

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

IN RE OPANA ER ANTITRUST
LITIGATION

MDL No. 2580

Lead Case No. 14-cv-10150

THIS DOCUMENT RELATES TO:

Hon. Harry D. Leinenweber

Direct Purchaser Action

**DIRECT PURCHASER CLASS PLAINTIFFS' SECOND 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") and consistent with the Court's Order Approving Direct Purchaser Plaintiffs' Motion for Distribution of Net Settlement Fund ("First Distribution Order") [ECF No. 1098] approving the administrative determinations of settlement administrator, RG/2 Claims Administration ("RG/2"), concerning the claims filed in this case, among other things, Direct Purchaser Plaintiffs ("Direct Purchaser Plaintiffs"), by undersigned counsel ("Class Counsel") respectfully move for an order (i) approving and authorizing the distribution of each Claimant's share of the Net Settlement Fund following the final settlement installment payment of \$30,401,534.25 (\$29,000,000 plus interest) from Impax Laboratories, Inc. ("Impax") to Claimants whose Claim Forms have been approved by RG/2; and (ii) approving a payment of \$4,490 to RG/2 for fees and expenses associated with the claims administration process and (iii) approving the withholding of no more than \$505,500 from the

distribution to cover estimated 2024 taxes owed from the Net Settlement Fund¹ for interest earned on the funds in 2024.

The basis for this motion is as follows:

1. On November 3, 2022, the Court granted final approval of Direct Purchaser Plaintiffs' settlement with defendant Impax and granted Class Counsel's request an award of attorneys' fees of 36% of the Settlement (including the interest accrued thereon). *See* Final Approval Order at ¶¶ 14-15 [ECF No. 1085.]

2. In the Final Approval Order, 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. Final Approval Order at ¶ 9.

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. On June 8, 2023, the Court entered the First Distribution Order approving the administrative determinations of RG/2 concerning the Claims submitted in this case and directing RG/2 to distribute to each of the 34 Claimants whose Claim Form has been accepted by RG/2 and which are listed in Exhibit B to the Final RG/2 Report [ECF No. 1096-1], its *pro rata* percentage of the then-balance of Net Settlement Fund. *See* First Distribution Order [ECF No. 1098].

5. On or about June 15, 2023, wires and checks were sent to each of the 34 Claimants. Declaration of Tina Chiango in Support of Second Motion for Distribution From the Net

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

Settlement Fund, dated January 3, 2024 (“Second Chiango RG/2 Decl.”), at ¶ 4. All wires and checks from the first distribution have cleared indicating receipt of payment. *Id.*

6. On January 16, 2024, Impax made its final settlement payment of \$30,401,534.25 (\$29,000,000 plus interest).

7. As part of the Second Chiango RG/2 Decl., RG/2 indicates that it anticipates incurring an additional \$4,490 in fees and expenses to complete the distributions of funds to Claimants, file the necessary tax returns, and respond to Claimant inquiries concerning the distributions. Second Chiango RG/2 Decl., ¶ 5.

8. In its June 8, 2023 First Distribution Order, the Court granted Direct Purchaser Plaintiffs’ request for leave to withhold \$476,000 from distribution to cover estimated tax liabilities incurred based on the interest earned or to be earned on the Net Settlement Fund in 2023. First Distribution Order at ¶ 5 [ECF No. 1098].

9. The Net Settlement Fund included \$20,436,631.57 as of January 30, 2024.

10. RG/2’s final 2023 tax estimate is \$450,000, which is less than previously withheld for estimated 2023 taxes. Second Chiango RG/2 Decl., at ¶ 6.

11. RG/2 estimates that the 2024 tax liability for the Settlement Fund, if invested through the end of February 2024, to be no more than \$55,500 based on interest earned or to be earned on the Net Settlement Fund in 2024 and has recommended that that amount be withheld from the distribution to cover any such liability. Second Chiango RG/2 Decl., ¶ 7.

12. In total, RG/2 recommends withholding a total of no more than \$505,500 for estimated 2023 and 2024 taxes. Second Chiango RG/2 Decl., ¶ 8.

Based upon the foregoing, Direct Purchaser Plaintiffs respectfully request that the Court (a) 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; (b) approve the payment of \$4,490 to RG/2 for fees and expenses associated with the administration of the settlements, and (c) approve the withholding of a total no more than \$505,500 from the distribution to cover the estimated 2023 and 2024 taxes owed from Settlement Fund. To the extent that RG/2 later determines that estimated 2023 and 2024 taxes are less than \$505,500 (for instance, if this Motion is granted before the end of February 2024), any excess that is not needed for taxes will be included in the distribution to Claimants whose Claim Forms have been accepted. A proposed order is submitted herewith.

Dated: January 30, 2024

Respectfully submitted,

/s/ Andrew C. Curley

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