

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

IN RE OPANA ER ANTITRUST LITIGATION	MDL No. 2580
THIS DOCUMENT RELATES TO:  Direct Purchaser Action	Lead Case No. 14-cv-10150  Hon. Harry D. Leinenweber

**DIRECT PURCHASER CLASS PLAINTIFFS' MOTION  
FOR DISTRIBUTION FROM THE NET SETTLEMENT FUND**

In accordance with this Court's previous Order Granting Final Judgment and Order of Dismissal Approving Direct Purchaser Class Settlement and Dismissing Direct Purchaser Class Claims Against Impax Laboratories, Inc. [ECF No. 1085] (the "Final Approval Order"), Direct Purchaser Plaintiffs ("Plaintiffs"), by undersigned counsel ("Class Counsel") respectfully move for an order (i) approving the administrative determinations of settlement administrator, RG/2 Claims Administration ("RG/2"), concerning the claims filed in this case; (ii) approving and authorizing the distribution of each Claimant's share of the Net Settlement Fund following Impax's second installment payment as defined in the Allocation Order, to Claimants whose Claim Forms have been approved by RG/2; and (iii) approving payments to RG/2 and to Econ One, Inc. ("Econ One"), the economic consultants retained by Class Counsel to assist RG/2 with the claims administration process, for fees and expenses associated with the claims administration process

and approving the withholding of \$476,000 from the distribution to cover estimated 2023 taxes owed from the Net Settlement Fund<sup>1</sup> for interest earned on the funds in 2023.

The basis for this motion is as follows:

1. On November 3, 2022, the Court granted final approval of Plaintiffs' settlement with defendant Impax Laboratories, Inc. ("Impax"). [ECF No. 1085.]

2. Also on November 3, 2022, the Court approved a Plan of Allocation (filed at ECF No. 1043-2), which described the procedures and methods to be used by RG/2 to allocate and distribute the Net Settlement Fund to Claimants who submit valid claims after the deduction of any Court-approved attorney expenses.

3. Pursuant to Paragraph 9 of the Final Approval Order, RG/2 and Class Counsel were authorized to begin administration and distribution of the Net Settlement Fund in accordance with the approved Plan of Allocation [ECF No. 1043-2].

4. In accordance with the Plan of Allocation, on or about December 19, 2022, RG/2 mailed pre-populated Claim Forms to each Class Member setting forth the calculation of each Class Member's qualifying net purchases of brand and generic Opana ER. *See* Declaration of Tina Chiango of RG/2 Claims Administration in Support of Motion for Distribution from the Net Settlement Fund, dated May 17, 2023 (the "RG/2 Declaration"), ¶¶ 3-5. Specifically, as explained in the accompanying RG/2 Declaration, RG/2 worked with Class Counsel and Econ One to (i) identify the Class Members from the transactional sales data produced during the litigation; (ii) calculate the amount of all qualifying purchases of brand and generic Opana ER by each Class Member using the produced transactional sales data; and (iii) calculate each Class Member's total

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<sup>1</sup> "Net Settlement Fund" is defined in Direct Purchaser Plaintiffs' Plan of Allocation for the Direct Purchaser Class. *See* ECF No. 1043-2, at 1.

qualifying purchases of brand and generic Opana ER. *Id.* ¶ 4. These figures were included in the pre-populated Claim Forms sent to Class Members.

5. An un-populated version of the Claim Form was posted at <https://bergermontague.com/wp-content/uploads/2022/12/Opana-Blank-Claim.pdf>. RG/2 Declaration, ¶ 5; *see also id.* at Ex. A (copy of the un-populated Claim Form).

6. Since mailing the Claim Forms, RG/2 and Class Counsel, with the help and consultation of Econ One, worked with Claimants who submitted valid Claim Forms—including those Claim Forms submitted by Class Members or on the basis of assignments from Class Members—to process and evaluate these claims, and to determine each Claimant’s qualifying net purchases of brand and generic Opana ER. RG/2 Declaration, ¶¶ 7-9. In addition, RG/2 and Class Counsel followed up with Class Members who did not respond to RG/2’s Claim Form mailing to encourage such Class Members to submit claims. *Id.* ¶ 6.

7. In administrating the settlements, RG/2 (i) evaluated all submitted Claim Forms; (ii) with the help of economic consultant Econ One, evaluated any accompanying data submitted therewith; and (iii) worked with Econ One and Class Counsel and to determine the weighted *pro rata* payment to each Claimant who submitted a valid, approved claim from the Net Settlement Fund, and, submitted herewith, a report of its activities and results in a final report to the Court. *See* RG/2 Declaration, ¶ 7.

8. Based on RG/2’s administration of the settlement in accordance with the Plan of Allocation, RG/2 has determined that 34 Claimants filed valid Claim Forms and are eligible for participation in the Net Settlement Fund. RG/2 Declaration, ¶ 7. RG/2 did not find any Claim Form submitted by any Class Member or Claimant to be deficient, nor did RG/2 reject any Claim Form submitted by a Class Member or Claimant for any reason. RG/2 Declaration, ¶ 9.

9. The list of qualified Claimants, and their final calculated weighted pro rata percentage shares of the Net Settlement Fund, are attached as Exhibit B to the RG/2 Declaration. The pro rata percentage shares shown in Exhibit B to the RG/2 Declaration were calculated using the data produced by the Defendants and data submitted by Claimants with their Claim Forms.

10. The Net Settlement Fund included \$72,956,556 as of April 28, 2023.

11. As part of the RG/2 Declaration, RG/2 indicates that it has incurred \$8,597 in unpaid professional fees and expenses for administering the claims in this settlement and anticipates incurring an additional \$2,150 in fees and expenses to complete the initial distribution of funds to Claimants, file the necessary tax returns, and respond to Claimant inquiries concerning the initial distribution. RG/2 Declaration, ¶ 10.

12. In addition, Econ One incurred fees in connection with the claims administration process, specifically in calculating Class Members' and Claimants' purchases and *pro rata* shares of the Net Settlement Fund, including, in some cases, the examination and auditing of additional data provided by Claimants with their Claim Forms. Econ One's outstanding fees total \$31,321. RG/2 Declaration, ¶ 11.

13. RG/2 estimates that that the 2023 tax liability for the Settlement Fund to be \$476,000 based on interest earned or to be earned on the Net Settlement Fund in 2023 and has recommended that that amount be withheld from the distribution to cover any such liability. RG/2 Declaration, ¶ 12.

Based upon the foregoing, Plaintiffs respectfully request that the Court (a) approve the Net Settlement Fund allocation determinations as set forth in Exhibit B to the RG/2 Declaration; (b) authorize RG/2 to distribute each Claimant's *pro rata* share of the Net Settlement Fund, calculated in accordance with the Court-approved Plan of Allocation, to the 34 Claimants who submitted

approved Claim Forms as shown in Exhibit B to the RG/2 Declaration;<sup>2</sup> (c) approve the payment of the amounts set forth above to RG/2 (\$10,747) and Econ One (\$31,321) for fees and expenses associated with the administration of the settlements, and (d) approve the withholding of \$476,000 from the distribution to cover the estimated 2023 taxes owed from Settlement Fund. A proposed order is submitted herewith.

Dated: May 18, 2023

Respectfully submitted,

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<sup>2</sup> Per the Final Approval Order, RG/2 will distribute the remainder of each Claimant's share of the Net Settlement Fund after Impax's third installment payment to be paid no later than January 17, 2024. ECF No. 1085 ¶ 9.