

UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION  
OFFICE OF ADMINISTRATIVE LAW JUDGES

06 01 2017  
586961

---

In the Matter of )  
 )  
 )  
Impax Laboratories, Inc., )  
a corporation, )  
 )  
Respondent )  
 )  

---

ORIGINAL

DOCKET NO. 9373

COMPLAINT COUNSEL'S  
MOTION TO COMPEL RESPONSE TO INTERROGATORY NOS. 2 & 3

Bradley S. Albert  
Deputy Assistant Director

**COMPLAINT COUNSEL'S MOTION TO COMPEL RESPONSE TO  
INTERROGATORY NOS. 2 & 3**

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

Please take notice that, pursuant to Federal Trade Commission Rule of Practice 3.38(a), Complaint Counsel hereby respectfully requests an order compelling Respondent to provide substantive responses to Complaint Counsel's Interrogatory Nos. 2 & 3. For the reasons set forth in the accompanying Memorandum, this motion should be granted.

This Motion is supported by the accompanying Memorandum and the authorities cited therein. A Proposed Order is attached.

Respectfully submitted,

/s/ Nicholas A. Leefer

Nicholas A. Leefer  
Bradley S. Albert  
Charles A. Loughlin  
Daniel W. Butrymowicz  
Alpa D. Davis  
Synda Mark  
Lauren Peay  
Maren J. Schmidt  
Eric M. Sprague  
Jamie Towey  
James H. Weingarten

Federal Trade Commission  
Bureau of Competition  
600 Pennsylvania Ave., NW  
Washington, DC 20580  
Telephone: (202) 326-3573  
Facsimile: (202) 326-3384  
Email: nleefer@ftc.gov

*Counsel Supporting the Complaint*

Dated: June 1, 2017

**UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION  
OFFICE OF ADMINISTRATIVE LAW JUDGES**

---

<b>In the Matter of</b>	)	
	)	
	)	
<b>Impax Laboratories, Inc.,</b>	)	
<b>a corporation,</b>	)	<b>DOCKET NO. 9373</b>
	)	
<b>Respondent</b>	)	

---

**MEMORANDUM OF LAW IN SUPPORT OF COMPLAINT COUNSEL'S  
MOTION TO COMPEL RESPONSE TO INTERROGATORY NOS. 2 & 3**

Bradley S. Albert  
Deputy Assistant Director

Charles A. Loughlin  
Chief Trial Counsel

Daniel W. Butrymowicz  
Alpa D. Davis  
Nicholas A. Leefer  
Synda Mark  
Lauren Peay  
Maren J. Schmidt  
Eric M. Sprague  
Jamie Towey  
James H. Weingarten  
Attorneys

Federal Trade Commission  
Bureau of Competition  
Health Care Division  
600 Pennsylvania Ave., NW  
Washington, DC 20580  
Telephone: (202) 326-3573  
Email: nleefer@ftc.gov

Dated: June 1, 2017

This case challenges an anticompetitive reverse-payment agreement between Impax and Endo to obstruct lower-cost generic competition to Opana ER, a pain-relief medication. Under this agreement, Impax accepted large payments in cash and other valuable consideration in exchange for its commitment not to compete for 2 ½ years. In *FTC v. Actavis, Inc.*, 133 S. Ct. 2223 (2013), the Supreme Court held that such “reverse payments” can violate the antitrust laws and should be evaluated under the rule of reason applicable to most antitrust cases. Under the well-established burden-shifting framework used in antitrust rule-of-reason cases, Impax has the burden of establishing a legitimate justification for the reverse payment it received.

In its Answer, Impax asserts that the alleged conduct had “substantial pro-competitive justifications,” but does not identify or provide any other information about these purported procompetitive justifications. Answer at 21. To obtain the information necessary to conduct meaningful discovery, Complaint Counsel propounded two interrogatories, asking Impax to identify (1) the purported procompetitive justifications, and (2) how the reverse payments were reasonably necessary to achieve those benefits. Impax refused to answer these interrogatories on the ground that they are “contention interrogatories, to which Impax need not respond until the close of discovery, if at all.” Declaration of Nicholas A. Leefer (“Leefer Decl.”) Exhibit C at 2.

Complaint counsel respectfully submits that Impax should answer these interrogatories now. They seek discovery at the heart of this case: whether Impax can demonstrate legitimate, cognizable, procompetitive justifications for the reverse payment. Both interrogatories clearly can be answered at this time; Impax has no need to take its own discovery to identify whatever justifications it claims exist. By refusing to answer these interrogatories until the “close of discovery, if at all,” Impax is denying Complaint Counsel the opportunity to conduct meaningful



respond until the close of discovery. *See* Leefer Decl. Exhibit B. To resolve this discovery dispute Complaint Counsel proposed a compromise: Impax could wait until the close of discovery to identify the factual bases for its asserted procompetitive justifications and benefits, but that it would identify now the claimed procompetitive justifications and benefits and explain why the provisions of the settlement agreement were necessary to achieve those benefits. *See* Leefer Decl. Exhibit C at 3. Impax rejected this compromise, and instead recycled a three-year-old response to a much narrower CID Specification from the FTC’s investigation. *Id.* at 1-2.

## **II. ARGUMENT**

### **A. Interrogatory Nos. 2 & 3 seek relevant information**

“Parties may obtain discovery to the extent that it may be reasonably expected to yield information relevant to the allegations of the complaint, to the proposed relief, or to the defenses of any respondent.” 16 C.F.R. § 3.31(c)(1). In its Answer, Impax has raised purported procompetitive justifications as an affirmative defense. The interrogatories at issue seek a description of and other information relating to that affirmative defense. Thus, notwithstanding Impax’s boilerplate objections, the interrogatories unquestionably seek relevant information. *See Liguria Foods, Inc. v. Griffith Labs., Inc.*, No. C14-3041, 2017 U.S. Dist. LEXIS 35370, at \*51 (N.D. Iowa Mar. 13, 2017) (“Federal discovery rules and the cases interpreting them uniformly finding the ‘boilerplate’ discovery culture impermissible are not aspirational, they are the law.”).

### **B. Interrogatory Nos. 2 & 3 should be answered now to allow Complaint Counsel to conduct meaningful discovery of Impax’s affirmative defenses**

An answer to these interrogatories at this time is both appropriate and necessary to allow Complaint Counsel to conduct discovery and prepare for trial. To be sure, the FTC’s Rules of Practice presume that a party may wait to answer contention interrogatories until the end of discovery. But, the rules also contemplate that in appropriate circumstances contention

interrogatories should be answered at an earlier stage. *See* Rules of Practice; Final Rule, 74 Fed. Reg. 1804, 1815 (Jan. 13, 2009) (amending 16 C.F.R. pt. 3 and 4) (“[T]he proposed Rule also allowed a party posing a contention interrogatory to secure an earlier answer, if one was necessary, by filing a motion seeking an earlier answer.”); *see also* Rules of Practice; Proposed Rule, 73 Fed. Reg. 58832, 58839 (Oct. 7, 2008) (amending 16 C.F.R. pt. 3 and 4) (“If a party poses a contention interrogatory that is capable of being answered at an earlier time, there is no reason it could not move to compel a more expeditious response.”). This is one of those circumstances.

Basic fairness dictates that a party raising a claim or defense disclose such claim or defense and the factual basis for it. *See* 16 C.F.R. § 3.31(b)(2) (requiring initial disclosures that include “a copy of, or a description by category and location of, all documents and electronically stored information...that are relevant to...the defenses of the respondent...”). A party “is not excused from making its disclosures because it has not fully completed its investigation.” *Id.* This makes sense; absent early disclosure of affirmative defenses and related facts, Complaint Counsel has no opportunity to question witnesses, request documents, or seek admissions related to those affirmative defenses. Impax’s refusal to specify its purported procompetitive justifications and benefits impairs Complaint Counsel’ ability to prepare for trial.

This logic applies equally regardless of whether Interrogatory Nos. 2 & 3 are labeled “contention interrogatories.” As the district court observed in *United States v. Blue Cross Blue Shield of Mich.*, No. CV 10-14155, 2012 WL 12930840, at \*5 (E.D. Mich. May 30, 2012), an interrogatory seeking “the basis of one of BCBS’s defenses—that BCBS’s MFN clauses caused procompetitive effects” was “not one that is best served at the end of discovery.” This Court reached a similar conclusion in *In re POM Wonderful LLC*, explaining that undue delay in







explanation of how the provisions of the settlement agreement relate to Impax's purported procompetitive justifications. *See* Leefer Decl. Exhibit C at 3. As narrowed, Complaint Counsel is simply seeking the particularization of Impax's asserted affirmative defenses.

Interrogatories that ask a party to particularize its defenses are not contention interrogatories—that is, interrogatories that “involve[] an opinion or contention that relates to fact or the application of law to fact.” 16 C.F.R. § 3.35(b)(2). *See Dot Com Entm't Grp., Inc.*, 237 F.R.D. at 44 (holding that an interrogatory demanding that “Defendants particularize, *i.e.*, ‘identify,’ the prior art upon which Defendants’ prior art defense is predicated” was not a contention interrogatory); *see also Intelligent Verification Systems, LLC v. Microsoft Corp.*, No. 2:12-cv-525, 2015 WL 846012, at \*4 (E.D. Va. Feb. 25, 2015) (“Strikingly absent from Interrogatory No. 6 is any request for an opinion or contention as contemplated by Rule 33(c).”) (*internal quotation omitted*). As in *Dot Com Entm't Grp.*, Interrogatory No. 2 does not ask Impax “to explain why or how, as a matter of opinion or otherwise,” its purported justifications are procompetitive, or require Impax to “advance legal argument in support of [its] defense...” *Dot Com Entm't Grp., Inc.*, 237 F.R.D. at 44. And, although Interrogatory No. 3 does ask Impax to explain “how” the reverse payments from the settlement agreement were necessary to achieving the purported procompetitive effects, this is a factual inquiry into why the payments were included in the settlement, not a request for opinion or legal argument. As narrowed, both interrogatories are easily answered based on Impax's current knowledge, and should be

Respectfully submitted,

/s/ Nicholas A. Leefer

Nicholas A. Leefer  
Bradley S. Albert  
Charles A. Loughlin  
Daniel W. Butrymowicz  
Alpa D. Davis  
Synda Mark  
Lauren Peay  
Maren J. Schmidt  
Eric M. Sprague  
Jamie Towey  
James H. Weingarten

*Counsel Supporting the Complaint*

Dated: June 1, 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 Respondent's Objections and Responses to Complaint Counsel's First Set of Interrogatories. On May 9, 2017, Complaint Counsel (Nicholas Leefer) responded to Impax's objections with a proposed compromise, and asked to meet and confer. On May 16, 2017, Complaint Counsel (Nicholas Leefer, Bradley Albert, and Maren Schmidt) and Respondent's Counsel (Anna Fabish) communicated by telephone. And on May 22, 2017, Complaint Counsel (Nicholas Leefer) and Respondent's Counsel (Anna Fabish) communicated by email.

Dated: June 1, 2017

Respectfully submitted,

/s/ Nicholas A. Leefer

Nicholas A. Leefer  
Federal Trade Commission  
600 Pennsylvania Ave, NW

**UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION  
OFFICE OF ADMINISTRATIVE LAW JUDGES**

In the Matter of	)	
	)	
	)	
Impax Laboratories, Inc.,	)	
a corporation,	)	<b>DOCKET NO. 9373</b>
	)	
Respondent	)	
	)	

**[PROPOSED] ORDER**

Having carefully considered Complaint Counsel’s Motion to Compel Response to Interrogatory Nos. 2 & 3, Respondent’s Opposition thereto, all supporting evidence, and the applicable law, it is hereby ORDERED that Complaint Counsel’s Motion to Compel Response to Interrogatory Nos. 2 & 3 is GRANTED and it is hereby ORDERED that, no later than June 15, 2017, Respondent shall provide full and complete answers to Interrogatory Nos. 2 & 3 from Complaint Counsel’s First Set of Interrogatories.

ORDERED:

\_\_\_\_\_  
D. Michael Chappell  
Chief Administrative Law Judge

**CERTIFICATE OF SERVICE**

I hereby certify that on June 1, 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 c ITc 0.004 Tc 0.004 Tc 0.004 Tc 0.004 Tc4( 1 c)6n th2(. )JTJ the c 0 Twl0 Tc 0 -4 0.000 Twn

**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 1, 2017

By: /s/ Nicholas A. Leefer  
Attorney

**UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION  
OFFICE OF ADMINISTRATIVE LAW JUDGES**

In the Matter of	)	
	)	
	)	
Impax Laboratories, Inc.,	)	
a corporation,	)	<b>DOCKET NO. 9373</b>
	)	
<b>Respondent</b>	)	
	)	

**DECLARATION OF NICHOLAS A. LEEFER**

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 Response to Interrogatory Nos. 2 & 3
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 Complaint Counsel’s First Set of Interrogatories to Impax Laboratories, Inc.
- 4.



Fabish and others, dated May 22 2017, and an email from Anna Fabish to Nicholas  
Leefer and others, dated May 24, 2017.

I declare under the penalty of perjury that the foregoing is true and correct. Executed this 1st  
day of June, 2017 in Washington, DC.

/s/ Nicholas A. Leefer

Nicholas A. Leefer  
Federal Trade Commission  
600 Pennsylvania Ave., NW  
Washington, DC 20580  
Telephone: (202) 326-3573  
Facsimile: (202) 326-3384  
Email: nleefer@ftc.gov

*Counsel Supporting the Complaint*

# Exhibit A

**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 FIRST SET OF INTERROGATORIES TO  
IMPAX LABORATORIES, INC.**

Pursuant to the Federal Trade Commission's Rules of Practice, 16 C.F.R. §§ 3.31 and 3.35, Complaint Counsel hereby requests that the Respondent answer the following Interrogatories within 30 days from the date of service thereof or in such lesser time as the Administrative Law Judge may allow pursuant to Rule of Practice 3.35(a)(2):

1. Identify any joint defense or common interest between You and Endo in any actual or potential litigation (including, but not limited to, *FTC v. Endo Pharmaceuticals Inc.*, Case No. 16-cv-01440 (E.D. Pa. filed March 30, 2016), *Endo Pharmaceuticals Inc. v. FTC*, Case No. 16-cv-05600 (E.D. Pa. filed Oct. 16, 2016), and *In re Opana Antitrust Litigation*, Case Nos. 1:14-cv-10150, 1:14-cv-07320, and 15-cv-00269 (N.D. Ill.)), and describe the subject matter and scope of any joint defense or common interest.
2. Identify all procompetitive justifications and benefits to consumers and the public interest referenced in the Eighth Defense in Your Answer to the Complaint in this case, and explain the factual basis for Your answer to this Interrogatory, including identifying all facts and documents You rely on in Your answer to this Interrogatory.
3. For each procompetitive justification and benefit identified in response to Interrogatory No. 2, explain how the No-AG Provision and the Endo Credit provision contained in the Opana ER Settlement and License Agreement were reasonably necessary to achieve that benefit, including identifying all facts and documents You rely on in Your answer to this Interrogatory.

**DEFINITIONS**

1. The terms “Impax,” “Company,” “You,” or “Your” mean Impax Laboratories, Inc., its directors, officers, trustees, employees, attorneys, agents, accountants, consultants, and representatives, its domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, partnerships and joint ventures, and the directors, officers, trustees, employees, attorneys, agents, consultants, and representatives of its domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, and partnerships and joint ventures.
2. The terms “and” and “or” have both conjunctive and disjunctive meanings.
3. The term “Communication” means any transmittal, exchange, transfer, or dissemination of information, regardless of the means by which it is accomplished, and includes all communications, whether written or oral, and all discussions, meetings, telephone communications, or email contacts.
4. The term “Complaint” means the Complaint issued in this matter, *In re Impax Laboratories, Inc.*, FTC Docket No. 9373.
5. The term “Documents” means all written, recorded, transcribed, or graphic matter of every type and description, however and by whomever prepared, produced, reproduced, disseminated, or made, including, but not limited to, analyses, letters, telegrams, memoranda, reports, bills, receipts, telexes, contracts, invoices, books, accounts, statements, studies, surveys, pamphlets, notes, charts, maps, plats, tabulations, graphs, tapes, data sheets, data processing cards, printouts, net sites, microfilm, indices, calendar or diary entries, manuals, guides, outlines, abstracts, histories, agendas, minutes or records of meetings, conferences, electronic mail, and telephone or other conversations or Communications, as well as films, tapes, or slides, and all other data compilations in the possession, custody, or control of the Company, or to which the Company has access. The term “documents” includes the complete original document (or a copy thereof if the original is not available), all drafts (whether or not they resulted in a final document), and all copies that differ in any respect from the original, including any notation, underlining, marking, or information not on the original.
6. The term “each,” “any,” and “all” mean “each and every.”
7. The term “Endo” means Endo International plc, its directors, officers, trustees, employees, attorneys, agents, accountants, consultants, and representatives, its domestic and foreign parents, predecessors, divisions, subsidiaries (including, but not limited to, Endo Pharmaceuticals Inc.), affiliates, partnerships and joint ventures, and the directors, officers, trustees, employees, attorneys, agents, consultants, and representatives of its domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, and partnerships and joint ventures.
8. The term “Endo Credit” means Section 4.4 of the Opana ER Settlement and License Agreement.
9. The term “Identify” means to state:

- a) in the case of a natural person, his or her name, employer, business address and telephone number, title or position, and dates the person held that position(s);
  - b) in the case of a Person other than a natural person, its name and principal address, telephone number, and name of a contact person;
  - c) in the case of a document, the title of the document, the author, the title or position of the author, the addressee, each recipient, the type of document, the subject matter, the date of preparation, and its number of pages; and
  - d) in the case of a communication, the date of the communication, the parties to the communication, the method of communication (oral, written, etc.), and a description of the substance of the information exchanged during the communication.
10. The term “No-AG Provision” means Section 4.1(c) of the Opana ER Settlement and License Agreement.
11. The term “Opana ER Settlement and License Agreement” means the Settlement and License Agreement between Endo, Penwest, and Impax signed on June 7, 2010, and effective on June 8, 2010.
12. The term “Person” includes the Company, and means any natural person, corporate entity, partnership, association, joint venture, governmental entity, trust, or any other organization or entity engaged in commerce.

## INSTRUCTIONS

1. The relevant period for each Interrogatory is January 1, 2008 to the present.
2. Provide separate and complete sworn responses for each Interrogatory and subpart. Please note that under 16 C.F.R. §3.35, interrogatories directed to a corporation shall be answered by an “officer or agent,” “[e]ach interrogatory shall be answered separately and fully in writing under oath,” and “[t]he answers are to be signed by the person making them, and the objections signed by the attorney making them.” See 16 C.F.R. §§3.35(a), (b), (c).
3. State if You are unable to answer any of the Interrogatories herein fully and completely after exercising due diligence to secure the information necessary to make full and complete answers. Specify the reason(s) for Your inability to answer any portion or aspect of such Interrogatory, including a description of all efforts You made to obtain the information necessary to answer the Interrogatory fully.
4. Answer each Interrogatory fully and completely based on the information and knowledge currently available to You, regardless of whether You intend to supplement Your response upon the completion of discovery. See *North Texas Specialty Physicians*, FTC Docket No. 9312 (April 11, 2002) (Complaint 42)a9.55w(j0.0 No.-7xru -1ltion 5)3.9(7(s0 T009 Tw er o

10. The singular form of a word shall be interpreted as plural, and the plural form of a word shall be interpreted as singular, so as to bring within the scope of the Interrogatory that which might otherwise be excluded.
11. “And” and “or” are to be interpreted inclusively so as not to exclude any information otherwise within the scope of any request.
12. None of the Definitions or Interrogatories set forth herein shall be construed as an admission relating to the existence of any evidence, to the relevance or admissibility of any evidence, or to the truth or accuracy of any statement or characterization in the Definition or Interrogatory.
13. Whenever a verb is used in one tense it shall also be taken to include all other tenses, so as to bring within the scope of the Interrogatory that which might otherwise be excluded.
14. All words that are quoted from the Complaint filed in this matter have the same meaning as those used therein.
15. For each natural person You refer to in Your answers, state (1) that person’s full name; (2) the person’s last known business address and business phone number, or where that person’s business address and phone number is unavailable, that person’s home address and home phone number; (3) the person’s business affiliation and title during the time period of the matter at issue; and (4) the person’s current business affiliation and title.

Dated: April 5, 2017

By: /s/ Bradley S. Albert  
Bradley S. Albert  
FEDERAL TRADE COMMISSION  
Bureau of Competition  
400 7<sup>th</sup> Street, SW  
Washington, DC 20024  
balbert@ftc.gov  
Telephone: (202) 326-3670

*Counsel Supporting the Complaint*



**CERTIFICATE OF SERVICE**

I hereby certify that on April 5, 2017, I served via electronic mail a true copy of the foregoing document on:

Edward D. Hassi  
O'MELVENY & MYERS LLP  
1625 Eye Street, NW  
Washington, D.C. 20006  
ehassi@omm.com

*Counsel for Respondent Impax*

By: /s/ Rebecca E. Weinstein  
Rebecca E. Weinstein

*Counsel Supporting the Complaint*  
Bureau of Competition  
Federal Trade Commission  
Washington, D.C. 20024

# **Exhibit B**

**UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION**

In the Matter of

Impax Laboratories, Inc.  
a corporation

**Docket No. 9373**

**RESPONDENT**

right to supplement or modify these objections and responses at any time in light of subsequently discovered information.

The following objections and responses are made without waiving but, instead, preserving: (a) the right to raise in any subsequent proceeding or in the trial of this or any other action all questions of authenticity, foundation, relevancy, materiality, privilege, and evidentiary admissibility of any information or document provided or identified in these responses; (b) the right to object on any ground to the use or introduction into evidence of any information or document in any subsequent proceeding or in the trial of this or any other action on any ground; and (c) the right to object on any ground at any time to additional discovery.

**II. GENERAL OBJECTIONS**

Respondent makes the following general objections whether or not separately set forth in response:

1. Impax objects to each Interrogatory to the extent it is vague, ambiguous, overbroad, unduly burdensome, and/or fails to describe the information sought with reasonable particularity.
2. Impax objects to each Interrogatory to the extent it requires the disclosure of information that is neither relevant to the parties' claims or defenses in this action nor reasonably calculated to lead to the discovery of admissible evidence.
3. Impax objects to each Interrogatory to the extent it requires the disclosure of any information that is a matter of public record, or is equally available to Complaint Counsel.

4. Impax objects to each Interrogatory to the extent it seeks information not in Impax's possession, custody, or control.
5. Impax objects to each Interrogatory to the extent it does not contain reasonable time limits.
6. Impax objects to each Interrogatory to the extent it calls for information that is protected by the attorney-client privilege, the joint prosecution privilege, the joint defense privilege, the work-product doctrine, or any other privileges, protections, or doctrines of similar effect.
7. Impax objects to each Interrogatory to the extent it seeks to impose obligations different from, or in excess of, those required or 29u 2äÝ± äð!ãA.CÒÃäÒ!" "# .An2äÄ! ä1 B B ?



C. Impax objects to the definition of the term “Endo” in Definition 7 to the extent it purports to include third-party “agents,” “consultants,” “representatives,” or “affiliates” on the grounds that the definition is vague, ambiguous, overly broad, and/or unduly burdensome.

11.





Finally, to the extent that Interrogatory No. 1 asks whether Impax has any interest in common with Endo at a theoretical level, Impax objects that responding to Interrogatory No. 1 calls for a legal conclusion and involves an opinion or contention that relates to fact or the application of law to fact. Therefore, under Federal Trade Commission Rule of Practice § 3.35(b)(2), no answer is required until the close of discovery, if at all.

Subject to and without waiving the foregoing objections, Impax responds as follows: Impax has no joint defense or common interest agreement with Endo in this litigation.

**Interrogatory No. 2:**

Identify all procompetitive justifications and benefits to consumers and the public interest referenced in the Eighth Defense in Your Answer to the Complaint in this case, and explain the factual basis for Your answer to this Interrogatory, including identifying all facts and documents You rely on in Your answer to this Interrogatory.

**Response to Interrogatory No. 2:**

Impax objects that responding to Interrogatory No. 2 involves an opinion or contention that relates to fact or the application of law to fact. Therefore, under Federal Trade Commission Rule of Practice § 3.35(b)(2), no answer is required until the close of discovery. Impax will supplement its response to Interrogatory No. 2 in due course.

**Interrogatory No. 3:**

For each procompetitive justification and benefit identified in response to Interrogatory No. 2, explain how the No-AG Provision and the Endo Credit provision contained in the Opana ER Settlement and License Agreement were reasonably necessary to achieve that

benefit, including identifying all facts and documents You rely on in Your answer to this Interrogatory.

**Response to Interrogatory No. 3:**

Impax objects that responding to Interrogatory No. 3 involves an opinion or contention that relates to fact or the application of law to fact. Therefore, under Federal Trade Commission Rule of Practice § 3.35(b)(2), no answer is required until the close of discovery. Impax will supplement its response to Interrogatory No. 3 in due course.

Dated: XXXX, 2017

Edward D. Hassi  
Edward D. Hassi  
Michael E. Antalics  
Benjamin J. Hendricks  
Eileen M. Brogan  
O'MELVENY & MYERS LLP

CERTIFICATE OF SERVICE

I hereby certify that on **XXXXXX**, 2017, I served the foregoing document on the following counsel via electronic mail:

Markus Meier  
Bradley Albert  
Daniel Butrymowicz  
Nicholas Leefer  
Synda Mark  
Maren Schmidt  
Jaime Towey  
Eric Sprague  
Chuck Loughlin

Federal Trade Commission  
600 Pennsylvania Ave., N.W.  
Washington, DC 20580  
(202) 326-2030

mmeier@ftc.gov  
balbert@ftc.gov  
dbutrymowicz@ftc.gov  
nleefer@ftc.gov  
smark@ftc.gov  
mschmidt@ftc.gov  
jtowey@ftc.gov  
esprague@ftc.gov  
cloughlin@ftc.gov

*Counsel for Complainant Federal Trade  
Commission*

/s/ Anna M. Fabish  
Anna M. Fabish

# Exhibit C

Leefer, Nicholas

---

From: Fabish, Anna <afabish@omm.com>  
Sent: Wednesday, May 24, 2017 10:28 AM  
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; Butymowicz, Daniel W.; Mark, Synda; Schmidt, J. Maren; Towey, Jamie; Sprague, Eric M.; Loughlin, Chuck; Weinstein, Rebecca; Clark, Alexandra  
Subject: RE: Docket 9373 - Responses and Objections to First Set of Interrogatories

My May 22<sup>nd</sup> email below reflects Impax's final position on this issue.

Best,

Anna

---

From: Leefer, Nicholas [mailto:nleefer@ftc.gov]  
Sent: Monday, May 22, 2017 2:14 PM  
To: Fabish, Anna; Hassi, Ted; Antalics, Michael E.; Parker, Richard; McIntyre, Stephen; Hendricks, Benjamin J.; Brogan,



This message and any attached documents contain information from



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: Friday, May 05, 2017 3:17 PM  
To: Leef, Nicholas; Meier, Markus H.; Albert, Bradley Scott;

Notice of Electronic Service

I hereby certify that on June 01, 2017, I filed an electronic copy of the foregoing CC Motion to Compel Response to Interrogatories, 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 01, 2017, I served via E-Service an electronic copy of the foregoing CC Motion to Compel Response to Interrogatories, 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  
Complaint

Maren Schmidt  
Attorney  
Federal Trade Commission  
mschmidt@ftc.gov  
Complaint

Eric Sprague  
Attorney  
Federal Trade Commission  
esprague@ftc.gov  
Complaint

Jamie Towey  
Attorney  
Federal Trade Commission  
jtowey@ftc.gov

Complaint

Chuck Loughlin  
Attorney  
Federal Trade Commission  
cloughlin@ftc.gov  
Complaint

Alpa D. Davis  
Attorney  
Federal Trade Commission  
adavis6@ftc.gov  
Complaint

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 01, 2017, I served via other means, as provided in 4.4(b) of the foregoing CC Motion to Compel Response to Interrogatories, 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