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

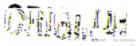
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In the Matter of:

IMPAX LABORATORIES, INC.,

a corporation.

Docket No. 9373



NON- UNOPPOSED MOTION FOR LIMITED INTERVENTION AND MEMORANDUM IN SUPPORT

Non-SDUW\(QGR3KDUPDFHXWsL, pFuDs ODaNt to, ODGFC.F.R.(§Q3G14R(a)), foFPRYH

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 Conwithout providing Endo with the notice and opportunity to be heard required by basic prinof due process and without creating an evidentiary recordding the competitive effect of the 2017 Settlement. Instead, in their Post-Trial Brief, they attempt to mount a collateral attaction 2017 Settlement without the due process provided for by the Federal Trade Commiss 3) 7 & \$,FinModicing the safeguards of notice and dearing.

Endo therefore seeks to intervene for the limited purpose of responding to Coi & R X Q V H-Orland Brieffand Wirproposed Order and opposing (1) any findings related to the accompetitive effects of the 2017 Settlement (2) the requested nullification of the 20 Settlement, or any remedial K D W Z R X O G D I I H F W at a page of the interpretation of the 20 L Q W H U Y H Q H (Q G R Z L O O V X E P L W E U L H I L Q J H [S O D L C the 2017 Settlement, is improper in this action and should be summarily rejected. In shorelief (a) would nullify non-party (Q G R ¶ V U L J K W V X Q G H U phow to built the most basic elements of due process; and (b) is not supported to the remedial process. In addition, Endo will also explain why the remedy requested with respect to the Settlement is not the type of ancillary relief sometimes permitted in FTC enforcement acti

² 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

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

announced that if Endo failed to comply with its request to withdraw reformulated Opana E agency would take steps to require Endo to do so. On July 6, 2017, one month before t Settlement, Endo publicly announced that it would comply with the FDA request and with reformulated Opana ER from the markethus, regardl mFon(I)-1moA52() Tj sopanaoanao

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on the alleged competitive effect of the 2017 Settler Metrik HUHIRUH MHRSDUG rights without a fully-developed recognid without Endo havinghad anopportunity 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 this KLJKOLJKW WKH LQDSSURSULDWHQHVV RILWV UHTX those cases, the ancillary relief implicated the rights of parties to the casend not those o third-parties who had no full and fair opportunity to be heard in the proceed the season. Massachusetts v. Microsp 1873 F.3d 1199, 1215-16 (D.C. Cir. 2004) (affirming a disclosuremedy that affected only Microsof 1974 Motor Co. v. United State 105 U.S. 562, 577 (1972) (affirming a marketing and manufacturing remedy affecting only Ford). Further, both approved ancillary relief that was surely prospective and targeted at future conditation like the type of retrospective relief that Complaint Counsel seeks here, targeting a different ment than the one at issue in the proceed into And in affirming limited, ancillary relief those courts were mindful that WKH UHPHG\ > PXVW@QRW > EH@VRMHcfros bftQ 373 F.3d at 1215.

Endo is also seeking intervention to protect its fundamental right to due process.
5(b) of the FTC Act provides that if the Commission wants to charge a party with engagin unfair method of competition, the Commission missest serve that company with a complai stating the chargeand S U R Y L G H 0 'c'aê SG ™fÇ ° 4Vgç™Q p € P Lwi611<0040

/XPEHUPDQ¶V & R1X03QFE2dG04(304) 7(98th Cir. 1939) (finding thank KH & RPP cease and desist order violates due process if there is indib LU WinLaLsDff@cienErlecord).

Complaint Counsel took none of these steps and, therefore, their unsupported attempt to

Date: January 2, 2018 Respectfully submitted,

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Counsel for Non-Party Endo Pharmaceuticals II

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

In the Matter of:	Docket No. 9373
IMPAX LABORATORIES, INC.,	
a corporation.	
[PROPOSED] ORDER GRANTING NON-	ı
UNOPPOSED MOTION FOR LIMIT	ED INTERVENTION
Upon consideration of non DUW\((QG)	R 3KDUPDFHXW

Upon consideration of nor DUW\ (QGR 3KDUPDFHXWLFDOV, Intervention, it is HEREBY ORDERED that Endo is permitted to intervene in the above-captioned action for the limited purpose of responding to Complaint CoffurBurst-Trial Brief and Proposed Order and opposing (1) any findings related to the alleged competitive effe the 2017 Settlement and (2) the nullification of the 2017 Settlement, or any remedy that w DITHFW (QGR¶V ULJKW.V(QGR¶WU EWUKLDHW IRJUUWKPM QSWXU\$) before January 16, 2018.

ORDERED:	
	D. Michael Chappell Administrative Law Judge

PUBLIC 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-Part Endo Pharmaceutical's Unopposed Motion for Limited Intervention, 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

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

Jamie Towey Attorney Federal Trade Commission jtowey@ftc.gov

rweinstein@ftc.gov Complaint Garth Huston Attorney
Federal Trade Commission
ghuston@ftc.gov
Complaint

I hereby certify that on January 02, 2018, I served via other means, as provided in 4.4(b) of the foregoing No