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**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 TIMELY PRODUCTION OF DOCUMENTS**

Markus H. Meier  
Assistant Director

Bradley S. Albert  
Deputy Assistant Director

Charles A. Loughlin  
Chief Trial Counsel

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Alpa D. Davis  
Nicholas A. Leefer  
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Dated: June 2, 2017

Respondent Impax has repeatedly failed to produce highly relevant documents related to its witnesses with enough time for Complaint Counsel to review them in advance of deposing those witnesses. Although Complaint Counsel's first set of document requests have been pending for months, Impax twice produced important witness documents the day or night before a deposition. Following the second eleventh-hour production, Complaint Counsel sought a commitment from Impax that (1) Impax would produce documents involving or relating to a witness at least four business days in advance of the witness's deposition, and (2) if Impax did not do so, Complaint Counsel could recall the witness for deposition in Washington, DC, to take testimony on the late-produced documents. Impax refused and has suggested that Complaint Counsel should expect more last-minute productions before depositions. To ensure that we receive relevant documents with adequate time to review them and prepare for depositions, we seek an order from this Court compelling timely production of documents before depositions and, in the event Respondent continues its untimely productions, permitting Complaint Counsel to recall any witness to testify about any late-produced documents.

### **BACKGROUND**

On February 22, 2017, Complaint Counsel served its first set of document requests on Impax. On April 12, 2017, complaint counsel noticed the depositions of twelve current and former Impax employees.<sup>1</sup> By late April, Complaint Counsel had become concerned with the slow pace of Impax's document production. On April 27, Complaint Counsel wrote Impax to express concern that, with depositions rapidly approaching, Impax had "produced only 40 documents" and "declined to give [Complaint Counsel] a timeframe in which we can expect more." Email from N. Leefler to A. Fabish (Apr. 27, 2017) (Ex. A to Decl. of James H.

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<sup>1</sup> Complaint Counsel has subsequently noticed the depositions of three additional current and former Impax employees as well as Impax itself under FTC Rule 3.33(c)(1).

Weingarten) at 1. Although Impax was unwilling to set a specific schedule for its document production, it agreed that it would “attempt to produce all responsive custodial documents for a current or former Impax deponent seven days prior to his or her deposition.” Email from A. Fabish to N. Leefer (May 4, 2017) (Ex. B to Decl. of James H. Weingarten) at 1.

Despite that commitment, Impax failed to produce relevant documents until the day—or night—before two of three depositions taken so far. Impax’s first untimely production occurred before the deposition of Chris Mengler, a former President of Global Pharmaceuticals at Impax. Mr. Mengler’s deposition was set for May 25, 2017. At 2:50 p.m. on May 24, Impax made a new production that contained the official minutes of the meeting of Impax’s Board of Directors held on May 25-26, 2010, during which Mr. Mengler discussed the product at issue in this case with the Board of Directors. Complaint Counsel reiterated to Impax the prejudice from such late productions and asked Impax to “[p]lease produce documents in a more timely manner for all future depositions.” Email from N. Leefer to A. Fabish (May 26, 2017) (attached hereto as Ex. A).

Impax did not do so. Five days before the deposition on May 31 of another former President of Global Pharmaceuticals at Impax, Dr. Carole Ben-Maimon, Complaint Counsel requested that Impax produce certain board of directors materials that were likely to be highly relevant to Dr. Ben-Maimon’s deposition at least two days in advance of the deposition “so that we have a chance to review them.” *Id.* Impax produced nine of those documents—which were, in fact, highly relevant to Dr. Ben-Maimon—between 11:55 p.m. the night before the deposition (May 30) and 12:07 a.m. the day of the deposition (May 31).<sup>2</sup>

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<sup>2</sup> See Email from B. Hendricks to M. Schmidt (May 30, 2017) (Ex. C to Decl. of James H. Weingarten) (attachment omitted); Email from B. Hendricks to M. Schmidt (May 31, 2017) (Ex. D to Decl. of James H. Weingarten) (attachment omitted).

There are twelve remaining depositions of current or former Impax employees. In light of Impax's consistent failure to timely produce relevant documents in advance of depositions, Complaint Counsel recently requested that Impax agree to produce relevant documents at least four business days in advance of future depositions and, if Impax fails to meet that timeline, consent to Complaint Counsel's recalling relevant witnesses in Washington, D.C. to question them about documents that were not timely produced. Impax has refused and suggested that we should expect more last-minute productions.

### ARGUMENT

Impax has repeatedly failed to produce highly relevant documents within a reasonable time before a deposition. Instead, it has produced such documents the day before—even the night before—scheduled depositions of Impax witnesses. Impax's untimely productions include documents—such as minutes of meetings of Impax's board of directors—that Impax should have collected, reviewed, and produced months ago. Impax's late productions are prejudicing Complaint Counsel's ability to conduct discovery in this case. This Court has the inherent authority to compel the timely production of materials responsive to complaint counsel's document requests. *See generally* FTC Rule 3.38(a). This Court also has the power to permit Complaint Counsel to recall witnesses whose documents Impax produces late so that Impax's conduct does not unfairly prejudice Complaint Counsel's opportunity to question witnesses about those documents. *See id.*

Courts have routinely recognized the importance of obtaining relevant documents with sufficient time to review them in advance of a deposition and have ordered timely production. *See, e.g., Dragushansky v. Nasser*, 2016 WL 452155, at \*1 (S.D.N.Y. Feb. 4, 2016) (noting that judge had previously ordered “plaintiff to produce any and all document requests to Defense

counsel in advance of the date of Plaintiffs deposition to afford counsel sufficient time to review those documents”); *Kansas Food Packers v. Corpak*, 2000 WL 33170870, at \*4 (D. Kan. Oct. 12, 2000) (ordering defendant to produce documents “forthwith so that [plaintiff] may review the documents in advance of depositions); *Hartzell Mfg., Inc. v. American Chemical Tech.*, 899 F. Supp. 405, 410 (D. Minn. 1995) (ordering that parties must receive copies of relevant witness documents “at least one week before the [] deposition”). Courts also have permitted a party to recall witnesses whose documents were not produced in a timely manner. *See, e.g., Apple Inc. v. Samsung Elecs. Co.*, 2012 WL 762240, at \*3 (N.D. Cal. Mar. 8, 2012) (granting additional deposition time “in light of [] repeated, late productions”).

Impax’s untimely productions have materially prejudiced Complaint Counsel’s ability to conduct depositions of important fact witnesses. Complaint Counsel needs time to review the substance of relevant documents and prepare questions. Complaint Counsel also needs time to prepare copies of any documents for use as exhibits in the depositions. None of the depositions are taking place in Washington, DC, and Complaint Counsel’s receipt of documents the night before a deposition taking place away from the FTC’s offices is especially prejudicial to our ability to review and prepare documents.

Impax has offered no legitimate excuse for its untimely productions. Impax should have collected, reviewed, and produced relevant documents such as minutes and presentations from meetings of its board of directors months ago. Impax cannot plausibly claim that it only recently discovered such documents, which are among the most important and readily accessible documents constituting a corporation’s books and records. Impax’s untimely production of important documents and its continued refusal to abide by a reasonable production schedule going forward demonstrate that Court intervention is appropriate.

The answer to any issues Impax may be having with review and production of its documents at this late date is not to cancel already-scheduled depositions at the last minute and delay them to the end of fact discovery. The schedule for this matter should not be held hostage to Impax's document production issues. In the event that Impax claims that it cannot produce documents for witnesses four days before their currently scheduled depositions, then the solution is for the currently scheduled depositions to go forward and for the Court to permit Complaint Counsel to recall any witness whose documents are not timely produced four days before his or her deposition so that Complaint Counsel may question the witness about the late-produced documents. Accordingly, Complaint Counsel respectfully requests that the Court enter an order restoring Complaint Counsel's opportunity to depose witnesses on any late-produced documents.

#### **CONCLUSION**

Complaint Counsel respectfully requests that the Court enter an order requiring Impax to produce all documents involving or referencing a particular witness at least four business days before that witness's deposition. Complaint Counsel also respectfully requests that the Court permit Complaint Counsel to recall for a deposition in Washington, DC, any witness whose documents are not produced at least four days prior to his or her deposition so that Complaint Counsel may take the witness's testimony about any late-produced documents.

Respectfully submitted,

/s/ Bradley S. Albert

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Markus H. Meier  
Bradley S. Albert  
Charles A. Loughlin  
Daniel W. Butrymowicz  
Alpa D. Davis  
Nicholas A. Leefer  
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James H. Weingarten

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*Counsel Supporting the Complaint*

Dated: June 2, 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 Complaint Counsel's Motion to Compel Timely Production of Documents and have been unable to reach such an agreement. Complaint Counsel (Nicholas Leefer) and Respondent's Counsel (Anna Fabish) emailed regarding these issues on April 27, 2017; May 4, 2017; May 17, 2017; and May 26, 2017. On June 1, 2017, Complaint Counsel (Bradley S. Albert) and Respondent's Counsel (Ted Hassi) communicated by phone and were unable to resolve the issues raised in the foregoing Motion.

Dated: June 2, 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 Timely Production of Documents, Respondent's Opposition thereto, all supporting evidence, and the applicable law, it is hereby ORDERED that Complaint Counsel's Motion to Compel Timely Production of Documents is GRANTED and it is hereby ORDERED that:

Respondent shall produce all documents involving or relating to a witness at least four business days before the deposition of such witness; and

FURTHER ORDERED that, should Respondent produce any documents involving or relating to a witness (including any witness deposed before the entry of this Order) later than four days before that witness's deposition, Complaint Counsel may recall any such witness for a deposition in Washington, DC, to take testimony about any late-produced documents.

SO ORDERED:

\_\_\_\_\_

D. Michael Chappell  
Chief Administrative Law Judge

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

**CERTIFICATE OF SERVICE**

I hereby certify that on June 2, 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  
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Anna Fabish  
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400 South Hope Street  
Los Angeles, CA 90071  
afabish@omm.com  
smcintyre@omm.com

*Counsel for Respondent Impax Laboratories, Inc.*

Dated: June 2, 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.

June 2, 2017

By: /s/ Nicholas A. Leefler  
Attorney

**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,** ) **DOCKET NO. 9373**  
 )  
**Respondent** )  

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**DECLARATION OF JAMES H. WEINGARTEN**

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 Timely Production of Documents.

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 an email from Nicholas Leefer to Anna Fabish and others, dated April 27, 2017.

4. Exhibit B is a true and correct copy of an email from Nicholas Leefer to Anna Fabish and others, dated May 4, 2017.

5. Exhibit C is a true and correct copy of an email, not including an attachment, from Benjamin J. Hendricks to J. Maren Schmidt and others, dated May 30, 2017.

6. Exhibit D is a true and correct copy of an email, not including an attachment, from Benjamin J. Hendricks to J. Maren Schmidt and others, dated May 31, 2017.

I declare under the penalty of perjury that the foregoing is true and correct. Executed this  
2nd day of June 2017 in Washington, DC.

/s/ James H. Weingarten

James H. Weingarten  
Federal Trade Commission  
600 Pennsylvania Ave., NW  
Washington, DC 20580  
Telephone: (202) 326-3570  
Facsimile: (202) 326-3384  
Email: [jweingarten@ftc.gov](mailto:jweingarten@ftc.gov)

*Counsel Supporting the Complaint*

# **EXHIBIT A**

**Weingarten, James**

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**From:** Leefer, Nicholas  
**Sent:** Thursday, April 27, 2017 2:15 PM  
**To:** 'Fabish, Anna'; Albert, Bradley Scott; 'Hassi, Ted'; 'Antalics, Michael E.'; 'Parker, Richard'; 'McIntyre, Stephen'; 'Hendricks, Benjamin J.'; 'Brogan, Eileen M.'  
**Cc:** Meier, Markus H.; Butrymowicz, Daniel W.; Mark, Synda; Schmidt, J. Maren; Towey, Jamie; Sprague, Eric M.; Loughlin, Chuck; Weinstein, Rebecca  
**Subject:** RE: Docket 9373 - Responses and Objections to Requests for Production

Anna,

We appreciate the work necessary to respond to our discovery requests. We have tried to keep our requests narrowly tailored and to work with you to reach compromises where possible. But more than two months have passed since we served the RFPs, and little more than two months remain until the close of discovery on July 7. Depositions need to begin in just a few weeks. At Impax's request, we moved the deadline for filing Complaint Counsel's expert reports up one week to July 14. Thus far, you have produced only 40 documents, and you have declined to give us a timeframe in which we can expect more, including the vast majority of the data that we need in order for our expert to prepare his report in time. Moreover, rather than give us even a general timeframe, you seem to be emphasizing your position that you are not required to produce any documents prior to the end of discovery.

In order to ensure that discovery proceeds in a timely manner, we propose the following schedule for the parties to produce documents in response to currently outstanding requests for production:

- The parties will continue rolling productions from now through the date for substantial completion of document production
- Date for production of data requested in Complaint Counsel's RFP Nos. 9-11 and April 7, 2017 letter: May 19, 2017
- For any depositions of current or former Impax employees scheduled before the substantial completion of document production, all responsive documents from the deponent's custodial files must be produced at least one week (7 calendar days) in advance of the deposition date
  - Likewise, the FTC will produce any documents, not already in Impax's possession, that it intends to use as exhibits at the deposition of an Impax witness at least one week in advance of the deposition.
- Date for substantial completion of document production: June 9, 2017
  - Although some clean up may happen after this date, the intention is that the parties' significant collection, search, review, and production efforts related to the outstanding requests for production will be complete at this time.
- The parties provide privilege and redaction logs: June 16, 2017

Please let us know if Impax agrees to this schedule. If this schedule is not acceptable to Impax, please propose a schedule that is by Monday, May 1. If we cannot reach agreement on a timeframe for document production, we may need to seek relief from Judge Chappell.

Thank you for your cooperation.

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:** Thursday, April 27, 2017 9:25 AM  
**To:** Leefer, Nicholas; Albert, Bradley Scott; Hassi, Ted; Antalics, Michael E.; Parker, Richard; McIntyre, Stephen; Hendricks, Benjamin J.; Brogan, Eileen M.  
**Cc:** Meier, Markus H.; Butrymowicz, Daniel W.; Mark, Synda; Schmidt, J. Maren; Towey, Jamie; Sprague, Eric M.; Loughlin, Chuck; Weinstein, Rebecca  
**Subject:** RE: Docket 9373 - Responses and Objections to Requests for Production

Nicholas -

Thank you for your email. I respond to your various points below.

**Regarding deposition scheduling:** As we discussed during our call, we are in the process of reaching out to the former Impax employees you have indicated you wish to depose. Based on these ongoing efforts, we can confirm that we will represent at least the following former employees in connection with their depositions in this matter:

- Huong Nguyen
- Art Koch
- Larry Hsu
- Ted Smolenski
- Carole Ben-Maimon

We are in the process of discussing specific dates with these individuals and will provide you with proposed dates as soon as we have them.

With respect to the remaining 5 former Impax employees you identified (Chris Mengler, John Anthony, Joe Camargo, Shawn Fatholahi, and Chuck Hildebrand), you should assume that O'Melveny will represent them in connection with their deposition in this matter unless and until we indicate otherwise. You are aware that we are in the process of determining how these individuals would like to proceed, and that Impax counsel has represented former Impax employee witnesses during investigational hearings in the past. Under these circumstances, contacting any of these 5 individuals is tantamount to contacting a witness represented by counsel, and likely violates applicable codes of ethics. We are working diligently to contact these individuals, and will provide you with updates regarding representation and scheduling on a rolling basis.

**Regarding the proposed searches:** As we indicated during our conference, we will discuss with our client and further consider whether it is necessary to run the searches you propose in order to gather documents responsive to the Requests for Production. Once we have determined the proper course of action, we will convey that information to you, and are happy to continue to meet and confer as necessary. However, we will not agree to provide you with a response by your unilaterally imposed and arbitrary deadline. We are under no obligation to search for and collect documents in the exact manner you think is acceptable; nor are we under any obligation to provide you any documents or information on a timeline not reflected in the Scheduling Order. Nor is there any basis for your assertion that the size of Impax's CID production is in any way indicative of whether Impax has in its possession a significant number of responsive documents that have not already been produced—much less that the specific searches and custodians you now demand are necessary to capture all responsive documents. As you acknowledged in your April 24 letter, Impax is in the best position to know how to gather responsive documents. We are in the process of doing just that with all deliberate speed (which, it bears mention, is also in Impax's own best interests in order to prepare for trial and the *fifteen* depositions Complaint



Counsel insists on scheduling within a 6 week window). We will provide you with responses to your questions in due course.

Nor is the amount of Complaint Counsel's production to date in any way relevant to this discussion. Complaint Counsel's productions for the most part reflect document collections and transcripts you have received and simply forwarded to Impax (including hundreds of pages of IH transcripts for Impax and former Impax employee witnesses, which Impax obviously already has). The size of Complaint Counsel's productions does not, as you imply in your April 24<sup>th</sup> letter, make Impax's production efforts inadequate or small by comparison.

**Regarding your questions on Impax's data:** As I described when we spoke, we are in the process of discussing the numerous questions in your four-page letter with various Impax personnel. We have already had several such discussions, and are scheduled to discuss further with Impax this week. We are diligently pursuing the requested clarifications, which obviously affect our own experts' ability to prepare their reports as well. We will provide this information to you as soon as we have it. However, as noted above, the Scheduling Order does not require us to do so now, or to do so within a timeframe you deem to be appropriate, or to provide you with a status report by a date of your choosing.

We are pursuing and will continue to pursue these matters with all deliberate speed and will provide you with responses to your questions as soon as possible. However, these obligations do not include meeting arbitrary deadlines for progress reports, or gathering documents in the exact manner Complaint Counsel deems best.

**Regarding Requests 12-14.** Thank you for confirming your willingness to agree to the compromise approach you describe below. We are in the process of getting Impax's approval for this approach, and will confirm once we have done so.

Best,

Anna

**O'Melveny**

**Anna M. Fabish**

Counsel

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

O: +1-213-430-7512

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**From:** LEEFER, Nicholas [<mailto:nleef@ftc.gov>]

**Sent:** Wednesday, April 26, 2017 2:07 PM

**To:** Fabish, Anna; Albert, Bradley Scott; Hassi, Ted; Antalics, Michael E.; Parker, Richard; McIntyre, Stephen; Hendricks, Benjamin J.; Brogan, Eileen M.

**Cc:** Meier, Markus H.; Butrymowicz, Daniel W.; Mark, Synda; Schmidt, J. Maren; Towey, Jamie; Sprague, Eric M.; Loughlin, Chuck; Weinstein, Rebecca

**Subject:** RE: Docket 9373 - Responses and Objections to Requests for Production

Anna,

Thank you for meeting and conferring with us yesterday. I'm writing to follow up on a few points.

First, as we emphasized during our call, we are very concerned by the limited number of documents that Impax has produced thus far in discovery. Discovery is now nearly half over, and Impax has only provided 40 documents. We are concerned that the lack of documents may be due to Impax's resistance to running a complete set of search terms over documents collected from Joe Camargo, John Anthony, and Mark Donohue; as well as documents postdating Impax's CID production. Our concerns are exacerbated by the modest size of Impax's production from the investigation (totaling only 4419 documents), as this suggests that Impax's efforts may not be capturing all relevant documents.

At a minimum, we believe the following steps are appropriate to ensure that all relevant documents are identified:

- The search terms Impax used to respond to the investigation CID should be run over all documents collected from Joe Camargo, John Anthony, and Mark Donohue.
- The search terms Impax used to respond to the investigation CID should be run over documents collected after the date of Impax's CID production.
- Impax should develop new search terms to capture documents responsive to Complaint Counsel's Requests for Production, which differ from the CID specifications, and these new search terms should be run over all collected documents.

In response to our concerns, you indicated that you would confer with Impax, and get back to us on whether it is willing to run the searches we have proposed. Given the short discovery period, and the need to review documents in advance of depositions, we ask that you provide us with Impax's final position by Friday, April 28, 2017.

Second, we ask that you provide us with an update on your efforts to respond to my April 7, 2017 letter regarding Impax's data productions. Our experts require complete and accurate data in order to prepare their reports, and that depends on resolution of the issues outlined in my letter. Please provide either a substantive response or an estimate for when you will be able to provide a substantive response by Friday, April 28, 2017.

Third, we confirm our agreement related to Complaint Counsel's Request for Production Nos. 12-14. We understand that Impax's proposed compromise is to produce full and unredacted copies of its major projections and forecasts related to Opana ER and/or oxymorphone ER. Specifically we understand that this will include the final plans presented to the board of directors each year, as well as the updates to those plans prepared throughout each year. We are satisfied with this proposal and, subject to our reservation of rights to challenge inadequacies following our review of documents produced by Impax, we believe the current dispute related to these requests is resolved.

Finally, as a reminder, we plan to begin contacting former Impax employees next week to schedule depositions unless we hear before then that counsel for Impax is representing these former employees. If you are representing any of the former Impax employees that we have identified on our list of deponents, please let us know by Friday, April 28, 2017. 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)

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**From:** Leefer, Nicholas

**Sent:** Monday, April 24, 2017 4:31 PM

**To:** 'Fabish, Anna'; Albert, Bradley Scott; 'Hassi, Ted'; 'Antalics, Michael E.'; 'Parker, Richard'; 'McIntyre, Stephen'; 'Hendricks, Benjamin J.'; 'Brogan, Eileen M.'

**Cc:** Meier, Markus H.; Butrymowicz, Daniel W.; Mark, Synda; Schmidt, J. Maren; Towey, Jamie; Sprague, Eric M.;

Loughlin, Chuck; Weinstein, Rebecca

**Subject:** RE: Docket 9373 - Responses and Objections to Requests for Production

Anna,

In advance of our call tomorrow, please see the attached correspondence. Thank you.

Best Regards,

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

---

**From:** Leefer, Nicholas

**Sent:** Friday, April 21, 2017 5:13 PM

**To:** 'Fabish, Anna'; Albert, Bradley Scott; Hassi, Ted; Antalics, Michael E.; Parker, Richard; McIntyre, Stephen; Hendricks, Benjamin J.; Brogan, Eileen M.

**Cc:** Meier, Markus H.; Butrymowicz, Daniel W.; Mark, Synda; Schmidt, J. Maren; Towey, Jamie; Sprague, Eric M.; Loughlin, Chuck; Weinstein, Rebecca

**Subject:** RE: Docket 9373 - Responses and Objections to Requests for Production

Anna,

We are available at 5pm Eastern time on Tuesday 4/25. We can use the following dial-in information for our call. Thank you.

**USA Toll-Free:** (877)873-8017  
**ACCESS CODE:** 3263573

Best Regards,

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

---

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

**Sent:** Thursday, April 20, 2017 6:28 PM

**To:** Albert, Bradley Scott; Leefer, Nicholas; Hassi, Ted; Antalics, Michael E.; Parker, Richard; McIntyre, Stephen; Hendricks, Benjamin J.; Brogan, Eileen M.

**Cc:** Meier, Markus H.; Butrymowicz, Daniel W.; Mark, Synda; Schmidt, J. Maren; Towey, Jamie; Sprague, Eric M.; Loughlin, Chuck; Weinstein, Rebecca

**Subject:** RE: Docket 9373 - Responses and Objections to Requests for Production

Thanks, Brad. Assuming you mean 2:30 Eastern, we are free at 5pm Eastern/2pm Pacific on Tuesday 4/25. If that is too late for you, we suggest Wednesday at 1:30pm Eastern/10:30am Pacific. Please let us know.

Best,

Anna

## O'Melveny

**Anna M. Fabish**

Counsel

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O: +1-213-430-7512

---

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---

**From:** Albert, Bradley Scott [<mailto:BALBERT@ftc.gov>]

**Sent:** Thursday, April 20, 2017 2:56 PM

**To:** Fabish, Anna; Leefer, Nicholas; Hassi, Ted; Antalics, Michael E.; Parker, Richard; McIntyre, Stephen; Hendricks, Benjamin J.; Brogan, Eileen M.

**Cc:** Meier, Markus H.; Butrymowicz, Daniel W.; Mark, Synda; Schmidt, J. Maren; Towey, Jamie; Sprague, Eric M.; Loughlin, Chuck; Weinstein, Rebecca

**Subject:** RE: Docket 9373 - Responses and Objections to Requests for Production

Anna –

We agree that it makes sense to set aside time to talk next week. We propose Tuesday after 2:30. If that time doesn't work, please propose another time that is convenient for you.

Thanks

Brad

---

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

**Sent:** Wednesday, April 19, 2017 7:47 PM

**To:** Leefer, Nicholas; Hassi, Ted; Antalics, Michael E.; Parker, Richard; McIntyre, Stephen; Hendricks, Benjamin J.; Brogan, Eileen M.

**Cc:** Meier, Markus H.; Albert, Bradley Scott; Butrymowicz, Daniel W.; Mark, Synda; Schmidt, J. Maren; Towey, Jamie; Sprague, Eric M.; Loughlin, Chuck; Weinstein, Rebecca

**Subject:** Docket 9373 - Responses and Objections to Requests for Production

Counsel -

Please see the attached correspondence following up on our recent calls regarding the parties' respective Responses and Objections to Requests for Production of Documents.

Best,

Anna

## 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 B**

**Weingarten, James**

---

**From:** Leefer, Nicholas  
**Sent:** Thursday, May 04, 2017 1:37 PM  
**To:** 'Fabish, Anna'; Albert, Bradley Scott; 'Hassi, Ted'; 'Antalics, Michael E.'; 'Parker, Richard'; 'McIntyre, Stephen'; 'Hendricks, Benjamin J.'; 'Brogan, Eileen M.'  
**Cc:** Meier, Markus H.; Butrymowicz, Daniel W.; Mark, Synda; Schmidt, J. Maren; Towey, Jamie; Sprague, Eric M.; Loughlin, Chuck; Weinstein, Rebecca  
**Subject:** RE: Docket 9373 - Responses and Objections to Requests for Production

Anna,

Thank you for the response. We have one point that we would like to clarify: your email does not commit to produce any of the additional data that we identified as missing in our April 7 letter, but instead merely says that Impax will provide "additional data as necessary." Can you please clarify what additional data, if any, Impax plans to produce by May 19<sup>th</sup>? If Impax has responsive data that it does not plan to produce, please also explain why. 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](mailto:afabish@omm.com)]  
**Sent:** Tuesday, May 02, 2017 9:26 AM  
**To:** Leefer, Nicholas; Albert, Bradley Scott; Hassi, Ted; Antalics, Michael E.; Parker, Richard; McIntyre, Stephen; Hendricks, Benjamin J.; Brogan, Eileen M.  
**Cc:** Meier, Markus H.; Butrymowicz, Daniel W.; Mark, Synda; Schmidt, J. Maren; Towey, Jamie; Sprague, Eric M.; Loughlin, Chuck; Weinstein, Rebecca  
**Subject:** RE: Docket 9373 - Responses and Objections to Requests for Production

Nicholas -

We can agree to set some general timing goals for continuing document production efforts to inform the parties' expectations with respect to document discovery timing. Specifically, Impax agrees to continue with rolling productions until Impax's production is complete, which we anticipate will be before the end of the discovery period. We will also attempt to produce all responsive custodial documents for a current or former Impax deponent seven days prior to his or her deposition; we understand the FTC is prepared to do the same. Finally, we agree to provide answers to your questions regarding data, and additional data as necessary, by May 19th.

Best,

Anna

---

**From:** Leefer, Nicholas [mailto:[nleefer@ftc.gov](mailto:nleefer@ftc.gov)]  
**Sent:** Thursday, April 27, 2017 11:15 AM  
**To:** Fabish, Anna; Albert, Bradley Scott; Hassi, Ted; Antalics, Michael E.; Parker, Richard; McIntyre, Stephen; Hendricks,

Benjamin J.; Brogan, Eileen M.

**Cc:** Meier, Markus H.; Butrymowicz, Daniel W.; Mark, Synda; Schmidt, J. Maren; Towey, Jamie; Sprague, Eric M.; Loughlin, Chuck; Weinstein, Rebecca

**Subject:** RE: Docket 9373 - Responses and Objections to Requests for Production

Anna,

We appreciate the work necessary to respond to our discovery requests. We have tried to keep our requests narrowly tailored and to work with you to reach compromises where possible. But more than two months have passed since we served the RFPs, and little more than two months remain until the close of discovery on July 7. Depositions need to begin in just a few weeks. At Impax's request, we moved the deadline for filing Complaint Counsel's expert reports up one week to July 14. Thus far, you have produced only 40 documents, and you have declined to give us a timeframe in which we can expect more, including the vast majority of the data that we need in order for our expert to prepare his report in time. Moreover, rather than give us even a general timeframe, you seem to be emphasizing your position that you are not required to produce any documents prior to the end of discovery.

In order to ensure that discovery proceeds in a timely manner, we propose the following schedule for the parties to produce documents in response to currently outstanding requests for production:

- The parties will continue rolling productions from now through the date for substantial completion of document production
- Date for production of data requested in Complaint Counsel's RFP Nos. 9-11 and April 7, 2017 letter: May 19, 2017
- For any depositions of current or former Impax employees scheduled before the substantial completion of document production, all responsive documents from the deponent's custodial files must be produced at least one week (7 calendar days) in advance of the deposition date
  - Likewise, the FTC will produce any documents, not already in Impax's possession, that it intends to use as exhibits at the deposition of an Impax witness at least one week in advance of the deposition.
- Date for substantial completion of document production: June 9, 2017
  - Although some clean up may happen after this date, the intention is that the parties' significant collection, search, review, and production efforts related to the outstanding requests for production will be complete at this time.
- The parties provide privilege and redaction logs: June 16, 2017

Please let us know if Impax agrees to this schedule. If this schedule is not acceptable to Impax, please propose a schedule that is by Monday, May 1. If we cannot reach agreement on a timeframe for document production, we may need to seek relief from Judge Chappell.

Thank you for your cooperation.

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:** Thursday, April 27, 2017 9:25 AM

**To:** Leefer, Nicholas; Albert, Bradley Scott; Hassi, Ted; Antalics, Michael E.; Parker, Richard; McIntyre, Stephen; Hendricks, Benjamin J.; Brogan, Eileen M.



**Cc:** Meier, Markus H.; Butrymowicz, Daniel W.; Mark, Synda; Schmidt, J. Maren; Towey, Jamie; Sprague, Eric M.; Loughlin, Chuck; Weinstein, Rebecca

**Subject:** RE: Docket 9373 - Responses and Objections to Requests for Production

Nicholas -

Thank you for your email. I respond to your various points below.

**Regarding deposition scheduling:** As we discussed during our call, we are in the process of reaching out to the former Impax employees you have indicated you wish to depose. Based on these ongoing efforts, we can confirm that we will represent at least the following former employees in connection with their depositions in this matter:

- Huong Nguyen
- Art Koch
- Larry Hsu
- Ted Smolenski
- Carole Ben-Maimon

We are in the process of discussing specific dates with these individuals and will provide you with proposed dates as soon as we have them.

With respect to the remaining 5 former Impax employees you identified (Chris Mengler, John Anthony, Joe Camargo, Shawn Fatholahi, and Chuck Hildebrand), you should assume that O'Melveny will represent them in connection with their deposition in this matter unless and until we indicate otherwise. You are aware that we are in the process of determining how these individuals would like to proceed, and that Impax counsel has represented former Impax employee witnesses during investigational hearings in the past. Under these circumstances, contacting any of these 5 individuals is tantamount to contacting a witness represented by counsel, and likely violates applicable codes of ethics. We are working diligently to contact these individuals, and will provide you with updates regarding representation and scheduling on a rolling basis.

**Regarding the proposed searches:** As we indicated during our conference, we will discuss with our client and further consider whether it is necessary to run the searches you propose in order to gather documents responsive to the Requests for Production. Once we have determined the proper course of action, we will convey that information to you, and are happy to continue to meet and confer as necessary. However, we will not agree to provide you with a response by your unilaterally imposed and arbitrary deadline. We are under no obligation to search for and collect documents in the exact manner you think is acceptable; nor are we under any obligation to provide you any documents or information on a timeline not reflected in the Scheduling Order. Nor is there any basis for your assertion that the size of Impax's CID production is in any way indicative of whether Impax has in its possession a significant number of responsive documents that have not already been produced—much less that the specific searches and custodians you now demand are necessary to capture all responsive documents. As you acknowledged in your April 24 letter, Impax is in the best position to know how to gather responsive documents. We are in the process of doing just that with all deliberate speed (which, it bears mention, is also in Impax's own best interests in order to prepare for trial and the *fifteen* depositions Complaint Counsel insists on scheduling within a 6 week window). We will provide you with responses to your questions in due course.

Nor is the amount of Complaint Counsel's production to date in any way relevant to this discussion. Complaint Counsel's productions for the most part reflect document collections and transcripts you have received and simply forwarded to Impax (including hundreds of pages of IH transcripts for Impax and former Impax employee witnesses, which Impax obviously already has). The size of Complaint Counsel's productions does

not, as you imply in your April 24<sup>th</sup> letter, make Impax's production efforts inadequate or small by comparison.

**Regarding your questions on Impax's data:** As I described when we spoke, we are in the process of discussing the numerous questions in your four-page letter with various Impax personnel. We have already had several such discussions, and are scheduled to discuss further with Impax this week. We are diligently pursuing the requested clarifications, which obviously affect our own experts' ability to prepare their reports as well. We will provide this information to you as soon as we have it. However, as noted above, the Scheduling Order does not require us to do so now, or to do so within a timeframe you deem to be appropriate, or to provide you with a status report by a date of your choosing.

We are pursuing and will continue to pursue these matters with all deliberate speed and will provide you with responses to your questions as soon as possible. However, these obligations do not include meeting arbitrary deadlines for progress reports, or gathering documents in the exact manner Complaint Counsel deems best.

**Regarding Requests 12-14.** Thank you for confirming your willingness to agree to the compromise approach you describe below. We are in the process of getting Impax's approval for this approach, and will confirm once we have done so.

Best,

Anna

**O'Melveny**

**Anna M. Fabish**

Counsel

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

O: +1-213-430-7512

---

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---

**From:** LEEFER, Nicholas [<mailto:nleefer@ftc.gov>]

**Sent:** Wednesday, April 26, 2017 2:07 PM

**To:** Fabish, Anna; Albert, Bradley Scott; Hassi, Ted; Antalics, Michael E.; Parker, Richard; McIntyre, Stephen; Hendricks, Benjamin J.; Brogan, Eileen M.

**Cc:** Meier, Markus H.; Butrymowicz, Daniel W.; Mark, Synda; Schmidt, J. Maren; Towey, Jamie; Sprague, Eric M.; Loughlin, Chuck; Weinstein, Rebecca

**Subject:** RE: Docket 9373 - Responses and Objections to Requests for Production

Anna,

Thank you for meeting and conferring with us yesterday. I'm writing to follow up on a few points.

First, as we emphasized during our call, we are very concerned by the limited number of documents that Impax has produced thus far in discovery. Discovery is now nearly half over, and Impax has only provided 40 documents. We are concerned that the lack of documents may be due to Impax's resistance to running a complete set of search terms over documents collected from Joe Camargo, John Anthony, and Mark Donohue; as well as documents postdating Impax's

CID production. Our concerns are exacerbated by the modest size of Impax's production from the investigation (totaling only 4419 documents), as this suggests that Impax's efforts may not be capturing all relevant documents.

At a minimum, we believe the following steps are appropriate to ensure that all relevant documents are identified:

- The search terms Impax used to respond to the investigation CID should be run over all documents collected from Joe Camargo, John Anthony, and Mark Donohue.
- The search terms Impax used to respond to the investigation CID should be run over documents collected after the date of Impax's CID production.
- Impax should develop new search terms to capture documents responsive to Complaint Counsel's Requests for Production, which differ from the CID specifications, and these new search terms should be run over all collected documents.

In response to our concerns, you indicated that you would confer with Impax, and get back to us on whether it is willing to run the searches we have proposed. Given the short discovery period, and the need to review documents in advance of depositions, we ask that you provide us with Impax's final position by Friday, April 28, 2017.

Second, we ask that you provide us with an update on your efforts to respond to my April 7, 2017 letter regarding Impax's data productions. Our experts require complete and accurate data in order to prepare their reports, and that depends on resolution of the issues outlined in my letter. Please provide either a substantive response or an estimate for when you will be able to provide a substantive response by Friday, April 28, 2017.

Third, we confirm our agreement related to Complaint Counsel's Request for Production Nos. 12-14. We understand that Impax's proposed compromise is to produce full and unredacted copies of its major projections and forecasts related to Opana ER and/or oxymorphone ER. Specifically we understand that this will include the final plans presented to the board of directors each year, as well as the updates to those plans prepared throughout each year. We are satisfied with this proposal and, subject to our reservation of rights to challenge inadequacies following our review of documents produced by Impax, we believe the current dispute related to these requests is resolved.

Finally, as a reminder, we plan to begin contacting former Impax employees next week to schedule depositions unless we hear before then that counsel for Impax is representing these former employees. If you are representing any of the former Impax employees that we have identified on our list of deponents, please let us know by Friday, April 28, 2017. 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:** Leefer, Nicholas  
**Sent:** Monday, April 24, 2017 4:31 PM  
**To:** 'Fabish, Anna'; Albert, Bradley Scott; 'Hassi, Ted'; 'Antalics, Michael E.'; 'Parker, Richard'; 'McIntyre, Stephen'; 'Hendricks, Benjamin J.'; 'Brogan, Eileen M.'  
**Cc:** Meier, Markus H.; Butrymowicz, Daniel W.; Mark, Synda; Schmidt, J. Maren; Towey, Jamie; Sprague, Eric M.; Loughlin, Chuck; Weinstein, Rebecca  
**Subject:** RE: Docket 9373 - Responses and Objections to Requests for Production

Anna,

In advance of our call tomorrow, please see the attached correspondence. 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)

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**From:** Leefer, Nicholas  
**Sent:** Friday, April 21, 2017 5:13 PM  
**To:** 'Fabish, Anna'; Albert, Bradley Scott; Hassi, Ted; Antalics, Michael E.; Parker, Richard; McIntyre, Stephen; Hendricks, Benjamin J.; Brogan, Eileen M.  
**Cc:** Meier, Markus H.; Butrymowicz, Daniel W.; Mark, Synda; Schmidt, J. Maren; Towey, Jamie; Sprague, Eric M.; Loughlin, Chuck; Weinstein, Rebecca  
**Subject:** RE: Docket 9373 - Responses and Objections to Requests for Production

Anna,

We are available at 5pm Eastern time on Tuesday 4/25. We can use the following dial-in information for our call. Thank you.

**USA Toll-Free:** (877)873-8017  
**ACCESS CODE:** 3263573

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:** Thursday, April 20, 2017 6:28 PM  
**To:** Albert, Bradley Scott; Leefer, Nicholas; Hassi, Ted; Antalics, Michael E.; Parker, Richard; McIntyre, Stephen; Hendricks, Benjamin J.; Brogan, Eileen M.  
**Cc:** Meier, Markus H.; Butrymowicz, Daniel W.; Mark, Synda; Schmidt, J. Maren; Towey, Jamie; Sprague, Eric M.; Loughlin, Chuck; Weinstein, Rebecca  
**Subject:** RE: Docket 9373 - Responses and Objections to Requests for Production

Thanks, Brad. Assuming you mean 2:30 Eastern, we are free at 5pm Eastern/2pm Pacific on Tuesday 4/25. If that is too late for you, we suggest Wednesday at 1:30pm Eastern/10:30am Pacific. Please let us know.

Best,  
Anna

**O'Melveny**  
**Anna M. Fabish**  
Counsel

---

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

---

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---

**From:** Albert, Bradley Scott [<mailto:BALBERT@ftc.gov>]  
**Sent:** Thursday, April 20, 2017 2:56 PM  
**To:** Fabish, Anna; Leefer, Nicholas; Hassi, Ted; Antalics, Michael E.; Parker, Richard; McIntyre, Stephen; Hendricks, Benjamin J.; Brogan, Eileen M.  
**Cc:** Meier, Markus H.; Butrymowicz, Daniel W.; Mark, Synda; Schmidt, J. Maren; Towey, Jamie; Sprague, Eric M.; Loughlin, Chuck; Weinstein, Rebecca  
**Subject:** RE: Docket 9373 - Responses and Objections to Requests for Production

Anna –

We agree that it makes sense to set aside time to talk next week. We propose Tuesday after 2:30. If that time doesn't work, please propose another time that is convenient for you.

Thanks  
Brad

---

**From:** Fabish, Anna [<mailto:afabish@omm.com>]  
**Sent:** Wednesday, April 19, 2017 7:47 PM  
**To:** Leefer, Nicholas; Hassi, Ted; Antalics, Michael E.; Parker, Richard; McIntyre, Stephen; Hendricks, Benjamin J.; Brogan, Eileen M.  
**Cc:** Meier, Markus H.; Albert, Bradley Scott; Butrymowicz, Daniel W.; Mark, Synda; Schmidt, J. Maren; Towey, Jamie; Sprague, Eric M.; Loughlin, Chuck; Weinstein, Rebecca  
**Subject:** Docket 9373 - Responses and Objections to Requests for Production

Counsel -

Please see the attached correspondence following up on our recent calls regarding the parties' respective Responses and Objections to Requests for Production of Documents.

Best,

Anna

**O'Melveny**

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

---

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# **EXHIBIT C**

**Weingarten, James**

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**From:** Hendricks, Benjamin J. <bhendricks@omm.com>  
**Sent:** Tuesday, May 30, 2017 11:55 PM  
**To:** Schmidt, J. Maren; Fabish, Anna; Meier, Markus H.; Albert, Bradley Scott; Butrymowicz, Daniel W.; Mark, Synda; Towey, Jamie; Sprague, Eric M.; Loughlin, Chuck; Weinstein, Rebecca; Clark, Alexandra; Leefer, Nicholas  
**Cc:** Hassi, Ted; Antalics, Michael E.; Parker, Richard; McIntyre, Stephen; Brogan, Eileen M.; Morries, Kendra  
**Subject:** RE: In re Impax Laboratories, Inc. (FTC Docket No. 9373) - Documents involving Carole Ben-Maimon  
**Attachments:** 1\_IMPAX-OPANA-CID00021669\_IMOPCID008.pdf

1/9

**Ben Hendricks**  
**O'Melveny**

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

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---

**From:** Schmidt, J. Maren [<mailto:mschmidt@ftc.gov>]  
**Sent:** Tuesday, May 30, 2017 11:43 PM  
**To:** Fabish, Anna; Meier, Markus H.; Albert, Bradley Scott; Butrymowicz, Daniel W.; Mark, Synda; Towey, Jamie; Sprague, Eric M.; Loughlin, Chuck; Weinstein, Rebecca; Clark, Alexandra; Leefer, Nicholas  
**Cc:** Hassi, Ted; Antalics, Michael E.; Parker, Richard; McIntyre, Stephen; Hendricks, Benjamin J.; Brogan, Eileen M.; Morries, Kendra  
**Subject:** RE: In re Impax Laboratories, Inc. (FTC Docket No. 9373) - Documents involving Carole Ben-Maimon

Anna: I am not able to download files from an FTP site from home, and I don't expect anyone else to be attempting to do so at this late hour. We are waiting for the individual emails.

Federal Trade Commission  
 Bureau of Competition, Health Care Division  
 600 Pennsylvania Avenue NW, CC-7333  
 Washington, DC 20580  
 Tel: (202) 326-3084  
 Fax: (202) 326-3384

---

**From:** Fabish, Anna [<mailto:afabish@omm.com>]  
**Sent:** Tuesday, May 30, 2017 11:38 PM  
**To:** 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; Leefer, Nicholas  
**Cc:** Hassi, Ted; Antalics, Michael E.; Parker, Richard; McIntyre, Stephen; Hendricks, Benjamin J.; Brogan, Eileen M.;



Morries, Kendra

**Subject:** RE: In re Impax Laboratories, Inc. (FTC Docket No. 9373) - Documents involving Carole Ben-Maimon

We continue to have technical difficulties with the size of these files. I understand Kendra ultimately sent the nine files via FTP site in the attached email. Please let me know if you cannot access via the FTP. I will also attempt to send these nine documents in individual emails. I will likely need to send in nine separate emails.

## O'Melveny

### Anna M. Fabish

Counsel

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

O: +1-213-430-7512

---

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---

**From:** Schmidt, J. Maren [<mailto:mschmidt@ftc.gov>]

**Sent:** Tuesday, May 30, 2017 8:01 PM

**To:** Fabish, Anna; Meier, Markus H.; Albert, Bradley Scott; Butrymowicz, Daniel W.; Mark, Synda; Towey, Jamie; Sprague, Eric M.; Loughlin, Chuck; Weinstein, Rebecca; Clark, Alexandra; Leefer, Nicholas

**Cc:** Hassi, Ted; Antalics, Michael E.; Parker, Richard; McIntyre, Stephen; Hendricks, Benjamin J.; Brogan, Eileen M.; Morries, Kendra

**Subject:** RE: In re Impax Laboratories, Inc. (FTC Docket No. 9373) - Documents involving Carole Ben-Maimon

Anna:

It is 11:00 p.m. the night before Ms. Ben-Maimon's deposition and we have not received any actual documents. This is not acceptable. Where are the pdfs?

### Maren Schmidt

Attorney

Federal Trade Commission

Bureau of Competition, Health Care Division

600 Pennsylvania Avenue NW, CC-7333

Washington, DC 20580

Tel: (202) 326-3084

Fax: (202) 326-3384

---

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

**Sent:** Tuesday, May 30, 2017 9:55 PM

**To:** Meier, Markus H.; Albert, Bradley Scott; Butrymowicz, Daniel W.; Mark, Synda; Schmidt, J. Maren; Towey, Jamie; Sprague, Eric M.; Loughlin, Chuck; Weinstein, Rebecca; Clark, Alexandra; Leefer, Nicholas

**Cc:** Hassi, Ted; Antalics, Michael E.; Parker, Richard; McIntyre, Stephen; Hendricks, Benjamin J.; Brogan, Eileen M.; Morries, Kendra

**Subject:** In re Impax Laboratories, Inc. (FTC Docket No. 9373) - Documents involving Carole Ben-Maimon

Counsel:

Later tonight, Impax will make its Production No. 8, which will contain documents involving or referencing Carole Ben-Maimon. Because Ms. Ben-Maimon is scheduled to be deposed tomorrow, we will be providing

courtesy copies of the documents involving Ms. Ben-Maimon that Complaint Counsel has not previously received via email as well. There are nine such documents. Kendra Morries, copied here, will send these documents in a series of separate emails in response to this email chain. (My attempts to send all documents via a single zip file were unsuccessful).

Given the late hour and the off-site location of the deposition tomorrow, we will attempt to provide paper copies of these documents at tomorrow's deposition.

A link to Production No. 8, as well as a production cover letter, will follow later this evening under separate cover.

Best,

Anna

**O'Melveny**

**Anna M. Fabish**

Counsel

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

O: +1-213-430-7512

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# **EXHIBIT D**

**Weingarten, James**

---

**From:** Hendricks, Benjamin J. <bhendricks@omm.com>  
**Sent:** Wednesday, May 31, 2017 12:07 AM  
**To:** Schmidt, J. Maren; Fabish, Anna; Meier, Markus H.; Albert, Bradley Scott; Butrymowicz, Daniel W.; Mark, Synda; Towey, Jamie; Sprague, Eric M.; Loughlin, Chuck; Weinstein, Rebecca; Clark, Alexandra; Leefer, Nicholas  
**Cc:** Hassi, Ted; Antalics, Michael E.; Parker, Richard; McIntyre, Stephen; Brogan, Eileen M.; Morries, Kendra  
**Subject:** RE: In re Impax Laboratories, Inc. (FTC Docket No. 9373) - Documents involving Carole Ben-Maimon  
**Attachments:** 9\_DUTASTERIDE (AVODART)\_Redacted.pdf

9/9

Please confirm receipt of the 9 documents. Thank you.

**Ben Hendricks**  
**O'Melveny**

[bhendricks@omm.com](mailto:bhendricks@omm.com)  
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---

**From:** Hendricks, Benjamin J.  
**Sent:** Wednesday, May 31, 2017 12:05 AM  
**To:** 'Schmidt, J. Maren'; Fabish, Anna; 'Meier, Markus H.'; 'Albert, Bradley Scott'; 'Butrymowicz, Daniel W.'; 'Mark, Synda'; 'Towey, Jamie'; 'Sprague, Eric M.'; 'Loughlin, Chuck'; 'Weinstein, Rebecca'; 'Clark, Alexandra'; 'Leefer, Nicholas'  
**Cc:** Hassi, Ted; Antalics, Michael E.; Parker, Richard; McIntyre, Stephen; Brogan, Eileen M.; Morries, Kendra  
**Subject:** RE: In re Impax Laboratories, Inc. (FTC Docket No. 9373) - Documents involving Carole Ben-Maimon

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**Ben Hendricks**  
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---

**From:** Hendricks, Benjamin J.  
**Sent:** Wednesday, May 31, 2017 12:03 AM  
**To:** 'Schmidt, J. Maren'; Fabish, Anna; 'Meier, Markus H.'; 'Albert, Bradley Scott'; 'Butrymowicz, Daniel W.'; 'Mark, Synda'; 'Towey, Jamie'; 'Sprague, Eric M.'; 'Loughlin, Chuck'; 'Weinstein, Rebecca'; 'Clark, Alexandra'; 'Leefer, Nicholas'  
**Cc:** Hassi, Ted; Antalics, Michael E.; Parker, Richard; McIntyre, Stephen; Brogan, Eileen M.; Morries, Kendra  
**Subject:** RE: In re Impax Laboratories, Inc. (FTC Docket No. 9373) - Documents involving Carole Ben-Maimon

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**Ben Hendricks**  
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**From:** Hendricks, Benjamin J.  
**Sent:** Wednesday, May 31, 2017 12:02 AM  
**To:** 'Schmidt, J. Maren'; Fabish, Anna; 'Meier, Markus H.'; 'Albert, Bradley Scott'; 'Butrymowicz, Daniel W.'; 'Mark, Synda'; 'Towey, Jamie'; 'Sprague, Eric M.'; 'Loughlin, Chuck'; 'Weinstein, Rebecca'; 'Clark, Alexandra'; 'Leefer, Nicholas'  
**Cc:** Hassi, Ted; Antalics, Michael E.; Parker, Richard; McIntyre, Stephen; Brogan, Eileen M.; Morries, Kendra  
**Subject:** RE: In re Impax Laboratories, Inc. (FTC Docket No. 9373) - Documents involving Carole Ben-Maimon

6/9

**Ben Hendricks**  
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---

**From:** Hendricks, Benjamin J.  
**Sent:** Wednesday, May 31, 2017 12:01 AM  
**To:** 'Schmidt, J. Maren'; Fabish, Anna; 'Meier, Markus H.'; 'Albert, Bradley Scott'; 'Butrymowicz, Daniel W.'; 'Mark, Synda'; 'Towey, Jamie'; 'Sprague, Eric M.'; 'Loughlin, Chuck'; 'Weinstein, Rebecca'; 'Clark, Alexandra'; 'Leefer, Nicholas'  
**Cc:** Hassi, Ted; Antalics, Michael E.; Parker, Richard; McIntyre, Stephen; Brogan, Eileen M.; Morries, Kendra  
**Subject:** RE: In re Impax Laboratories, Inc. (FTC Docket No. 9373) - Documents involving Carole Ben-Maimon

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**Ben Hendricks**  
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**From:** Hendricks, Benjamin J.  
**Sent:** Tuesday, May 30, 2017 11:59 PM  
**To:** 'Schmidt, J. Maren'; Fabish, Anna; 'Meier, Markus H.'; 'Albert, Bradley Scott'; 'Butrymowicz, Daniel W.'; 'Mark, Synda'; 'Towey, Jamie'; 'Sprague, Eric M.'; 'Loughlin, Chuck'; 'Weinstein, Rebecca'; 'Clark, Alexandra'; 'Leefer, Nicholas'  
**Cc:** Hassi, Ted; Antalics, Michael E.; Parker, Richard; McIntyre, Stephen; Brogan, Eileen M.; Morries, Kendra  
**Subject:** RE: In re Impax Laboratories, Inc. (FTC Docket No. 9373) - Documents involving Carole Ben-Maimon

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**Ben Hendricks**  
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**From:** Hendricks, Benjamin J.  
**Sent:** Tuesday, May 30, 2017 11:58 PM  
**To:** 'Schmidt, J. Maren'; Fabish, Anna; 'Meier, Markus H.'; 'Albert, Bradley Scott'; 'Butrymowicz, Daniel W.'; 'Mark, Synda'; 'Towey, Jamie'; 'Sprague, Eric M.'; 'Loughlin, Chuck'; 'Weinstein, Rebecca'; 'Clark, Alexandra'; 'Leefer, Nicholas'  
**Cc:** Hassi, Ted; Antalics, Michael E.; Parker, Richard; McIntyre, Stephen; Brogan, Eileen M.; Morries, Kendra  
**Subject:** RE: In re Impax Laboratories, Inc. (FTC Docket No. 9373) - Documents involving Carole Ben-Maimon

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---

**From:** Hendricks, Benjamin J.  
**Sent:** Tuesday, May 30, 2017 11:56 PM  
**To:** 'Schmidt, J. Maren'; Fabish, Anna; 'Meier, Markus H.'; 'Albert, Bradley Scott'; 'Butrymowicz, Daniel W.'; 'Mark, Synda'; 'Towey, Jamie'; 'Sprague, Eric M.'; 'Loughlin, Chuck'; 'Weinstein, Rebecca'; 'Clark, Alexandra'; 'Leefer, Nicholas'  
**Cc:** Hassi, Ted; Antalics, Michael E.; Parker, Richard; McIntyre, Stephen; Brogan, Eileen M.; Morries, Kendra  
**Subject:** RE: In re Impax Laboratories, Inc. (FTC Docket No. 9373) - Documents involving Carole Ben-Maimon

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---

**From:** Hendricks, Benjamin J.  
**Sent:** Tuesday, May 30, 2017 11:55 PM  
**To:** 'Schmidt, J. Maren'; Fabish, Anna; Meier, Markus H.; Albert, Bradley Scott; Butrymowicz, Daniel W.; Mark, Synda; Towey, Jamie; Sprague, Eric M.; Loughlin, Chuck; Weinstein, Rebecca; Clark, Alexandra; Leefer, Nicholas  
**Cc:** Hassi, Ted; Antalics, Michael E.; Parker, Richard; McIntyre, Stephen; Brogan, Eileen M.; Morries, Kendra  
**Subject:** RE: In re Impax Laboratories, Inc. (FTC Docket No. 9373) - Documents involving Carole Ben-Maimon

1/9

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---

**From:** Schmidt, J. Maren [<mailto:mschmidt@ftc.gov>]

**Sent:** Tuesday, May 30, 2017 11:43 PM

**To:** Fabish, Anna; Meier, Markus H.; Albert, Bradley Scott; Butrymowicz, Daniel W.; Mark, Synda; Towey, Jamie; Sprague, Eric M.; Loughlin, Chuck; Weinstein, Rebecca; Clark, Alexandra; Leefer, Nicholas

**Cc:** Hassi, Ted; Antalics, Michael E.; Parker, Richard; McIntyre, Stephen; Hendricks, Benjamin J.; Brogan, Eileen M.; Morries, Kendra

**Subject:** RE: In re Impax Laboratories, Inc. (FTC Docket No. 9373) - Documents involving Carole Ben-Maimon

Anna: I am not able to download files from an FTP site from home, and I don't expect anyone else to be attempting to do so at this late hour. We are waiting for the individual emails.

Federal Trade Commission  
Bureau of Competition, Health Care Division  
600 Pennsylvania Avenue NW, CC-7333  
Washington, DC 20580  
Tel: (202) 326-3084  
Fax: (202) 326-3384

---

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

**Sent:** Tuesday, May 30, 2017 11:38 PM

**To:** 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; Leefer, Nicholas

**Cc:** Hassi, Ted; Antalics, Michael E.; Parker, Richard; McIntyre, Stephen; Hendricks, Benjamin J.; Brogan, Eileen M.; Morries, Kendra

**Subject:** RE: In re Impax Laboratories, Inc. (FTC Docket No. 9373) - Documents involving Carole Ben-Maimon

We continue to have technical difficulties with the size of these files. I understand Kendra ultimately sent the nine files via FTP site in the attached email. Please let me know if you cannot access via the FTP. I will also attempt to send these nine documents in individual emails. I will likely need to send in nine separate emails.

## O'Melveny

### Anna M. Fabish

Counsel

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---

**From:** Schmidt, J. Maren [<mailto:mschmidt@ftc.gov>]

**Sent:** Tuesday, May 30, 2017 8:01 PM

**To:** Fabish, Anna; Meier, Markus H.; Albert, Bradley Scott; Butrymowicz, Daniel W.; Mark, Synda; Towey, Jamie; Sprague, Eric M.; Loughlin, Chuck; Weinstein, Rebecca; Clark, Alexandra; Leefer, Nicholas

**Cc:** Hassi, Ted; Antalics, Michael E.; Parker, Richard; McIntyre, Stephen; Hendricks, Benjamin J.; Brogan, Eileen M.; Morries, Kendra

**Subject:** RE: In re Impax Laboratories, Inc. (FTC Docket No. 9373) - Documents involving Carole Ben-Maimon

Anna:



It is 11:00 p.m. the night before Ms. Ben-Maimon's deposition and we have not received any actual documents. This is not acceptable. Where are the pdfs?

**Maren Schmidt**

Attorney  
Federal Trade Commission  
Bureau of Competition, Health Care Division  
600 Pennsylvania Avenue NW, CC-7333  
Washington, DC 20580  
Tel: (202) 326-3084  
Fax: (202) 326-3384

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

**Sent:** Tuesday, May 30, 2017 9:55 PM

**To:** Meier, Markus H.; Albert, Bradley Scott; Butrymowicz, Daniel W.; Mark, Synda; Schmidt, J. Maren; Towey, Jamie; Sprague, Eric M.; Loughlin, Chuck; Weinstein, Rebecca; Clark, Alexandra; Leefer, Nicholas

**Cc:** Hassi, Ted; Antalics, Michael E.; Parker, Richard; McIntyre, Stephen; Hendricks, Benjamin J.; Brogan, Eileen M.; Morries, Kendra

**Subject:** In re Impax Laboratories, Inc. (FTC Docket No. 9373) - Documents involving Carole Ben-Maimon

Counsel:

Later tonight, Impax will make its Production No. 8, which will contain documents involving or referencing Carole Ben-Maimon. Because Ms. Ben-Maimon is scheduled to be deposed tomorrow, we will be providing courtesy copies of the documents involving Ms. Ben-Maimon that Complaint Counsel has not previously received via email as well. There are nine such documents. Kendra Morries, copied here, will send these documents in a series of separate emails in response to this email chain. (My attempts to send all documents via a single zip file were unsuccessful).

Given the late hour and the off-site location of the deposition tomorrow, we will attempt to provide paper copies of these documents at tomorrow's deposition.

A link to Production No. 8, as well as a production cover letter, will follow later this evening under separate cover.

Best,

Anna

**O'Melveny**

**Anna M. Fabish**

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

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Notice of Electronic Service

**I hereby certify that on June 02, 2017, I filed an electronic copy of the foregoing CC Motion to Compel Timely Production of Documents and [Proposed] Order, 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 June 02, 2017, I served via E-Service an electronic copy of the foregoing CC Motion to Compel Timely Production of Documents and [Proposed] Order, upon:**

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

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

Nicholas Leefer  
Attorney  
Federal Trade Commission  
nleefer@ftc.gov  
Complaint

Synda Mark  
Attorney  
Federal Trade Commission  
smark@ftc.gov  
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Maren Schmidt  
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Eric Sprague  
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Jamie Towey  
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Complaint

Chuck Loughlin  
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Alpa D. Davis  
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Lauren Peay  
Attorney  
Federal Trade Commission  
lpeay@ftc.gov  
Complaint

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

**I hereby certify that on June 02, 2017, I served via other means, as provided in 4.4(b) of the foregoing CC Motion to Compel Timely Production of Documents and [Proposed] Order, upon:**

Markus Meier  
Attorney  
Federal Trade Commission  
mmeier@ftc.gov  
Complaint

Ted Hassi  
Attorney  
O'Melveny & Myers LLP  
ehassi@omm.com  
Respondent

Nicholas Leefer  
Attorney