, Bradley Scott; Weingarten, James; Peay, Lauren  
**Subject:** RE: Docket 9373 - Inadvertently produced non-responsive forecasts

Anna,

We are considering this issue, and will try to get back to you by early next week. We will also keep an eye out for the coming privilege clawback you reference, below.

In addition, we want to follow up on a few other issues from our meet and confer call yesterday.

- Interrogatory No. 20
  - During our call, I asked about the units associated with the quantities of finished goods in Impax's response. You indicated that this information came from the documents cited in the response (Impax\_Opana\_PartIII\_0026746) and that we should look there for that information. You further suggested that if the document did not answer the question, you would be willing to ask someone at Impax for more information.
  - Unfortunately, this document does not appear to indicate units for the quantity information. As such, we ask that you consult with Impax to determine the appropriate units for this quantity information.  
AMF: The units referenced in this document are 100 count bottles.
- Interrogatory No. 21
  - As I mentioned, we believe that the spreadsheets referenced in this response (and some similar documents) are missing relevant tabs. In particular, summary or data aggregation/processing tabs appear to have been removed before production. You indicated that, if we sent a list of spreadsheets where we had identified with missing tabs, you would review them and get back to us. The list of these documents is as follows:
    - IMPAX-OPANA-CID0000009339 + 9340 (referenced in ROG response)
    - IMPAX-OPANA-CID00011906
    - IMPAX-OPANA-CID00007096
    - IMPAX-OPANA-CID00007117
    - IMPAX-OPANA-CID00007077
    - IMPAX-OPANA-CID00006578
    - IMPAX-OPANA-CID00008014  
AMF: As you are aware, during the investigation, FTC staff and Impax agree that Impax would produce certain forecasts in excerpted form, removing sensitive and detailed information regarding other products. Most of the above appear to be excerpted forecasts (though I am still in the process of confirming), produced pursuant to this agreement with staff. During our meet and confer, I understood you to say that Complaint Counsel is requesting the summary sheets for these forecasts, not any underlying detailed sheets regarding other products, to the extent these exist. Impax is willing to provide these summary sheets. Note that these summary sheets do still include summary information regarding other products. Please confirm that my understanding of the scope of your request is correct, and we will prepare new excerpted versions of the spreadsheets with summary pages for re-production.
- DEA Quota Documents
  - We raised our concern that the quota request submissions to the DEA were not in

Impax's production, even though some such documents were referenced in the communications from the DEA that Impax did produce. During our call, you said that you had searched for these documents—including by searching hard copies—and had been unable to find them. However, we just found a document in Impax's production suggesting that hard copies of the quota requests sent to the DEA were preserved by Impax in Philadelphia. Please see the attached document (Impax\_Opana\_PartIII\_0021533). We hope that this document may provide some additional insight and help Impax to locate these records.

AF: We are aware of this document, but it unfortunately does not assist us in locating the final DEA quota requests.

Thank you.

Best Regards,

Nicholas Leefer  
Federal Trade Commission  
Bureau of Competition, Health Care Division  
202-326-3573  
[nleefer@ftc.gov](mailto:nleefer@ftc.gov)

---

**From:** Fabish, Anna [<mailto:afabish@omm.com>]

**Sent:** Wednesday, July 12, 2017 7:16 PM

**To:** Leefer, Nicholas; Hassi, Ted; Antalics, Michael E.; Parker, Richard; McIntyre, Stephen; Hendricks, Benjamin J.; Brogan, Eileen M.; Meier, Markus H.; Butrymowicz, Daniel W.; Mark, Synda; Schmidt, J. Maren; Towey, Jamie; Sprague, Eric M.; Loughlin, Chuck; Weinstein, Rebecca; Clark, Alexandra; Albert, Bradley Scott; Weingarten, James; Peay, Lauren

**Cc:** Fabish, Anna

**Subject:** Docket 9373 - Inadvertently produced non-responsive forecasts

Nicholas -

As I explained during our call today, our vendor inadvertently produced numerous versions of forecast documents that the parties agreed Impax was not obligated to produce. We have also identified privilege redactions in these documents that, as a result of issues with our document vendor, do not appear to be proper (though, as noted, we have not yet completed our review of all the redacted portions of these documents).

During our call today, I proposed that, rather than re-reviewing and potentially reproducing and/or re-redacting many or all of these non-responsive documents, we claw them back for non-responsiveness.

You agreed you would consider this, and that, although you had already agreed Impax needn't produce these documents, you would like to receive a list of the documents we propose clawing back for responsiveness. In an effort to reach the most efficient solution to these issues, I am providing a list of the documents that are non-responsive in the manner discussed above, but were inadvertently produced. We have not yet completed a review of these documents to determine the extent to which the privilege redactions they contain are

warranted. Our hope is to avoid unnecessary effort and time spent on documents the parties have already agreed need not be produced.

Note that this list is of “master” documents; there are one or more exact duplicates of several of these that would be the subject of the proposed responsiveness clawback as well.

Please let me know whether Complaint Counsel will agree to our proposed approach. Of course, as part of our previously agreed upon approach to forecasts, we will still produce (if we have not already) the forecasts supporting all board presentations after Impax’s launch of oxymorphone ER in 2013 (until the date of collection), as well as forecast documents supporting sales or other projections regarding oxymorphone contained in any board presentations between 2009 and 2012. We will identify these for you by bates number as well.

Finally, please note that we will be sending separate correspondence today or tomorrow regarding a separate clawback *based on privilege*. That separate clawback is *not* based on responsiveness (though, some of these privileged documents are non-responsive as well). I just wanted to clarify that these are two separate issues and avoid any confusion that might otherwise arise when you receive our privilege clawback correspondence today or tomorrow.

Best,

Anna

Impax_Opana_PartIII_0070108
Impax_Opana_PartIII_0070789
Impax_Opana_PartIII_0071103
Impax_Opana_PartIII_0075207
Impax_Opana_PartIII_0070385
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Impax_Opana_PartIII_0071135
Impax_Opana_PartIII_0069943



Impax\_Opana\_PartIII\_0073671

Impax\_Opana\_PartIII\_0071907

## O'Melveny

### Anna M. Fabish

Counsel

[afabish@omm.com](mailto:afabish@omm.com)

O: +1-213-430-7512

---

O'Melveny & Myers LLP

400 South Hope Street, 18<sup>th</sup> Floor

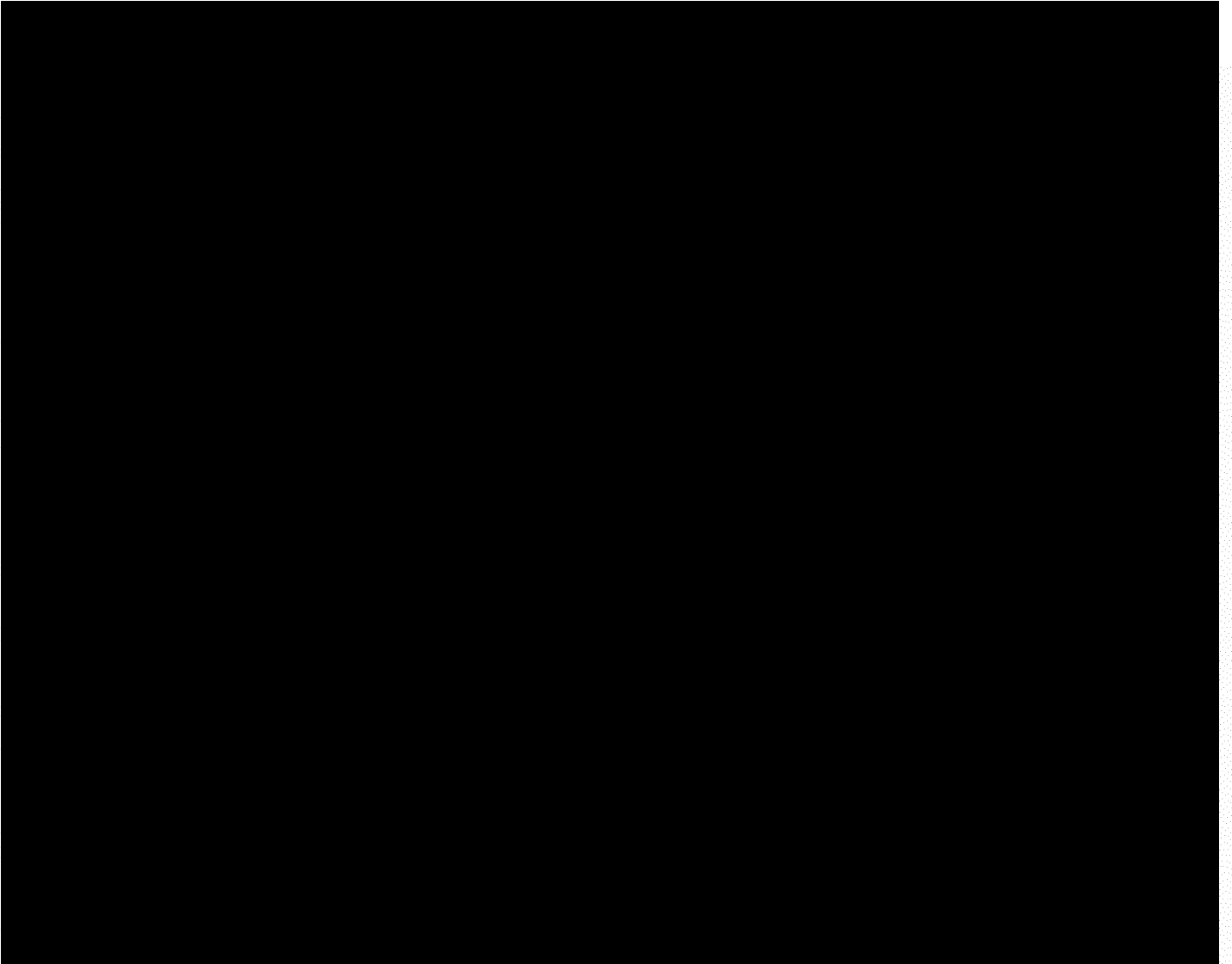
Los Angeles, CA 90071

[Website](#) | [LinkedIn](#) | [Twitter](#)

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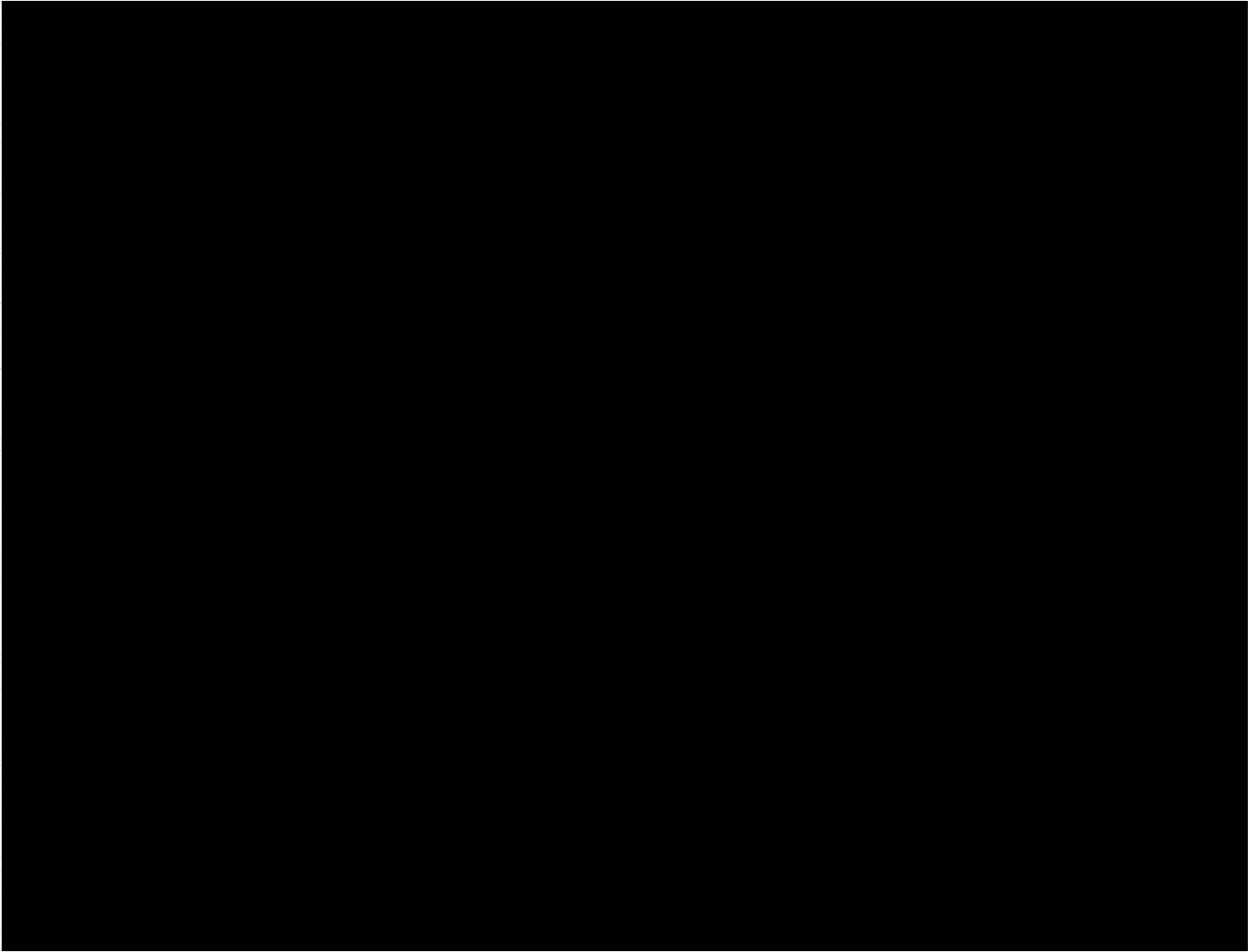
# Exhibit C





Confidential Material per Jan. 24, 2017 Protective Order

Impax\_Opana\_PartIII\_0024287



Confidential Material per Jan. 24, 2017 Protective Order

Impax\_Opana\_PartIII\_0024288

Notice of Electronic Service

**I hereby certify that on July 28, 2017, I filed an electronic copy of the foregoing Complaint Counsel's Motion to Compel Production (Public), with:**

D. Michael Chappell  
Chief Administrative Law Judge  
600 Pennsylvania Ave., NW  
Suite 110  
Washington, DC, 20580

Donald Clark  
600 Pennsylvania Ave., NW  
Suite 172  
Washington, DC, 20580

**I hereby certify that on July 28, 2017, I served via E-Service an electronic copy of the foregoing Complaint Counsel's Motion to Compel Production (Public), upon:**

Bradley Albert  
Attorney  
Federal Trade Commission  
balbert@ftc.gov  
Complaint

Daniel Butrymowicz  
Attorney  
Federal Trade Commission  
dbutrymowicz@ftc.gov  
Complaint

Nicholas Leefer  
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nleefer@ftc.gov  
Complaint

Synda Mark  
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Complaint

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Complaint

James H. Weingarten  
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Federal Trade Commission  
jweingarten@ftc.gov  
Complaint

Rebecca Weinstein  
Attorney  
Federal Trade Commission  
rweinstein@ftc.gov  
Complaint

**I hereby certify that on July 28, 2017, I served via other means, as provided in 4.4(b) of the foregoing Complaint Counsel's Motion to Compel Production (Public), upon:**

Eileen Brogan  
O'Melveny & Myers, LLP  
ebrogan@omm.com  
Respondent

Michael Antalics  
O'Melveny & Myers, LLP  
Respondent

Benjamin Hendricks  
O'Melveny & Myers, LLP  
Respondent

Edward Hassi  
O'Melveny & Myers, LLP  
Respondent

Anna Fabish  
O'Melveny & Myers, LLP  
Respondent

Stephen McIntyre  
O'Melveny & Myers, LLP  
Respondent

Nicholas Leefer  
Attorney