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

01 02 2018  
589213

In the Matter of:

IMPAX LABORATORIES, INC.,

a corporation.

Docket No. 9373

ORIGINAL

NON- UNOPPOSED MOTION  
FOR LIMITED INTERVENTION AND MEMORANDUM IN SUPPORT

Non-SDUW \ ( Q G R 3 K D U P D F H X W s , F U S C A M T O C F C . F . R . ( § 3 3 4 ) , f o r P R Y H

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be heard on the issues. Complaint Counsel, however, chose to conduct this proceeding properly raising a challenge to the 2017 Settlement (by, for example, amending their Complaint without providing Endo with the notice and opportunity to be heard required by basic principles of due process and without creating an evidentiary record regarding the competitive effect of the 2017 Settlement. Instead, in their Post-Trial Brief, they attempt to mount a collateral attack on the 2017 Settlement without the due process provided for by the Federal Trade Commission's Rules, including the safeguards of notice and hearing.

Endo therefore seeks to intervene for the limited purpose of responding to Complaint Counsel's Proposed Order and opposing (1) any findings related to the competitive effects of the 2017 Settlement<sup>2</sup> and (2) the requested nullification of the 2017 Settlement, or any remedy requested. If permitted to nullify the 2017 Settlement, is improper in this action and should be summarily rejected. In such relief (a) would nullify non-party agreements with Endo with the most basic elements of due process; and (b) is not supported by an evidentiary record in this action. In addition, Endo will also explain why the remedy requested with respect to the 2017 Settlement is not the type of ancillary relief sometimes permitted in FTC enforcement actions.

<sup>2</sup> Complaint Counsel raised the specter of seeking findings and retrospective relief re existing agreements in its Pretrial Brief, but the proposed relief identified did not spec



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Settlement, or given Endo the opportunity to present any facts or argument related agreement.

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announced that if Endo failed to comply with its request to withdraw reformulated Opana ER, the FDA agency would take steps to require Endo to do so. On July 6, 2017, one month before the Settlement, Endo publicly announced that it would comply with the FDA request and withdraw reformulated Opana ER from the market. Thus, regarding Form 1-150A52 ( ) Tj sopanaoanao

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on the alleged competitive effect of the 2017 Settlement without a fully-developed record and without Endo having had an opportunity to be heard.

Notably, the cases cited by Complaint Counsel in support of its position that the should nullify the 2017 Settlement, despite the fact that it was not the subject matter of those cases, the ancillary relief implicated the rights of parties to the case and not those of third-parties who had no full and fair opportunity to be heard in the proceedings, e.g. Massachusetts v. Microsoft, 373 F.3d 1199, 1215-16 (D.C. Cir. 2004) (affirming a disclosure remedy that affected only Microsoft); Ford Motor Co. v. United States, 405 U.S. 562, 577 (1972) (affirming a marketing and manufacturing remedy affecting only Ford). Further, both approved ancillary relief that was purely prospective and targeted at future conduct, nothing like the type of retrospective relief that Complaint Counsel seeks here, targeting a different agreement than the one at issue in the proceedings. And in affirming limited, ancillary relief, those courts were mindful that Microsoft, 373 F.3d at 1215.

Endo is also seeking intervention to protect its fundamental right to due process. Section 5(b) of the FTC Act provides that if the Commission wants to charge a party with engaging in an unfair method of competition, the Commission must first serve that company with a complaint stating the charges.



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1000 F.2d 304, 304 (9th Cir. 1993) (finding that K H & R P P  
cease and desist order violates due process if there is no D L U W H A L S D F I C I E N Z R e c o r d )  
Complaint Counsel took none of these steps and, therefore, their unsupported attempt to

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Date: January 2, 2018

Respectfully submitted,

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Counsel for Non-Party Endo Pharmaceuticals I

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BEFORE THE FEDERAL TRADE COMMISSION  
OFFICE OF ADMINISTRATIVE LAW JUDGES

In the Matter of:

IMPAX LABORATORIES, INC.,  
a corporation.

Docket No. 9373

[PROPOSED] ORDER GRANTING NON-  
UNOPPOSED MOTION FOR LIMITED INTERVENTION

Upon consideration of non-~~S D U W \ ( Q G R 3 K D U P D F H X W L F D O V~~ ,  
Intervention, it is HEREBY ORDERED that Endo is permitted to intervene in the above-  
captioned action for the limited purpose of responding to Complaint ~~Co~~ Post-Trial Brief  
and Proposed Order and opposing (1) any findings related to the alleged competitive effect  
the 2017 Settlement and (2) the nullification of the 2017 Settlement, or any remedy that w  
~~D I I H F W ( Q G R \ V U L J K W . V ( Q G B \ H U E W K L D W I B J U W K E M G V X U :~~  
before January 16, 2018.

ORDERED:

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

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CERTIFICATE OF SERVICE

Notice of Electronic Service

I hereby certify that on January 02, 2018, I filed an electronic copy of the foregoing Non-Party Endo Pharmaceutical's Unopposed Motion for Limited Intervention, 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 January 02, 2018, I served via E-Service an electronic copy of the foregoing Non-Party Endo Pharmaceutical's Unopposed Motion for Limited Intervention, upon:

Bradley Albert  
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Complaint

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I hereby certify that on January 02, 2018, I served via other means, as provided in 4.4(b) of the foregoing Notice of Complaint.

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