

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

IN RE: OPANA ER ANTITRUST LITIGATION	MDL DOCKET NO. 2580
THIS DOCUMENT RELATES TO: All Direct Purchaser Class Actions	Case No. 1:14-cv-10150 (HDL)

**DIRECT PURCHASER PLAINTIFFS’ NOTICE OF SUPPLEMENTAL DECLARATION
OF JEFFREY J. LEITZINGER PH.D. RELATED TO PROPOSED ALLOCATION
PLAN AND NET SETTLEMENT FUND ALLOCATION**

Direct Purchaser Plaintiffs (“DPPs”) respectfully submit a supplemental declaration from their Class damages expert, Jeffrey J. Leitzinger, Ph.D., attached hereto as **Exhibit A**. The declaration responds to the Court’s inquiry at the July 28, 2022 hearing regarding DPPs’ motion for preliminary approval of their settlement with Impax Laboratories, Inc. (ECF No. 1041) concerning DPPs’ Proposed Plan of Allocation for the Net Settlement Fund.

The allocation methodology that has been submitted will use claimants’ *pro rata* net purchases of brand and generic Opana ER (with a weighting as between brand and generic to reflect the higher claimed overcharges on brand purchases). *See* ECF No. 1043-2 (Plan of Allocation); ECF No. 1043-3 (Dr. Leitzinger’s declaration dated July 19, 2022). A number of courts have approved this same allocation method in prior, similar cases in which Dr. Leitzinger has served as an expert. *See* ECF No. 1043-3 at ¶ 4 (listing cases).

As set forth in the attached declaration, based on his preliminary review, Dr. Leitzinger has concluded that adjusting the allocation method to account for variations in per-mg pricing between the different dosage strengths would not materially impact Class members’ allocations. Furthermore, to perform a full-blown analysis of whether claimed per-mg overcharges varied by

dosage strength would cost \$50,000 to \$60,000 or more – a cost that would be deducted from the funds available for Class members.

Dated: August 2, 2022

Respectfully Submitted:

/s/ Andrew C. Curley

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Co-Lead Counsel for the Direct Purchaser Class

CERTIFICATE OF SERVICE

I hereby certify that on August 2, 2022, I caused the above to be filed by CM/ECF system.

Respectfully submitted,

/s/ Bruce E. Gerstein

Bruce E. Gerstein

EXHIBIT A

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

IN RE: OPANA ER ANTITRUST LITIGATION

This Document Relates to:

DIRECT PURCHASER ACTIONS

**MDL 2580
Case No. 14-cv-10150**

**SUPPLEMENTAL DECLARATION OF JEFFREY J. LEITZINGER, PH.D.
Related to Proposed Allocation Plan and
Net Settlement Fund Allocation**

Econ ONE Research, Inc.

August 2, 2022

550 South Hope St., Suite 800
Los Angeles, CA 90071

1. I am the same Jeffrey J. Leitzinger who previously submitted three expert reports in this case and a declaration setting forth a proposed settlement allocation plan.¹ Econ One is being compensated for the time I spend on this matter at my normal and customary rate of \$895 per hour. Econ One also is being compensated for time spent by my research staff on this matter at their normal and customary hourly rates.
2. As described in my Allocation Declaration, I proposed settlement allocations for each Claimant that would reflect its share of the total milligrams of Opana ER (both branded and generic) purchased by all Claimants during the period of April 1, 2011 through December 31, 2017. In that regard, I proposed that generic purchases be given less weight in these share calculations as a result of their lower per unit overcharge.² As described in my Allocation Declaration, this allocation aligns with court-approved allocation procedures in a number of similar cases in which I have participated as an expert.³
3. I now have been asked by counsel in this matter whether the proposed allocations also might be adjusted to account for the differences in the Opana ER tablet strengths (5, 10, 20, 30 and 40 mg) purchased by Claimants. In that regard, I offer the following observations.
 - There is no basis within the literature or the data available in this case for presuming that the size of the overcharge varies systematically with tablet strength.

¹ See Expert Report of Jeffrey J. Leitzinger, Ph.D., dated March 25, 2019 (“Report” or “Leitzinger Report”); Rebuttal Report of Jeffrey J. Leitzinger, Ph.D., dated November 5, 2019 (“Rebuttal Report” or “Leitzinger Rebuttal Report”) (collectively, “Reports”); Supplemental Report of Jeffrey J. Leitzinger, Ph.D., dated July 26, 2021 (“Supplemental Report” or “Leitzinger Supplemental Report”); Declaration of Jeffrey J. Leitzinger, Ph.D., Related to Proposed Allocation Plan and Net Settlement Fund Allocation, dated July 19, 2019 (“Allocation Declaration” or “Leitzinger Allocation Declaration”).

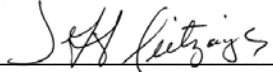
² The difference in relative overcharges results from the fact that overcharges on brand purchases reflect the difference between actual brand prices (paid by Class members) and the lower prices for generics that would have been purchased instead, whereas overcharges on generic purchases reflect the difference between the actual prices paid for generic purchases (prices that are below brand prices) and the even lower generic prices that would have been paid with additional generic competition.

³ See Allocation Declaration ¶ 4 (listing 14 previous cases).

8/2/2022

- Average brand WACs per milligram do show modest declines with higher tablet strengths (about 5 percent lower on average with each 10 mg increment in tablet strength moving from 10 mg to 40 mg). However, I've seen nothing in the record regarding whether other components of the overcharge calculation (forecasted generic substitution rates, forecasted generic discounts, and forecasted conversion to reformulated Opana ER) also varied by strength.⁴ Accordingly, there is no basis in the data for concluding that per-mg overcharges varied by strength. While there is no economic basis for doing so, as an arithmetic matter one certainly could give more weight in the settlement allocation to Claimants that, on average, purchased lower strengths and thereby paid more per milligram.
- However, in that regard, Claimants representing over 95 percent of the total Class volume purchased the various dosage strengths in very similar proportions. Hence, adjustment to these Claimants' allocations for price differences according to tablet strength would have little effect (2 percent or less).
- There are eight Claimants, accounting for less than 1 percent of the total Class volume, for whom the effect of adjusting for tablet strength would range from 2 to 5.6 percent. The average difference in allocation arising from adjustment for price differences associated with tablet strength would be approximately \$2,700.⁵

4. The foregoing is true and correct to the best of my knowledge and belief.



Jeffrey J. Leitzinger, Ph.D.
August 2, 2022

⁴ Preliminary investigation has revealed nothing about whether these parameters varied by dosage strength. A complete investigation into this issue would require at least \$50,000 to \$60,000 of work and potentially more, and require re-review of all forecasts and other discovery materials. Having spent a lot of time with this type of information for this case and other similar cases, I am not aware of anything, at this time, that would allow one to determine whether these parameters vary by strength.

⁵ I've been asked to assume the Class will receive a net of \$85 million for purposes of this calculation.



Dr. JEFFREY J. LEITZINGER
Managing Director
Los Angeles, California
Tel: 213 624 9600

EDUCATION

Ph.D., Economics, University of California, Los Angeles
M.A., Economics, University of California, Los Angeles
B.S., Economics, Santa Clara University

WORK EXPERIENCE

Econ One Research, Inc., 1997 to date
Board Chairman and Managing Director, 2018 to date
Management Committee Chair, 2012-2018
President and CEO, 1997-2011
Founder, 1997

Micronomics, Inc., 1988-1997
President and CEO, 1994-1997
Executive Vice President, 1988-1994
Cofounder, 1988

National Economic Research Associates, Inc. 1980-1988
(Last position was Senior Vice President and member of the Board of Directors)

California State University, Northridge, Lecturer, 1979-1980

BOARD EXPERIENCE

Board of Visitors, UCLA Department of Economics, 2018-present
California United Bank, 2015-2017
Advisory Board Member, American Antitrust Institute, 2013-present
Bolton & Company, 2006-present
First Enterprise Bank, 2006-2015
Blind Children's Center, 2005-present

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Managing Director

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AREAS OF EXPERTISE

Has offered expert testimony regarding:

- Competition economics
- Commercial damages
- Econometrics and statistics
- Intellectual property
- Valuation

INVITED PRESENTATIONS

Some Implications of Tyson for Econometric Models in Class Action Antitrust Cases, *American Bar Association*, 65th Antitrust Law Spring Meeting, March 2017.

Where Are We on Class Certification? Examples from Health Care and Pharmaceutical Cases, *ABA Section of Antitrust Law, Health Care and Pharmaceuticals and Civil Practice and Procedure and Trial Practice Committees*, March 2016.

Corporations & Cartels: Should You Be a Plaintiff?, *American Bar Association*, 62nd Antitrust Law Spring Meeting, March 2014.

Developments in Antitrust Cases Alleging Delayed Generic Competition in the Pharmaceutical Industry, *American Antitrust Institute*, 5th Annual Future of Private Antitrust Enforcement Conference, December 2011.

Class Certification and Calculation of Damages, *American Bar Association*, Section of Antitrust Law and *International Bar Association*, 8th International Cartel Workshop, February 2010.

Class Certification Discussion and Demonstration, *American Bar Association*, Section of Antitrust Law, The Antitrust Litigation Course, October 2007.

Antitrust Injury and the Predominance Requirement in Antitrust Class Actions, *American Bar Association*, Houston Chapter, April 2007.

Class Certification Discussion and Demonstration, *American Bar Association*, Section of Antitrust Law, The Antitrust Litigation Course, October 2005.

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Managing Director

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INVITED PRESENTATIONS (cont'd.)

What Can an Economist Say About the Presence of Conspiracy?, *American Bar Association*, Antitrust Law, The Antitrust Litigation Course, October 2003.

Lessons from Gas Deregulation, *International Association for Energy Economics*, Houston Chapter, December 2002.

A Retrospective Look at Wholesale Gas Industry Restructuring, *Center for Research in Regulated Industries*, 20th Annual Conference of the Advanced Workshop in Regulation and Competition, May 2001.

The Economic Analysis of Intellectual Property Damages, *American Conference Institute*, 6th National Advanced Forum, January 2001.

Law and Economics of Predatory Pricing Under Federal and State Law, *Golden State Antitrust and Unfair Competition Law Institute*, 8th Annual Meeting, October 2000.

Non-Price Predation--Some New Thinking About Exclusionary Behavior, *Houston Bar Association*, Antitrust and Trade Regulation Section, October 2000.

After the Guilty Plea: Does the Defendant Pay the Price in the Civil Damage Action, *American Bar Association*, Section of Antitrust Law, 48th Annual Spring Meeting, April 2000.

Economics of Restructuring in Gas Distribution, *Center for Research in Regulated Industries*, 12th Annual Western Conference, July 1999.

A Basic Speed Law for the Information Superhighway, *California State Bar Association*, December 1998.

Innovation in Regulation, *Center for Research in Regulated Industries*, 11th Annual Western Conference, July/September 1998.

Electric Industry Deregulation: What Does the Future Hold?, *Los Angeles Headquarters Association*, November 1996.

Why Deregulate Electric Utilities?, *National Association of Regulatory Utility Commissioners*, November 1995.

Restructuring U.S. Power Markets: What Can the Gas Industry's Experience Tell Us?, *National Association of Regulatory Utility Commissioners*, July 1995.

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Managing Director

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INVITED PRESENTATIONS (cont'd.)

Natural Gas Restructuring: Lessons for Electric Utilities and Regulators, *International Association for Energy Economics*, May 1995.

Techniques in the Direct and Cross-Examination of Economic, Financial, and Damage Experts, *The Antitrust and Trade Regulation Law Section of the State Bar of California and The Los Angeles County Bar Association*, 2nd Annual Golden State Antitrust and Trade Regulation Institute, October 1994.

Demonstration: Deposition of Expert Witnesses and Using Legal Technology, *National Association of Attorneys General*, 1994 Antitrust Training Seminar, September 1994.

Direct and Cross Examination of Financial, Economic, and Damage Experts, *The State Bar of California, Antitrust and Trade Regulation Law Section*, May 1994.

Price Premiums in Gas Purchase Contracts, *International Association for Energy Economics*, October 1992.

Valuing Water Supply Reliability, *Western Economic Association*, Natural Resources Section, July 1992.

Transportation Services After Order 636: "Back to the Future" for Natural Gas, Seminar sponsored by Jones, Day, Reavis & Pogue, May 1992.

The Cost of an Unreliable Water Supply for Southern California, Forum presented by Micronomics, Inc., May 1991.

Market Definition: It's Time for Some "New Learning", *Los Angeles County Bar Association*, Antitrust and Corporate Law Section, December 1989.

Market Definition in Antitrust Cases: Some New Thinking, *Oregon State Bar*, Antitrust Law Section, March 1987.

Future Directions for Antitrust Activity in the Natural Gas Industry, *International Association of Energy Economists*, February 1987.

Information Externalities in Oil and Gas Leasing, *Western Economic Association Meetings*, Natural Resources Section, July 1983.

Economic Analysis of Offshore Oil and Gas Leasing, *Western States Land Commissioners Association*, December 1982.

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PUBLISHED ARTICLES

“Statistical Significance and Statistical Error in Antitrust Analysis,” *Antitrust Law Journal*, Volume 81, Issue 2, July 2017.

“The Predominance Requirement for Antitrust Class Actions--Can Relevant Market Analysis Help?,” American Bar Association, Section of Antitrust Law, *Economics Committee Newsletter*, Volume 7, No. 1, Spring 2007.

“A Retrospective Look at Wholesale Gas: Industry Restructuring,” *Journal of Regulatory Economics*, January 2002.

“Balance Needed in Operating Agreements as Industry’s Center of Gravity Shifts to State Oil Firms,” *Oil & Gas Journal*, October 2000.

“What Can We Expect From Restructuring In Natural Gas Distribution?” *Energy Law Journal*, January 2000.

“Gas Experience Can Steer Power Away from Deregulation Snags,” *Oil & Gas Journal*, August 1996.

“Anatomy of FERC Order 636: What’s out, What’s in,” *Oil & Gas Journal*, June 1992.

“Antitrust II – Future Direction for Antitrust in the Natural Gas Industry,” *Natural Gas*, November 1987.

“Information Externalities in Oil and Gas Leasing,” *Contemporary Policy Issues*, March 1984.

“Regression Analysis in Antitrust Cases: Opening the Black Box,” *Philadelphia Lawyer*, July 1983.

“Foreign Competition in Antitrust Law,” *The Journal of Law & Economics*, April 1983.

REGULATORY SUBMISSIONS

In the Matter of the Application of Southern California Gas Company Regarding Year Six (1999-2000) Under its Experimental Gas Cost Incentive Mechanism and Related Gas Supply Matters; A.00-06-023, Public Utilities Commission of the State of California, November 2001.

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Managing Director

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REGULATORY SUBMISSIONS (cont'd.)

Sempra Energy and KN Energy, Incorporation; Docket No. EC99-48-000 (Affidavit and Verified Statement), Federal Energy Regulatory Commission, March/May 1999.

Rulemaking on the Commission's Own Motion to Assess and Revise the Regulatory Structure Governing California's Natural Gas Industry (Market Conditions Report), Public Utilities Commission of the State of California, July 1998.

In the Matter of the Application of Pacific Enterprises, Enova Corporation, et al. for Approval of a Plan of Merger Application No. A. 96-10-038, Public Utilities Commission of the State of California, August/October 1997.

In re: Koch Gateway Pipeline Company; Docket No. RP 97-373-000, Federal Energy Regulatory Commission, May/October 1997 and February 1998.

In the Matter of the Application of Sadlerochit Pipeline Company for a Certificate of Public Convenience and Necessity; Docket No. P-96-4, Alaska Public Utilities Commission, May 1996.

Public Funding of Electric Industry Research, Development, and Demonstration (RD&D) Under Partial Deregulation, California Energy Commission, January 1995.

NorAm Gas Transmission Company; Docket No. RP94-343-000, Federal Energy Regulatory Commission, August 1994/June 1995.

Natural Gas Vehicle Program; Investigation No. 919-10-029, California Public Utilities Commission, July 1994.

Transcontinental Gas Pipe Line Corporation; Docket No. RP93-136-000 (Proposed Firm-to-the-Wellhead Rate Design), Federal Energy Regulatory Commission, January 1994.

In re: Sierra Pacific's Proposed Nomination for Service on Tuscarora Gas Pipeline; Docket No. 93-2035, The Public Service Commission of Nevada, July 1993.

Employment Gains in Louisiana from Entergy-Gulf States Utilities Merger, Louisiana Public Utilities Commission, December 1992.

Employment Gains to the Beaumont Area from Entergy-Gulf States Utilities Merger, Texas Public Utilities Commission, August 1992.

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REGULATORY SUBMISSIONS (cont'd.)

Transcontinental Gas Pipe Line Corporation; Docket No. RS 92-86-000 (Affidavit regarding Transco's Proposed IPS Service), Federal Energy Regulatory Commission, June 1992.

In Re: Pipeline Service Obligations; Docket No. RM91-11-000; Revisions to Regulations Governing Self-Implementing Transportation Under Part 284 of the Commission's Regulations; Docket No. RM91-3-000; Revisions to the Purchased Gas Adjustment Regulations; Docket No. RM90-15-000, Federal Energy Regulatory Commission, May 1991.

In the Matter of Natural Gas Pipeline Company of America; Docket No. CP89-1281 (Gas Inventory Charge Proposal), Federal Energy Regulatory Commission, January 1990.

In the Matter of United Gas Pipeline Company, UniSouth, Cypress Pipeline Company; Docket No. CP89-2114-000 (Proposed Certificate of Storage Abandonment by United Gas Pipeline Company), Federal Energy Regulatory Commission, December 1989.

In the Matter of Tennessee Gas Pipeline Company; Docket No. CP89-470 (Gas Inventory Charge Proposal), Federal Energy Regulatory Commission, July 1989.

In the Matter of Take-Or-Pay Allocation Proposed by Mississippi River Transmission Corporation, Federal Energy Regulatory Commission, March 1988.

In the Matter of Natural Gas Pipeline Company of America: Docket No. RP87-141-000 (Gas Inventory Charge Proposal), Federal Energy Regulatory Commission, December 1987.

In the Matter of Application of Wisconsin Gas Company for Authority to Construct New Pipeline Facilities; 6650-CG-104, Public Service Commission, State of Wisconsin, August 1987.

Trans-Alaska Pipeline System: Docket Nos. OR 78-1-014 and OR 78-1-016 (Phase 1 Remand), Federal Energy Regulatory Commission, October 1983.

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Los Angeles, California
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Dr. Jeffrey Leitzinger
Aug 2018 – July 2022

Proceeding	Court/Commission/ Agency	Docket or File
1. <u>In Re: AndroGel Antitrust Litigation</u>	U.S. District Court, Northern District of Georgia	Case No. 1:09-MD-2084-TWT
2. <u>In Re: Rail Freight Surcharge Antitrust Litigation</u>	U.S. District Court, District of Columbia	Case No. 1:07-MC-00489
3. <u>UFCW & Employers Benefit Trust, et al., v. Sutter Health, et al.</u>	Superior Court of California, County of San Francisco	No. CGC 14-538451 No. CGC-18-565398
4. <u>Sourceone Dental Inc. v. Patterson Companies, et al.</u>	U.S. District Court, Eastern District of New York	Case No. 15-cv-05440
5. <u>In re: Thalomid and Revlimid Antitrust Litigation</u>	U.S. District Court, District of Connecticut	C.A. No. 3:14-MD-2516 (SRU)
6. <u>In re Loestrin 24 FE Antitrust Litigation</u>	U.S. District Court, District of Rhode Island	MDL No. 2472, Master File No. 1:13-md-2472-S-PAS
7. <u>CVS Health Corporation, Caremark, LLC, and Caremark, PCS, LLC v. Vividus LLC f/k/a HM Compounding Services, LLC, and HMX Services, LLC d/b/a HM Compounding</u>	American Arbitration Association	Case No. 01-14-0002-0801
8. <u>In Re: Qualcomm Litigation</u>	U.S. District Court, Southern District of California	Case No. 3:17-cv-00108-GPC-MDD
9. <u>In re: Niaspan Antitrust Litigation</u>	U.S. District Court, Eastern District of Pennsylvania	MDL 2460, Master Case No. 2:13-md-2460
10. <u>Littop Enterprises Limited, et al. v. Ukraine</u>	The Stockholm Chamber of Commerce	SCC Case No 2015/092
11. <u>In re: Restasis (Cyclosporine Ophthalmic Emulsion) Antitrust Litigation</u>	U.S. District Court, Eastern District of New York	Case No. 18-MD-2819 (NG) (LB)

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Aug 2018 – July 2022

Proceeding	Court/Commission/ Agency	Docket or File
12. <u>In re: Opana ER Antitrust Litigation</u>	U.S. District Court, Northern District of Illinois	Civil Action No. 14-cv-10150
13. <u>In re: Intuniv Antitrust Litigation</u>	U.S. District Court, District of Massachusetts	Civil Action No. 16-cv-12653-ADB (Direct)
14. <u>SS&C Technologies, Inc. v. Clearwater Analytics, LLC</u>	Superior Court for the State of Connecticut, Judicial District of Hartford	No. X07-HHD-CV-16-6070719-S
15. <u>In re: Zetia (Ezetimibe) Antitrust Litigation</u>	U.S. District Court, Eastern District of Virginia Norfolk Division	MDL No. 2836 Civil Action No. 18-md-2836-RBS-DEM
16. <u>In re: Glumetza Antitrust Litigation</u>	U.S. District Court, Northern District of California	Case No. 3:19-cv-05822-WHA
17. <u>In re: Keurig Green Mountain Single-Serve Coffee Antitrust Litigation</u>	U.S. District Court, Southern District of New York	No. 1:14-md-02542 (VSB) (SLC) No. 1:19-cv-00325 (VSB)
18. <u>In Re: Payment Card Interchange Fee and Merchant Discount Antitrust Litigation</u>	U.S. District Court, Eastern District of New York	No. 05-md-1720
19. <u>International Construction Products, LLC v. Caterpillar Inc., Komatsu America Corp., Associated Auction Services, LLC doing business as Cat Auction Services.</u>	U.S. District Court, District of Delaware	C.A. No. 15-108-RGA
20. <u>In re: Novartis and Par Antitrust Litigation</u>	U.S. District Court, Southern District of New York	Case No. 1:18-cv-04361-AKH
21. <u>Toll Brothers, Inc. and Porter Ranch Development Company v. Sempra Energy, Southern California Gas Company, et al.</u>	Superior Court of the State of California, County of Los Angeles, Central Civil West	Case No. BC674622