

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS

In re: Opana ER Antitrust Litigation

Master File No. 1:14-cv-10150 (HDL) (N.D. Ill.)

Si desea recibir esta notificación en español, llámenos al 866-742-4955

PROOF OF CLAIM AND RELEASE

Your claim must be postmarked by: February 2, 2023

Notice ID:

INTRODUCTION

On November 3, 2022, the Court in the above-entitled action (the “Action”) approved a \$145 million Settlement of Value Drug Company (“Value Drug”) and Meijer, Inc. and Meijer Distribution, Inc.’s (“Meijer”) (collectively, “Plaintiffs” or “Class Representatives”) class action suit against Impax Laboratories, Inc. (“Impax”). The notice of class action Settlement dated July 28, 2022, which was previously mailed to you, summarizes both the litigation and terms of the Settlement. The purpose of this Proof of Claim Form and Release is to ensure that you are able to participate in the distribution of the Settlement funds from the Settlement, net of attorneys’ fees, service awards to Class Representatives, and other costs awarded by the Court (the “Net Settlement Fund”).

In order for the Claims Administrator to make the proper calculation of your *pro rata* share of the Net Settlement Fund, please either (a) verify the accuracy of the net purchase volumes listed in Part II.A of this Proof of Claim and Release Form that are derived from purchase data produced in this Action or (b) submit the data required in Part II.B of this Proof of Claim and Release Form.

PART I: CLAIMANT IDENTIFICATION

Please provide this information. In addition, if purchases were made in a name other than the Claimant’s name (for example, if you are filing this Proof of Claim and Release Form based on an assignment, please include documentation of your right to assert a claim with respect to those claimed purchases).

Employer Tax Identification Number: _____

Claimant Name & Address:

Please make any changes or corrections below:

Person overseeing the claims process for Claimant (who can be contacted if there are questions regarding this claim):

First Name: _____ MI: _____ Last Name: _____

Phone Number: (_____) _____ - _____ Email Address: _____

PART II: CLASS MEMBER'S QUALIFYING PURCHASES OF BRAND OPANA ER AND/OR GENERIC OPANA ER

A. The Claims Administrator, in conjunction with the direct purchaser plaintiffs' economic expert, has calculated each Class member's qualifying direct purchases of brand and generic Opana ER 5, 10, 20, 30, and/or 40mg tablets from Endo Health Solutions Inc., Endo Pharmaceuticals Inc., Penwest Pharmaceuticals Co. (collectively "Endo") and Impax (Endo and Impax are collectively referred to as "Defendants"), and, based upon that net purchase volume (*i.e.*, purchases net of returns, free samples, and known assignments), has provided an initial estimate of each Class member's *pro rata* share of the Net Settlement Fund, based on the allocation methodology approved by the Court. The initial estimate is based upon brand and generic Opana ER purchase data produced in the Action. If and when the Claims Administrator learns of additional assignments of rights to participate in this litigation, the *pro rata* calculations may change. In addition, your *pro rata* calculation may change as a result of the total number of claims received and/or other information submitted during the claims administration process. **To repeat, the initial estimate is subject to change.**

Each Class member should verify the accuracy of the total net purchase volumes listed below. **If you agree that the total net purchase volumes computed for your company are accurate, you should sign on page 6 of this Proof of Claim and Release Form and mail it to the Claims Administrator postmarked no later than February 2, 2023.** If you verify the accuracy of the total net purchase volumes listed below, you will not be required to produce any purchase data as part of the claims administration process, but you are waiving the right to challenge or appeal the Claims Administrator's determination regarding your *pro rata* distribution amount on the basis that the distribution amount would have been different had it been calculated using your own purchase records. **If you believe the total net purchase volumes listed for your company below are not accurate, you may submit purchase records, in electronic format as described in Part II.B below; any such data must be mailed to the Claims Administrator postmarked no later than February 2, 2023.**

If you are filing a claim based on an assignment, you will have to submit documentation of your right to assert a claim with respect to those claimed purchases along with data showing the volume of purchases covered by your assignment.

In order to have a valid claim, you must be a member of the certified Direct Purchaser Class or have an assignment of rights from a Direct Purchaser Class member allowing you to recover as an assignee of a Class member. The certified Direct Purchaser Class (or "Class") is defined as follows:

All persons or entities in the United States and its territories, including Puerto Rico, who purchased brand or generic Opana ER 5, 10, 20, 30, and/or 40mg tablets directly from Defendants at any time during the period from April 1, 2011 until August 31, 2017 (the "Class").

The following were excluded from the Class of direct purchasers: Defendants and their officers, directors, management, employees, subsidiaries, or affiliates, and all federal governmental entities.

At their request, also excluded from the Class for purposes of this Settlement Agreement are: all Retailer Plaintiffs that have opted out of the Class, including CVS Pharmacy, Inc., Rite Aid Corporation, Rite Aid Hdqtrs. Corp., Walgreen Co., The Kroger Co., Albertsons LLC, Safeway Inc. and H-E-B L.P.

The Court-approved Plan of Allocation provides, for Claimants with valid claims, that each Claimant's allocated share of the Net Settlement Fund will be determined by taking (a) each Claimant's weighted combined total net purchases of brand and generic Opana ER from Defendants during the relevant period, (b) removing any purchases which the rights to damages have been assigned by agreement, and (c) dividing it by the weighted combined total purchases by all eligible Claimants. The Defendants that sold brand and generic Opana ER during the period from April 1, 2011 until December 31, 2017 (the relevant period) were

Impax and Endo. Generic Opana ER purchases will be weighted as 0.4 (40%) of a brand Opana ER purchase. This is because alleged overcharges on units of generic Opana ER were substantially less than alleged overcharges on units of brand Opana ER.

Allocations to Claimants whose right to an allocation arises by virtue of an assignment(s) from a Class member(s) would be determined in this same fashion. In these cases, the volumes of brand and generic purchases used to determine the allocation would be the volumes assigned to the Claimant by an otherwise eligible Class member(s) (and the assignor Class member's brand and generic purchase volumes would be reduced by the same amount).

Please note that related documents, including the Plan of Allocation and the Court's Order approving the Plan of Allocation, are available at <https://www.garwingerstein.com/settlements/opana-er-antitrust-litigation> and <https://www.bergermontague.com/cases/opana-er-antitrust-litigation>. This summary of the Plan of Allocation is only a summary and is not meant to alter the terms of the Court-approved Plan of Allocation. Claimants should refer to the Plan of Allocation for further details of how the allocation will work.

**INITIAL ESTIMATE OF YOUR PURCHASE VOLUMES
FROM APRIL 1, 2011 UNTIL DECEMBER 31, 2017**

According to the direct purchaser plaintiffs' economic expert's analysis of the data produced in the Action, your net qualifying volumes of brand and/or generic Opana ER purchases are as follows:

___ Milligrams of Brand Opana ER (5mg, 10mg, 20mg, 30mg, or 40mg) directly from Endo (net of returns, free samples, and known assignments).

___ Milligrams of Generic Opana ER (5mg, 10mg, 20mg, 30mg, or 40mg) purchased directly from Impax (net of returns, free samples, and known assignments).

To calculate the milligrams of brand and generic Opana ER set forth above, direct purchaser plaintiffs' economic expert added the total milligrams purchased. By way of example, a Claimant that bought 100 Brand Opana ER tablets in 40mg strength, and 200 Brand Opana ER tablets in 20mg strength from Endo would have 8,000 milligrams listed above ($100 \times 40 + 200 \times 20$).

Note that these estimates account for only those assignments of rights that plaintiffs' economic expert is aware of.

The National Drug Codes (NDCs) associated with the products and strengths at issue here are set forth in Exhibit A to this Proof of Claim and Release Form.

If you accept and verify that the above figures for your net direct brand and generic Opana ER purchases are correct, please check here:

B. To the extent that you do not elect to rely upon the calculation of net purchase volumes as set forth above in Part II.A, please identify all **direct** purchases during the relevant time period, from April 1, 2011 until December 31, 2017, of (a) total net brand Opana ER (5mg, 10mg, 20mg, 30mg, and 40mg) purchases from Endo (net of returns, free samples, and assignments); and (b) total net generic Opana ER (5mg, 10mg, 20mg, 30mg, and 40mg) purchases from Impax (net of returns, free samples, and assignments) by providing the information below in electronic format. The Claims Administrator may require additional information.

Date of Purchase (MM/DD/YYYY)	Supplier (Purchased From)	NDC (#####-###-##)	Transaction Type (Purchase or Return)	Purchase Volume	
				# of Bottles	# of Milligrams

C. Assignments

Please check here if you are filing this claim based on an assignment:

If you are submitting a claim pursuant to an assignment, please identify with particularity that assignment here. Please also attach documentation in support of such assignment, including the assignment agreement and data showing your qualifying purchases for the period from **April 1, 2011 through December 31, 2017** (net of returns and free samples) that are covered by any such assignment of: (a) total net brand Opana ER (5mg, 10mg, 20mg, 30mg, and 40mg) purchases from Endo; and/or (b) total net generic Opana ER (5mg, 10mg, 20mg, 30mg, and 40mg) purchases from Impax. Please note that the Claims Administrator may require additional information and documents for any claim made based on an assignment. Also please note that your claim, including the documentation and data submitted therewith, may be shared with your assignor as part of the Claims Administration process. By submitting a claim by virtue of an assignment, you are agreeing that such data and documentation, and calculations based on such data and documentation, may be shared with your assignor.

PART III: SUBMISSION TO JURISDICTION OF THE COURT

By signing below, you agree to submit to the exclusive jurisdiction of the United States District Court for Northern District of Illinois with respect to any suit, action, proceeding or dispute arising out of or relating to *In re: Opana ER Antitrust Litigation*, Master File No. 1:14-cv-10150 (HDL) (N.D. Ill.) (the "Action"), claims administration in the Action, the claim you or any other entity is making as a Class member or assignee thereof in the Action, and/or the Releases set forth below.

PART IV: RELEASES

A. By signing below, you hereby confirm that you and your respective past, present, and future parents, subsidiaries, associates, affiliates, officers, directors, employees, insurers, general or limited partners, divisions, agents, attorneys, servants, trustees, joint ventures, heirs, executors, administrators, representatives (and the parents' subsidiaries' and affiliates' past and present officers, directors, employees, agents, attorneys, servants, and representatives), and their predecessors, successors, heirs, executors, administrators, and representatives (collectively, the "Releasors"), hereby release and forever discharge, and covenant not to sue, Impax and its past, present, and future parents, subsidiaries, divisions, affiliates, joint ventures, stockholders, officers, directors, management, supervisory boards, insurers, general or limited partners, employees, agents, attorneys, servants, representatives (and the parents', subsidiaries', and affiliates' past, present, and future officers, directors, employees, agents, attorneys, servants, and representatives), and the predecessors, successors, heirs, executors, administrators and representatives of each of the foregoing (collectively, the "Releasees") from all manner of claims, debts, obligations, demands, actions, suits, causes of action, damages whenever incurred, liabilities of any nature whatsoever, including costs, expenses, penalties and attorneys' fees, under federal or state laws, whether known or unknown, foreseen or unforeseen, suspected or unsuspected, contingent or non-contingent, in law or equity, that arise out of or relate, in whole or in part in any manner, to: (a) all claims related to the Direct Purchaser Class Action that accrued prior to the date of this Settlement Agreement, (collectively, this entire paragraph represents the "Released Claims").

B. In addition, each Releasor hereby expressly waive, releases and forever discharges, upon the Settlement becoming final, any and all provisions, rights and/or benefits conferred by § 1542 of the California Civil Code, which reads:

Section 1542. General Release; extent. A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor;

or by any law of any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to § 1542 of the California Civil Code. Each Releasor may hereafter discover facts other than or different from those which he, she or it knows or believes to be true with respect to the claims which are the subject matter of paragraph 14 of the Settlement Agreement, but each Releasor hereby expressly waives and fully, finally and forever settles, releases, and discharges, upon this Settlement becoming final, any known or unknown, foreseen or unforeseen, suspected or unsuspected, asserted or unasserted, contingent or non-contingent claim that would otherwise fall within the definition of Released Claims, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts. Each Releasor also hereby expressly waives and fully, finally and forever settles, releases, and discharges any and all claims that are the subject matter of Paragraph 14 of the Settlement Agreement that it may have against any Releasees under § 17200, *et seq.*, of the California Business and Professions Code or any similar comparable or equivalent provision of the law of any other state or territory of the United States or other jurisdiction.

C. This Settlement Agreement is not intended to release anyone other than the Releasees, and is not on behalf of anyone other than the Releasors. For the avoidance of doubt, nothing herein shall be construed to effect a release of any kind of any claim against Endo. Furthermore, Impax represented and warranted that it has assumed no contractual obligation that would, in fact or at law, in the event Plaintiffs prevail against Endo in the Direct Purchaser Class Action, obligate Impax to indemnify, pay contribution to, be liable over to, or share in a judgment entered in favor of Plaintiffs against Endo in the Direct Purchaser Class Action, and agreed that Plaintiffs justifiably rely on this representation and warranty and that it is material to Plaintiffs' decision to enter into this Settlement Agreement.

D. The releases set forth above effect a complete and total resolution of this Action against Impax to the extent of the claims of the Direct Purchaser Class that are related to the Direct Purchaser Class Action, but is not intended to release any claims: (1) arising in the ordinary course of business between Releasors and the Releasees arising under Article 2 of the Uniform Commercial Code (pertaining to sales), the laws of negligence or product liability or implied warranty, breach of contract, breach of express warranty, or personal injury; (2) arising out of or in any way relating to any alleged price-fixing agreement between or among manufacturers of generic pharmaceutical products, including but not limited to Impax, including claims alleged in *In re: Generic Pharmaceuticals Pricing Antitrust Litig.*, MDL No. 2724, Case No. 16-MD-2724 (E.D. Pa.); and/or (3) of any sort that do not relate specifically to brand or generic Opana ER.

PART V: VERIFICATION/RELEASE

I declare under penalty of perjury under the laws of the United States of America that the foregoing information provided by the undersigned is true and correct and that this proof of claim and release was executed this _____, day of _____, _____ in _____, _____
(Day) (Month) (Year) (City) (State/Country)

Sign your name here: _____

Type/print your name here: _____

Type/print your company name here: _____

Capacity of person signing (e.g., President, Partner): _____

RETURN YOUR COMPLETED PROOF OF CLAIM AND RELEASE AND RETURN TO:

In re Opana ER Antitrust Litigation
c/o RG/2 Claims Administration
P.O. Box 59479
Philadelphia, PA 19102-9479

Questions? Contact the Claims Administrator at 866-742-4955.

Remember, your signed Proof of Claim and Release must be mailed and postmarked by February 2, 2023.

Exhibit A: Relevant NDCs of Brand and Generic Opana ER 5mg, 10mg, 20mg, 30mg, and 40mg

Endo Brand Opana ER NDCs during the relevant time period
63481043470
63481043670
63481043870
63481043970
63481044070
63481057170
63481061770
63481067470
63481069370
63481081220
63481081260
63481081420
63481081460
63481081620
63481081660
63481081720
63481081760
63481081820
63481081860
63481090770
63481090775

Impax Generic Opana ER NDCs during the relevant time period
00115123101
00115123113
00115123201
00115123213
00115123301
00115123313
00115123401
00115123413
00115131701
00115131713