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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

ORIGINAL

COMPLAINT COUNSEL'S MOTION
TO COMPEL DEMIR BINGOL'S COMPLIANCE WITH THE
SUBPOENA *AD TESTIFICANDUM*

Complaint Counsel moves the Court for an order compelling Demir Bingol, a non-party, to comply with the subpoena *ad testificandum* issued by Complaint Counsel on October 3, 2017. Rule 3.42; *see also* Rule 3.38; 15 U.S.C. § 49. This subpoena commands Mr. Bingol to appear for trial testimony in *In the Matter of Impax Laboratories, Inc.*, Docket No. 9373. In support of this motion, Complaint Counsel states as follows:

1. Mr. Bingol is Endo's former Senior Director, Oral Pain Solutions. Complaint Counsel anticipates that Mr. Bingol will testify about, among other things, Endo's expectations for the entry of Impax's oxymorphone ER product as early as June 2010, and Endo's plans for reformulation of the Opana ER product.
2. On October 2, 2017, Mr. Bingol's attorney, Christine C. Levin, agreed to accept service of a trial subpoena on behalf of Mr. Bingol. *See* Declaration of Bradley S. Albert, Ex. A.

3. On October 3, 2017, Complaint Counsel served Ms. Levin with a subpoena *ad testificandum* for Mr. Bingol's appearance in the above-referenced matter in Washington, D.C. *See* Declaration of Bradley S. Albert, Ex. B.
4. The October 3, 2017 subpoena *ad testificandum* required Mr. Bingol's attendance beginning on October 24, 2017, the first day of the trial. At the request of Mr. Bingol's counsel that we narrow the dates that we might need Mr. Bingol, we advised that, "Mr. Bingol will be notified in advance of the precise date he will be scheduled to testify." *Id.*; *see also* Declaration of Bradley S. Albert, Ex. A.
5. On October 26, 2017, Complaint Counsel informed Mr. Bingol's counsel that Mr. Bingol was required to be available to testify on October 31, 2017, starting at 2:00 PM. *See* Declaration of Bradley Albert, Ex. C.
6. On October 27, 2017, Mr. Bingol's attorney responded that Mr. Bingol would not be

STATEMENT REGARDING MEET AND CONFER

The undersigned counsel certifies that Complaint Counsel met and conferred with the counsel for non-party Demir Bingol in a good faith effort to resolve by agreement the issues discussed above. Counsel could not agree that Demir Bingol would appear for trial testimony on October 31, 2017.

Dated: October 27, 2017

By: /s/ Bradley S. Albert
Attorney

CERTIFICATE OF SERVICE

I hereby certify that on October 27, 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 certify that I delivered via electronic mail a copy of the foregoing documents to:

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Counsel for Third Party Endo Pharmaceuticals, Inc. and Demir Bingol

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.

October 27, 2017

By: /s/ Rebecca E. Weinstein
Attorney

1410004

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

In the Matter of

**Impax Laboratories, Inc.,
a corporation.**

Executed this 27th day of October, 2017 in Washington, D.C.

/s/ Bradley S. Albert
Bradley S. Albert
Federal Trade Commission
600 Pennsylvania Ave., NW
Washington, DC 20580

EXHIBIT A

From: [Albert Bradley Scott](#)
To: Weinstein, Rebecca

PUBLIC

This e-mail is from Dechert LLP, a law firm, and may contain information that is confidential or privileged. If you are not the intended recipient, do not read, copy or distribute the e-mail or any attachments. Instead, please notify the sender and delete the e-mail and any attachments. Thank you.

EXHIBIT B



UNITED STATES OF AMERICA

FEDERAL TRADE COMMISSION



INVESTIGATION OF THE

THE SCHEDULE 10 CLAIMS FOR WITNESS ATTENDANCE FEES, TRAVEL AND SUBSISTENCE EXPENSES

[The following text is heavily obscured by noise and artifacts, making it largely illegible. It appears to be a list or table of data.]

International Trade Commission

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RETURN OF SERVICE

I hereby certify that a duplicate original of the within subpoena was duly served: (check the method used)

in person.

on the person named herein on:

(Month, day, and year)

(Name of person making service)

(Official title)

CERTIFICATE OF SERVICE

I hereby certify that I delivered via FedEx and electronic mail a copy of the foregoing document to:

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Counsel for Endo Pharmaceuticals Inc.

I hereby certify that I delivered via electronic mail a copy of the foregoing document to:

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Counsel for Respondent Impax Laboratories, Inc.

EXHIBIT C

From: [Albert, Bradley Scott](#)
To: [Weinstein, Rebecca](#)
Subject: FW: In re Impax (Bingol)
Date: Friday, October 27, 2017 11:07:19 AM

From: Levin, Christine [<mailto:christine.levin@dechert.com>]
Sent: Friday, October 27, 2017 9:23 AM
To: Albert, Bradley Scott
Subject: Re: In re Impax (Bingol)

Brad

Tuesday morning is really no better given his commitments Tuesday afternoon. As I said before we worked to arrange his schedule around testifying on Thursday morning.

Christine C. Levin

slot in for that time?

Christine C. Levin
Partner

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On Oct 26, 2017, at 6:41 PM, Albert, Bradley Scott
<BALBERT@ftc.gov> wrote:

Chris-

Chris-

We have been instructed by the Court to ensure that we have witnesses
available so that we can continue the hearing until the end of each day. I

.m 21.491 -5.36.665 Td ()Tj EMC ET BT 11.25 0 0 11.25 138 465.75 Tm 6t68.916.5395.151

MR. LOUGHLIN: We did.

JUDGE CHAPPELL: Have you released anyone from subpoena.

MR. LOUGHLIN: No, Your Honor.

JUDGE CHAPPELL: Then they should be here.

MR. LOUGHLIN: Understood, Your Honor. We are working with them to try to get them here on a schedule that is -- that works for them and works for us.

JUDGE CHAPPELL: Subpoena doesn't leave wiggle room unless you give wiggle room, sir. You know what a subpoena you know you don't need to give them wiggle room when you issue a subpoena, they shall be here.

MR. LOUGHLIN: Your Honor, we're working with counsel to try to make that happen, but we don't have the power to send deputies to drag them to court.

JUDGE CHAPPELL: You bring it to me and I'll Get you a deputy involved. There are ways to force subpoenas if you don't believe it, look at the rules. I'm not saying you don't have a deputy, but there will be a deputy. There will be a marshal involved if someone doesn't honor a subpoena you know that; correct?

MR. LOUGHLIN: Your Honor, yes and that's wonderful to hear. We would like nothing more than to have witnesses lined up. We have not been able to make that happen. But we will try harder.

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