PUBLIC

ORIGINAL

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of: IMPAX LABORATORIES, INC., **a corporation.**	**Docket No. 9373**

RESPONDENT IMPAX LABORATORIES, INC.'S OPPOSITION TO COMPLAINT COUNSEL'S MOTION TO COMPEL TIMELY PRODUCTION OF DOCUMENTS

I. INTRODUCTION

Complaint Counsel's Motion is an eleventh hour request to amend the Scheduling Order and change a deadline on which Impax has relied since discovery commenced. Its title notwithstanding, the Motion does not seek "timely" compliance with any existing discovery deadline. Rather, Complaint Counsel seeks to invent new deadlines—and to do so less than four weeks before the close of discovery. Complaint Counsel has not demonstrated good cause for this extraordinary request. Nor has it explained its failure to raise the issue at the Scheduling Conference, when the Court could have most efficiently addressed Complaint Counsel's concerns. Complaint Counsel knew then that neither Commission rules, nor any other source of law requires Impax to complete document discovery in advance of depositions. Nothing has changed that would justify the inefficiency and burden that would result from granting Complaint Counsel's belated request.

The Scheduling Order has one discovery deadline: All discovery must be complete by July 7, 2017. Impax has been working diligently to produce responsive documents on or before that date. Ordering Impax to adjust these complex efforts to accommodate a last minute deadline change would be patently unfair. Moreover, Impax is already exerting its best efforts to produce responsive documents regarding each witness before that witness' scheduled deposition, and has been doing so since Complaint Counsel raised the issue in late April. Because Impax initially planned its discovery efforts assuming a July 7 deadline, however, it is possible Impax's best efforts may not achieve this goal for every Impax deponent. If that happens, the relief Complaint Counsel seeks would penalize Impax and witnesses—including numerous third party witnesses—by requiring them to undergo a second (and in the cases of investigational hearing deponents, a third) deposition. This would unduly burden both Impax and the witnesses. Complaint Counsel's Motion should be denied.

II. STATEMENT OF FACTS

On February 8, 2017, the Office of Administrative Law Judges asked the parties to "provide a joint markup of any proposed modifications" to the draft scheduling order by February 14, 2017. Exs. A-B.[1] Complaint Counsel did not suggest tying document production deadlines to deposition dates. *See* Exs. C-F; *see also* Mot. at 5. The parties' joint submission contained various revisions proposed by (i) Complaint Counsel, (ii) Impax, and (iii) the parties jointly, but no one proposed changing the July 7, 2017 fact discovery deadline. *See* Exs. G-I. On February 17, 2017, this Court issued a final Scheduling Order containing a single discovery deadline: July 7.

Complaint Counsel served its first set of document requests on Impax on February 22, 2017. Ex. J. Many of Complaint Counsel's document requests are overbroad or otherwise improper, and have required the parties to engage in a series of meet and confer communications. These have increased the complexity of Impax's document collection efforts. For example, Complaint Counsel's Request No. 5 seeks "Complete, unredacted versions of each document identified in the privilege logs produced by Impax . . . in response to the Civil Investigative Demand. . . ." Ex. J. Complaint Counsel ultimately explained that this request seeks only a subset of specific documents, which Complaint Counsel did not identify until May 5, almost two months after serving the request and over two years after receiving the logs. Fabish Decl. ¶ 12. Impax provided an itemized response to Complaint Counsel's 40+ pages of privilege log challenges on June 5, and produced additional documents where appropriate. *Id.*

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[1] All citations to exhibits refer to the Exhibits to the June 9, 2017 Declaration of Anna M. Fabish In Support of Respondent Impax Laboratories, Inc.'s Opposition to Motion to Compel filed with this opposition (the "Fabish Decl.").

Impax did not wait for the meet and confer process to conclude before it began its document collection and review efforts. Impax counsel immediately began coordinating with Impax in-house counsel, Impax employees, and outside counsel for Impax in other cases to assess and execute the steps needed to gather, review, and produce documents and data responsive to Complaint Counsel's requests.[2] Fabish Decl. ¶ 11. These document discovery efforts are still ongoing and far from simple. They include, for example, crafting electronic search terms, engaging a team of eleven contract attorneys to review the results of these searches, manually collecting documents, and performing complex privilege assessments.

During a meet and confer on April 6, 2017, the parties agreed to produce documents on a rolling basis, though Impax expressly declined to so do on any particular schedule. Fabish Decl. ¶ 12. Impax began producing materials on March 17, 2017, and has produced over ten thousand documents to date. Fabish Decl. ¶ 11.

Impax's efforts to collect, review, and produce documents on a rolling basis were delayed by numerous follow-up questions Complaint Counsel raised in a nine-page letter regarding Impax's data. Fabish Decl. ¶ 13. In an effort to answer these questions, Impax counsel met with numerous Impax employees over the course of several weeks to discuss a broad range of data issues. These efforts culminated in a 10-page letter to Complaint Counsel and supplemental data productions. *Id.*

In mid-April, Complaint Counsel noticed the depositions of 15 current and former Impax employees, and requested all be made available for deposition between May 22 and June 30. Ex. K; Fabish Decl. ¶14. Impax contacted these witnesses and scheduled their depositions largely within the time periods Complaint Counsel requested. *Id.*

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[2] Of course, such materials are in addition to the 21,000 pages of documents Impax has already produced in response to the CID.

On April 27, 2017, Complaint Counsel expressed concerns about the volume of documents it had received from Impax and requested Impax agree to produce custodial documents for each current or former Impax employee a week in advance of his or her deposition. Mot. Ex. A. Impax agreed to exercise it best efforts to achieve this goal, Mot. Ex. B, and amended its review process consistent with Complaint Counsel's request. For example, Impax scheduled depositions and prioritized its document review to focus on early deponents. Fabish Decl. ¶15.

Between May 24 and May 31, Complaint Counsel deposed four former Impax employees: Shawn Fatholahi, Chris Mengler, Carole Ben-Maimon, and Arthur Koch. As a result of Impax's efforts to provide relevant documents prior to each deposition, Impax produced one document involving Mr. Mengler the day before his deposition. Mot. Ex. A. Impax also produced 6 documents involving Dr. Ben-Maimon one week before her deposition, Fabish Decl. ¶15, and supplemented this production with 9 documents the night before her deposition. *Id.*, Mot. Ex. D. Impax worked through various technical issues late that evening to provide electronic courtesy copies of the documents, Mot. Exs. C & D, and provided paper copies at the deposition.

Following the Mengler and Ben-Maimon depositions, Complaint Counsel complained that it had not received the additional documents sufficiently in advance of their depositions. Fabish Decl. ¶ 17. Impax again explained it could not commit to production deadlines beyond those in the Scheduling Order. Complaint Counsel frustrated Impax's efforts by serving additional document requests: a second set on May 12, 2017, and a third set ***during Dr. Ben-Maimon's deposition*** on May 31, 2017. *See* Ex. L. Impax offered to reschedule depositions to later in the discovery period. Complaint Counsel declined and instead filed the instant motion. In a further effort to accommodate Complaint Counsel, on June 7, 2017, Impax authorized

Complaint Counsel to file a joint motion seeking a 5-week extension of the hearing date and a corresponding extension of the discovery period. Dkt. 9373, Joint Filing, June 7, 2017. That joint motion, if granted, would moot the relief sought here, by allowing the depositions to be rescheduled after the completion of Impax's document production.

III. ARGUMENT

A. Complaint Counsel's Motion Seeks to Change Impax's Discovery Obligations Under the Scheduling Order, Not to Secure "Timely" Compliances with Them.

Complaint Counsel repeatedly refers to Impax's "untimely" and "late" production of documents prior to recent depositions, as if Impax had violated its discovery obligations. Impax has not. The Court's Scheduling Order does not establish a relationship between document production and depositions, *see* Scheduling Order §13, and "[t]here is no provision in the Commission's rules that requires parties to produce all documents prior to depositions." *In the Matter of Polypore Int'l, Inc.*, F.T.C. Dkt. 9327, 2008 WL 4947490, at *6 (F.T.C. Nov. 14, 2008). Complaint Counsel made precisely that argument in other proceedings, with regard to a third party deposition. *See In the Matter of Tk-7 Corp. & Moshe Tal*, F.T.C. Dkt. 9224, 1990 WL 606516, at *1 (F.T.C. June 7, 1990) (complaint counsel arguing "there is no legal basis for requiring complaint counsel to turn over the correspondence at issue prior to the deposition of [a third-party witness]."). Nor do the Federal Rules of Civil Procedure oblige a party to produce all documents related to a deponent in advance of a deposition. Indeed, Complaint Counsel's April 27, 2017 request that Impax counsel agree to such a requirement implicitly acknowledges that no such obligation exists.

The limited authority in Complaint Counsel's motion stands for the distinct proposition that a court has the ***authority*** to order documents be produced in advance of deposition, and that doing so may be efficient. *See Dragushansky v. Nasser*, 2016 WL 452155, at *1 (S.D.N.Y. Feb.

4, 2016) (schedule for document production set by judge during scheduling conference ordered production of documents in advance of Plaintiff deposition). Impax does not dispute this Court's authority to issue such an order. In fact, this court has ***already*** exercised that authority by issuing the Scheduling Order—the very document with which Impax is complying, and which Complaint Counsel would now have the Court revise.

B. Complaint Counsel Has Not Demonstrated Good Cause for Amending the Scheduling Order.

A party seeking to amend the Scheduling Order carries the burden of demonstrating the existence of good cause. *See* 16 C.F.R. § 3.21(c)(2). Complaint Counsel argues that, absent the desired order, it will be unable to adequately prepare for depositions. But this is a function of Complaint Counsel's own failure to act, and of the way Complaint Counsel chose to structure its discovery efforts.

First, Complaint Counsel did not seek to amend the proposed scheduling order when this Court offered the parties the opportunity to amend it in February. Had Complaint Counsel done so successfully, the parties could have structured their document discovery and deposition schedule accordingly from the beginning. Nothing has changed between the Scheduling Conference and the date of Complaint Counsel's Motion: Complaint Counsel was aware then, as it is now, that Impax is not obligated to produce documents in advance of deposition. *See GEMTRONICS, INC.*, 2009 WL 725986, at *1 (complaint counsel arguing against scheduling adjustment where need "was clearly foreseeable at the time the Scheduling Order was entered").

Complaint Counsel also chose to request ***fifteen*** current and former Impax employee depositions within a six week time period—knowing full well Impax was not obligated to complete document production prior to these depositions. It chose to serve numerous document requests, and to do so on a rolling basis. It further chose to reject the most efficient and logical

solution to its concerns: rescheduling depositions for later in or after the discovery period. The Motion expressly excludes this as a possible way of dealing with Complaint Counsel's concerns.

C. Adding New Discovery Deadlines At This Late Stage Would Be Manifestly Unfair, Unduly Burden Impax, And Inconvenience Party and Third Party Witnesses.

Impax's document production efforts are proceeding according to the rules and timeline set forth in the Scheduling Order. Effectively "moving the goal post" at this late stage would be manifestly unfair. The Court had good reason for requesting the parties resolve scheduling issues early on: doing so allows parties to structure their discovery efforts to meet deadlines. Impax has done just that: it structured its document review and production efforts to meet the July 7, 2017 discovery deadline. Complaint Counsel seeks to uproot these efforts and force Impax to instead comply with a maze of entirely new discovery deadlines keyed off of deposition dates—several of which are only days away. This would be inefficient and prejudicial to Impax. Moreover, because Impax will not likely be able to meet these deadlines, former and current Impax employees would be at risk of being deposed multiple times. Complaint Counsel would further add to those non-party witnesses' burden by requiring them to travel to Washington D.C. for a second deposition (none of the 15 current and former Impax employees lives in the D.C. area, and many live in California, where Impax is headquartered). Complaint Counsel's motion does not demonstrate good cause for its request, let alone good cause for the resulting inefficiency, unfairness, and undue burden to Impax and its former employees.

D. Complaint Counsel's View That The Discovery Schedule It Seeks Would Be Easy For Impax Is Irrelevant, Uninformed, and Inaccurate.

Complaint Counsel implies it would be easy for Impax to produce documents on a different timetable than the Scheduling Order requires, and that Impax "should have" produced

certain documents "months ago." But Impax is entitled to structure its discovery efforts as it sees fit within the boundaries set by the Scheduling Order. Complaint Counsel's opinion on those efforts is meaningless and ill-informed.

Further, Complaint Counsel has not basis for its opinions as to which types of documents are "among the most readily accessible," Mot. at 4, how long it takes to review documents and prepare those documents for production, or what that preparation involves. Nor is there any standard timeline on which companies generally should collect, review, and produce documents. Complying with the order Complaint Counsel seeks would ***not*** be easy for Impax. The company developed an approach to document discovery that relied on the Scheduling Order's limits. Requiring Impax to change course now, in the closing weeks of discovery, would generate inefficiency and burden Impax and potentially third parties. As discussed above, Impax is already exerting its best efforts to produce documents on the timeline Complaint Counsel seeks. Issuing the requested order will not make that timeline any more feasible. Rather, it will only risk Impax's former employees being subject to multiple depositions.

IV. CONCLUSION

Impax respectfully requests that the Court deny the motion in full.

Dated: June 9, 2017

By: */s/ Edward D. Hassi*
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Counsel for Impax Laboratories, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on June 9, 2017, I emailed a copy of the foregoing to the following individuals:

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UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of: IMPAX LABORATORIES, INC., a corporation.	**Docket No. 9373**

DECLARATION OF ANNA M. FABISH IN SUPPORT OF RESPONDENT IMPAX LABORATORIES, INC.'S OPPOSITION TO MOTION TO COMPEL

I, Anna M. Fabish, state and declare as follows:

1. I am an attorney at O'Melveny & Myers LLP ("O'Melveny"). I am licensed to practice law in the State of California. I am over the age of 18, am capable of making this Declaration, know all of the following facts of my own personal knowledge, and, if called and sworn as a witness, could and would testify competently thereto.
2. Attached as **Exhibit A** is a true and correct copy of an email from Ms. Lynette L. Pelzer to counsel in the above-captioned matter dated February 8, 2017.
3. Attached as **Exhibit B** is a true and correct copy of the attachment to Exhibit A, a Proposed Scheduling Order from the Office of Administrative Law Judges.
4. Attached as **Exhibit C** is a true and correct copy is an email from Bradley Albert to Ted Hassi, Benjamin Hendricks, Michael Antalics, and Eileen Brogan dated February 13, 2017.
5. Attached as **Exhibit D** is a true and correct copy of the attachment to Exhibit C, a draft Proposed Scheduling Order including Complaint Counsel's suggested changes.

6. Attached as **Exhibit E** is a true and correct copy of an email from Bradley Albert to Ted Hassi, Benjamin Hendricks, Michael Antalics, and Eileen Brogan dated February 14, 2017.
7. Attached as **Exhibit F** is a true and correct copy of the attachment to Exhibit E, a draft Proposed Scheduling Order including additional changes to the Proposed Scheduling Order.
8. Attached as **Exhibit G** is a true and correct copy of an email from Bradley Albert to the Office of Administrative Law Judges dated February 14, 2017.
9. Attached as **Exhibit H** is a true and correct copy of an attachment to Exhibit G, the parties' "Joint Submission Regarding Proposed Scheduling Order."
10. Attached as **Exhibit I** is a true and correct copy of an attachment to Exhibit G, a redline comparing the parties "Joint Submission Regarding Proposed Scheduling Order" to Exhibit B, the "Proposed Scheduling Order".
11. Attached as **Exhibit J** is a true and correct copy of Complaint Counsel's First Set of Requests for Production dated February 22, 2017. After receiving these, I and other attorneys at O'Melveny began coordinating with Impax in-house counsel, Impax employees, and outside counsel for Impax in other cases to assess and execute the steps needed to gather, review, and produce documents and data responsive to Complaint Counsel's requests. I and other attorneys at O'Melveny & Myers crafted electronic search terms, are working with a team of eleven contract attorneys to review the results of these searches, manually collected documents, and performed assessments of complex privilege issues. As of June 8, 2017, Respondent had produced approximately 10,470 documents to Complaint Counsel in response to Part III discovery.

12. During a meet and confer with Complaint Counsel on April 6, 2017, the parties agreed to produce documents on a rolling basis, though Impax expressly declined to so do on any particular schedule. Complaint Counsel also indicated during this call that its Request for Production No. 5 sought certain documents listed in Impax's Civil Investigative Demand privilege and redaction logs, and that Complaint Counsel would provide a list of these log entries. Complaint Counsel did so in an over forty-page letter dated May 5, 2017. I provided an itemized response in a June 5, 2017 letter to Complaint Counsel, and Impax has produced additional documents where appropriate.
13. On April 7, 2017, I received a letter from Complaint Counsel asking a broad range of questions regarding the data Impax had produced on March 17, 2017. I and other attorneys at O'Melveny engaged in extensive discussions with Impax employees to gather the information necessary to answer these questions. I provided these answers in a May 11, 2017 Letter to Complaint Counsel.
14. A true and correct copy of an April 12, 2017 letter from Complaint Counsel regarding scheduling depositions for 12 current and former Impax employees is attached as **Exhibit K**. Complaint Counsel later requested the depositions of three additional current and former Impax employees as well. Impax counsel, including myself, undertook to contact these current and former employees and schedule their depositions. Impax ultimately scheduled the depositions of all fifteen witnesses, largely within the window of time Complaint Counsel requested.
15. Beginning in approximately late April, I and other O'Melveny attorneys began prioritizing document review efforts regarding the early deponents in the schedule, in an attempt to address Complain Counsel's concerns regarding document production timing.

As a result, on May 24, 2017, Impax produced six documents involving Carole Ben-Maimon in anticipation of her May 31, 2017 deposition, and produced an additional nine documents the night before her deposition. I and other attorneys at O'Melveny sent courtesy copies of these documents to Complaint Counsel via email late that evening, and I assisted in facilitating that Complaint Counsel receive paper copies at the deposition.

16. Attached as **Exhibit L** is a true and correct copy of Complaint Counsel's Third Set of Requests for Production dated May 30, 2017.

17. A true and correct copy of a May 31, 2017 6:42am PST email from Complaint Counsel to myself is attached as **Exhibit M.**

I declare under the penalty of perjury that the foregoing is true and correct.

Executed this 9th day of June 2017 in Los Angeles, CA.

By: /s/ *Anna M. Fabish*
Anna M. Fabish

Exhibit A

From:	Pelzer, Lynnette
To:	Meier, Markus H.; Albert, Bradley Scott; Butrymowicz, Daniel W.; Leefer, Nicholas; Mark, Synda; Schmidt, J. Maren; Sprague, Eric M.; Towey, Jamie; Loughlin, Chuck; Hassi, Ted; Antalics, Michael E.; Hendricks, Benjamin J.; Brogan, Eileen M.; Fabish, Anna; McIntyre, Stephen; Clark, Alexandra; Durand, Caitlin
Cc:	Arthaud, Victoria; Gebler, Hillary; Gross, Dana
Subject:	Docket 9373 - Proposed Scheduling Order
Date:	Wednesday, February 08, 2017 4:00:50 PM
Attachments:	Proposed Scheduling Order.docx

Dear Counsel,

Pursuant to the February 8, 2016 Order, attached please find the scheduling order Judge Chappell anticipates entering in this case. Please provide a joint markup of any proposed modifications to this draft by 3:00 pm on February 14, 2016 to the following email address: OALJ@FTC.GOV. Please do not serve the requested document on the Office of the Secretary. Please also note that delivery to the OALJ email address does not constitute service on the Office of the Secretary.

At the initial scheduling conference, in addition to covering those items required by Rule 3.21(a) and (b), Judge Chappell will allow each party to present an overview, limited to fifteen minutes in duration, of the case and contested issues. The parties are advised that they shall not present confidential information in their overview of the case.

Enjoy your day,
Lynnette L. Pelzer
Legal Assistant
Federal Trade Commission
Office of Administrative Law Judges
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Phone: (202) 326-3150

PUBLIC

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

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

[PROPOSED]
SCHEDULING ORDER

March 21, 2017	-	Complaint Counsel provides preliminary witness list (not including experts) with a brief summary of the proposed testimony.
April 4, 2017	-	Respondent's Counsel provides preliminary witness list (not including experts) with a brief summary of the proposed testimony.
May 30, 2017	-	Deadline for issuing document requests, interrogatories and subpoenas *duces tecum*, except for discovery for purposes of authenticity and admissibility of exhibits.
June 5, 2017	-	Complaint Counsel provides expert witness list.
June 19, 2017	-	Deadline for issuing requests for admissions, except for requests for admissions for purposes of authenticity and admissibility of exhibits.
June 23, 2017	-	Respondent's Counsel provides expert witness list.
July 7, 2017	-	Close of discovery, other than discovery permitted under Rule 3.24(a)(4), depositions of experts, and discovery for purposes of authenticity and admissibility of exhibits.
July 21, 2017	-	Deadline for Complaint Counsel to provide expert witness reports.

August 4, 2017	-	Deadline for Respondent's Counsel to provide expert witness reports (to be provided by 4 p.m. ET). Respondent's expert report shall include (without limitation) rebuttal, if any, to Complaint Counsel's expert witness report(s).
August 9, 2017	-	Complaint Counsel provides to Respondent's Counsel its final proposed witness and exhibit lists, including depositions, copies of all exhibits (except for demonstrative, illustrative or summary exhibits and expert related exhibits), Complaint Counsel's basis of admissibility for each proposed exhibit, and a brief summary of the testimony of each witness. Complaint Counsel serves courtesy copies on ALJ of its final proposed witness and exhibit lists, its basis of admissibility for each proposed exhibit, and a brief summary of the testimony of each witness, including its expert witnesses.
August 16, 2017	-	Complaint Counsel to identify rebuttal expert(s) and provide rebuttal expert report(s). Any such reports are to be limited to rebuttal of matters set forth in Respondent's expert reports. If material outside the scope of fair rebuttal is presented, Respondent will have the right to seek appropriate relief (such as striking Complaint Counsel's rebuttal expert reports or seeking leave to submit surrebuttal expert reports on behalf of Respondent).
August 22, 2017	-	Respondent's Counsel provides to Complaint Counsel its final proposed witness and exhibit lists, including depositions, copies of all exhibits (except for demonstrative, illustrative or summary exhibits and expert related exhibits), Respondent's basis of admissibility for each proposed exhibit, and a brief summary of the testimony of each witness. Respondent's Counsel serves courtesy copies on ALJ its final proposed witness and exhibit lists, its basis of admissibility for each proposed exhibit, and a brief summary of the testimony of each witness, including its expert witnesses.
August 23, 2017	-	Parties that intend to offer confidential materials of an opposing party or non-party as evidence at the hearing must provide notice to the opposing party or non-party, pursuant

		to 16 C.F.R. § 3.45(b).[1] *See* Additional Provision 7.
August 28, 2017	-	Deadline for depositions of experts (including rebuttal experts) and exchange of expert related exhibits.
August 30, 2017	-	Deadline for filing motions *in limine* to preclude admission of evidence. *See* Additional Provision 9.
August 30, 2017	-	Exchange and serve courtesy copy on ALJ objections to final proposed witness lists and exhibit lists.
September 5, 2017	-	Deadline for filing motions for *in camera* treatment of proposed trial exhibits.
September 5, 2017	-	Complaint Counsel files pretrial brief supported by legal authority.
September 5, 2017	-	Deadline for filing responses to motions *in limine* to preclude admissions of evidence.
September 6, 2017	-	Exchange proposed stipulations of law, facts, and authenticity.
September 8, 2017	-	Deadline for filing responses to motions for *in camera* treatment of proposed trial exhibits.
September 12, 2017	-	Respondent's Counsel files pretrial brief supported by legal authority.
September 14, 2017	-	Final prehearing conference to begin at 10:00 a.m. in FTC Courtroom, Room 532, Federal Trade Commission Building, 600 Pennsylvania Avenue, NW, Washington, DC 20580. The parties shall meet and confer prior to the prehearing conference regarding trial logistics and proposed stipulations of law, facts, and authenticity of exhibits. To the extent the parties have agreed to stipulate to any

[1] Appendix A to Commission Rule 3.31, the Standard Protective Order, states that if a party or third party wishes *in camera* treatment for a document or transcript that a party intends to introduce into evidence, that party or third party shall file an appropriate motion with the Administrative Law Judge within 5 days after it receives notice of a party's intent to introduce such material. Commission Rule 3.45(b) states that parties who seek to use material obtained from a third party subject to confidentiality restrictions must demonstrate that the third party has been given at least 10 days' notice of the proposed use of such material. To resolve this apparent conflict, the Scheduling Order requires that the parties provide 10 days' notice to the opposing party or third parties to allow for the filing of motions for *in camera* treatment.

issues of law, facts, and/or authenticity of exhibits, the parties shall prepare a list of such stipulations and submit a copy of the stipulations to the ALJ prior to the conference. At the conference, the parties' list of stipulations shall be marked as "JX1" and signed by each party, and the list shall be offered into evidence as a joint exhibit. No signature by the ALJ is required. Any subsequent stipulations may be offered as agreed by the parties.

Counsel may present any objections to the final proposed witness lists and exhibits. Trial exhibits will be admitted or excluded to the extent practicable. To the extent the parties agree to the admission of each other's exhibits, the parties shall prepare a list identifying each exhibit to which admissibility is agreed, marked as "JX2" and signed by each party, which list shall be offered into evidence as a joint exhibit. No signature by the ALJ is required.

September 19, 2017 - Commencement of Hearing, to begin at 10:00 a.m. in FTC Courtroom, Room 532, Federal Trade Commission Building, 600 Pennsylvania Avenue, NW, Washington, DC 20580.

ADDITIONAL PROVISIONS

1. For all papers that are required to be filed with the Office of the Secretary, the parties shall serve a courtesy copy on the Administrative Law Judge by electronic mail to the following email address: oalj@ftc.gov. The courtesy copy should be transmitted at or shortly after the time of any electronic filing with the Office of the Secretary. Courtesy copies must be transmitted to Office of the Administrative Law Judge directly, and the FTC E-filing system shall not be used for this purpose. The oalj@ftc.gov email account is to be used only for courtesy copies of pleadings filed with the Office of the Secretary and for documents specifically requested of the parties by the Office of Administrative Law Judges. Certificates of service for any pleading shall not include the OALJ email address, or the email address of any OALJ personnel, including the Chief ALJ, but rather shall designate only 600 Pennsylvania Ave., NW, Rm. H-110 as the place of service. **The subject line of all electronic submissions to oalj@ftc.gov shall set forth only the docket number and the title of the submission**. The parties are not required to serve a courtesy copy to the OALJ in hard copy, except upon request. In any instance in which a courtesy copy of a pleading for the Administrative Law Judge cannot be effectuated by electronic mail, counsel shall hand deliver a hard copy to the Office of Administrative Law Judges. Discovery requests and discovery responses shall not be submitted to the Office of Administrative Law Judges.

2. The parties shall serve each other by electronic mail and shall include "Docket 9373" in the re: line and all attached documents in .pdf format. In the event that service through electronic mail is not possible, the parties may serve each other through any method authorized under the Commission's Rules of Practice.

3. Each pleading that cites to unpublished opinions or opinions not available on LEXIS or WESTLAW shall include such copies as exhibits.

4. Each motion (other than a motion to dismiss, motion for summary decision, or a motion for *in camera* treatment) shall be accompanied by a separate signed statement representing that counsel for the moving party has conferred with opposing counsel in an effort in good faith to resolve by agreement the issues raised by the motion and has been unable to reach such an agreement. In addition, pursuant to Rule 3.22(g), for each motion to quash filed pursuant to § 3.34(c), each motion to compel or determine sufficiency pursuant to § 3.38(a), or each motion for sanctions pursuant to § 3.38(b), the required signed statement must also "recite the date, time, and place of each . . . conference between counsel, and the names of all parties participating in each such conference." Motions that fail to include such separate statement may be denied on that ground.

5. Rule 3.22(c) states:

> All written motions shall state the particular order, ruling, or action desired and the grounds therefor. Memoranda in support of, or in opposition to, any dispositive motion shall not exceed 10,000 words. Memoranda in support of, or in opposition to, any other motion shall not exceed 2,500 words. Any reply in support of a dispositive motion shall not exceed 5,000 words and any reply in support of any other motion authorized by the Administrative Law Judge or the Commission shall not exceed 1,250 words.

If a party chooses to submit a motion without a separate memorandum, the word count limits of 3.22(c) apply to the motion. If a party chooses to submit a motion with a separate memorandum, absent prior approval of the ALJ, the motion shall be limited to 750 words, and the word count limits of 3.22(c) apply to the memorandum in support of the motion. This provision applies to all motions filed with the Administrative Law Judge, including those filed under Rule 3.38.

6. If papers filed with the Office of the Secretary contain *in camera* or confidential material, the filing party shall mark any such material in the complete version of their submission with **{bold font and braces}**. 16 C.F.R. § 3.45(e). Parties shall be aware of the rules for filings containing such information, including 16 C.F.R. § 4.2.

7. If a party intends to offer confidential materials of an opposing party or non-party as evidence at the hearing, in providing notice to such non-party, the parties are

required to inform each non-party of the strict standards for motions for *in camera* treatment for evidence to be introduced at trial set forth in 16 C.F.R. § 3.45, explained in *In re Jerk, LLC*, 2015 FTC LEXIS (Feb. 23, 2015); *In re Basic Research, Inc.*, 2006 FTC LEXIS 14 (Jan. 25, 2006); *In re Hoechst Marion Roussel, Inc.*, 2000 FTC LEXIS 157 (Nov. 22, 2000) and 2000 FTC LEXIS 138 (Sept. 19, 2000); and *In re Dura Lube Corp.*, 1999 FTC LEXIS 255 (Dec. 23, 1999). Motions also must be supported by a declaration or affidavit by a person qualified to explain the confidential nature of the documents. *In re North Texas Specialty Physicians*, 2004 FTC LEXIS 66 (April 23, 2004). Each party or non-party that files a motion for *in camera* treatment shall provide one copy of the documents for which *in camera* treatment is sought to the Administrative Law Judge.

8. If the expert reports prepared for either party contain confidential information that has been granted *in camera* treatment, the party shall prepare two versions of its expert report(s) in accordance with Additional Provision 6 of this Scheduling Order and 16 C.F.R. § 3.45(e).

9. Motions *in limine* are discouraged. Motion *in limine* refers "to any motion, whether made before or during trial, to exclude anticipated prejudicial evidence before the evidence is actually offered." *In re Daniel Chapter One*, 2009 FTC LEXIS 85, *18-20 (April 20, 2009) (citing *Luce v. United States*, 469 U.S. 38, 40 n.2 (1984)). Evidence should be excluded in advance of trial on a motion *in limine* only when the evidence is clearly inadmissible on all potential grounds. *Id.* (citing *Hawthorne Partners v. AT&T Technologies, Inc*., 831 F. Supp. 1398, 1400 (N.D. Ill. 1993); *Sec. Exch. Comm'n v. U.S. Environmental, Inc*., 2002 U.S. Dist. LEXIS 19701, at *5-6 (S.D.N.Y. Oct. 16, 2002)). Moreover, the risk of prejudice from giving undue weight to marginally relevant evidence is minimal in a bench trial such as this where the judge is capable of assigning appropriate weight to evidence.

10. Compliance with the scheduled end of discovery requires that the parties serve subpoenas and discovery requests sufficiently in advance of the discovery cut-off and that all responses and objections will be due on or before that date, unless otherwise noted. Any motion to compel responses to discovery requests shall be filed within 30 days of service of the responses and/or objections to the discovery requests, within 20 days after the close of discovery, or within 5 days of reaching an impasse on resolving a discovery dispute, after the parties have engaged in good faith negotiations, whichever first occurs.

11. Each party is limited to 50 document requests, including all discrete subparts; 25 interrogatories, including all discrete subparts; and 50 requests for admissions, including all discrete subparts, except that there shall be no limit on the number of requests for admission for authentication and admissibility of exhibits. Any single interrogatory inquiring as to a request for admissions response may address only a single such response. There is no limit to the number of sets of discovery requests the parties may issue, so long as the total number of each type of discovery request, including all subparts, does not exceed these limits. Within seven days of service of a document

request, the parties shall confer about the format for the production of electronically

stored information.

12. The deposition of any person may be recorded by videotape, provided that the deposing party notifies the deponent and all parties of its intention to record the deposition by videotape at least five days in advance of the deposition. No deposition, whether recorded by videotape or otherwise, may exceed a single, seven-hour day, unless otherwise agreed to by the parties or ordered by the Administrative Law Judge.

13. The parties shall serve upon one another, at the time of issuance, copies of all subpoenas *duces tecum* and subpoenas *ad testificandum*. For subpoenas *ad testificandum*, the party seeking the deposition shall consult with the other parties before the deposition date is scheduled. The parties need not separately notice the deposition of a non-party noticed by an opposing party. At the request of any party, the time and allocation for a non-party deposition shall be divided evenly between them, but the noticing party may use any additional time not used by the opposing party. If no party makes such a request, cross-examination of the witness will be limited to one hour.

14. Non-parties shall provide copies or make available for inspection and copying of documents requested by subpoena to the party issuing the subpoena. The party that has requested documents from non-parties shall provide copies of the documents received from non-parties to the opposing party within three business days of receiving the documents. No deposition of a non-party shall be scheduled between the time a non-party provides documents in response to a subpoena *duces tecum* to a party, and 3 business days after the party provides those documents to the other party, unless a shorter time is required by unforeseen logistical issues in scheduling the deposition, or a non-party produces those documents at the time of the deposition, as agreed to by all parties involved.

15. The final witness lists shall represent counsels' good faith designation of all potential witnesses who counsel reasonably expect may be called in their case-in-chief. Parties shall notify the opposing party promptly of changes in witness lists to facilitate completion of discovery within the dates of the scheduling order. The final proposed witness list may not include additional witnesses not listed in the preliminary witness lists previously exchanged unless by consent of all parties, or, if the parties do not consent, by an order of the Administrative Law Judge upon a showing of good cause.

16. The final exhibit lists shall represent counsels' good faith designation of all trial exhibits other than demonstrative, illustrative, or summary exhibits. Additional exhibits may be added after the submission of the final lists only by consent of all parties,

or, if the parties do not consent, by an order of the Administrative Law Judge upon a showing of good cause.

17. Witnesses shall not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. F.R.E. 602.

18. Witnesses not properly designated as expert witnesses shall not provide opinions beyond what is allowed in F.R.E. 701.

19. The parties are required to comply with Rule 3.31A and with the following:

(a) At the time an expert is first listed as a witness by a party, that party shall provide to the other party:

(i) materials fully describing or identifying the background and qualifications of the expert, all publications authored by the expert within the preceding ten years, and all prior cases in which the expert has testified or has been deposed within the preceding four years; and

(ii) transcripts of such testimony in the possession, custody, or control of the producing party or the expert, except that transcript sections that are under seal in a separate proceeding need not be produced.

(b) At the time an expert report is produced, the producing party shall provide to the other party all documents and other written materials relied upon by the expert in formulating an opinion in this case, subject to the provisions of 19(g).

(c) It shall be the responsibility of a party designating an expert witness to ensure that the expert witness is reasonably available for deposition in keeping with this Scheduling Order. Unless otherwise agreed to by the parties or ordered by the Administrative Law Judge, expert witnesses shall be deposed only once and each expert deposition shall be limited to one day for seven hours.

(d) Each expert report shall include a complete statement of all opinions to be expressed and the basis and reasons therefore; the data or other information considered by the expert in forming the opinions; any exhibits to be used as a summary of or support for the opinions; the qualifications of the expert; and the compensation to be paid for the study and testimony.

(e) A party may not discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of this litigation or preparation for hearing and who is not designated by a party as a testifying witness.

(f) At the time of service of the expert reports, a party shall provide opposing counsel:

(i) a list of all commercially-available computer programs used by the expert in the preparation of the report;

(ii) a copy of all data sets used by the expert, in native file format and processed data file format; and

(iii) all customized computer programs used by the expert in the preparation of the report or necessary to replicate the findings on which the expert report is based.

(g) Experts' disclosures and reports shall comply in all respects with Rule 3.31A, except that neither side must preserve or disclose:

(i) any form of communication or work product shared between any of the parties' counsel and their expert(s), or between any of the experts themselves;

(ii) any form of communication or work product shared between an expert(s) and persons assisting the expert(s);

(iii) expert's notes, unless they constitute the only record of a fact or an assumption relied upon by the expert in formulating an opinion in this case;

(iv) drafts of expert reports, analyses, or other work product; or

(v) data formulations, data runs, data analyses, or any database-related operations not relied upon by the expert in the opinions contained in his or her final report.

20. Properly admitted deposition testimony and properly admitted investigational hearing transcripts are part of the record and need not be read in open court. Videotape deposition excerpts that have been admitted in evidence may be presented in open court only upon prior approval by the Administrative Law Judge.

21. The parties shall provide one another, and the Administrative Law Judge, no later than 48 hours in advance, not including weekends and holidays, a list of all witnesses to be called on each day of hearing, subject to possible delays or other unforeseen circumstances.

22. The parties shall provide one another with copies of any demonstrative, illustrative or summary exhibits (other than those prepared for cross-examination) 24 hours before they are used with a witness.

23. Complaint Counsel's exhibits shall bear the designation CCX and Respondent's exhibits shall bear the designation RX or some other appropriate designation. Complaint Counsel's demonstrative exhibits shall bear the designation CCXD and Respondent's demonstrative exhibits shall bear the designation RXD or some other appropriate designation. Both sides shall number the first page of each exhibit with a single series of consecutive numbers. When an exhibit consists of more than one piece of paper, each page of the exhibit must bear a consecutive control number or some other consecutive page number. Additionally, parties must account for all their respective exhibit numbers. Any number not actually used at the hearing shall be designated "intentionally not used."

24. At the final prehearing conference, counsel will be required to introduce all exhibits they intend to introduce at trial. The parties shall confer and shall eliminate duplicative exhibits in advance of the final prehearing conference and, if necessary, during trial. For example, if CCX 100 and RX 200 are different copies of the same document, only one of those documents shall be offered into evidence. The parties shall agree in advance as to which exhibit number they intend to use. Counsel shall contact the court reporter regarding submission of exhibits.

Exhibit B

PUBLIC

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

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

[PROPOSED]
SCHEDULING ORDER

March 21, 2017	-	Complaint Counsel provides preliminary witness list (not including experts) with a brief summary of the proposed testimony.
April 4, 2017	-	Respondent's Counsel provides preliminary witness list (not including experts) with a brief summary of the proposed testimony.
May 30, 2017	-	Deadline for issuing document requests, interrogatories and subpoenas *duces tecum*, except for discovery for purposes of authenticity and admissibility of exhibits.
June 5, 2017	-	Complaint Counsel provides expert witness list.
June 19, 2017	-	Deadline for issuing requests for admissions, except for requests for admissions for purposes of authenticity and admissibility of exhibits.
June 23, 2017	-	Respondent's Counsel provides expert witness list.
July 7, 2017	-	Close of discovery, other than discovery permitted under Rule 3.24(a)(4), depositions of experts, and discovery for purposes of authenticity and admissibility of exhibits.
July 21, 2017	-	Deadline for Complaint Counsel to provide expert witness reports.

August 4, 2017	-	Deadline for Respondent's Counsel to provide expert witness reports (to be provided by 4 p.m. ET). Respondent's expert report shall include (without limitation) rebuttal, if any, to Complaint Counsel's expert witness report(s).
August 9, 2017	-	Complaint Counsel provides to Respondent's Counsel its final proposed witness and exhibit lists, including depositions, copies of all exhibits (except for demonstrative, illustrative or summary exhibits and expert related exhibits), Complaint Counsel's basis of admissibility for each proposed exhibit, and a brief summary of the testimony of each witness. Complaint Counsel serves courtesy copies on ALJ of its final proposed witness and exhibit lists, its basis of admissibility for each proposed exhibit, and a brief summary of the testimony of each witness, including its expert witnesses.
August 16, 2017	-	Complaint Counsel to identify rebuttal expert(s) and provide rebuttal expert report(s). Any such reports are to be limited to rebuttal of matters set forth in Respondent's expert reports. If material outside the scope of fair rebuttal is presented, Respondent will have the right to seek appropriate relief (such as striking Complaint Counsel's rebuttal expert reports or seeking leave to submit surrebuttal expert reports on behalf of Respondent).
August 22, 2017	-	Respondent's Counsel provides to Complaint Counsel its final proposed witness and exhibit lists, including depositions, copies of all exhibits (except for demonstrative, illustrative or summary exhibits and expert related exhibits), Respondent's basis of admissibility for each proposed exhibit, and a brief summary of the testimony of each witness. Respondent's Counsel serves courtesy copies on ALJ its final proposed witness and exhibit lists, its basis of admissibility for each proposed exhibit, and a brief summary of the testimony of each witness, including its expert witnesses.
August 23, 2017	-	Parties that intend to offer confidential materials of an opposing party or non-party as evidence at the hearing must provide notice to the opposing party or non-party, pursuant

		to 16 C.F.R. § 3.45(b).[1] *See* Additional Provision 7.
August 28, 2017	-	Deadline for depositions of experts (including rebuttal experts) and exchange of expert related exhibits.
August 30, 2017	-	Deadline for filing motions *in limine* to preclude admission of evidence. *See* Additional Provision 9.
August 30, 2017	-	Exchange and serve courtesy copy on ALJ objections to final proposed witness lists and exhibit lists.
September 5, 2017	-	Deadline for filing motions for *in camera* treatment of proposed trial exhibits.
September 5, 2017	-	Complaint Counsel files pretrial brief supported by legal authority.
September 5, 2017	-	Deadline for filing responses to motions *in limine* to preclude admissions of evidence.
September 6, 2017	-	Exchange proposed stipulations of law, facts, and authenticity.
September 8, 2017	-	Deadline for filing responses to motions for *in camera* treatment of proposed trial exhibits.
September 12, 2017	-	Respondent's Counsel files pretrial brief supported by legal authority.
September 14, 2017	-	Final prehearing conference to begin at 10:00 a.m. in FTC Courtroom, Room 532, Federal Trade Commission Building, 600 Pennsylvania Avenue, NW, Washington, DC 20580. The parties shall meet and confer prior to the prehearing conference regarding trial logistics and proposed stipulations of law, facts, and authenticity of exhibits. To the extent the parties have agreed to stipulate to any

[1] Appendix A to Commission Rule 3.31, the Standard Protective Order, states that if a party or third party wishes *in camera* treatment for a document or transcript that a party intends to introduce into evidence, that party or third party shall file an appropriate motion with the Administrative Law Judge within 5 days after it receives notice of a party's intent to introduce such material. Commission Rule 3.45(b) states that parties who seek to use material obtained from a third party subject to confidentiality restrictions must demonstrate that the third party has been given at least 10 days' notice of the proposed use of such material. To resolve this apparent conflict, the Scheduling Order requires that the parties provide 10 days' notice to the opposing party or third parties to allow for the filing of motions for *in camera* treatment.

issues of law, facts, and/or authenticity of exhibits, the parties shall prepare a list of such stipulations and submit a copy of the stipulations to the ALJ prior to the conference. At the conference, the parties' list of stipulations shall be marked as "JX1" and signed by each party, and the list shall be offered into evidence as a joint exhibit. No signature by the ALJ is required. Any subsequent stipulations may be offered as agreed by the parties.

Counsel may present any objections to the final proposed witness lists and exhibits. Trial exhibits will be admitted or excluded to the extent practicable. To the extent the parties agree to the admission of each other's exhibits, the parties shall prepare a list identifying each exhibit to which admissibility is agreed, marked as "JX2" and signed by each party, which list shall be offered into evidence as a joint exhibit. No signature by the ALJ is required.

September 19, 2017 - Commencement of Hearing, to begin at 10:00 a.m. in FTC Courtroom, Room 532, Federal Trade Commission Building, 600 Pennsylvania Avenue, NW, Washington, DC 20580.

ADDITIONAL PROVISIONS

1. For all papers that are required to be filed with the Office of the Secretary, the parties shall serve a courtesy copy on the Administrative Law Judge by electronic mail to the following email address: oalj@ftc.gov. The courtesy copy should be transmitted at or shortly after the time of any electronic filing with the Office of the Secretary. Courtesy copies must be transmitted to Office of the Administrative Law Judge directly, and the FTC E-filing system shall not be used for this purpose. The oalj@ftc.gov email account is to be used only for courtesy copies of pleadings filed with the Office of the Secretary and for documents specifically requested of the parties by the Office of Administrative Law Judges. Certificates of service for any pleading shall not include the OALJ email address, or the email address of any OALJ personnel, including the Chief ALJ, but rather shall designate only 600 Pennsylvania Ave., NW, Rm. H-110 as the place of service. **The subject line of all electronic submissions to oalj@ftc.gov shall set forth only the docket number and the title of the submission**. The parties are not required to serve a courtesy copy to the OALJ in hard copy, except upon request. In any instance in which a courtesy copy of a pleading for the Administrative Law Judge cannot be effectuated by electronic mail, counsel shall hand deliver a hard copy to the Office of Administrative Law Judges. Discovery requests and discovery responses shall not be submitted to the Office of Administrative Law Judges.

2. The parties shall serve each other by electronic mail and shall include "Docket 9373" in the re: line and all attached documents in .pdf format. In the event that service through electronic mail is not possible, the parties may serve each other through any method authorized under the Commission's Rules of Practice.

3. Each pleading that cites to unpublished opinions or opinions not available on LEXIS or WESTLAW shall include such copies as exhibits.

4. Each motion (other than a motion to dismiss, motion for summary decision, or a motion for *in camera* treatment) shall be accompanied by a separate signed statement representing that counsel for the moving party has conferred with opposing counsel in an effort in good faith to resolve by agreement the issues raised by the motion and has been unable to reach such an agreement. In addition, pursuant to Rule 3.22(g), for each motion to quash filed pursuant to § 3.34(c), each motion to compel or determine sufficiency pursuant to § 3.38(a), or each motion for sanctions pursuant to § 3.38(b), the required signed statement must also "recite the date, time, and place of each . . . conference between counsel, and the names of all parties participating in each such conference." Motions that fail to include such separate statement may be denied on that ground.

5. Rule 3.22(c) states:

> All written motions shall state the particular order, ruling, or action desired and the grounds therefor. Memoranda in support of, or in opposition to, any dispositive motion shall not exceed 10,000 words. Memoranda in support of, or in opposition to, any other motion shall not exceed 2,500 words. Any reply in support of a dispositive motion shall not exceed 5,000 words and any reply in support of any other motion authorized by the Administrative Law Judge or the Commission shall not exceed 1,250 words.

If a party chooses to submit a motion without a separate memorandum, the word count limits of 3.22(c) apply to the motion. If a party chooses to submit a motion with a separate memorandum, absent prior approval of the ALJ, the motion shall be limited to 750 words, and the word count limits of 3.22(c) apply to the memorandum in support of the motion. This provision applies to all motions filed with the Administrative Law Judge, including those filed under Rule 3.38.

6. If papers filed with the Office of the Secretary contain *in camera* or confidential material, the filing party shall mark any such material in the complete version of their submission with **{bold font and braces}**. 16 C.F.R. § 3.45(e). Parties shall be aware of the rules for filings containing such information, including 16 C.F.R. § 4.2.

7. If a party intends to offer confidential materials of an opposing party or non-party as evidence at the hearing, in providing notice to such non-party, the parties are

required to inform each non-party of the strict standards for motions for *in camera* treatment for evidence to be introduced at trial set forth in 16 C.F.R. § 3.45, explained in *In re Jerk, LLC*, 2015 FTC LEXIS (Feb. 23, 2015); *In re Basic Research, Inc.*, 2006 FTC LEXIS 14 (Jan. 25, 2006); *In re Hoechst Marion Roussel, Inc.*, 2000 FTC LEXIS 157 (Nov. 22, 2000) and 2000 FTC LEXIS 138 (Sept. 19, 2000); and *In re Dura Lube Corp.*, 1999 FTC LEXIS 255 (Dec. 23, 1999). Motions also must be supported by a declaration or affidavit by a person qualified to explain the confidential nature of the documents. *In re North Texas Specialty Physicians*, 2004 FTC LEXIS 66 (April 23, 2004). Each party or non-party that files a motion for *in camera* treatment shall provide one copy of the documents for which *in camera* treatment is sought to the Administrative Law Judge.

8. If the expert reports prepared for either party contain confidential information that has been granted *in camera* treatment, the party shall prepare two versions of its expert report(s) in accordance with Additional Provision 6 of this Scheduling Order and 16 C.F.R. § 3.45(e).

9. Motions *in limine* are discouraged. Motion *in limine* refers "to any motion, whether made before or during trial, to exclude anticipated prejudicial evidence before the evidence is actually offered." *In re Daniel Chapter One*, 2009 FTC LEXIS 85, *18-20 (April 20, 2009) (citing *Luce v. United States*, 469 U.S. 38, 40 n.2 (1984)). Evidence should be excluded in advance of trial on a motion *in limine* only when the evidence is clearly inadmissible on all potential grounds. *Id.* (citing *Hawthorne Partners v. AT&T Technologies, Inc*., 831 F. Supp. 1398, 1400 (N.D. Ill. 1993); *Sec. Exch. Comm'n v. U.S. Environmental, Inc*., 2002 U.S. Dist. LEXIS 19701, at *5-6 (S.D.N.Y. Oct. 16, 2002)). Moreover, the risk of prejudice from giving undue weight to marginally relevant evidence is minimal in a bench trial such as this where the judge is capable of assigning appropriate weight to evidence.

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12. The deposition of any person may be recorded by videotape, provided that the deposing party notifies the deponent and all parties of its intention to record the deposition by videotape at least five days in advance of the deposition. No deposition, whether recorded by videotape or otherwise, may exceed a single, seven-hour day, unless otherwise agreed to by the parties or ordered by the Administrative Law Judge.

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(ii) transcripts of such testimony in the possession, custody, or control of the producing party or the expert, except that transcript sections that are under seal in a separate proceeding need not be produced.

(b) At the time an expert report is produced, the producing party shall provide to the other party all documents and other written materials relied upon by the expert in formulating an opinion in this case, subject to the provisions of 19(g).

(c) It shall be the responsibility of a party designating an expert witness to ensure that the expert witness is reasonably available for deposition in keeping with this Scheduling Order. Unless otherwise agreed to by the parties or ordered by the Administrative Law Judge, expert witnesses shall be deposed only once and each expert deposition shall be limited to one day for seven hours.

(d) Each expert report shall include a complete statement of all opinions to be expressed and the basis and reasons therefore; the data or other information considered by the expert in forming the opinions; any exhibits to be used as a summary of or support for the opinions; the qualifications of the expert; and the compensation to be paid for the study and testimony.

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(f) At the time of service of the expert reports, a party shall provide opposing counsel:

(i) a list of all commercially-available computer programs used by the expert in the preparation of the report;

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(iv) drafts of expert reports, analyses, or other work product; or

(v) data formulations, data runs, data analyses, or any database-related operations not relied upon by the expert in the opinions contained in his or her final report.

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Exhibit C

From: Albert, Bradley Scott
To: Hassi, Ted; Hendricks, Benjamin J.; Antalics, Michael E.; Brogan, Eileen M.
Cc: Loughlin, Chuck; Schmidt, J. Maren
Subject: In re Impax (Dkt. No. 9373)
Date: Monday, February 13, 2017 9:29:47 AM
Attachments: Proposed Scheduling Order (Complaint Counsel).docx

---

Ted –

Please find attached some suggestions to the proposed scheduling order to help guide our discussion this afternoon.

We can use the following call-in number.

1-877-873-8017
9614999

Regards

Brad

PUBLIC

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

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

[PROPOSED]
SCHEDULING ORDER

March 21, 2017	-	Complaint Counsel provides preliminary witness list (not including experts) with a brief summary of the proposed testimony.
April 4, 2017	-	Respondent's Counsel provides preliminary witness list (not including experts) with a brief summary of the proposed testimony.
May 30, 2017	-	Deadline for issuing document requests, interrogatories and subpoenas *duces tecum*, except for discovery for purposes of authenticity and admissibility of exhibits.
June 5, 2017	-	Complaint Counsel provides expert witness list.
June 19, 2017	-	Deadline for issuing requests for admissions, except for requests for admissions for purposes of authenticity and admissibility of exhibits.
June 23, 2017	-	Respondent's Counsel provides expert witness list.
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July 21, 2017	-	Deadline for Complaint Counsel to provide expert witness reports.

August 4, 2017	-	Deadline for Respondent's Counsel to provide expert witness reports (to be provided by 4 p.m. ET). Respondent's expert report shall include (without limitation) rebuttal, if any, to Complaint Counsel's expert witness report(s).
August 9, 2017	-	Complaint Counsel provides to Respondent's Counsel its final proposed witness and exhibit lists, including depositions, copies of all exhibits (except for demonstrative, illustrative or summary exhibits and expert related exhibits), Complaint Counsel's basis of admissibility for each proposed exhibit, and a brief summary of the testimony of each witness. Complaint Counsel serves courtesy copies on ALJ of its final proposed witness and exhibit lists, its basis of admissibility for each proposed exhibit, and a brief summary of the testimony of each witness, including its expert witnesses.
August 16, 2017	-	Complaint Counsel to identify rebuttal expert(s) and provide rebuttal expert report(s). Any such reports are to be limited to rebuttal of matters set forth in Respondent's expert reports. If material outside the scope of fair rebuttal is presented, Respondent will have the right to seek appropriate relief (such as striking Complaint Counsel's rebuttal expert reports or seeking leave to submit surrebuttal expert reports on behalf of Respondent).
August 22, 2017	-	Respondent's Counsel provides to Complaint Counsel its final proposed witness and exhibit lists, including depositions, copies of all exhibits (except for demonstrative, illustrative or summary exhibits and expert related exhibits), Respondent's basis of admissibility for each proposed exhibit, and a brief summary of the testimony of each witness. Respondent's Counsel serves courtesy copies on ALJ its final proposed witness and exhibit lists, its basis of admissibility for each proposed exhibit, and a brief summary of the testimony of each witness, including its expert witnesses.
August 23, 2017	-	Parties that intend to offer confidential materials of an opposing party or non-party as evidence at the hearing must provide notice to the opposing party or non-party, pursuant

		to 16 C.F.R. § 3.45(b).[1] *See* Additional Provision 7.
August 28, 2017	-	Deadline for depositions of experts (including rebuttal experts) and exchange of expert related exhibits.
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September 5, 2017	-	Complaint Counsel files pretrial brief supported by legal authority.
September 5, 2017	-	Deadline for filing responses to motions *in limine* to preclude admissions of evidence.
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September 14, 2017	-	Final prehearing conference to begin at 10:00 a.m. in FTC Courtroom, Room 532, Federal Trade Commission Building, 600 Pennsylvania Avenue, NW, Washington, DC 20580. The parties shall meet and confer prior to the prehearing conference regarding trial logistics and proposed stipulations of law, facts, and authenticity of exhibits. To the extent the parties have agreed to stipulate to any

[1] Appendix A to Commission Rule 3.31, the Standard Protective Order, states that if a party or third party wishes *in camera* treatment for a document or transcript that a party intends to introduce into evidence, that party or third party shall file an appropriate motion with the Administrative Law Judge within 5 days after it receives notice of a party's intent to introduce such material. Commission Rule 3.45(b) states that parties who seek to use material obtained from a third party subject to confidentiality restrictions must demonstrate that the third party has been given at least 10 days' notice of the proposed use of such material. To resolve this apparent conflict, the Scheduling Order requires that the parties provide 10 days' notice to the opposing party or third parties to allow for the filing of motions for *in camera* treatment.

issues of law, facts, and/or authenticity of exhibits, the parties shall prepare a list of such stipulations and submit a copy of the stipulations to the ALJ prior to the conference. At the conference, the parties' list of stipulations shall be marked as "JX1" and signed by each party, and the list shall be offered into evidence as a joint exhibit. No signature by the ALJ is required. Any subsequent stipulations may be offered as agreed by the parties.

Counsel may present any objections to the final proposed witness lists and exhibits. Trial exhibits will be admitted or excluded to the extent practicable. To the extent the parties agree to the admission of each other's exhibits, the parties shall prepare a list identifying each exhibit to which admissibility is agreed, marked as "JX2" and signed by each party, which list shall be offered into evidence as a joint exhibit. No signature by the ALJ is required.

September 19, 2017 - Commencement of Hearing, to begin at 10:00 a.m. in FTC Courtroom, Room 532, Federal Trade Commission Building, 600 Pennsylvania Avenue, NW, Washington, DC 20580.

ADDITIONAL PROVISIONS

1. For all papers that are required to be filed with the Office of the Secretary, the parties shall serve a courtesy copy on the Administrative Law Judge by electronic mail to the following email address: oalj@ftc.gov. The courtesy copy should be transmitted at or shortly after the time of any electronic filing with the Office of the Secretary. Courtesy copies must be transmitted to Office of the Administrative Law Judge directly, and the FTC E-filing system shall not be used for this purpose. The oalj@ftc.gov email account is to be used only for courtesy copies of pleadings filed with the Office of the Secretary and for documents specifically requested of the parties by the Office of Administrative Law Judges. Certificates of service for any pleading shall not include the OALJ email address, or the email address of any OALJ personnel, including the Chief ALJ, but rather shall designate only 600 Pennsylvania Ave., NW, Rm. H-110 as the place of service. **The subject line of all electronic submissions to oalj@ftc.gov shall set forth only the docket number and the title of the submission**. The parties are not required to serve a courtesy copy to the OALJ in hard copy, except upon request. In any instance in which a courtesy copy of a pleading for the Administrative Law Judge cannot be effectuated by electronic mail, counsel shall hand deliver a hard copy to the Office of Administrative Law Judges. Discovery requests and discovery responses shall not be submitted to the Office of Administrative Law Judges.

2. The parties shall serve each other by electronic mail and shall include "Docket 9373" in the re: line and all attached documents in .pdf format. In the event that service through electronic mail is not possible, the parties may serve each other through any method authorized under the Commission's Rules of Practice.

3. Each pleading that cites to unpublished opinions or opinions not available on LEXIS or WESTLAW shall include such copies as exhibits.

4. Each motion (other than a motion to dismiss, motion for summary decision, or a motion for *in camera* treatment) shall be accompanied by a separate signed statement representing that counsel for the moving party has conferred with opposing counsel in an effort in good faith to resolve by agreement the issues raised by the motion and has been unable to reach such an agreement. In addition, pursuant to Rule 3.22(g), for each motion to quash filed pursuant to § 3.34(c), each motion to compel or determine sufficiency pursuant to § 3.38(a), or each motion for sanctions pursuant to § 3.38(b), the required signed statement must also "recite the date, time, and place of each . . . conference between counsel, and the names of all parties participating in each such conference." Motions that fail to include such separate statement may be denied on that ground.

5. Rule 3.22(c) states:

> All written motions shall state the particular order, ruling, or action desired and the grounds therefor. Memoranda in support of, or in opposition to, any dispositive motion shall not exceed 10,000 words. Memoranda in support of, or in opposition to, any other motion shall not exceed 2,500 words. Any reply in support of a dispositive motion shall not exceed 5,000 words and any reply in support of any other motion authorized by the Administrative Law Judge or the Commission shall not exceed 1,250 words.

If a party chooses to submit a motion without a separate memorandum, the word count limits of 3.22(c) apply to the motion. If a party chooses to submit a motion with a separate memorandum, absent prior approval of the ALJ, the motion shall be limited to 750 words, and the word count limits of 3.22(c) apply to the memorandum in support of the motion. This provision applies to all motions filed with the Administrative Law Judge, including those filed under Rule 3.38.

6. If papers filed with the Office of the Secretary contain *in camera* or confidential material, the filing party shall mark any such material in the complete version of their submission with **{bold font and braces}**. 16 C.F.R. § 3.45(e). Parties shall be aware of the rules for filings containing such information, including 16 C.F.R. § 4.2.

7. If a party intends to offer confidential materials of an opposing party or non-party as evidence at the hearing, in providing notice to such non-party, the parties are

required to inform each non-party of the strict standards for motions for *in camera* treatment for evidence to be introduced at trial set forth in 16 C.F.R. § 3.45, explained in *In re Jerk, LLC*, 2015 FTC LEXIS (Feb. 23, 2015); *In re Basic Research, Inc.*, 2006 FTC LEXIS 14 (Jan. 25, 2006); *In re Hoechst Marion Roussel, Inc.*, 2000 FTC LEXIS 157 (Nov. 22, 2000) and 2000 FTC LEXIS 138 (Sept. 19, 2000); and *In re Dura Lube Corp.*, 1999 FTC LEXIS 255 (Dec. 23, 1999). Motions also must be supported by a declaration or affidavit by a person qualified to explain the confidential nature of the documents. *In re North Texas Specialty Physicians*, 2004 FTC LEXIS 66 (April 23, 2004). Each party or non-party that files a motion for *in camera* treatment shall provide one copy of the documents for which *in camera* treatment is sought to the Administrative Law Judge.

8. If the expert reports prepared for either party contain confidential information that has been granted *in camera* treatment, the party shall prepare two versions of its expert report(s) in accordance with Additional Provision 6 of this Scheduling Order and 16 C.F.R. § 3.45(e).

9. Motions *in limine* are discouraged. Motion *in limine* refers "to any motion, whether made before or during trial, to exclude anticipated prejudicial evidence before the evidence is actually offered." *In re Daniel Chapter One*, 2009 FTC LEXIS 85, *18-20 (April 20, 2009) (citing *Luce v. United States*, 469 U.S. 38, 40 n.2 (1984)). Evidence should be excluded in advance of trial on a motion *in limine* only when the evidence is clearly inadmissible on all potential grounds. *Id.* (citing *Hawthorne Partners v. AT&T Technologies, Inc.*, 831 F. Supp. 1398, 1400 (N.D. Ill. 1993); *Sec. Exch. Comm'n v. U.S. Environmental, Inc.*, 2002 U.S. Dist. LEXIS 19701, at *5-6 (S.D.N.Y. Oct. 16, 2002)). Moreover, the risk of prejudice from giving undue weight to marginally relevant evidence is minimal in a bench trial such as this where the judge is capable of assigning appropriate weight to evidence.

10. Compliance with the scheduled end of discovery requires that the parties serve subpoenas and discovery requests sufficiently in advance of the discovery cut-off and that all responses and objections will be due on or before that date, unless otherwise noted. An objection to a document request must state whether any responsive materials are being withheld on the basis of that objection. An objection to part of a request must specify the part and permit inspection of the rest. Any motion to compel responses to discovery requests shall be filed within 30 days of service of the responses and/or objections to the discovery requests~~, within 20 days after the close of discovery,~~ or within 14~~5~~ days of reaching an impasse on resolving a discovery dispute, after the parties have engaged in good faith negotiations, whichever ~~first~~ occurs last; except that no motion to compel may be filed more than ~~.~~ 20 days after the close of discovery.

11. For discovery between the parties, each party is limited to 50 document requests, including all discrete subparts; 25 interrogatories, including all discrete subparts; and 50 requests for admissions, including all discrete subparts, except that there shall be no limit on the number of requests for admission for authentication and admissibility of exhibits. Any single interrogatory inquiring as to a request for admissions response may address only a single such response. There is no limit to the

number of sets of discovery requests the parties may issue, so long as the total number of each type of discovery request, including all subparts, does not exceed these limits. Within seven days of service of a document request, the parties shall confer about the format for the production of electronically stored information.

~~12.~~ All depositions, including transcripts, video, and audio, taken in *In re Opana ER Antitrust Litigation*, Civil Action Nos. 14-10150, 14-07320, and 15-00269 (N.D. Ill.) (the "MDL Action") shall be produced by Respondent to Complaint Counsel in this action. Any such depositions shall be included as part of the record in this proceeding and shall be treated by the ALJ and the parties as if they had been taken and transcribed in this proceeding. Nothing in this paragraph in any way limits either party from taking discovery in this proceeding.

12.

13. The deposition of any person may be recorded by videotape, provided that the deposing party notifies the deponent and all parties of its intention to record the deposition by videotape at least five days in advance of the deposition. No deposition, whether recorded by videotape or otherwise, may exceed a single, seven-hour day, unless otherwise agreed to by the parties or ordered by the Administrative Law Judge.

14. The parties shall serve upon one another, at the time of issuance, copies of all subpoenas *duces tecum* and subpoenas *ad testificandum*.

(a) For subpoenas *ad testificandum*, the party seeking the deposition shall consult with the other parties before the deposition date is scheduled. Neither party will object to a date proposed for a third- party deposition if: 1) the party is provided with two weeks notice of the proposed date of the deposition; 2) the deposition is scheduled on a non-holiday Tuesday, Wednesday, Thursday or Friday; 3) no other deposition has been scheduled by that party for that day, and 4) if the third party has received a subpoena duces tecum from either party, each party has received a sufficient production from the third party at least two weeks before the proposed deposition date. The parties need not separately notice the deposition of a non-party noticed by an opposing party.

(b) At the request of any party, and with the exceptions noted below in (c), the time and allocation for a non-party deposition shall be divided evenly between the parties, but the noticing party may use any additional time not used by the opposing party. If no party makes such a request, cross-examination of the witness will be limited to one hour.

(c) If a third party has provided a declaration for a party, the deposition time shall be split 5 hours to 2 hours in favor of the party who did not obtain the declaration. If both parties obtained a declaration from the third-party, the time shall be divided equally. For depositions of any entity that is a defendant in the MDL Action, or any employee or former employee of a defendant in the MDL Action, the seven-hour deposition time shall

be allocated to Complaint Counsel**.** Reasonable time shall also be afforded to Respondent to ask follow-up questions of any such deponent, but such time shall not count against the seven (7) hour time limit.

15. Non-parties shall provide copies or make available for inspection and copying of documents requested by subpoena to the party issuing the subpoena. The party that has requested documents from non-parties shall provide copies of the documents received from non-parties to the opposing party within three business days of receiving the documents. No deposition of a non-party shall be scheduled between the time a non-party provides documents in response to a subpoena *duces tecum* to a party, and 3 business days after the party provides those documents to the other party, unless a shorter time is required by unforeseen logistical issues in scheduling the deposition, or a non-party produces those documents at the time of the deposition, as agreed to by all parties involved.

16. The final witness lists shall represent counsels' good faith designation of all potential witnesses who counsel reasonably expect may be called in their case-in-chief. Parties shall notify the opposing party promptly of changes in witness lists to facilitate completion of discovery within the dates of the scheduling order. The final proposed witness list may not include additional witnesses not listed in the preliminary witness lists previously exchanged unless by consent of all parties, or, if the parties do not consent, by an order of the Administrative Law Judge upon a showing of good cause.

17. The final exhibit lists shall represent counsels' good faith designation of all trial exhibits other than demonstrative, illustrative, or summary exhibits. Additional exhibits may be added after the submission of the final lists only by consent of all parties,

or, if the parties do not consent, by an order of the Administrative Law Judge upon a showing of good cause.

18. Witnesses shall not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. F.R.E. 602.

19. Witnesses not properly designated as expert witnesses shall not provide opinions beyond what is allowed in F.R.E. 701.

20. The parties are required to comply with Rule 3.31A and with the following:

(a) At the time an expert is first listed as a witness by a party, that party shall provide to the other party:

(i) materials fully describing or identifying the background and qualifications of the expert, all publications authored by the expert within the preceding ten years, and all prior cases in which the expert has testified or has been deposed within the preceding four years; and

(ii) transcripts of such testimony in the possession, custody, or control of the producing party or the expert, except that transcript sections that are under seal in a separate proceeding need not be produced.

(b) At the time an expert report is produced, the producing party shall provide to the other party all documents and other written materials relied upon by the expert in formulating an opinion in this case, subject to the provisions of 19(g), except that documents and materials already produced in the case need only be listed by Bates number.

(c) It shall be the responsibility of a party designating an expert witness to ensure that the expert witness is reasonably available for deposition in keeping with this Scheduling Order. Unless otherwise agreed to by the parties or ordered by the Administrative Law Judge, expert witnesses shall be deposed only once and each expert deposition shall be limited to one day for seven hours.

(d) Each expert report shall include a complete statement of all opinions to be expressed and the basis and reasons therefore; the data or other information considered by the expert in forming the opinions; any exhibits to be used as a summary of or support for the opinions; the qualifications of the expert; and the compensation to be paid for the study and testimony.

(e) A party may not discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of this litigation or preparation for hearing and who is not designated by a party as a testifying witness.

(f) At the time of service of the expert reports, a party shall provide opposing counsel:

(i) a list of all commercially-available computer programs used by the expert in the preparation of the report;

(ii) a copy of all data sets used by the expert, in native file format and processed data file format; and

(iii) all customized computer programs used by the expert in the preparation of the report or necessary to replicate the findings on which the expert report is based.

(g) Experts' disclosures and reports shall comply in all respects with Rule 3.31A, except that neither side must preserve or disclose:

(i) any form of communication or work product shared between any of the parties' counsel and their expert(s), or between any of the experts themselves;

(ii) any form of communication or work product shared between an expert(s) and persons assisting the expert(s);

(iii) expert's notes, unless they constitute the only record of a fact or an assumption relied upon by the expert in formulating an opinion in this case;

(iv) drafts of expert reports, analyses, or other work product; or

(v) data formulations, data runs, data analyses, or any database-related operations not relied upon by the expert in the opinions contained in his or her final report.

21. Properly admitted deposition testimony and properly admitted investigational hearing transcripts are part of the record and need not be read in open court. Videotape deposition excerpts that have been admitted in evidence may be presented in open court only upon prior approval by the Administrative Law Judge.

22. The parties shall provide one another, and the Administrative Law Judge, no later than 48 hours in advance, not including weekends and holidays, a list of all witnesses to be called on each day of hearing, subject to possible delays or other unforeseen circumstances.

23. The parties shall provide one another with copies of any demonstrative, illustrative or summary exhibits (other than those prepared for cross-examination) 24 hours before they are used with a witness.

24. Complaint Counsel's exhibits shall bear the designation CCX and Respondent's exhibits shall bear the designation RX or some other appropriate designation. Complaint Counsel's demonstrative exhibits shall bear the designation CCXD and Respondent's demonstrative exhibits shall bear the designation RXD or some other appropriate designation. Both sides shall number the first page of each exhibit with a single series of consecutive numbers. When an exhibit consists of more than one piece of paper, each page of the exhibit must bear a consecutive control number or some other consecutive page number. Additionally, parties must account for all their respective exhibit numbers. Any number not actually used at the hearing shall be designated "intentionally not used."

25. At the final prehearing conference, counsel will be required to introduce all exhibits they intend to introduce at trial. The parties shall confer and shall eliminate duplicative exhibits in advance of the final prehearing conference and, if necessary, during trial. For example, if CCX 100 and RX 200 are different copies of the same document, only one of those documents shall be offered into evidence. The parties shall agree in advance as to which exhibit number they intend to use. Counsel shall contact the court reporter regarding submission of exhibits.

Exhibit D

PUBLIC

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

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

[PROPOSED]
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8. If the expert reports prepared for either party contain confidential information that has been granted *in camera* treatment, the party shall prepare two versions of its expert report(s) in accordance with Additional Provision 6 of this Scheduling Order and 16 C.F.R. § 3.45(e).

9. Motions *in limine* are discouraged. Motion *in limine* refers "to any motion, whether made before or during trial, to exclude anticipated prejudicial evidence before the evidence is actually offered." *In re Daniel Chapter One*, 2009 FTC LEXIS 85, *18-20 (April 20, 2009) (citing *Luce v. United States*, 469 U.S. 38, 40 n.2 (1984)). Evidence should be excluded in advance of trial on a motion *in limine* only when the evidence is clearly inadmissible on all potential grounds. *Id.* (citing *Hawthorne Partners v. AT&T Technologies, Inc.*, 831 F. Supp. 1398, 1400 (N.D. Ill. 1993); *Sec. Exch. Comm'n v. U.S. Environmental, Inc.*, 2002 U.S. Dist. LEXIS 19701, at *5-6 (S.D.N.Y. Oct. 16, 2002)). Moreover, the risk of prejudice from giving undue weight to marginally relevant evidence is minimal in a bench trial such as this where the judge is capable of assigning appropriate weight to evidence.

10. Compliance with the scheduled end of discovery requires that the parties serve subpoenas and discovery requests sufficiently in advance of the discovery cut-off and that all responses and objections will be due on or before that date, unless otherwise noted. An objection to a document request must state whether any responsive materials are being withheld on the basis of that objection. An objection to part of a request must specify the part and permit inspection of the rest. Any motion to compel responses to discovery requests shall be filed within 30 days of service of the responses and/or objections to the discovery requests~~, within 20 days after the close of discovery,~~ or within 14~~5~~ days of reaching an impasse on resolving a discovery dispute, after the parties have engaged in good faith negotiations, whichever ~~first~~ occurs last; except that no motion to compel may be filed more than ~~.~~ 20 days after the close of discovery.

11. For discovery between the parties, each party is limited to 50 document requests, including all discrete subparts; 25 interrogatories, including all discrete subparts; and 50 requests for admissions, including all discrete subparts, except that there shall be no limit on the number of requests for admission for authentication and admissibility of exhibits. Any single interrogatory inquiring as to a request for admissions response may address only a single such response. There is no limit to the

number of sets of discovery requests the parties may issue, so long as the total number of each type of discovery request, including all subparts, does not exceed these limits. Within seven days of service of a document request, the parties shall confer about the format for the production of electronically stored information.

~~12.~~ All depositions, including transcripts, video, and audio, taken in *In re Opana ER Antitrust Litigation*, Civil Action Nos. 14-10150, 14-07320, and 15-00269 (N.D. Ill.) (the "MDL Action") shall be produced by Respondent to Complaint Counsel in this action. Any such depositions shall be included as part of the record in this proceeding and shall be treated by the ALJ and the parties as if they had been taken and transcribed in this proceeding. Nothing in this paragraph in any way limits either party from taking discovery in this proceeding.

12.

13. The deposition of any person may be recorded by videotape, provided that the deposing party notifies the deponent and all parties of its intention to record the deposition by videotape at least five days in advance of the deposition. No deposition, whether recorded by videotape or otherwise, may exceed a single, seven-hour day, unless otherwise agreed to by the parties or ordered by the Administrative Law Judge.

14. The parties shall serve upon one another, at the time of issuance, copies of all subpoenas *duces tecum* and subpoenas *ad testificandum*.

(a) For subpoenas *ad testificandum*, the party seeking the deposition shall consult with the other parties before the deposition date is scheduled. Neither party will object to a date proposed for a third- party deposition if: 1) the party is provided with two weeks notice of the proposed date of the deposition; 2) the deposition is scheduled on a non-holiday Tuesday, Wednesday, Thursday or Friday; 3) no other deposition has been scheduled by that party for that day, and 4) if the third party has received a subpoena duces tecum from either party, each party has received a sufficient production from the third party at least two weeks before the proposed deposition date. The parties need not separately notice the deposition of a non-party noticed by an opposing party.

(b) At the request of any party, and with the exceptions noted below in (c), the time and allocation for a non-party deposition shall be divided evenly between the parties, but the noticing party may use any additional time not used by the opposing party. If no party makes such a request, cross-examination of the witness will be limited to one hour.

(c) If a third party has provided a declaration for a party, the deposition time shall be split 5 hours to 2 hours in favor of the party who did not obtain the declaration. If both parties obtained a declaration from the third-party, the time shall be divided equally. For depositions of any entity that is a defendant in the MDL Action, or any employee or former employee of a defendant in the MDL Action, the seven-hour deposition time shall

be allocated to Complaint Counsel**.** Reasonable time shall also be afforded to Respondent to ask follow-up questions of any such deponent, but such time shall not count against the seven (7) hour time limit.

15. Non-parties shall provide copies or make available for inspection and copying of documents requested by subpoena to the party issuing the subpoena. The party that has requested documents from non-parties shall provide copies of the documents received from non-parties to the opposing party within three business days of receiving the documents. No deposition of a non-party shall be scheduled between the time a non-party provides documents in response to a subpoena *duces tecum* to a party, and 3 business days after the party provides those documents to the other party, unless a shorter time is required by unforeseen logistical issues in scheduling the deposition, or a non-party produces those documents at the time of the deposition, as agreed to by all parties involved.

16. The final witness lists shall represent counsels' good faith designation of all potential witnesses who counsel reasonably expect may be called in their case-in-chief. Parties shall notify the opposing party promptly of changes in witness lists to facilitate completion of discovery within the dates of the scheduling order. The final proposed witness list may not include additional witnesses not listed in the preliminary witness lists previously exchanged unless by consent of all parties, or, if the parties do not consent, by an order of the Administrative Law Judge upon a showing of good cause.

17. The final exhibit lists shall represent counsels' good faith designation of all trial exhibits other than demonstrative, illustrative, or summary exhibits. Additional exhibits may be added after the submission of the final lists only by consent of all parties,

or, if the parties do not consent, by an order of the Administrative Law Judge upon a showing of good cause.

18. Witnesses shall not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. F.R.E. 602.

19. Witnesses not properly designated as expert witnesses shall not provide opinions beyond what is allowed in F.R.E. 701.

20. The parties are required to comply with Rule 3.31A and with the following:

(a) At the time an expert is first listed as a witness by a party, that party shall provide to the other party:

(i) materials fully describing or identifying the background and qualifications of the expert, all publications authored by the expert within the preceding ten years, and all prior cases in which the expert has testified or has been deposed within the preceding four years; and

(ii) transcripts of such testimony in the possession, custody, or control of the producing party or the expert, except that transcript sections that are under seal in a separate proceeding need not be produced.

(b) At the time an expert report is produced, the producing party shall provide to the other party all documents and other written materials relied upon by the expert in formulating an opinion in this case, subject to the provisions of 19(g), except that documents and materials already produced in the case need only be listed by Bates number.

(c) It shall be the responsibility of a party designating an expert witness to ensure that the expert witness is reasonably available for deposition in keeping with this Scheduling Order. Unless otherwise agreed to by the parties or ordered by the Administrative Law Judge, expert witnesses shall be deposed only once and each expert deposition shall be limited to one day for seven hours.

(d) Each expert report shall include a complete statement of all opinions to be expressed and the basis and reasons therefore; the data or other information considered by the expert in forming the opinions; any exhibits to be used as a summary of or support for the opinions; the qualifications of the expert; and the compensation to be paid for the study and testimony.

(e) A party may not discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of this litigation or preparation for hearing and who is not designated by a party as a testifying witness.

(f) At the time of service of the expert reports, a party shall provide opposing counsel:

(i) a list of all commercially-available computer programs used by the expert in the preparation of the report;

(ii) a copy of all data sets used by the expert, in native file format and processed data file format; and

(iii) all customized computer programs used by the expert in the preparation of the report or necessary to replicate the findings on which the expert report is based.

(g) Experts' disclosures and reports shall comply in all respects with Rule 3.31A, except that neither side must preserve or disclose:

(i) any form of communication or work product shared between any of the parties' counsel and their expert(s), or between any of the experts themselves;

(ii) any form of communication or work product shared between an expert(s) and persons assisting the expert(s);

(iii) expert's notes, unless they constitute the only record of a fact or an assumption relied upon by the expert in formulating an opinion in this case;

(iv) drafts of expert reports, analyses, or other work product; or

(v) data formulations, data runs, data analyses, or any database-related operations not relied upon by the expert in the opinions contained in his or her final report.

21. Properly admitted deposition testimony and properly admitted investigational hearing transcripts are part of the record and need not be read in open court. Videotape deposition excerpts that have been admitted in evidence may be presented in open court only upon prior approval by the Administrative Law Judge.

22. The parties shall provide one another, and the Administrative Law Judge, no later than 48 hours in advance, not including weekends and holidays, a list of all witnesses to be called on each day of hearing, subject to possible delays or other unforeseen circumstances.

23. The parties shall provide one another with copies of any demonstrative, illustrative or summary exhibits (other than those prepared for cross-examination) 24 hours before they are used with a witness.

24. Complaint Counsel's exhibits shall bear the designation CCX and Respondent's exhibits shall bear the designation RX or some other appropriate designation. Complaint Counsel's demonstrative exhibits shall bear the designation CCXD and Respondent's demonstrative exhibits shall bear the designation RXD or some other appropriate designation. Both sides shall number the first page of each exhibit with a single series of consecutive numbers. When an exhibit consists of more than one piece of paper, each page of the exhibit must bear a consecutive control number or some other consecutive page number. Additionally, parties must account for all their respective exhibit numbers. Any number not actually used at the hearing shall be designated "intentionally not used."

25. At the final prehearing conference, counsel will be required to introduce all exhibits they intend to introduce at trial. The parties shall confer and shall eliminate duplicative exhibits in advance of the final prehearing conference and, if necessary, during trial. For example, if CCX 100 and RX 200 are different copies of the same document, only one of those documents shall be offered into evidence. The parties shall agree in advance as to which exhibit number they intend to use. Counsel shall contact the court reporter regarding submission of exhibits.

Exhibit E

From: Albert, Bradley Scott
To: Hassi, Ted; Hendricks, Benjamin J.; Antalics, Michael E.; Brogan, Eileen M.
Cc: Loughlin, Chuck; Schmidt, J. Maren
Subject: RE: In re Impax (Dkt. No. 9373)
Date: Tuesday, February 14, 2017 12:27:31 PM
Attachments: Proposed Scheduling Order (2.14.2017 Complaint Counsel).docx

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Ted –

I've attached our revision. There are two issues:

1. We've made a slight modification to the expert report dates so that our expert report is not due on the same date as the end of fact discovery.
2. We've added back in the provision on split of deposition time for third-parties that are also defendants in the MDL action. Specifically, we do not believe that depositions of Endo witnesses should be split evenly as they are participants to the challenged agreement.

Please let us know if you wish to discuss either of these changes.

Brad

From: Hassi, Ted [mailto:ehassi@omm.com]
Sent: Tuesday, February 14, 2017 11:29 AM
To: Albert, Bradley Scott; Hendricks, Benjamin J.; Antalics, Michael E.; Brogan, Eileen M.
Cc: Loughlin, Chuck; Schmidt, J. Maren
Subject: RE: In re Impax (Dkt. No. 9373)

Brad,

The attached reflects our proposal on the scheduling order. It makes the changes we proposed on expert report dates, accepts those of your proposed changes we can agree on, and rejects others which we think are either unnecessary or not appropriate. Please let me know if you would like to discuss or if we can agree to submit the attached as a joint submission.

Thanks,

Ted

From: Albert, Bradley Scott [mailto:BALBERT@ftc.gov]
Sent: Tuesday, February 14, 2017 10:33 AM
To: Hassi, Ted; Hendricks, Benjamin J.; Antalics, Michael E.; Brogan, Eileen M.
Cc: Loughlin, Chuck; Schmidt, J. Maren
Subject: RE: In re Impax (Dkt. No. 9373)

Ted –

As you know, we are required to submit any proposed changes to the scheduling order by 3:00 pm today. Can you let us know when you expect to provide us with your reactions to our redline?

Thanks
Brad

From: Albert, Bradley Scott
Sent: Monday, February 13, 2017 9:27 AM
To: Hassi, Ted (ehassi@omm.com); Hendricks, Benjamin J. (bhendricks@omm.com); mantalics@omm.com; ebrogan@omm.com
Cc: Loughlin, Chuck; Schmidt, J. Maren
Subject: In re Impax (Dkt. No. 9373)

Ted –

Please find attached some suggestions to the proposed scheduling order to help guide our discussion this afternoon.

We can use the following call-in number.

1-877-873-8017
9614999

Regards

Brad

PUBLIC

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

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

[PROPOSED]
SCHEDULING ORDER

March 21, 2017	-	Complaint Counsel provides preliminary witness list (not including experts) with a brief summary of the proposed testimony.
April 4, 2017	-	Respondent's Counsel provides preliminary witness list (not including experts) with a brief summary of the proposed testimony.
May 30, 2017	-	Deadline for issuing document requests, interrogatories and subpoenas *duces tecum*, except for discovery for purposes of authenticity and admissibility of exhibits.
June 5, 2017	-	Complaint Counsel provides expert witness list.
June 19, 2017	-	Deadline for issuing requests for admissions, except for requests for admissions for purposes of authenticity and admissibility of exhibits.
June 23, 2017	-	Respondent's Counsel provides expert witness list.
July 7, 2017	-	Close of discovery, other than discovery permitted under Rule 3.24(a)(4), depositions of experts, and discovery for purposes of authenticity and admissibility of exhibits.
July 14~~7~~21, 2017	-	Deadline for Complaint Counsel to provide expert witness reports.

~~August 4~~August 1~~July 28~~, 2017	-	Deadline for Respondent's Counsel to provide expert witness reports (to be provided by 4 p.m. ET). Respondent's expert report shall include (without limitation) rebuttal, if any, to Complaint Counsel's expert witness report(s).
August 9, 2017	-	Complaint Counsel provides to Respondent's Counsel its final proposed witness and exhibit lists, including depositions, copies of all exhibits (except for demonstrative, illustrative or summary exhibits and expert related exhibits), Complaint Counsel's basis of admissibility for each proposed exhibit, and a brief summary of the testimony of each witness. Complaint Counsel serves courtesy copies on ALJ of its final proposed witness and exhibit lists, its basis of admissibility for each proposed exhibit, and a brief summary of the testimony of each witness, including its expert witnesses.
August 16, 2017	-	Complaint Counsel to identify rebuttal expert(s) and provide rebuttal expert report(s). Any such reports are to be limited to rebuttal of matters set forth in Respondent's expert reports. If material outside the scope of fair rebuttal is presented, Respondent will have the right to seek appropriate relief (such as striking Complaint Counsel's rebuttal expert reports or seeking leave to submit surrebuttal expert reports on behalf of Respondent).
August 22, 2017	-	Respondent's Counsel provides to Complaint Counsel its final proposed witness and exhibit lists, including depositions, copies of all exhibits (except for demonstrative, illustrative or summary exhibits and expert related exhibits), Respondent's basis of admissibility for each proposed exhibit, and a brief summary of the testimony of each witness. Respondent's Counsel serves courtesy copies on ALJ its final proposed witness and exhibit lists, its basis of admissibility for each proposed exhibit, and a brief summary of the testimony of each witness, including its expert witnesses.
August 23, 2017	-	Parties that intend to offer confidential materials of an opposing party or non-party as evidence at the hearing must provide notice to the opposing party or non-party, pursuant

		to 16 C.F.R. § 3.45(b).[1] *See* Additional Provision 7.
August 28, 2017	-	Deadline for depositions of experts (including rebuttal experts) and exchange of expert related exhibits.
August 30, 2017	-	Deadline for filing motions *in limine* to preclude admission of evidence. *See* Additional Provision 9.
August 30, 2017	-	Exchange and serve courtesy copy on ALJ objections to final proposed witness lists and exhibit lists.
September 5, 2017	-	Deadline for filing motions for *in camera* treatment of proposed trial exhibits.
September 5, 2017	-	Complaint Counsel files pretrial brief supported by legal authority.
September 5, 2017	-	Deadline for filing responses to motions *in limine* to preclude admissions of evidence.
September 6, 2017	-	Exchange proposed stipulations of law, facts, and authenticity.
September 8, 2017	-	Deadline for filing responses to motions for *in camera* treatment of proposed trial exhibits.
September 12, 2017	-	Respondent's Counsel files pretrial brief supported by legal authority.
September 14, 2017	-	Final prehearing conference to begin at 10:00 a.m. in FTC Courtroom, Room 532, Federal Trade Commission Building, 600 Pennsylvania Avenue, NW, Washington, DC 20580. The parties shall meet and confer prior to the prehearing conference regarding trial logistics and proposed stipulations of law, facts, and authenticity of exhibits. To the extent the parties have agreed to stipulate to any

[1] Appendix A to Commission Rule 3.31, the Standard Protective Order, states that if a party or third party wishes *in camera* treatment for a document or transcript that a party intends to introduce into evidence, that party or third party shall file an appropriate motion with the Administrative Law Judge within 5 days after it receives notice of a party's intent to introduce such material. Commission Rule 3.45(b) states that parties who seek to use material obtained from a third party subject to confidentiality restrictions must demonstrate that the third party has been given at least 10 days' notice of the proposed use of such material. To resolve this apparent conflict, the Scheduling Order requires that the parties provide 10 days' notice to the opposing party or third parties to allow for the filing of motions for *in camera* treatment.

issues of law, facts, and/or authenticity of exhibits, the parties shall prepare a list of such stipulations and submit a copy of the stipulations to the ALJ prior to the conference. At the conference, the parties' list of stipulations shall be marked as "JX1" and signed by each party, and the list shall be offered into evidence as a joint exhibit. No signature by the ALJ is required. Any subsequent stipulations may be offered as agreed by the parties.

Counsel may present any objections to the final proposed witness lists and exhibits. Trial exhibits will be admitted or excluded to the extent practicable. To the extent the parties agree to the admission of each other's exhibits, the parties shall prepare a list identifying each exhibit to which admissibility is agreed, marked as "JX2" and signed by each party, which list shall be offered into evidence as a joint exhibit. No signature by the ALJ is required.

September 19, 2017 - Commencement of Hearing, to begin at 10:00 a.m. in FTC Courtroom, Room 532, Federal Trade Commission Building, 600 Pennsylvania Avenue, NW, Washington, DC 20580.

ADDITIONAL PROVISIONS

1. For all papers that are required to be filed with the Office of the Secretary, the parties shall serve a courtesy copy on the Administrative Law Judge by electronic mail to the following email address: oalj@ftc.gov. The courtesy copy should be transmitted at or shortly after the time of any electronic filing with the Office of the Secretary. Courtesy copies must be transmitted to Office of the Administrative Law Judge directly, and the FTC E-filing system shall not be used for this purpose. The oalj@ftc.gov email account is to be used only for courtesy copies of pleadings filed with the Office of the Secretary and for documents specifically requested of the parties by the Office of Administrative Law Judges. Certificates of service for any pleading shall not include the OALJ email address, or the email address of any OALJ personnel, including the Chief ALJ, but rather shall designate only 600 Pennsylvania Ave., NW, Rm. H-110 as the place of service. **The subject line of all electronic submissions to oalj@ftc.gov shall set forth only the docket number and the title of the submission**. The parties are not required to serve a courtesy copy to the OALJ in hard copy, except upon request. In any instance in which a courtesy copy of a pleading for the Administrative Law Judge cannot be effectuated by electronic mail, counsel shall hand deliver a hard copy to the Office of Administrative Law Judges. Discovery requests and discovery responses shall not be submitted to the Office of Administrative Law Judges.

2. The parties shall serve each other by electronic mail and shall include "Docket 9373" in the re: line and all attached documents in .pdf format. In the event that service through electronic mail is not possible, the parties may serve each other through any method authorized under the Commission's Rules of Practice.

3. Each pleading that cites to unpublished opinions or opinions not available on LEXIS or WESTLAW shall include such copies as exhibits.

4. Each motion (other than a motion to dismiss, motion for summary decision, or a motion for *in camera* treatment) shall be accompanied by a separate signed statement representing that counsel for the moving party has conferred with opposing counsel in an effort in good faith to resolve by agreement the issues raised by the motion and has been unable to reach such an agreement. In addition, pursuant to Rule 3.22(g), for each motion to quash filed pursuant to § 3.34(c), each motion to compel or determine sufficiency pursuant to § 3.38(a), or each motion for sanctions pursuant to § 3.38(b), the required signed statement must also "recite the date, time, and place of each . . . conference between counsel, and the names of all parties participating in each such conference." Motions that fail to include such separate statement may be denied on that ground.

5. Rule 3.22(c) states:

> All written motions shall state the particular order, ruling, or action desired and the grounds therefor. Memoranda in support of, or in opposition to, any dispositive motion shall not exceed 10,000 words. Memoranda in support of, or in opposition to, any other motion shall not exceed 2,500 words. Any reply in support of a dispositive motion shall not exceed 5,000 words and any reply in support of any other motion authorized by the Administrative Law Judge or the Commission shall not exceed 1,250 words.

If a party chooses to submit a motion without a separate memorandum, the word count limits of 3.22(c) apply to the motion. If a party chooses to submit a motion with a separate memorandum, absent prior approval of the ALJ, the motion shall be limited to 750 words, and the word count limits of 3.22(c) apply to the memorandum in support of the motion. This provision applies to all motions filed with the Administrative Law Judge, including those filed under Rule 3.38.

6. If papers filed with the Office of the Secretary contain *in camera* or confidential material, the filing party shall mark any such material in the complete version of their submission with **{bold font and braces}**. 16 C.F.R. § 3.45(e). Parties shall be aware of the rules for filings containing such information, including 16 C.F.R. § 4.2.

7. If a party intends to offer confidential materials of an opposing party or non-party as evidence at the hearing, in providing notice to such non-party, the parties are

required to inform each non-party of the strict standards for motions for *in camera* treatment for evidence to be introduced at trial set forth in 16 C.F.R. § 3.45, explained in *In re Jerk, LLC*, 2015 FTC LEXIS (Feb. 23, 2015); *In re Basic Research, Inc.*, 2006 FTC LEXIS 14 (Jan. 25, 2006); *In re Hoechst Marion Roussel, Inc.*, 2000 FTC LEXIS 157 (Nov. 22, 2000) and 2000 FTC LEXIS 138 (Sept. 19, 2000); and *In re Dura Lube Corp.*, 1999 FTC LEXIS 255 (Dec. 23, 1999). Motions also must be supported by a declaration or affidavit by a person qualified to explain the confidential nature of the documents. *In re North Texas Specialty Physicians*, 2004 FTC LEXIS 66 (April 23, 2004). Each party or non-party that files a motion for *in camera* treatment shall provide one copy of the documents for which *in camera* treatment is sought to the Administrative Law Judge.

8. If the expert reports prepared for either party contain confidential information that has been granted *in camera* treatment, the party shall prepare two versions of its expert report(s) in accordance with Additional Provision 6 of this Scheduling Order and 16 C.F.R. § 3.45(e).

9. Motions *in limine* are discouraged. Motion *in limine* refers "to any motion, whether made before or during trial, to exclude anticipated prejudicial evidence before the evidence is actually offered." *In re Daniel Chapter One*, 2009 FTC LEXIS 85, *18-20 (April 20, 2009) (citing *Luce v. United States*, 469 U.S. 38, 40 n.2 (1984)). Evidence should be excluded in advance of trial on a motion *in limine* only when the evidence is clearly inadmissible on all potential grounds. *Id.* (citing *Hawthorne Partners v. AT&T Technologies, Inc.*, 831 F. Supp. 1398, 1400 (N.D. Ill. 1993); *Sec. Exch. Comm'n v. U.S. Environmental, Inc.*, 2002 U.S. Dist. LEXIS 19701, at *5-6 (S.D.N.Y. Oct. 16, 2002)). Moreover, the risk of prejudice from giving undue weight to marginally relevant evidence is minimal in a bench trial such as this where the judge is capable of assigning appropriate weight to evidence.

10. Compliance with the scheduled end of discovery requires that the parties serve subpoenas and discovery requests sufficiently in advance of the discovery cut-off and that all responses and objections will be due on or before that date, unless otherwise noted. An objection to a document request must state whether any responsive materials are being withheld on the basis of that objection. An objection to part of a request must specify the part and permit inspection of the rest. Any motion to compel responses to discovery requests shall be filed within 30 days of service of the responses and/or objections to the discovery requests or within 14 days of reaching an impasse on resolving a discovery dispute, after the parties have engaged in good faith negotiations, whichever occurs last; except that no motion to compel may be filed more than 20 days after the close of discovery.

11. For discovery between the parties, each party is limited to 50 document requests, including all discrete subparts; 25 interrogatories, including all discrete subparts; and 50 requests for admissions, including all discrete subparts, except that there shall be no limit on the number of requests for admission for authentication and admissibility of exhibits. Any single interrogatory inquiring as to a request for admissions response may address only a single such response. There is no limit to the

number of sets of discovery requests the parties may issue, so long as the total number of each type of discovery request, including all subparts, does not exceed these limits. Within seven days of service of a document request, the parties shall confer about the format for the production of electronically stored information.

12. The deposition of any person may be recorded by videotape, provided that the deposing party notifies the deponent and all parties of its intention to record the deposition by videotape at least five days in advance of the deposition. No deposition, whether recorded by videotape or otherwise, may exceed a single, seven-hour day, unless otherwise agreed to by the parties or ordered by the Administrative Law Judge.

14. The parties shall serve upon one another, at the time of issuance, copies of all subpoenas *duces tecum* and subpoenas *ad testificandum*.

(a) For subpoenas *ad testificandum*, the party seeking the deposition shall consult with the other parties before the deposition date is scheduled. Each party shall make a good faith effort to accommodate the date on which a third-party deposition has been noticed. If a third party has received a subpoena duces tecum from either party, the deposition shall not be noticed for a date less than two weeks after each party has received a sufficient production from the third party. The parties need not separately notice the deposition of a non-party noticed by an opposing party.

(b) At the request of any party, and with the exceptions noted below in (c), the time and allocation for a non-party deposition shall be divided evenly between the parties, but the noticing party may use any additional time not used by the opposing party. If no party makes such a request, cross-examination of the witness will be limited to one hour.

(c) For depositions of any entity that is a defendant in *In re Opana ER Antitrust Litigation*, Civil Action Nos. 14-10150, 14-07320, and 15-00269 (N.D. Ill.) (the "MDL Action"), or any employee or former employee of a defendant in the MDL Action, the seven-hour deposition time shall be allocated to Complaint Counsel. Reasonable time shall also be afforded to Respondent to ask follow-up questions of any such deponent, but such time shall not count against the seven (7) hour time limit.

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15. Non-parties shall provide copies or make available for inspection and copying of documents requested by subpoena to the party issuing the subpoena. The party that has requested documents from non-parties shall provide copies of the documents received from non-parties to the opposing party within three business days of receiving the documents. No deposition of a non-party shall be scheduled between the time a non-party provides documents in response to a subpoena *duces tecum* to a party, and 3 business days after the party provides those documents to the other party, unless a shorter time is required by unforeseen logistical issues in scheduling the deposition, or a non-party produces those documents at the time of the deposition, as agreed to by all parties involved.

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17. The final exhibit lists shall represent counsels' good faith designation of all trial exhibits other than demonstrative, illustrative, or summary exhibits. Additional exhibits may be added after the submission of the final lists only by consent of all parties,

or, if the parties do not consent, by an order of the Administrative Law Judge upon a showing of good cause.

18. Witnesses shall not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. F.R.E. 602.

19. Witnesses not properly designated as expert witnesses shall not provide opinions beyond what is allowed in F.R.E. 701.

20. The parties are required to comply with Rule 3.31A and with the following:

(a) At the time an expert is first listed as a witness by a party, that party shall provide to the other party:

(i) materials fully describing or identifying the background and qualifications of the expert, all publications authored by the expert within the preceding ten years, and all prior cases in which the expert has testified or has been deposed within the preceding four years; and

(ii) transcripts of such testimony in the possession, custody, or control of the producing party or the expert, except that transcript sections that are under seal in a separate proceeding need not be produced.

(b) At the time an expert report is produced, the producing party shall provide to the other party all documents and other written materials relied upon by the expert in formulating an opinion in this case, subject to the provisions of 19(g), except that documents and materials already produced in the case need only be listed by Bates number.

(c) It shall be the responsibility of a party designating an expert witness to ensure that the expert witness is reasonably available for deposition in keeping with this Scheduling Order. Unless otherwise agreed to by the parties or ordered by the

Administrative Law Judge, expert witnesses shall be deposed only once and each expert deposition shall be limited to one day for seven hours.

(d) Each expert report shall include a complete statement of all opinions to be expressed and the basis and reasons therefore; the data or other information considered by the expert in forming the opinions; any exhibits to be used as a summary of or support for the opinions; the qualifications of the expert; and the compensation to be paid for the study and testimony.

(e) A party may not discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of this litigation or preparation for hearing and who is not designated by a party as a testifying witness.

(f) At the time of service of the expert reports, a party shall provide opposing counsel:

(i) a list of all commercially-available computer programs used by the expert in the preparation of the report;

(ii) a copy of all data sets used by the expert, in native file format and processed data file format; and

(iii) all customized computer programs used by the expert in the preparation of the report or necessary to replicate the findings on which the expert report is based.

(g) Experts' disclosures and reports shall comply in all respects with Rule 3.31A, except that neither side must preserve or disclose:

(i) any form of communication or work product shared between any of the parties' counsel and their expert(s), or between any of the experts themselves;

(ii) any form of communication or work product shared between an expert(s) and persons assisting the expert(s);

(iii) expert's notes, unless they constitute the only record of a fact or an assumption relied upon by the expert in formulating an opinion in this case;

(iv) drafts of expert reports, analyses, or other work product; or

(v) data formulations, data runs, data analyses, or any database-related operations not relied upon by the expert in the opinions contained in his or her final report.

21. Properly admitted deposition testimony and properly admitted investigational hearing transcripts are part of the record and need not be read in open court. Videotape deposition excerpts that have been admitted in evidence may be presented in open court

only upon prior approval by the Administrative Law Judge.

22. The parties shall provide one another, and the Administrative Law Judge, no later than 48 hours in advance, not including weekends and holidays, a list of all witnesses to be called on each day of hearing, subject to possible delays or other unforeseen circumstances.

23. The parties shall provide one another with copies of any demonstrative, illustrative or summary exhibits (other than those prepared for cross-examination) 24 hours before they are used with a witness.

24. Complaint Counsel's exhibits shall bear the designation CCX and Respondent's exhibits shall bear the designation RX or some other appropriate designation. Complaint Counsel's demonstrative exhibits shall bear the designation CCXD and Respondent's demonstrative exhibits shall bear the designation RXD or some other appropriate designation. Both sides shall number the first page of each exhibit with a single series of consecutive numbers. When an exhibit consists of more than one piece of paper, each page of the exhibit must bear a consecutive control number or some other consecutive page number. Additionally, parties must account for all their respective exhibit numbers. Any number not actually used at the hearing shall be designated "intentionally not used."

25. At the final prehearing conference, counsel will be required to introduce all exhibits they intend to introduce at trial. The parties shall confer and shall eliminate duplicative exhibits in advance of the final prehearing conference and, if necessary, during trial. For example, if CCX 100 and RX 200 are different copies of the same document, only one of those documents shall be offered into evidence. The parties shall agree in advance as to which exhibit number they intend to use. Counsel shall contact the court reporter regarding submission of exhibits.

Exhibit F

PUBLIC

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

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

[PROPOSED]
SCHEDULING ORDER

March 21, 2017	-	Complaint Counsel provides preliminary witness list (not including experts) with a brief summary of the proposed testimony.
April 4, 2017	-	Respondent's Counsel provides preliminary witness list (not including experts) with a brief summary of the proposed testimony.
May 30, 2017	-	Deadline for issuing document requests, interrogatories and subpoenas *duces tecum*, except for discovery for purposes of authenticity and admissibility of exhibits.
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June 19, 2017	-	Deadline for issuing requests for admissions, except for requests for admissions for purposes of authenticity and admissibility of exhibits.
June 23, 2017	-	Respondent's Counsel provides expert witness list.
July 7, 2017	-	Close of discovery, other than discovery permitted under Rule 3.24(a)(4), depositions of experts, and discovery for purposes of authenticity and admissibility of exhibits.
July 14~~7~~21, 2017	-	Deadline for Complaint Counsel to provide expert witness reports.

~~August 4~~August 1~~July 28~~, 2017	-	Deadline for Respondent's Counsel to provide expert witness reports (to be provided by 4 p.m. ET). Respondent's expert report shall include (without limitation) rebuttal, if any, to Complaint Counsel's expert witness report(s).
August 9, 2017	-	Complaint Counsel provides to Respondent's Counsel its final proposed witness and exhibit lists, including depositions, copies of all exhibits (except for demonstrative, illustrative or summary exhibits and expert related exhibits), Complaint Counsel's basis of admissibility for each proposed exhibit, and a brief summary of the testimony of each witness. Complaint Counsel serves courtesy copies on ALJ of its final proposed witness and exhibit lists, its basis of admissibility for each proposed exhibit, and a brief summary of the testimony of each witness, including its expert witnesses.
August 16, 2017	-	Complaint Counsel to identify rebuttal expert(s) and provide rebuttal expert report(s). Any such reports are to be limited to rebuttal of matters set forth in Respondent's expert reports. If material outside the scope of fair rebuttal is presented, Respondent will have the right to seek appropriate relief (such as striking Complaint Counsel's rebuttal expert reports or seeking leave to submit surrebuttal expert reports on behalf of Respondent).
August 22, 2017	-	Respondent's Counsel provides to Complaint Counsel its final proposed witness and exhibit lists, including depositions, copies of all exhibits (except for demonstrative, illustrative or summary exhibits and expert related exhibits), Respondent's basis of admissibility for each proposed exhibit, and a brief summary of the testimony of each witness. Respondent's Counsel serves courtesy copies on ALJ its final proposed witness and exhibit lists, its basis of admissibility for each proposed exhibit, and a brief summary of the testimony of each witness, including its expert witnesses.
August 23, 2017	-	Parties that intend to offer confidential materials of an opposing party or non-party as evidence at the hearing must provide notice to the opposing party or non-party, pursuant

		to 16 C.F.R. § 3.45(b).[1] *See* Additional Provision 7.
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September 5, 2017	-	Deadline for filing motions for *in camera* treatment of proposed trial exhibits.
September 5, 2017	-	Complaint Counsel files pretrial brief supported by legal authority.
September 5, 2017	-	Deadline for filing responses to motions *in limine* to preclude admissions of evidence.
September 6, 2017	-	Exchange proposed stipulations of law, facts, and authenticity.
September 8, 2017	-	Deadline for filing responses to motions for *in camera* treatment of proposed trial exhibits.
September 12, 2017	-	Respondent's Counsel files pretrial brief supported by legal authority.
September 14, 2017	-	Final prehearing conference to begin at 10:00 a.m. in FTC Courtroom, Room 532, Federal Trade Commission Building, 600 Pennsylvania Avenue, NW, Washington, DC 20580. The parties shall meet and confer prior to the prehearing conference regarding trial logistics and proposed stipulations of law, facts, and authenticity of exhibits. To the extent the parties have agreed to stipulate to any

[1] Appendix A to Commission Rule 3.31, the Standard Protective Order, states that if a party or third party wishes *in camera* treatment for a document or transcript that a party intends to introduce into evidence, that party or third party shall file an appropriate motion with the Administrative Law Judge within 5 days after it receives notice of a party's intent to introduce such material. Commission Rule 3.45(b) states that parties who seek to use material obtained from a third party subject to confidentiality restrictions must demonstrate that the third party has been given at least 10 days' notice of the proposed use of such material. To resolve this apparent conflict, the Scheduling Order requires that the parties provide 10 days' notice to the opposing party or third parties to allow for the filing of motions for *in camera* treatment.

issues of law, facts, and/or authenticity of exhibits, the parties shall prepare a list of such stipulations and submit a copy of the stipulations to the ALJ prior to the conference. At the conference, the parties' list of stipulations shall be marked as "JX1" and signed by each party, and the list shall be offered into evidence as a joint exhibit. No signature by the ALJ is required. Any subsequent stipulations may be offered as agreed by the parties.

Counsel may present any objections to the final proposed witness lists and exhibits. Trial exhibits will be admitted or excluded to the extent practicable. To the extent the parties agree to the admission of each other's exhibits, the parties shall prepare a list identifying each exhibit to which admissibility is agreed, marked as "JX2" and signed by each party, which list shall be offered into evidence as a joint exhibit. No signature by the ALJ is required.

September 19, 2017 - Commencement of Hearing, to begin at 10:00 a.m. in FTC Courtroom, Room 532, Federal Trade Commission Building, 600 Pennsylvania Avenue, NW, Washington, DC 20580.

ADDITIONAL PROVISIONS

1. For all papers that are required to be filed with the Office of the Secretary, the parties shall serve a courtesy copy on the Administrative Law Judge by electronic mail to the following email address: oalj@ftc.gov. The courtesy copy should be transmitted at or shortly after the time of any electronic filing with the Office of the Secretary. Courtesy copies must be transmitted to Office of the Administrative Law Judge directly, and the FTC E-filing system shall not be used for this purpose. The oalj@ftc.gov email account is to be used only for courtesy copies of pleadings filed with the Office of the Secretary and for documents specifically requested of the parties by the Office of Administrative Law Judges. Certificates of service for any pleading shall not include the OALJ email address, or the email address of any OALJ personnel, including the Chief ALJ, but rather shall designate only 600 Pennsylvania Ave., NW, Rm. H-110 as the place of service. **The subject line of all electronic submissions to oalj@ftc.gov shall set forth only the docket number and the title of the submission**. The parties are not required to serve a courtesy copy to the OALJ in hard copy, except upon request. In any instance in which a courtesy copy of a pleading for the Administrative Law Judge cannot be effectuated by electronic mail, counsel shall hand deliver a hard copy to the Office of Administrative Law Judges. Discovery requests and discovery responses shall not be submitted to the Office of Administrative Law Judges.

2. The parties shall serve each other by electronic mail and shall include "Docket 9373" in the re: line and all attached documents in .pdf format. In the event that service through electronic mail is not possible, the parties may serve each other through any method authorized under the Commission's Rules of Practice.

3. Each pleading that cites to unpublished opinions or opinions not available on LEXIS or WESTLAW shall include such copies as exhibits.

4. Each motion (other than a motion to dismiss, motion for summary decision, or a motion for *in camera* treatment) shall be accompanied by a separate signed statement representing that counsel for the moving party has conferred with opposing counsel in an effort in good faith to resolve by agreement the issues raised by the motion and has been unable to reach such an agreement. In addition, pursuant to Rule 3.22(g), for each motion to quash filed pursuant to § 3.34(c), each motion to compel or determine sufficiency pursuant to § 3.38(a), or each motion for sanctions pursuant to § 3.38(b), the required signed statement must also "recite the date, time, and place of each . . . conference between counsel, and the names of all parties participating in each such conference." Motions that fail to include such separate statement may be denied on that ground.

5. Rule 3.22(c) states:

> All written motions shall state the particular order, ruling, or action desired and the grounds therefor. Memoranda in support of, or in opposition to, any dispositive motion shall not exceed 10,000 words. Memoranda in support of, or in opposition to, any other motion shall not exceed 2,500 words. Any reply in support of a dispositive motion shall not exceed 5,000 words and any reply in support of any other motion authorized by the Administrative Law Judge or the Commission shall not exceed 1,250 words.

If a party chooses to submit a motion without a separate memorandum, the word count limits of 3.22(c) apply to the motion. If a party chooses to submit a motion with a separate memorandum, absent prior approval of the ALJ, the motion shall be limited to 750 words, and the word count limits of 3.22(c) apply to the memorandum in support of the motion. This provision applies to all motions filed with the Administrative Law Judge, including those filed under Rule 3.38.

6. If papers filed with the Office of the Secretary contain *in camera* or confidential material, the filing party shall mark any such material in the complete version of their submission with **{bold font and braces}**. 16 C.F.R. § 3.45(e). Parties shall be aware of the rules for filings containing such information, including 16 C.F.R. § 4.2.

7. If a party intends to offer confidential materials of an opposing party or non-party as evidence at the hearing, in providing notice to such non-party, the parties are

required to inform each non-party of the strict standards for motions for *in camera* treatment for evidence to be introduced at trial set forth in 16 C.F.R. § 3.45, explained in *In re Jerk, LLC*, 2015 FTC LEXIS (Feb. 23, 2015); *In re Basic Research, Inc.*, 2006 FTC LEXIS 14 (Jan. 25, 2006); *In re Hoechst Marion Roussel, Inc.*, 2000 FTC LEXIS 157 (Nov. 22, 2000) and 2000 FTC LEXIS 138 (Sept. 19, 2000); and *In re Dura Lube Corp.*, 1999 FTC LEXIS 255 (Dec. 23, 1999). Motions also must be supported by a declaration or affidavit by a person qualified to explain the confidential nature of the documents. *In re North Texas Specialty Physicians*, 2004 FTC LEXIS 66 (April 23, 2004). Each party or non-party that files a motion for *in camera* treatment shall provide one copy of the documents for which *in camera* treatment is sought to the Administrative Law Judge.

8. If the expert reports prepared for either party contain confidential information that has been granted *in camera* treatment, the party shall prepare two versions of its expert report(s) in accordance with Additional Provision 6 of this Scheduling Order and 16 C.F.R. § 3.45(e).

9. Motions *in limine* are discouraged. Motion *in limine* refers "to any motion, whether made before or during trial, to exclude anticipated prejudicial evidence before the evidence is actually offered." *In re Daniel Chapter One*, 2009 FTC LEXIS 85, *18-20 (April 20, 2009) (citing *Luce v. United States*, 469 U.S. 38, 40 n.2 (1984)). Evidence should be excluded in advance of trial on a motion *in limine* only when the evidence is clearly inadmissible on all potential grounds. *Id.* (citing *Hawthorne Partners v. AT&T Technologies, Inc*., 831 F. Supp. 1398, 1400 (N.D. Ill. 1993); *Sec. Exch. Comm'n v. U.S. Environmental, Inc*., 2002 U.S. Dist. LEXIS 19701, at *5-6 (S.D.N.Y. Oct. 16, 2002)). Moreover, the risk of prejudice from giving undue weight to marginally relevant evidence is minimal in a bench trial such as this where the judge is capable of assigning appropriate weight to evidence.

10. Compliance with the scheduled end of discovery requires that the parties serve subpoenas and discovery requests sufficiently in advance of the discovery cut-off and that all responses and objections will be due on or before that date, unless otherwise noted. An objection to a document request must state whether any responsive materials are being withheld on the basis of that objection. An objection to part of a request must specify the part and permit inspection of the rest. Any motion to compel responses to discovery requests shall be filed within 30 days of service of the responses and/or objections to the discovery requests or within 14 days of reaching an impasse on resolving a discovery dispute, after the parties have engaged in good faith negotiations, whichever occurs last; except that no motion to compel may be filed more than 20 days after the close of discovery.

11. For discovery between the parties, each party is limited to 50 document requests, including all discrete subparts; 25 interrogatories, including all discrete subparts; and 50 requests for admissions, including all discrete subparts, except that there shall be no limit on the number of requests for admission for authentication and admissibility of exhibits. Any single interrogatory inquiring as to a request for admissions response may address only a single such response. There is no limit to the

number of sets of discovery requests the parties may issue, so long as the total number of each type of discovery request, including all subparts, does not exceed these limits. Within seven days of service of a document request, the parties shall confer about the format for the production of electronically stored information.

12. The deposition of any person may be recorded by videotape, provided that the deposing party notifies the deponent and all parties of its intention to record the deposition by videotape at least five days in advance of the deposition. No deposition, whether recorded by videotape or otherwise, may exceed a single, seven-hour day, unless otherwise agreed to by the parties or ordered by the Administrative Law Judge.

14. The parties shall serve upon one another, at the time of issuance, copies of all subpoenas *duces tecum* and subpoenas *ad testificandum*.

(a) For subpoenas *ad testificandum*, the party seeking the deposition shall consult with the other parties before the deposition date is scheduled. Each party shall make a good faith effort to accommodate the date on which a third-party deposition has been noticed. If a third party has received a subpoena duces tecum from either party, the deposition shall not be noticed for a date less than two weeks after each party has received a sufficient production from the third party. The parties need not separately notice the deposition of a non-party noticed by an opposing party.

(b) At the request of any party, and with the exceptions noted below in (c), the time and allocation for a non-party deposition shall be divided evenly between the parties, but the noticing party may use any additional time not used by the opposing party. If no party makes such a request, cross-examination of the witness will be limited to one hour.

(c) For depositions of any entity that is a defendant in *In re Opana ER Antitrust Litigation*, Civil Action Nos. 14-10150, 14-07320, and 15-00269 (N.D. Ill.) (the "MDL Action"), or any employee or former employee of a defendant in the MDL Action, the seven-hour deposition time shall be allocated to Complaint Counsel. Reasonable time shall also be afforded to Respondent to ask follow-up questions of any such deponent, but such time shall not count against the seven (7) hour time limit.

15. Non-parties shall provide copies or make available for inspection and copying of documents requested by subpoena to the party issuing the subpoena. The party that has requested documents from non-parties shall provide copies of the documents received from non-parties to the opposing party within three business days of receiving the documents. No deposition of a non-party shall be scheduled between the time a non-party provides documents in response to a subpoena *duces tecum* to a party, and 3 business days after the party provides those documents to the other party, unless a shorter time is required by unforeseen logistical issues in scheduling the deposition, or a non-party produces those documents at the time of the deposition, as agreed to by all parties involved.

16. The final witness lists shall represent counsels' good faith designation of all potential witnesses who counsel reasonably expect may be called in their case-in-chief. Parties shall notify the opposing party promptly of changes in witness lists to facilitate completion of discovery within the dates of the scheduling order. The final proposed witness list may not include additional witnesses not listed in the preliminary witness lists previously exchanged unless by consent of all parties, or, if the parties do not consent, by an order of the Administrative Law Judge upon a showing of good cause.

17. The final exhibit lists shall represent counsels' good faith designation of all trial exhibits other than demonstrative, illustrative, or summary exhibits. Additional exhibits may be added after the submission of the final lists only by consent of all parties,

or, if the parties do not consent, by an order of the Administrative Law Judge upon a showing of good cause.

18. Witnesses shall not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. F.R.E. 602.

19. Witnesses not properly designated as expert witnesses shall not provide opinions beyond what is allowed in F.R.E. 701.

20. The parties are required to comply with Rule 3.31A and with the following:

(a) At the time an expert is first listed as a witness by a party, that party shall provide to the other party:

(i) materials fully describing or identifying the background and qualifications of the expert, all publications authored by the expert within the preceding ten years, and all prior cases in which the expert has testified or has been deposed within the preceding four years; and

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Exhibit G

From:	Albert, Bradley Scott
To:	OALJ
Cc:	Hassi, Ted; Antalics, Michael E.; Hendricks, Benjamin J.; Brogan, Eileen M.; Loughlin, Chuck; Schmidt, J. Maren; Weinstein, Rebecca
Subject:	Docket 9373 - Proposed Scheduling Order
Date:	Tuesday, February 14, 2017 2:59:32 PM
Attachments:	Joint Submission Regarding Proposed Scheduling Order (clean).docx Joint Submission Regarding Proposed Scheduling Order.docx

Dear Judge Chappell:

Attached are the proposed revisions to the Proposed Scheduling Order. This draft reflects combined proposals from Complaint Counsel and Respondent's Counsel in clean and redline formats. The only provision on which we have not reached agreement is in paragraph 13(c). Each side's respective proposal is reflected in the draft.

Respectfully submitted,

Bradley Albert
On behalf of Complaint Counsel

PUBLIC

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

In the Matter of	)	
Impax Laboratories, Inc., a corporation,	)	DOCKET NO. 9373
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September 19, 2017 - Commencement of Hearing, to begin at 10:00 a.m. in FTC Courtroom, Room 532, Federal Trade Commission Building, 600 Pennsylvania Avenue, NW, Washington, DC 20580.

ADDITIONAL PROVISIONS

1. For all papers that are required to be filed with the Office of the Secretary, the parties shall serve a courtesy copy on the Administrative Law Judge by electronic mail to the following email address: oalj@ftc.gov. The courtesy copy should be transmitted at or shortly after the time of any electronic filing with the Office of the Secretary. Courtesy copies must be transmitted to Office of the Administrative Law Judge directly, and the FTC E-filing system shall not be used for this purpose. The oalj@ftc.gov email account is to be used only for courtesy copies of pleadings filed with the Office of the Secretary and for documents specifically requested of the parties by the Office of Administrative Law Judges. Certificates of service for any pleading shall not include the OALJ email address, or the email address of any OALJ personnel, including the Chief ALJ, but rather shall designate only 600 Pennsylvania Ave., NW, Rm. H-110 as the place of service. **The subject line of all electronic submissions to oalj@ftc.gov shall set forth only the docket number and the title of the submission**. The parties are not required to serve a courtesy copy to the OALJ in hard copy, except upon request. In any instance in which a courtesy copy of a pleading for the Administrative Law Judge cannot be effectuated by electronic mail, counsel shall hand deliver a hard copy to the Office of Administrative Law Judges. Discovery requests and discovery responses shall not be submitted to the Office of Administrative Law Judges.

2. The parties shall serve each other by electronic mail and shall include "Docket 9373" in the re: line and all attached documents in .pdf format. In the event that service through electronic mail is not possible, the parties may serve each other through any method authorized under the Commission's Rules of Practice.

3. Each pleading that cites to unpublished opinions or opinions not available on LEXIS or WESTLAW shall include such copies as exhibits.

4. Each motion (other than a motion to dismiss, motion for summary decision, or a motion for *in camera* treatment) shall be accompanied by a separate signed statement representing that counsel for the moving party has conferred with opposing counsel in an effort in good faith to resolve by agreement the issues raised by the motion and has been unable to reach such an agreement. In addition, pursuant to Rule 3.22(g), for each motion to quash filed pursuant to § 3.34(c), each motion to compel or determine sufficiency pursuant to § 3.38(a), or each motion for sanctions pursuant to § 3.38(b), the required signed statement must also "recite the date, time, and place of each . . . conference between counsel, and the names of all parties participating in each such conference." Motions that fail to include such separate statement may be denied on that ground.

5. Rule 3.22(c) states:

> All written motions shall state the particular order, ruling, or action desired and the grounds therefor. Memoranda in support of, or in opposition to, any dispositive motion shall not exceed 10,000 words. Memoranda in support of, or in opposition to, any other motion shall not exceed 2,500 words. Any reply in support of a dispositive motion shall not exceed 5,000 words and any reply in support of any other motion authorized by the Administrative Law Judge or the Commission shall not exceed 1,250 words.

If a party chooses to submit a motion without a separate memorandum, the word count limits of 3.22(c) apply to the motion. If a party chooses to submit a motion with a separate memorandum, absent prior approval of the ALJ, the motion shall be limited to 750 words, and the word count limits of 3.22(c) apply to the memorandum in support of the motion. This provision applies to all motions filed with the Administrative Law Judge, including those filed under Rule 3.38.

6. If papers filed with the Office of the Secretary contain *in camera* or confidential material, the filing party shall mark any such material in the complete version of their submission with **{bold font and braces}**. 16 C.F.R. § 3.45(e). Parties shall be aware of the rules for filings containing such information, including 16 C.F.R. § 4.2.

7. If a party intends to offer confidential materials of an opposing party or non-party as evidence at the hearing, in providing notice to such non-party, the parties are

required to inform each non-party of the strict standards for motions for *in camera* treatment for evidence to be introduced at trial set forth in 16 C.F.R. § 3.45, explained in *In re Jerk, LLC*, 2015 FTC LEXIS (Feb. 23, 2015); *In re Basic Research, Inc.*, 2006 FTC LEXIS 14 (Jan. 25, 2006); *In re Hoechst Marion Roussel, Inc.*, 2000 FTC LEXIS 157 (Nov. 22, 2000) and 2000 FTC LEXIS 138 (Sept. 19, 2000); and *In re Dura Lube Corp.*, 1999 FTC LEXIS 255 (Dec. 23, 1999). Motions also must be supported by a declaration or affidavit by a person qualified to explain the confidential nature of the documents. *In re North Texas Specialty Physicians*, 2004 FTC LEXIS 66 (April 23, 2004). Each party or non-party that files a motion for *in camera* treatment shall provide one copy of the documents for which *in camera* treatment is sought to the Administrative Law Judge.

8. If the expert reports prepared for either party contain confidential information that has been granted *in camera* treatment, the party shall prepare two versions of its expert report(s) in accordance with Additional Provision 6 of this Scheduling Order and 16 C.F.R. § 3.45(e).

9. Motions *in limine* are discouraged. Motion *in limine* refers "to any motion, whether made before or during trial, to exclude anticipated prejudicial evidence before the evidence is actually offered." *In re Daniel Chapter One*, 2009 FTC LEXIS 85, *18-20 (April 20, 2009) (citing *Luce v. United States*, 469 U.S. 38, 40 n.2 (1984)). Evidence should be excluded in advance of trial on a motion *in limine* only when the evidence is clearly inadmissible on all potential grounds. *Id.* (citing *Hawthorne Partners v. AT&T Technologies, Inc*., 831 F. Supp. 1398, 1400 (N.D. Ill. 1993); *Sec. Exch. Comm'n v. U.S. Environmental, Inc*., 2002 U.S. Dist. LEXIS 19701, at *5-6 (S.D.N.Y. Oct. 16, 2002)). Moreover, the risk of prejudice from giving undue weight to marginally relevant evidence is minimal in a bench trial such as this where the judge is capable of assigning appropriate weight to evidence.

10. Compliance with the scheduled end of discovery requires that the parties serve subpoenas and discovery requests sufficiently in advance of the discovery cut-off and that all responses and objections will be due on or before that date, unless otherwise noted. An objection to a document request must state whether any responsive materials are being withheld on the basis of that objection. An objection to part of a request must specify the part and permit inspection of the rest. Any motion to compel responses to discovery requests shall be filed within 30 days of service of the responses and/or objections to the discovery requests or within 14 days of reaching an impasse on resolving a discovery dispute, after the parties have engaged in good faith negotiations, whichever occurs last; except that no motion to compel may be filed more than 20 days after the close of discovery.

11. For discovery between the parties, each party is limited to 50 document requests, including all discrete subparts; 25 interrogatories, including all discrete subparts; and 50 requests for admissions, including all discrete subparts, except that there shall be no limit on the number of requests for admission for authentication and admissibility of exhibits. Any single interrogatory inquiring as to a request for admissions response may address only a single such response. There is no limit to the

number of sets of discovery requests the parties may issue, so long as the total number of each type of discovery request, including all subparts, does not exceed these limits. Within seven days of service of a document request, the parties shall confer about the format for the production of electronically stored information.

12. The deposition of any person may be recorded by videotape, provided that the deposing party notifies the deponent and all parties of its intention to record the deposition by videotape at least five days in advance of the deposition. No deposition, whether recorded by videotape or otherwise, may exceed a single, seven-hour day, unless otherwise agreed to by the parties or ordered by the Administrative Law Judge.

13. The parties shall serve upon one another, at the time of issuance, copies of all subpoenas *duces tecum* and subpoenas *ad testificandum*.

(a) For subpoenas *ad testificandum*, the party seeking the deposition shall consult with the other parties before the deposition date is scheduled. Each party shall make a good faith effort to accommodate the date on which a third-party deposition has been noticed. If a third party has received a subpoena duces tecum from either party, the deposition shall not be noticed for a date less than two weeks after each party has received a sufficient production from the third party. The parties need not separately notice the deposition of a non-party noticed by an opposing party.

Complaint Counsel's Position: The following redlined language to subparagraph (b) and subparagraph (c) should be included.

(b) At the request of any party, and with the exceptions noted below in (c), the time and allocation for a non-party deposition shall be divided evenly between the parties, but the noticing party may use any additional time not used by the opposing party. If no party makes such a request, cross-examination of the witness will be limited to one hour.

(c) For depositions of any entity that is a defendant in *In re Opana ER Antitrust Litigation*, Civil Action Nos. 14-10150, 14-07320, and 15-00269 (N.D. Ill.) (the "MDL Action"), or any employee or former employee of a defendant in the MDL Action, the time and allocation of the deposition shall be divided five and one-half hours (5½) to Complaint Counsel and one and one-half hours (1½) to Respondent. Complaint Counsel may use any additional time not used by Respondent.

Respondent's Position: The redlined language in subparagraph (b) and subparagraph (c) should not be included.

14. Non-parties shall provide copies or make available for inspection and copying of documents requested by subpoena to the party issuing the subpoena. The party that has requested documents from non-parties shall provide copies of the documents received from non-parties to the opposing party within three business days of receiving the documents. No deposition of a non-party shall be scheduled between the

time a non-party provides documents in response to a subpoena *duces tecum* to a party, and 3 business days after the party provides those documents to the other party, unless a shorter time is required by unforeseen logistical issues in scheduling the deposition, or a non-party produces those documents at the time of the deposition, as agreed to by all parties involved.

15. The final witness lists shall represent counsels' good faith designation of all potential witnesses who counsel reasonably expect may be called in their case-in-chief. Parties shall notify the opposing party promptly of changes in witness lists to facilitate completion of discovery within the dates of the scheduling order. The final proposed witness list may not include additional witnesses not listed in the preliminary witness lists previously exchanged unless by consent of all parties, or, if the parties do not consent, by an order of the Administrative Law Judge upon a showing of good cause.

16. The final exhibit lists shall represent counsels' good faith designation of all trial exhibits other than demonstrative, illustrative, or summary exhibits. Additional exhibits may be added after the submission of the final lists only by consent of all parties,

or, if the parties do not consent, by an order of the Administrative Law Judge upon a showing of good cause.

17. Witnesses shall not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. F.R.E. 602.

18. Witnesses not properly designated as expert witnesses shall not provide opinions beyond what is allowed in F.R.E. 701.

19. The parties are required to comply with Rule 3.31A and with the following:

(a) At the time an expert is first listed as a witness by a party, that party shall provide to the other party:

(i) materials fully describing or identifying the background and qualifications of the expert, all publications authored by the expert within the preceding ten years, and all prior cases in which the expert has testified or has been deposed within the preceding four years; and

(ii) transcripts of such testimony in the possession, custody, or control of the producing party or the expert, except that transcript sections that are under seal in a separate proceeding need not be produced.

(b) At the time an expert report is produced, the producing party shall provide to the other party all documents and other written materials relied upon by the expert in formulating an opinion in this case, subject to the provisions of 19(g), except that documents and materials already produced in the case need only be listed by Bates number.

(c) It shall be the responsibility of a party designating an expert witness to ensure that the expert witness is reasonably available for deposition in keeping with this Scheduling Order. Unless otherwise agreed to by the parties or ordered by the Administrative Law Judge, expert witnesses shall be deposed only once and each expert deposition shall be limited to one day for seven hours.

(d) Each expert report shall include a complete statement of all opinions to be expressed and the basis and reasons therefore; the data or other information considered by the expert in forming the opinions; any exhibits to be used as a summary of or support for the opinions; the qualifications of the expert; and the compensation to be paid for the study and testimony.

(e) A party may not discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of this litigation or preparation for hearing and who is not designated by a party as a testifying witness.

(f) At the time of service of the expert reports, a party shall provide opposing counsel:

(i) a list of all commercially-available computer programs used by the expert in the preparation of the report;

(ii) a copy of all data sets used by the expert, in native file format and processed data file format; and

(iii) all customized computer programs used by the expert in the preparation of the report or necessary to replicate the findings on which the expert report is based.

(g) Experts' disclosures and reports shall comply in all respects with Rule 3.31A, except that neither side must preserve or disclose:

(i) any form of communication or work product shared between any of the parties' counsel and their expert(s), or between any of the experts themselves;

(ii) any form of communication or work product shared between an expert(s) and persons assisting the expert(s);

(iii) expert's notes, unless they constitute the only record of a fact or an assumption relied upon by the expert in formulating an opinion in this case;

(iv) drafts of expert reports, analyses, or other work product; or

(v) data formulations, data runs, data analyses, or any database-related operations not relied upon by the expert in the opinions contained in his or her final report.

20. Properly admitted deposition testimony and properly admitted investigational hearing transcripts are part of the record and need not be read in open court. Videotape deposition excerpts that have been admitted in evidence may be presented in open court only upon prior approval by the Administrative Law Judge.

21. The parties shall provide one another, and the Administrative Law Judge, no later than 48 hours in advance, not including weekends and holidays, a list of all witnesses to be called on each day of hearing, subject to possible delays or other unforeseen circumstances.

22. The parties shall provide one another with copies of any demonstrative, illustrative or summary exhibits (other than those prepared for cross-examination) 24 hours before they are used with a witness.

23. Complaint Counsel's exhibits shall bear the designation CCX and Respondent's exhibits shall bear the designation RX or some other appropriate designation. Complaint Counsel's demonstrative exhibits shall bear the designation CCXD and Respondent's demonstrative exhibits shall bear the designation RXD or some other appropriate designation. Both sides shall number the first page of each exhibit with a single series of consecutive numbers. When an exhibit consists of more than one piece of paper, each page of the exhibit must bear a consecutive control number or some other consecutive page number. Additionally, parties must account for all their respective exhibit numbers. Any number not actually used at the hearing shall be designated "intentionally not used."

24. At the final prehearing conference, counsel will be required to introduce all exhibits they intend to introduce at trial. The parties shall confer and shall eliminate duplicative exhibits in advance of the final prehearing conference and, if necessary, during trial. For example, if CCX 100 and RX 200 are different copies of the same document, only one of those documents shall be offered into evidence. The parties shall agree in advance as to which exhibit number they intend to use. Counsel shall contact the court reporter regarding submission of exhibits.

From:	Albert, Bradley Scott
To:	OALJ
Cc:	Hassi, Ted; Antalics, Michael E.; Hendricks, Benjamin J.; Brogan, Eileen M.; Loughlin, Chuck; Schmidt, J. Maren; Weinstein, Rebecca
Subject:	Docket 9373 - Proposed Scheduling Order
Date:	Tuesday, February 14, 2017 2:59:32 PM
Attachments:	Joint Submission Regarding Proposed Scheduling Order (clean).docx Joint Submission Regarding Proposed Scheduling Order.docx

Dear Judge Chappell:

Attached are the proposed revisions to the Proposed Scheduling Order. This draft reflects combined proposals from Complaint Counsel and Respondent's Counsel in clean and redline formats. The only provision on which we have not reached agreement is in paragraph 13(c). Each side's respective proposal is reflected in the draft.

Respectfully submitted,

Bradley Albert
On behalf of Complaint Counsel

Exhibit H

PUBLIC

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

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

[PROPOSED]
SCHEDULING ORDER

March 21, 2017	-	Complaint Counsel provides preliminary witness list (not including experts) with a brief summary of the proposed testimony.
April 4, 2017	-	Respondent's Counsel provides preliminary witness list (not including experts) with a brief summary of the proposed testimony.
May 30, 2017	-	Deadline for issuing document requests, interrogatories and subpoenas *duces tecum*, except for discovery for purposes of authenticity and admissibility of exhibits.
June 5, 2017	-	Complaint Counsel provides expert witness list.
June 19, 2017	-	Deadline for issuing requests for admissions, except for requests for admissions for purposes of authenticity and admissibility of exhibits.
June 23, 2017	-	Respondent's Counsel provides expert witness list.
July 7, 2017	-	Close of discovery, other than discovery permitted under Rule 3.24(a)(4), depositions of experts, and discovery for purposes of authenticity and admissibility of exhibits.
July 14, 2017	-	Deadline for Complaint Counsel to provide expert witness reports.

August 1, 2017	-	Deadline for Respondent's Counsel to provide expert witness reports (to be provided by 4 p.m. ET). Respondent's expert report shall include (without limitation) rebuttal, if any, to Complaint Counsel's expert witness report(s).
August 9, 2017	-	Complaint Counsel provides to Respondent's Counsel its final proposed witness and exhibit lists, including depositions, copies of all exhibits (except for demonstrative, illustrative or summary exhibits and expert related exhibits), Complaint Counsel's basis of admissibility for each proposed exhibit, and a brief summary of the testimony of each witness. Complaint Counsel serves courtesy copies on ALJ of its final proposed witness and exhibit lists, its basis of admissibility for each proposed exhibit, and a brief summary of the testimony of each witness, including its expert witnesses.
August 16, 2017	-	Complaint Counsel to identify rebuttal expert(s) and provide rebuttal expert report(s). Any such reports are to be limited to rebuttal of matters set forth in Respondent's expert reports. If material outside the scope of fair rebuttal is presented, Respondent will have the right to seek appropriate relief (such as striking Complaint Counsel's rebuttal expert reports or seeking leave to submit surrebuttal expert reports on behalf of Respondent).
August 22, 2017	-	Respondent's Counsel provides to Complaint Counsel its final proposed witness and exhibit lists, including depositions, copies of all exhibits (except for demonstrative, illustrative or summary exhibits and expert related exhibits), Respondent's basis of admissibility for each proposed exhibit, and a brief summary of the testimony of each witness. Respondent's Counsel serves courtesy copies on ALJ its final proposed witness and exhibit lists, its basis of admissibility for each proposed exhibit, and a brief summary of the testimony of each witness, including its expert witnesses.
August 23, 2017	-	Parties that intend to offer confidential materials of an opposing party or non-party as evidence at the hearing must provide notice to the opposing party or non-party, pursuant

		to 16 C.F.R. § 3.45(b).[1] *See* Additional Provision 7.
August 28, 2017	-	Deadline for depositions of experts (including rebuttal experts) and exchange of expert related exhibits.
August 30, 2017	-	Deadline for filing motions *in limine* to preclude admission of evidence. *See* Additional Provision 9.
August 30, 2017	-	Exchange and serve courtesy copy on ALJ objections to final proposed witness lists and exhibit lists.
September 5, 2017	-	Deadline for filing motions for *in camera* treatment of proposed trial exhibits.
September 5, 2017	-	Complaint Counsel files pretrial brief supported by legal authority.
September 5, 2017	-	Deadline for filing responses to motions *in limine* to preclude admissions of evidence.
September 6, 2017	-	Exchange proposed stipulations of law, facts, and authenticity.
September 8, 2017	-	Deadline for filing responses to motions for *in camera* treatment of proposed trial exhibits.
September 12, 2017	-	Respondent's Counsel files pretrial brief supported by legal authority.
September 14, 2017	-	Final prehearing conference to begin at 10:00 a.m. in FTC Courtroom, Room 532, Federal Trade Commission Building, 600 Pennsylvania Avenue, NW, Washington, DC 20580. The parties shall meet and confer prior to the prehearing conference regarding trial logistics and proposed stipulations of law, facts, and authenticity of exhibits. To the extent the parties have agreed to stipulate to any

[1] Appendix A to Commission Rule 3.31, the Standard Protective Order, states that if a party or third party wishes *in camera* treatment for a document or transcript that a party intends to introduce into evidence, that party or third party shall file an appropriate motion with the Administrative Law Judge within 5 days after it receives notice of a party's intent to introduce such material. Commission Rule 3.45(b) states that parties who seek to use material obtained from a third party subject to confidentiality restrictions must demonstrate that the third party has been given at least 10 days' notice of the proposed use of such material. To resolve this apparent conflict, the Scheduling Order requires that the parties provide 10 days' notice to the opposing party or third parties to allow for the filing of motions for *in camera* treatment.

issues of law, facts, and/or authenticity of exhibits, the parties shall prepare a list of such stipulations and submit a copy of the stipulations to the ALJ prior to the conference. At the conference, the parties' list of stipulations shall be marked as "JX1" and signed by each party, and the list shall be offered into evidence as a joint exhibit. No signature by the ALJ is required. Any subsequent stipulations may be offered as agreed by the parties.

Counsel may present any objections to the final proposed witness lists and exhibits. Trial exhibits will be admitted or excluded to the extent practicable. To the extent the parties agree to the admission of each other's exhibits, the parties shall prepare a list identifying each exhibit to which admissibility is agreed, marked as "JX2" and signed by each party, which list shall be offered into evidence as a joint exhibit. No signature by the ALJ is required.

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14. Non-parties shall provide copies or make available for inspection and copying of documents requested by subpoena to the party issuing the subpoena. The party that has requested documents from non-parties shall provide copies of the documents received from non-parties to the opposing party within three business days of receiving the documents. No deposition of a non-party shall be scheduled between the

time a non-party provides documents in response to a subpoena *duces tecum* to a party, and 3 business days after the party provides those documents to the other party, unless a shorter time is required by unforeseen logistical issues in scheduling the deposition, or a non-party produces those documents at the time of the deposition, as agreed to by all parties involved.

15. The final witness lists shall represent counsels' good faith designation of all potential witnesses who counsel reasonably expect may be called in their case-in-chief. Parties shall notify the opposing party promptly of changes in witness lists to facilitate completion of discovery within the dates of the scheduling order. The final proposed witness list may not include additional witnesses not listed in the preliminary witness lists previously exchanged unless by consent of all parties, or, if the parties do not consent, by an order of the Administrative Law Judge upon a showing of good cause.

16. The final exhibit lists shall represent counsels' good faith designation of all trial exhibits other than demonstrative, illustrative, or summary exhibits. Additional exhibits may be added after the submission of the final lists only by consent of all parties,

or, if the parties do not consent, by an order of the Administrative Law Judge upon a showing of good cause.

17. Witnesses shall not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. F.R.E. 602.

18. Witnesses not properly designated as expert witnesses shall not provide opinions beyond what is allowed in F.R.E. 701.

19. The parties are required to comply with Rule 3.31A and with the following:

(a) At the time an expert is first listed as a witness by a party, that party shall provide to the other party:

(i) materials fully describing or identifying the background and qualifications of the expert, all publications authored by the expert within the preceding ten years, and all prior cases in which the expert has testified or has been deposed within the preceding four years; and

(ii) transcripts of such testimony in the possession, custody, or control of the producing party or the expert, except that transcript sections that are under seal in a separate proceeding need not be produced.

(b) At the time an expert report is produced, the producing party shall provide to the other party all documents and other written materials relied upon by the expert in formulating an opinion in this case, subject to the provisions of 19(g), except that documents and materials already produced in the case need only be listed by Bates number.

(c) It shall be the responsibility of a party designating an expert witness to ensure that the expert witness is reasonably available for deposition in keeping with this Scheduling Order. Unless otherwise agreed to by the parties or ordered by the Administrative Law Judge, expert witnesses shall be deposed only once and each expert deposition shall be limited to one day for seven hours.

(d) Each expert report shall include a complete statement of all opinions to be expressed and the basis and reasons therefore; the data or other information considered by the expert in forming the opinions; any exhibits to be used as a summary of or support for the opinions; the qualifications of the expert; and the compensation to be paid for the study and testimony.

(e) A party may not discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of this litigation or preparation for hearing and who is not designated by a party as a testifying witness.

(f) At the time of service of the expert reports, a party shall provide opposing counsel:

(i) a list of all commercially-available computer programs used by the expert in the preparation of the report;

(ii) a copy of all data sets used by the expert, in native file format and processed data file format; and

(iii) all customized computer programs used by the expert in the preparation of the report or necessary to replicate the findings on which the expert report is based.

(g) Experts' disclosures and reports shall comply in all respects with Rule 3.31A, except that neither side must preserve or disclose:

(i) any form of communication or work product shared between any of the parties' counsel and their expert(s), or between any of the experts themselves;

(ii) any form of communication or work product shared between an expert(s) and persons assisting the expert(s);

(iii) expert's notes, unless they constitute the only record of a fact or an assumption relied upon by the expert in formulating an opinion in this case;

(iv) drafts of expert reports, analyses, or other work product; or

(v) data formulations, data runs, data analyses, or any database-related operations not relied upon by the expert in the opinions contained in his or her final report.

20. Properly admitted deposition testimony and properly admitted investigational hearing transcripts are part of the record and need not be read in open court. Videotape deposition excerpts that have been admitted in evidence may be presented in open court only upon prior approval by the Administrative Law Judge.

21. The parties shall provide one another, and the Administrative Law Judge, no later than 48 hours in advance, not including weekends and holidays, a list of all witnesses to be called on each day of hearing, subject to possible delays or other unforeseen circumstances.

22. The parties shall provide one another with copies of any demonstrative, illustrative or summary exhibits (other than those prepared for cross-examination) 24 hours before they are used with a witness.

23. Complaint Counsel's exhibits shall bear the designation CCX and Respondent's exhibits shall bear the designation RX or some other appropriate designation. Complaint Counsel's demonstrative exhibits shall bear the designation CCXD and Respondent's demonstrative exhibits shall bear the designation RXD or some other appropriate designation. Both sides shall number the first page of each exhibit with a single series of consecutive numbers. When an exhibit consists of more than one piece of paper, each page of the exhibit must bear a consecutive control number or some other consecutive page number. Additionally, parties must account for all their respective exhibit numbers. Any number not actually used at the hearing shall be designated "intentionally not used."

24. At the final prehearing conference, counsel will be required to introduce all exhibits they intend to introduce at trial. The parties shall confer and shall eliminate duplicative exhibits in advance of the final prehearing conference and, if necessary, during trial. For example, if CCX 100 and RX 200 are different copies of the same document, only one of those documents shall be offered into evidence. The parties shall agree in advance as to which exhibit number they intend to use. Counsel shall contact the court reporter regarding submission of exhibits.

Exhibit I

PUBLIC

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

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

[PROPOSED]
SCHEDULING ORDER

March 21, 2017	-	Complaint Counsel provides preliminary witness list (not including experts) with a brief summary of the proposed testimony.
April 4, 2017	-	Respondent's Counsel provides preliminary witness list (not including experts) with a brief summary of the proposed testimony.
May 30, 2017	-	Deadline for issuing document requests, interrogatories and subpoenas *duces tecum*, except for discovery for purposes of authenticity and admissibility of exhibits.
June 5, 2017	-	Complaint Counsel provides expert witness list.
June 19, 2017	-	Deadline for issuing requests for admissions, except for requests for admissions for purposes of authenticity and admissibility of exhibits.
June 23, 2017	-	Respondent's Counsel provides expert witness list.
July 7, 2017	-	Close of discovery, other than discovery permitted under Rule 3.24(a)(4), depositions of experts, and discovery for purposes of authenticity and admissibility of exhibits.
July 14~~21~~, 2017	-	Deadline for Complaint Counsel to provide expert witness reports.

August 14, 2017	-	Deadline for Respondent's Counsel to provide expert witness reports (to be provided by 4 p.m. ET). Respondent's expert report shall include (without limitation) rebuttal, if any, to Complaint Counsel's expert witness report(s).
August 9, 2017	-	Complaint Counsel provides to Respondent's Counsel its final proposed witness and exhibit lists, including depositions, copies of all exhibits (except for demonstrative, illustrative or summary exhibits and expert related exhibits), Complaint Counsel's basis of admissibility for each proposed exhibit, and a brief summary of the testimony of each witness. Complaint Counsel serves courtesy copies on ALJ of its final proposed witness and exhibit lists, its basis of admissibility for each proposed exhibit, and a brief summary of the testimony of each witness, including its expert witnesses.
August 16, 2017	-	Complaint Counsel to identify rebuttal expert(s) and provide rebuttal expert report(s). Any such reports are to be limited to rebuttal of matters set forth in Respondent's expert reports. If material outside the scope of fair rebuttal is presented, Respondent will have the right to seek appropriate relief (such as striking Complaint Counsel's rebuttal expert reports or seeking leave to submit surrebuttal expert reports on behalf of Respondent).
August 22, 2017	-	Respondent's Counsel provides to Complaint Counsel its final proposed witness and exhibit lists, including depositions, copies of all exhibits (except for demonstrative, illustrative or summary exhibits and expert related exhibits), Respondent's basis of admissibility for each proposed exhibit, and a brief summary of the testimony of each witness. Respondent's Counsel serves courtesy copies on ALJ its final proposed witness and exhibit lists, its basis of admissibility for each proposed exhibit, and a brief summary of the testimony of each witness, including its expert witnesses.
August 23, 2017	-	Parties that intend to offer confidential materials of an opposing party or non-party as evidence at the hearing must provide notice to the opposing party or non-party, pursuant

		to 16 C.F.R. § 3.45(b).[1] *See* Additional Provision 7.
August 28, 2017	-	Deadline for depositions of experts (including rebuttal experts) and exchange of expert related exhibits.
August 30, 2017	-	Deadline for filing motions *in limine* to preclude admission of evidence. *See* Additional Provision 9.
August 30, 2017	-	Exchange and serve courtesy copy on ALJ objections to final proposed witness lists and exhibit lists.
September 5, 2017	-	Deadline for filing motions for *in camera* treatment of proposed trial exhibits.
September 5, 2017	-	Complaint Counsel files pretrial brief supported by legal authority.
September 5, 2017	-	Deadline for filing responses to motions *in limine* to preclude admissions of evidence.
September 6, 2017	-	Exchange proposed stipulations of law, facts, and authenticity.
September 8, 2017	-	Deadline for filing responses to motions for *in camera* treatment of proposed trial exhibits.
September 12, 2017	-	Respondent's Counsel files pretrial brief supported by legal authority.
September 14, 2017	-	Final prehearing conference to begin at 10:00 a.m. in FTC Courtroom, Room 532, Federal Trade Commission Building, 600 Pennsylvania Avenue, NW, Washington, DC 20580. The parties shall meet and confer prior to the prehearing conference regarding trial logistics and proposed stipulations of law, facts, and authenticity of exhibits. To the extent the parties have agreed to stipulate to any

[1] Appendix A to Commission Rule 3.31, the Standard Protective Order, states that if a party or third party wishes *in camera* treatment for a document or transcript that a party intends to introduce into evidence, that party or third party shall file an appropriate motion with the Administrative Law Judge within 5 days after it receives notice of a party's intent to introduce such material. Commission Rule 3.45(b) states that parties who seek to use material obtained from a third party subject to confidentiality restrictions must demonstrate that the third party has been given at least 10 days' notice of the proposed use of such material. To resolve this apparent conflict, the Scheduling Order requires that the parties provide 10 days' notice to the opposing party or third parties to allow for the filing of motions for *in camera* treatment.

issues of law, facts, and/or authenticity of exhibits, the parties shall prepare a list of such stipulations and submit a copy of the stipulations to the ALJ prior to the conference. At the conference, the parties' list of stipulations shall be marked as "JX1" and signed by each party, and the list shall be offered into evidence as a joint exhibit. No signature by the ALJ is required. Any subsequent stipulations may be offered as agreed by the parties.

Counsel may present any objections to the final proposed witness lists and exhibits. Trial exhibits will be admitted or excluded to the extent practicable. To the extent the parties agree to the admission of each other's exhibits, the parties shall prepare a list identifying each exhibit to which admissibility is agreed, marked as "JX2" and signed by each party, which list shall be offered into evidence as a joint exhibit. No signature by the ALJ is required.

September 19, 2017 - Commencement of Hearing, to begin at 10:00 a.m. in FTC Courtroom, Room 532, Federal Trade Commission Building, 600 Pennsylvania Avenue, NW, Washington, DC 20580.

ADDITIONAL PROVISIONS

1. For all papers that are required to be filed with the Office of the Secretary, the parties shall serve a courtesy copy on the Administrative Law Judge by electronic mail to the following email address: oalj@ftc.gov. The courtesy copy should be transmitted at or shortly after the time of any electronic filing with the Office of the Secretary. Courtesy copies must be transmitted to Office of the Administrative Law Judge directly, and the FTC E-filing system shall not be used for this purpose. The oalj@ftc.gov email account is to be used only for courtesy copies of pleadings filed with the Office of the Secretary and for documents specifically requested of the parties by the Office of Administrative Law Judges. Certificates of service for any pleading shall not include the OALJ email address, or the email address of any OALJ personnel, including the Chief ALJ, but rather shall designate only 600 Pennsylvania Ave., NW, Rm. H-110 as the place of service. **The subject line of all electronic submissions to oalj@ftc.gov shall set forth only the docket number and the title of the submission**. The parties are not required to serve a courtesy copy to the OALJ in hard copy, except upon request. In any instance in which a courtesy copy of a pleading for the Administrative Law Judge cannot be effectuated by electronic mail, counsel shall hand deliver a hard copy to the Office of Administrative Law Judges. Discovery requests and discovery responses shall not be submitted to the Office of Administrative Law Judges.

2. The parties shall serve each other by electronic mail and shall include "Docket 9373" in the re: line and all attached documents in .pdf format. In the event that service through electronic mail is not possible, the parties may serve each other through any method authorized under the Commission's Rules of Practice.

3. Each pleading that cites to unpublished opinions or opinions not available on LEXIS or WESTLAW shall include such copies as exhibits.

4. Each motion (other than a motion to dismiss, motion for summary decision, or a motion for *in camera* treatment) shall be accompanied by a separate signed statement representing that counsel for the moving party has conferred with opposing counsel in an effort in good faith to resolve by agreement the issues raised by the motion and has been unable to reach such an agreement. In addition, pursuant to Rule 3.22(g), for each motion to quash filed pursuant to § 3.34(c), each motion to compel or determine sufficiency pursuant to § 3.38(a), or each motion for sanctions pursuant to § 3.38(b), the required signed statement must also "recite the date, time, and place of each . . . conference between counsel, and the names of all parties participating in each such conference." Motions that fail to include such separate statement may be denied on that ground.

5. Rule 3.22(c) states:

> All written motions shall state the particular order, ruling, or action desired and the grounds therefor. Memoranda in support of, or in opposition to, any dispositive motion shall not exceed 10,000 words. Memoranda in support of, or in opposition to, any other motion shall not exceed 2,500 words. Any reply in support of a dispositive motion shall not exceed 5,000 words and any reply in support of any other motion authorized by the Administrative Law Judge or the Commission shall not exceed 1,250 words.

If a party chooses to submit a motion without a separate memorandum, the word count limits of 3.22(c) apply to the motion. If a party chooses to submit a motion with a separate memorandum, absent prior approval of the ALJ, the motion shall be limited to 750 words, and the word count limits of 3.22(c) apply to the memorandum in support of the motion. This provision applies to all motions filed with the Administrative Law Judge, including those filed under Rule 3.38.

6. If papers filed with the Office of the Secretary contain *in camera* or confidential material, the filing party shall mark any such material in the complete version of their submission with **{bold font and braces}**. 16 C.F.R. § 3.45(e). Parties shall be aware of the rules for filings containing such information, including 16 C.F.R. § 4.2.

7. If a party intends to offer confidential materials of an opposing party or non-party as evidence at the hearing, in providing notice to such non-party, the parties are

required to inform each non-party of the strict standards for motions for *in camera* treatment for evidence to be introduced at trial set forth in 16 C.F.R. § 3.45, explained in *In re Jerk, LLC*, 2015 FTC LEXIS (Feb. 23, 2015); *In re Basic Research, Inc.*, 2006 FTC LEXIS 14 (Jan. 25, 2006); *In re Hoechst Marion Roussel, Inc.*, 2000 FTC LEXIS 157 (Nov. 22, 2000) and 2000 FTC LEXIS 138 (Sept. 19, 2000); and *In re Dura Lube Corp.*, 1999 FTC LEXIS 255 (Dec. 23, 1999). Motions also must be supported by a declaration or affidavit by a person qualified to explain the confidential nature of the documents. *In re North Texas Specialty Physicians*, 2004 FTC LEXIS 66 (April 23, 2004). Each party or non-party that files a motion for *in camera* treatment shall provide one copy of the documents for which *in camera* treatment is sought to the Administrative Law Judge.

8. If the expert reports prepared for either party contain confidential information that has been granted *in camera* treatment, the party shall prepare two versions of its expert report(s) in accordance with Additional Provision 6 of this Scheduling Order and 16 C.F.R. § 3.45(e).

9. Motions *in limine* are discouraged. Motion *in limine* refers "to any motion, whether made before or during trial, to exclude anticipated prejudicial evidence before the evidence is actually offered." *In re Daniel Chapter One*, 2009 FTC LEXIS 85, *18-20 (April 20, 2009) (citing *Luce v. United States*, 469 U.S. 38, 40 n.2 (1984)). Evidence should be excluded in advance of trial on a motion *in limine* only when the evidence is clearly inadmissible on all potential grounds. *Id.* (citing *Hawthorne Partners v. AT&T Technologies, Inc.*, 831 F. Supp. 1398, 1400 (N.D. Ill. 1993); *Sec. Exch. Comm'n v. U.S. Environmental, Inc.*, 2002 U.S. Dist. LEXIS 19701, at *5-6 (S.D.N.Y. Oct. 16, 2002)). Moreover, the risk of prejudice from giving undue weight to marginally relevant evidence is minimal in a bench trial such as this where the judge is capable of assigning appropriate weight to evidence.

10. Compliance with the scheduled end of discovery requires that the parties serve subpoenas and discovery requests sufficiently in advance of the discovery cut-off and that all responses and objections will be due on or before that date, unless otherwise noted. An objection to a document request must state whether any responsive materials are being withheld on the basis of that objection. An objection to part of a request must specify the part and permit inspection of the rest. Any motion to compel responses to discovery requests shall be filed within 30 days of service of the responses and/or objections to the discovery requests~~, within 20 days after the close of discovery,~~ or within 14~~5~~ days of reaching an impasse on resolving a discovery dispute, after the parties have engaged in good faith negotiations, whichever ~~first~~ occurs last; except that no motion to compel may be filed more than ~~.~~ 20 days after the close of discovery.

11. For discovery between the parties, each party is limited to 50 document requests, including all discrete subparts; 25 interrogatories, including all discrete subparts; and 50 requests for admissions, including all discrete subparts, except that there shall be no limit on the number of requests for admission for authentication and admissibility of exhibits. Any single interrogatory inquiring as to a request for admissions response may address only a single such response. There is no limit to the

number of sets of discovery requests the parties may issue, so long as the total number of each type of discovery request, including all subparts, does not exceed these limits. Within seven days of service of a document request, the parties shall confer about the format for the production of electronically stored information.

12. The deposition of any person may be recorded by videotape, provided that the deposing party notifies the deponent and all parties of its intention to record the deposition by videotape at least five days in advance of the deposition. No deposition, whether recorded by videotape or otherwise, may exceed a single, seven-hour day, unless otherwise agreed to by the parties or ordered by the Administrative Law Judge.

13. The parties shall serve upon one another, at the time of issuance, copies of all subpoenas *duces tecum* and subpoenas *ad testificandum*.

(a) For subpoenas *ad testificandum*, the party seeking the deposition shall consult with the other parties before the deposition date is scheduled. Each party shall make a good faith effort to accommodate the date on which a third-party deposition has been noticed. If a third party has received a subpoena duces tecum from either party, the deposition shall not be noticed for a date less than two weeks after each party has received a sufficient production from the third party. The parties need not separately notice the deposition of a non-party noticed by an opposing party.

Complaint Counsel's Position: The following redlined language to subparagraph (b) and subparagraph (c) should be included.

(b) At the request of any party, and with the exceptions noted below in (c), the time and allocation for a non-party deposition shall be divided evenly between the parties, but the noticing party may use any additional time not used by the opposing party. If no party makes such a request, cross-examination of the witness will be limited to one hour.

(c) For depositions of any entity that is a defendant in *In re Opana ER Antitrust Litigation*, Civil Action Nos. 14-10150, 14-07320, and 15-00269 (N.D. Ill.) (the "MDL Action"), or any employee or former employee of a defendant in the MDL Action, the time and allocation of the deposition shall be divided five and one-half hours (5½) to Complaint Counsel and one and one-half hours (1½) to Respondent. Complaint Counsel may use any additional time not used by Respondent.

Respondent's Position: The redlined language in subparagraph (b) and subparagraph (c) should not be included.

14. Non-parties shall provide copies or make available for inspection and copying of documents requested by subpoena to the party issuing the subpoena. The party that has requested documents from non-parties shall provide copies of the documents received from non-parties to the opposing party within three business days of receiving the documents. No deposition of a non-party shall be scheduled between the

time a non-party provides documents in response to a subpoena *duces tecum* to a party, and 3 business days after the party provides those documents to the other party, unless a shorter time is required by unforeseen logistical issues in scheduling the deposition, or a non-party produces those documents at the time of the deposition, as agreed to by all parties involved.

15. The final witness lists shall represent counsels' good faith designation of all potential witnesses who counsel reasonably expect may be called in their case-in-chief. Parties shall notify the opposing party promptly of changes in witness lists to facilitate completion of discovery within the dates of the scheduling order. The final proposed witness list may not include additional witnesses not listed in the preliminary witness lists previously exchanged unless by consent of all parties, or, if the parties do not consent, by an order of the Administrative Law Judge upon a showing of good cause.

16. The final exhibit lists shall represent counsels' good faith designation of all trial exhibits other than demonstrative, illustrative, or summary exhibits. Additional exhibits may be added after the submission of the final lists only by consent of all parties,

or, if the parties do not consent, by an order of the Administrative Law Judge upon a showing of good cause.

17. Witnesses shall not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. F.R.E. 602.

18. Witnesses not properly designated as expert witnesses shall not provide opinions beyond what is allowed in F.R.E. 701.

19. The parties are required to comply with Rule 3.31A and with the following:

(a) At the time an expert is first listed as a witness by a party, that party shall provide to the other party:

(i) materials fully describing or identifying the background and qualifications of the expert, all publications authored by the expert within the preceding ten years, and all prior cases in which the expert has testified or has been deposed within the preceding four years; and

(ii) transcripts of such testimony in the possession, custody, or control of the producing party or the expert, except that transcript sections that are under seal in a separate proceeding need not be produced.

(b) At the time an expert report is produced, the producing party shall provide to the other party all documents and other written materials relied upon by the expert in formulating an opinion in this case, subject to the provisions of 19(g), except that documents and materials already produced in the case need only be listed by Bates number.

(c) It shall be the responsibility of a party designating an expert witness to ensure that the expert witness is reasonably available for deposition in keeping with this Scheduling Order. Unless otherwise agreed to by the parties or ordered by the Administrative Law Judge, expert witnesses shall be deposed only once and each expert deposition shall be limited to one day for seven hours.

(d) Each expert report shall include a complete statement of all opinions to be expressed and the basis and reasons therefore; the data or other information considered by the expert in forming the opinions; any exhibits to be used as a summary of or support for the opinions; the qualifications of the expert; and the compensation to be paid for the study and testimony.

(e) A party may not discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of this litigation or preparation for hearing and who is not designated by a party as a testifying witness.

(f) At the time of service of the expert reports, a party shall provide opposing counsel:

(i) a list of all commercially-available computer programs used by the expert in the preparation of the report;

(ii) a copy of all data sets used by the expert, in native file format and processed data file format; and

(iii) all customized computer programs used by the expert in the preparation of the report or necessary to replicate the findings on which the expert report is based.

(g) Experts' disclosures and reports shall comply in all respects with Rule 3.31A, except that neither side must preserve or disclose:

(i) any form of communication or work product shared between any of the parties' counsel and their expert(s), or between any of the experts themselves;

(ii) any form of communication or work product shared between an expert(s) and persons assisting the expert(s);

(iii) expert's notes, unless they constitute the only record of a fact or an assumption relied upon by the expert in formulating an opinion in this case;

(iv) drafts of expert reports, analyses, or other work product; or

(v) data formulations, data runs, data analyses, or any database-related operations not relied upon by the expert in the opinions contained in his or her final report.

20. Properly admitted deposition testimony and properly admitted investigational hearing transcripts are part of the record and need not be read in open court. Videotape deposition excerpts that have been admitted in evidence may be presented in open court only upon prior approval by the Administrative Law Judge.

21. The parties shall provide one another, and the Administrative Law Judge, no later than 48 hours in advance, not including weekends and holidays, a list of all witnesses to be called on each day of hearing, subject to possible delays or other unforeseen circumstances.

22. The parties shall provide one another with copies of any demonstrative, illustrative or summary exhibits (other than those prepared for cross-examination) 24 hours before they are used with a witness.

23. Complaint Counsel's exhibits shall bear the designation CCX and Respondent's exhibits shall bear the designation RX or some other appropriate designation. Complaint Counsel's demonstrative exhibits shall bear the designation CCXD and Respondent's demonstrative exhibits shall bear the designation RXD or some other appropriate designation. Both sides shall number the first page of each exhibit with a single series of consecutive numbers. When an exhibit consists of more than one piece of paper, each page of the exhibit must bear a consecutive control number or some other consecutive page number. Additionally, parties must account for all their respective exhibit numbers. Any number not actually used at the hearing shall be designated "intentionally not used."

24. At the final prehearing conference, counsel will be required to introduce all exhibits they intend to introduce at trial. The parties shall confer and shall eliminate duplicative exhibits in advance of the final prehearing conference and, if necessary, during trial. For example, if CCX 100 and RX 200 are different copies of the same document, only one of those documents shall be offered into evidence. The parties shall agree in advance as to which exhibit number they intend to use. Counsel shall contact the court reporter regarding submission of exhibits.

Exhibit J

1410004

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 REQUESTS FOR PRODUCTION ISSUED TO IMPAX LABORATORIES, INC.

Pursuant to the Federal Trade Commission's Rule of Practice, 16 C.F.R. § 3.37, and the Definitions and Instructions set forth below, Complaint Counsel hereby requests that Respondent Impax Laboratories, Inc. ("Impax") produce within 30 days all documents, electronically stored information, and other things in its possession, custody, or control responsive to the following requests:

1. All discovery requests, documents produced in response to discovery requests (including written responses to discovery requests), correspondence regarding discovery requests, and transcripts and recordings of depositions given or taken in *In re Opana ER Antitrust Litigation*, Case Nos. 1:14-cv-10150, 1:14-cv-07320, and 15-cv-00269 (N.D. Ill.).

2. All documents relating to the discussion of or entry into any common interest or joint defense agreement(s) with Endo, including draft or final versions of any common interest or joint defense agreement(s), relating to: Generic Opana ER; Opana ER; the Opana ER Settlement Agreement; the Development and Co-Promotion Agreement; the FTC Endo Investigation, File No. 141-0004; *FTC v. Endo Pharmaceuticals Inc.*, Case No. 16-cv-01440 (E.D. Pa. filed Mar. 30, 2016); *Endo Pharmaceuticals Inc. v. FTC*, Case No. 16-cv-05600 (E.D. Pa. filed Oct. 26, 2016); or *In re Opana ER Antitrust Litigation*, Case Nos. 1:14-cv-10150, 1:14-cv-07320, and 15-cv-00269 (N.D. Ill.).

3. All documents relating to FDA Citizen Petition No. 2012-P-0895, FDA Citizen Petition No. 2012-P-0951, or *Endo Pharmaceuticals Inc. v. U.S. Food & Drug Admin.*, Case No. 12-cv-01936 (D.D.C. filed Nov. 30, 2012), including unredacted versions of all documents filed in those actions.

4. All documents relating to the interpretation, execution, or fulfillment of the Opana ER Settlement Agreement.

5. Complete, unredacted versions of each document identified in the privilege logs produced by Impax on August 13, 2014, September 5, 2014, and December 8, 2014 in response to

the Civil Investigative Demand issued to Impax on February 20, 2014, in connection with the FTC Endo Investigation, FTC File No. 141-0004.

6. All documents relating to any effort to secure third-party investment in the development, domestic distribution, or domestic promotion of IPX-066 or IPX-203, including investment by Endo.

7. All documents relating to the Development and Co-Promotion Agreement, including documents relating to performance or termination of the Agreement.

8. All documents prepared for, presented to, or discussed at a meeting of the Impax Board of Directors, and all documents relating to any discussion at a meeting of the Impax Board of Directors (including Impax Board of Directors meeting minutes) relating to:

    a. Generic Opana ER or Opana ER;

    b. the Opana ER Settlement Agreement or the Development and Co-Promotion Agreement; or

    c. a potential or actual At Risk launch of any product that is the subject of an ANDA or 505(b)(2) Application.

9. For all Opioid Products, submit separately, by branded and generic versions of each drug, on a monthly basis for each month from January 2009 to present:

    a. IMS National Sales Perspective (Retail and Non-Retail) data, or the equivalent thereof, by product form and by dosage strength, separately by customer channel, for total sales in dollars and extended units; and

    b. IMS National Prescription Audit data, or the equivalent thereof, by product form and by dosage strength, separately by customer channel, for newly dispensed prescriptions, refill dispensed prescriptions, and total dispensed prescriptions.

10. From January 2013 to present, submit documents sufficient to show the following sales transaction data for Generic Opana ER:

    a. Transaction date;

    b. Payor name;

    c. Type of Payor (including, but not limited to, Medicare Part D, Medicaid, commercial MCO, hospital);

    d. National Drug Code ("NDC");

    e. Wholesale Acquisition Cost ("WAC");

    f. Sales in dollars;

g. Units sold;

h. Chargebacks in dollars;

i. Coupons in dollars;

j. Discounts in dollars;

k. Rebates in dollars;

l. Medicaid rebates in dollars;

m. Returns in dollars; and

n. Units returned.

11. For each month from January 2013 until present, for Generic Opana ER, submit documents sufficient to show on a monthly basis Impax's:

a. Units sold;

b. Gross sales;

c. Each category of deduction from gross sales, including: (i) chargebacks; (ii) coupons; (iii) discounts; (iv) rebates; (v) Medicaid rebates; (vi) returns; and (vii) any other discounts tracked in the ordinary course of business, stated separately;

d. Net sales;

e. Each component of cost of goods sold, including: (i) active pharmaceutical ingredient ("API"); (ii) other ingredients; (iii) freight or shipping charges; (iv) storage; (v) direct labor; (vi) plant overhead; (vii) depreciation; and (viii) any other components of cost of goods sold tracked in the ordinary course of business, stated separately;

f. Gross margins;

g. Each category of other expenses separately, including: (i) promotional expenses; (ii) marketing expenses; (iii) detailing expenses; (iv) advertising expenses; (v) research and development expenses, and (vi) any other significant expenses related to or allocated to branded or generic Opana ER tracked in the ordinary course of business, stated separately; and

h. Net margins.

For any allocated expense, explain the method of allocation. Subparts (b) through (h) should be stated in dollars.

12. All documents containing or reflecting financial or economic valuation, analysis,

forecasts, or projected revenues or profits (including any drafts or iterations thereof) related to the Opana ER Settlement Agreement or the Development and Co-Promotion Agreement, or any proposal or earlier draft discussed or considered by Endo and Impax during the negotiations that resulted in the Opana ER Settlement Agreement or the Development and Co-Promotion Agreement.

13. All documents relating to forecasts or projections of Generic Opana ER sales (including dollar sales, unit sales, or pricing) or forecasts or projections of Impax's share of Generic Opana ER sales (including dollar or unit share).

14. All documents relating to Impax's pricing of Generic Opana ER, including documents relating to the price at launch and any plans or strategies to increase or reduce prices since the launch, for any dosage strength.

15. All documents relating to any consideration of, planning for, or preparations for Impax launching, being prepared to launch, or being capable of launching Generic Opana ER in 2010 or 2011, including any communications with purchasers, distributors, or wholesalers regarding the availability of Generic Opana ER.

16. For January 1, 2009 through December 31, 2011, all documents relating to the manufacturing of Generic Opana ER, preparations to manufacture Generic Opana ER, or the disposition of manufactured Generic Opana ER (including brite stock, finished goods, and packaging labels) or oxymorphone API, including documents relating to communications with suppliers, requests to the U.S. Drug Enforcement Agency for oxymorphone quota, cancellations of requests for oxymorphone quota, manufacturing scheduling, dedication of plant capacity, production schedules, and accounting for costs or losses incurred in the manufacture of Generic Opana ER.

17. All documents relating to the preparation of public statements (including forms filed with the U.S. Securities and Exchange Commission) regarding any part of the Opana ER Settlement Agreement or Development and Co-Promotion Agreement.

For the purpose of these Requests, the following definitions and instructions apply without regard to whether the defined terms used herein are capitalized or lowercase and without regard to whether they are used in the plural or singular forms:

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 term "505(b)(2) Application" means an application filed with the United States Food and Drug Administration pursuant to Section 505(b)(2) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. § 355(b)(2).

3. The term "agreement" means any oral or written contract, arrangement, or understanding, whether formal or informal, between two or more persons, together with all modifications or amendments thereto.

4. The term "ANDA" means Abbreviated New Drug Application, including any amendments or supplements thereto, as defined in Title I of the Drug Price Competition and Patent Term Restoration Act of 1984.

5. The term "At Risk" means sales of a generic product, covered in the FDA's Orange Book by one or more patents, without a license before an appeals court decision in any associated patent litigation.

6. The terms "and" and "or" have both conjunctive and disjunctive meanings.

7. The term "Computer Files" includes information stored in, or accessible through, computer or other information retrieval systems. Thus, the Company should produce Documents that exist in machine-readable form, including Documents stored in personal computers, portable computers, workstations, minicomputers, mainframes, servers, backup disks and tapes, archive disks and tapes, and other forms of offline storage, whether on or off company premises. If the Company believes that the required search of backup disks and tapes and archive disks and tapes can be narrowed in any way that is consistent with Complaint Counsel's need for Documents and information, you are encouraged to discuss a possible modification to this instruction with the Complaint Counsel identified on the last page of this request. Complaint Counsel will consider modifying this instruction to:

   a. exclude the search and production of files from backup disks and tapes and archive disks and tapes unless it appears that files are missing from files that exist in personal computers, portable computers, workstations, minicomputers, mainframes, and servers searched by Respondent;

   b. limit the portion of backup disks and tapes and archive disks and tapes that needs to be searched and produced to certain key individuals, or certain time periods or certain specifications identified by Complaint Counsel; or

   c. include other proposals consistent with Commission policy and the facts of the case.

8. The term "Containing" means containing, describing, or interpreting in whole or in part.

9. The term "Development and Co-Promotion Agreement" means the Development and Co-Promotion Agreement dated of June 7, 2010 by and between Impax Laboratories, Inc. and Endo Pharmaceuticals Inc.

10. The terms "Discuss" or "Discussing" mean in whole or in part constituting, Containing, describing, analyzing, explaining, or addressing the designated subject matter, regardless of the length of the treatment or detail of analysis of the subject matter, but not merely

referring to the designated subject matter without elaboration. A document that "Discusses" another document includes the other document itself.

11. The term "Documents" means all Computer Files and written, recorded, and graphic materials of every kind in the possession, custody, or control of Respondent. The term "Documents" includes, without limitation: electronic mail messages; electronic correspondence and drafts of documents; metadata and other bibliographic or historical data describing or Relating to documents created, revised, or distributed on computer systems; copies of documents that are not identical duplicates of the originals in that Person's files; and copies of documents the originals of which are not in the possession, custody, or control of Respondent.

    Unless otherwise specified, the term "Documents" excludes (a) bills of lading, invoices, purchase orders, customs declarations, and other similar documents of a purely transactional nature; (b) architectural Plans and engineering blueprints; and (c) documents solely Relating to environmental, tax, human resources, OSHA, or ERISA issues.

12. The term "Documents Sufficient to Show" means both documents that are necessary and documents that are sufficient to provide the specified information. If summaries, compilations, lists, or synopses are available that provide the information being requested, these may be provided in lieu of the underlying documents.

13. The terms "each," "any," and "all" mean "each and every."

14. 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.

15. The term "FTC Endo Investigation" means the FTC's investigation of Endo Pharmaceuticals Inc., *et al.*, FTC File No. 141-0004.

16. The term "Generic Opana ER" means any extended-release tablet that contains oxymorphone hydrochloride as its active ingredient, other than a product sold under the Opana ER trademark. Any ANDA product seeking FDA approval and referencing Original Opana ER (NDA No. 021610) or Reformulated Opana ER (NDA No. 201655) is included in the definition of Generic Opana ER.

17. The term "NDA" means New Drug Application, as defined in Title I of the Drug Price Competition and Patent Term Restoration Act of 1984.

18. The term "Opana ER" includes both Original Opana ER and Reformulated Opana ER.

19. The term "Opana ER Settlement Agreement" means the Settlement and License Agreement between Endo, Penwest, and Impax signed on June 7, 2010, and effective on June 8, 2010.

20. The term "Original Opana ER" means all dosage strengths of the drug product covered by NDA No. 021610.

21. The term "Payor" means any party with which the Company has entered into a contract for the sale of Generic Opana ER, including but not limited to wholesalers, distributors, pharmacy benefit managers and health plans.

22. The term "Penwest" means Penwest Pharmaceuticals Co., together with its predecessors, divisions, wholly- or partially-owned subsidiaries, domestic or foreign parents, affiliates, partnerships, and joint ventures; and all the directors, officers, employees, consultants, agents, and representatives of the foregoing.

23. 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.

24. The terms "Plan" or "Plans" mean proposals, strategies, recommendations, analyses, reports, or considerations, whether or not tentative, preliminary, precisely formulated, finalized, authorized, or adopted.

25. The term "Reformulated Opana ER" means all dosage strengths of the drug product covered by NDA No. 201655.

26. The terms "Relate" or "Relating to" mean in whole or in part Discussing, constituting, commenting, Containing, concerning, embodying, summarizing, reflecting, explaining, describing, analyzing, identifying, stating, referring to, dealing with, or in any way pertaining to.

27. The term "Opioid Products" means branded and generic versions of the following pharmaceutical products in all dosage strengths and delivery forms: fentanyl extended-release transdermal system; hydromorphone hydrochloride extended-release; morphine sulfate extended-release; morphine sulfate and naltrexone extended-release; oxycodone hydrochloride controlled-release; oxymorphone hydrochloride immediate release; oxymorphone hydrochloride extended-release; tapentadol extended-release.

INSTRUCTIONS

1. Unless otherwise indicated, each request covers documents and information dated, generated, received, or in effect from January 1, 2009, to the present.

2. Respondent need not produce responsive documents that Respondent has previously produced to the Commission in relation to the prior investigation, FTC No. 141-0004. **Respondent must produce all other responsive documents, including any otherwise**

responsive documents that may have been produced by Respondent to the Commission in relation to any other investigation conducted by the Commission.

3. This request for documents shall be deemed continuing in nature so as to require production of all documents responsive to any specification included in this request produced or obtained by Respondent up to forty-five (45) calendar days prior to the date of the Company's full compliance with this request.

4. Except for privileged material, the Company will produce each responsive document in its entirety by including all attachments and all pages, regardless of whether they directly relate to the specified subject matter. The Company should submit any appendix, table, or other attachment by either attaching it to the responsive document or clearly marking it to indicate the responsive document to which it corresponds. Except for privileged material, the Company will not redact, mask, cut, expunge, edit, or delete any responsive document or portion thereof in any manner.

5. Unless modified by agreement with Complaint Counsel, these Requests require a search of all documents in the possession, custody, or control of the Company including, without limitation, those documents held by any of the Company's officers, directors, employees, agents, representatives, or legal counsel, whether or not such documents are on the premises of the Company. If any person is unwilling to have his or her files searched, or is unwilling to produce responsive documents, the Company must provide the Complaint Counsel with the following information as to each such person: his or her name, address, telephone number, and relationship to the Company. In addition to hard copy documents, the search must include all of the Company's Electronically Stored Information.

6. Form of Production. The Company shall submit all documents as instructed below absent written consent signed by Complaint Counsel.

   a. Documents stored in electronic or hard copy formats in the ordinary course of business shall be submitted in the following electronic format provided that such copies are true, correct, and complete copies of the original documents:

      i. Submit Microsoft Excel, Access, and PowerPoint files in native format with extracted text and applicable metadata and information as described in subparts (a)(iii) and (a)(iv).

      ii. Submit emails in image format with extracted text and the following metadata and information:

Metadata/Document Information	**Description**
Beginning Bates number	The beginning bates number of the document.
Ending Bates number	The last bates number of the document.

Custodian	The name of the custodian of the file.
To	Recipient(s) of the email.
From	The person who authored the email.
CC	Person(s) copied on the email.
BCC	Person(s) blind copied on the email.
Subject	Subject line of the email.
Date Sent	Date the email was sent.
Time Sent	Time the email was sent.
Date Received	Date the email was received.
Time Received	Time the email was received.
Attachments	The Document ID of attachment(s).
Mail Folder Path	Location of email in personal folders, subfolders, deleted items or sent items.
Message ID	Microsoft Outlook Message ID or similar value in other message systems.

iii. Submit email attachments in image format, or native format if the file is one of the types identified in subpart (a)(i), with extracted text and the following metadata and information:

Metadata/Document Information	**Description**
Beginning Bates number	The beginning bates number of the document.
Ending Bates number	The last bates number of the document.
Custodian	The name of the custodian of the file.
Parent Email	The Document ID of the parent email.
Modified Date	The date the file was last changed and saved.
Modified Time	The time the file was last changed and saved.

Filename with extension	The name of the file including the extension denoting the application in which the file was created.
Production Link	Relative file path to production media of submitted native files. Example: FTC-001\NATIVE\001\FTC-00003090.xls.
Hash	The Secure Hash Algorithm (SHA) value for the original native file.

iv. Submit all other electronic documents in image format, or native format if the file is one of the types identified in subpart (a)(i), accompanied by extracted text and the following metadata and information:

Metadata/Document Information	**Description**
Beginning Bates number	The beginning bates number of the document.
Ending Bates number	The last bates number of the document.
Custodian	The name of the custodian of the file.
Modified Date	The date the file was last changed and saved.
Modified Time	The time the file was last changed and saved.
Filename with extension	The name of the file including the extension denoting the application in which the file was created.
Originating Path	File path of the file as it resided in its original environment.
Production Link	Relative file path to production media of submitted native files. Example: FTC-001\NATIVE\001\FTC-00003090.xls.
Hash	The Secure Hash Algorithm (SHA) value for the original native file.

v. Submit documents stored in hard copy in image format accompanied by OCR with the following information:

Metadata/Document Information	Description
Beginning Bates number	The beginning bates number of the document.
Ending Bates number	The last bates number of the document.
Custodian	The name of the custodian of the file.

vi. Submit redacted documents in PDF format accompanied by OCR with the metadata and information required by relevant document type in subparts (a)(i) through (a)(v) above. For example, if the redacted file was originally an attachment to an email, provide the metadata and information specified in subpart (a)(iii) above. Additionally, please provide a basis for each privilege claim as detailed in Instruction 6.

b. Submit data compilations in electronic format, specifically Microsoft Excel spreadsheets or delimited text formats such as CSV files, with all underlying data un-redacted and all underlying formulas and algorithms intact.

c. If the Company intends to utilize any electronic search terms, de-duplication or email threading software or services when collecting or reviewing information that is stored in the Company's computer systems or electronic storage media, or if the Company's computer systems contain or utilize such software, the Company must contact the Commission to determine, with the assistance of the appropriate Commission representative, whether and in what manner the Company may use such software or services when producing materials in response to this CID.

d. Produce electronic file and image submissions as follows:

i. For productions over 10 gigabytes, use IDE, EIDE, and SATA hard disk drives, formatted in Microsoft Windows-compatible, uncompressed data in a USB 2.0 external enclosure;

ii. For productions under 10 gigabytes, CD-R CD-ROM optical disks formatted to ISO 9660 specifications, DVD-ROM optical disks for Windows-compatible personal computers, and USB 2.0 Flash Drives are acceptable storage formats; and

iii. <u>All documents produced in electronic format shall be scanned for and free of viruses prior to submission. The Commission will return any infected media for replacement, which may affect the timing of the Company's compliance with this CID.</u>

iv. Encryption of productions using NIST FIPS-compliant cryptographic hardware or software modules, with passwords sent under separate cover, is strongly encouraged.[1]

e. Each production shall be submitted with a transmittal letter that includes the FTC matter number; production volume name; encryption method/software used; passwords for any password protected files; list of custodians and document identification number range for each; total number of documents; and a list of load file fields in the order in which they are organized in the load file.

7. All documents responsive to these requests:

a. Shall be produced in complete form, unredacted unless privileged, and in the order in which they appear in the Company's files;

b. Shall be marked on each page with corporate identification and consecutive document control numbers when produced in image format;

c. Shall be produced in color where necessary to interpret the document (if the coloring of any document communicates any substantive information, or if black and white photocopying or conversion to TIFF format of any document (e.g., a chart or graph) makes any substantive information contained in the document unintelligible, the Company must submit the original document, a like-color photocopy, or a JPEG format image);

d. Shall be accompanied by an affidavit of an officer of the Company stating that the copies are true, correct, and complete copies of the original documents; and

e. Shall be accompanied by an index that identifies (i) the name of each person from whom responsive documents are submitted; and (ii) the corresponding consecutive document control number(s) used to identify that person's documents. The Commission representative will provide a sample index upon request.

8. If any documents are withheld from production based on a claim of privilege, Respondent shall provide, pursuant to 16 C.F.R. § 3.38A, a schedule which describes the nature of documents, communications, or tangible things not produced or disclosed, in a manner that will enable Complaint Counsel to assess the claim of privilege.

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[1] The National Institute of Standards and Technology (NIST) issued Federal Information Processing Standard (FIPS) Publications 140-1 and 140-2, which detail certified cryptographic modules for use by the U.S. Federal government and other regulated industries that collect, store, transfer, share, and disseminate sensitive but unclassified information. More information about FIPS 140-1 and 140-2 can be found at http://csrc.nist.gov/publications/PubsFIPS.html.

9. If Respondent is unable to answer any question fully, supply such information as is available. Explain why such answer is incomplete, the efforts made by Respondent to obtain the information, and the source from which the complete answer may be obtained. If books and records that provide accurate answers are not available, enter best estimates and describe how the estimates were derived, including the sources or bases of such estimates. Estimated data should be followed by the notation "est." If there is no reasonable way for Respondent to make an estimate, provide an explanation.

10. If documents responsive to a particular specification no longer exist for reasons other than the ordinary course of business or the implementation of the Company's document retention policy but Respondent has reason to believe have been in existence, state the circumstances under which they were lost or destroyed, describe the documents to the fullest extent possible, state the specification(s) to which they are responsive, and identify Persons having knowledge of the content of such documents.

11. The Company must provide the Commission with a statement identifying the procedures used to collect and search for electronically stored documents and documents stored in paper format. The Company must also provide a statement identifying any electronic production tools or software packages utilized by the company in responding to this subpoena for: keyword searching, Technology Assisted Review, email threading, de-duplication, global de-duplication or near-de-duplication, and

    a. if the company utilized keyword search terms to identify documents and information responsive to this subpoena, provide a list of the search terms used for each custodian;

    b. if the company utilized Technology Assisted Review software;

        i. describe the collection methodology, including: how the software was utilized to identify responsive documents; the process the company utilized to identify and validate the seed set documents subject to manual review; the total number of documents reviewed manually; the total number of documents determined nonresponsive without manual review; the process the company used to determine and validate the accuracy of the automatic determinations of responsiveness and nonresponsiveness; how the company handled exceptions ("uncategorized documents"); and if the company's documents include foreign language documents, whether reviewed manually or by some technology-assisted method; and

        ii. provide all statistical analyses utilized or generated by the company or its agents related to the precision, recall, accuracy, validation, or quality of its document production in response to this subpoena; and identify the person(s) able to testify on behalf

of the company about information known or reasonably available to the organization, relating to its response to this specification.

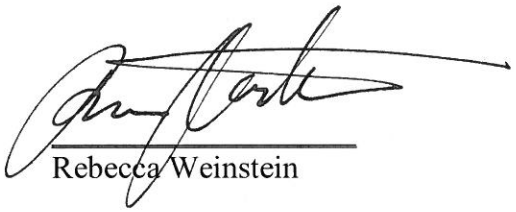
c. if the Company intends to utilize any de-duplication or email threading software or services when collecting or reviewing information that is stored in the Company's computer systems or electronic storage media in response to this subpoena, or if the Company's computer systems contain or utilize such software, the Company must contact a Commission representative to determine, with the assistance of the appropriate government technical officials, whether and in what manner the Company may use such software or services when producing materials in response to this subpoena

Any questions you have relating to the scope or meaning of anything in this request or suggestions for possible modifications thereto should be directed to Maren Schmidt at (202) 326-3084. The response to the request shall be addressed to the attention of Maren Schmidt, Federal Trade Commission, 400 7th Street SW, Washington, D.C. 20024, and delivered between 8:30 a.m. and 5:00 p.m. on any business day to the Federal Trade Commission.

CERTIFICATE OF SERVICE

I hereby certify that on February 22, 2017, I caused the foregoing Complaint Counsel's First Set of Requests for Production to be served via email on:

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



Rebecca Weinstein

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

Exhibit K

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Bureau of Competition
400 7th Street, SW
Washington, DC 20024

April 12, 2017

By Electronic Mail

Edward D. Hassi
O'Melveny & Myers
1625 Eye Street, NW
Washington, DC 20006

Re: *In the Matter of Impax Laboratories, Inc.*, Docket No. 9373

Dear Ted:

I write to notify you that we intend to depose, at least, the following current and former Impax employees, each of whom Impax has identified on its preliminary witness list. While we continue to assess other potential deponents, including a corporate designee pursuant to Rule 3.33(c)(1), it makes sense to begin the scheduling process, in light of the number of depositions the parties will need to coordinate in this short discovery period.

We ask that you identify several available dates for each witness within the specified date range. In addition, please confirm that you will represent former Impax employees at these depositions, and will accept service of a subpoena on the witness's behalf.

Current Employee	**Date Range**
Engle, Todd	June 5 – June 30
Snowden, Meg	May 22 – June 16

Former Employee	**Date Range**
Anthony, John	May 22 – June 16
Ben-Maimon, Carole	May 22 – June 16
Camargo, Joe	June 5 – June 30
Fatholahi, Shawn	May 22 – June 16
Hildenbrand, Chuck	May 22 – June 16
Hsu, Larry	June 5 – June 30
Koch, Art	June 5 – June 30
Mengler, Chris	May 22 – June 16
Nguyen, Huong	May 22 – June 16
Smolenski, Ted	June 5 – June 30

I look forward to receiving your response by April 19, 2017.

Regards,

/s/ Bradley S. Albert

Bradley S. Albert

Exhibit L

1410004

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 THIRD SET OF REQUESTS FOR PRODUCTION ISSUED TO IMPAX LABORATORIES, INC.

Pursuant to the Federal Trade Commission's Rule of Practice, 16 C.F.R. § 3.37, and the Definitions and Instructions set forth below, Complaint Counsel hereby requests that Respondent Impax Laboratories, Inc. ("Impax") produce within 30 days all documents, electronically stored information, and other things in its possession, custody, or control responsive to the following requests:

1. For the products buprenorphine and hydrocodone bitartrate, submit separately, by branded and generic versions of each drug, on a monthly basis for each month from January 2009 to present:

    a. IMS National Sales Perspective (Retail and Non-Retail) data, or the equivalent thereof, by product form and by dosage strength, separately by customer channel, for total sales in dollars and extended units; and

    b. IMS National Prescription Audit data, or the equivalent thereof, by product form and by dosage strength, separately by customer channel, for newly dispensed prescriptions, refill dispensed prescriptions, and total dispensed prescriptions.

2. For any current or former Impax employee identified by Impax as a custodian in the FTC Endo Investigation[1] or noticed or subpoenaed for a deposition by the FTC in this proceeding, all documents containing or reflecting personnel reviews or evaluations (whether in draft or final form) that relate to oxymorphone ER, Opana ER, IPX-066, IPX-066a, IPX-203, the Opana ER Settlement and License Agreement (including but not limited to the Endo Credit), or the Development and Co-Promotion Agreement.

3. Documents sufficient to show when development of IPX-066a and IPX-203 began, when the name IPX-203 was assigned, and the work that had been completed on IPX-066a and IPX-203 as of June 8, 2010.

4. Unredacted transcripts from the court proceedings on June 3, 4, and 7, 2010 in *Endo*

[1] *See* Impax Custodian List, June 19, 2014, FTC File No. 1410004.

Pharmaceuticals Inc. v. Impax Laboratories, Inc., Civil Action Nos. 09-831, 09-832, and 09-833 (D.N.J.).

5. All documents memorializing any agreement between Impax or its counsel and any fact witness in this proceeding that would result in any compensation to the fact witness for their preparation or time spent at a deposition.

6. For January 1, 2007 through December 31, 2011, all documents reflecting forecasts, projections, or budgets and documents sufficient to show actual expenditures relating to *Endo Pharmaceuticals Inc. v. Impax Laboratories, Inc.*, Civil Action Nos. 09-831, 09-832, and 09-833 (D.N.J.), and any anticipated or potential appeal thereof.

7. For January 1, 2016 to present, all documents reflecting forecasts, projections, or budgets and documents sufficient to show actual expenditures relating to *Endo Pharmaceuticals Inc. v. Impax Laboratories, Inc.*, Civil Action No. 2:16-2526 (D.N.J.), and any anticipated or potential appeal thereof.

8. All documents on which Impax expects to rely at the evidentiary hearing in this proceeding.

9. All documents from the custodial files of any current Impax employee that Impax identifies as a potential witness in this proceeding pursuant to Paragraph 13 of Impax's Preliminary Witness List concerning any of the topics identified in Paragraph 13, including: Impax's generic oxymorphone ER sales, the patent litigation regarding oxymorphone ER and its effects on Impax's sales and other Opana ANDA filers, the current market conditions for oxymorphone ER, or the Settlement and License Agreement's pro-competitive effects.

For the purpose of this Request, the following definitions and instructions apply without regard to whether the defined terms used herein are capitalized or lowercase and without regard to whether they are used in the plural or singular forms:

DEFINITIONS

1. The terms "Impax" or "Company" 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 term "agreement" means any oral or written contract, arrangement, or understanding, whether formal or informal, between two or more persons, together with all modifications or amendments thereto.

3. The terms "and" and "or" have both conjunctive and disjunctive meanings.

4. The term "Computer Files" includes information stored in, or accessible through, computer or other information retrieval systems. Thus, the Company should produce Documents that exist in machine-readable form, including Documents stored in personal computers, portable computers, workstations, minicomputers, mainframes, servers, backup disks and tapes, archive disks and tapes, and other forms of offline storage, whether on or off company premises. If the Company believes that the required search of backup disks and tapes and archive disks and tapes can be narrowed in any way that is consistent with Complaint Counsel's need for Documents and information, you are encouraged to discuss a possible modification to this instruction with the Complaint Counsel identified on the last page of this request. Complaint Counsel will consider modifying this instruction to:

   a. exclude the search and production of files from backup disks and tapes and archive disks and tapes unless it appears that files are missing from files that exist in personal computers, portable computers, workstations, minicomputers, mainframes, and servers searched by Respondent;

   b. limit the portion of backup disks and tapes and archive disks and tapes that needs to be searched and produced to certain key individuals, or certain time periods or certain specifications identified by Complaint Counsel; or

   c. include other proposals consistent with Commission policy and the facts of the case.

5. The term "Containing" means containing, describing, or interpreting in whole or in part.

6. The term "Development and Co-Promotion Agreement" means the Development and Co-Promotion Agreement dated June 7, 2010 by and between Impax Laboratories, Inc. and Endo Pharmaceuticals Inc.

7. The terms "Discuss" or "Discussing" mean in whole or in part constituting, Containing, describing, analyzing, explaining, or addressing the designated subject matter, regardless of the length of the treatment or detail of analysis of the subject matter, but not merely referring to the designated subject matter without elaboration. A document that "Discusses" another document includes the other document itself.

8. The term "Documents" means all Computer Files and written, recorded, and graphic materials of every kind in the possession, custody, or control of Respondent. The term "Documents" includes, without limitation: electronic mail messages; electronic correspondence and drafts of documents; metadata and other bibliographic or historical data describing or Relating to documents created, revised, or distributed on computer systems; copies of documents that are not identical duplicates of the originals in that Person's files; and copies of documents the originals of which are not in the possession, custody, or control of Respondent.

   Unless otherwise specified, the term "Documents" excludes (a) bills of lading, invoices, purchase orders, customs declarations, and other similar documents of a purely transactional nature; (b) architectural Plans and engineering blueprints; and (c)

documents solely Relating to environmental, tax, human resources, OSHA, or ERISA issues.

9. The terms "each," "any," and "all" mean "each and every."

10. 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.

11. The term "FTC Endo Investigation" means the FTC's investigation of Endo Pharmaceuticals Inc., *et al.*, FTC File No. 141-0004.

12. 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.

13. The term "Penwest" means Penwest Pharmaceuticals Co., together with its predecessors, divisions, wholly- or partially-owned subsidiaries, domestic or foreign parents, affiliates, partnerships, and joint ventures; and all the directors, officers, employees, consultants, agents, and representatives of the foregoing.

14. 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.

15. The terms "Plan" or "Plans" mean proposals, strategies, recommendations, analyses, reports, or considerations, whether or not tentative, preliminary, precisely formulated, finalized, authorized, or adopted.

16. The terms "Relate" or "Relating to" mean in whole or in part Discussing, constituting, commenting, Containing, concerning, embodying, summarizing, reflecting, explaining, describing, analyzing, identifying, stating, referring to, dealing with, or in any way pertaining to.

INSTRUCTIONS

1. Unless otherwise indicated, each request covers documents and information dated, generated, received, or in effect from January 1, 2009 to the present.

2. Respondent need not produce responsive documents that Respondent has previously produced to the Commission in relation to the prior investigation, FTC File No. 141-0004. **Respondent must produce all other responsive documents, including any otherwise responsive documents that may have been produced by Respondent to the Commission in relation to any other investigation conducted by the Commission.**

3. This request for documents shall be deemed continuing in nature so as to require production of all documents responsive to any specification included in this request produced or obtained by Respondent up to forty-five (45) calendar days prior to the date of the Company's full compliance with this request.

4. Except for privileged material, the Company will produce each responsive document in its entirety by including all attachments and all pages, regardless of whether they directly relate to the specified subject matter. The Company should submit any appendix, table, or other attachment by either attaching it to the responsive document or clearly marking it to indicate the responsive document to which it corresponds. Except for privileged material, the Company will not redact, mask, cut, expunge, edit, or delete any responsive document or portion thereof in any manner.

5. Unless modified by agreement with Complaint Counsel, these Requests require a search of all documents in the possession, custody, or control of the Company including, without limitation, those documents held by any of the Company's officers, directors, employees, agents, representatives, or legal counsel, whether or not such documents are on the premises of the Company. If any person is unwilling to have his or her files searched, or is unwilling to produce responsive documents, the Company must provide the Complaint Counsel with the following information as to each such person: his or her name, address, telephone number, and relationship to the Company. In addition to hard copy documents, the search must include all of the Company's Electronically Stored Information.

6. Form of Production. The Company shall submit all documents as instructed below absent written consent signed by Complaint Counsel.

    a. Documents stored in electronic or hard copy formats in the ordinary course of business shall be submitted in the following electronic format provided that such copies are true, correct, and complete copies of the original documents:

        i. Submit Microsoft Excel, Access, and PowerPoint files in native format with extracted text and applicable metadata and information as described in subparts (a)(iii) and (a)(iv).

        ii. Submit emails in image format with extracted text and the following metadata and information:

Metadata/Document Information	**Description**
Beginning Bates number	The beginning bates number of the document.
Ending Bates number	The last bates number of the document.
Custodian	The name of the custodian of the file.
To	Recipient(s) of the email.

From	The person who authored the email.
CC	Person(s) copied on the email.
BCC	Person(s) blind copied on the email.
Subject	Subject line of the email.
Date Sent	Date the email was sent.
Time Sent	Time the email was sent.
Date Received	Date the email was received.
Time Received	Time the email was received.
Attachments	The Document ID of attachment(s).
Mail Folder Path	Location of email in personal folders, subfolders, deleted items or sent items.
Message ID	Microsoft Outlook Message ID or similar value in other message systems.

iii. Submit email attachments in image format, or native format if the file is one of the types identified in subpart (a)(i), with extracted text and the following metadata and information:

Metadata/Document Information	**Description**
Beginning Bates number	The beginning bates number of the document.
Ending Bates number	The last bates number of the document.
Custodian	The name of the custodian of the file.
Parent Email	The Document ID of the parent email.
Modified Date	The date the file was last changed and saved.
Modified Time	The time the file was last changed and saved.
Filename with extension	The name of the file including the extension denoting the application in which the file was created.

Production Link	Relative file path to production media of submitted native files. Example: FTC-001\NATIVE\001\FTC-00003090.xls.
Hash	The Secure Hash Algorithm (SHA) value for the original native file.

iv. Submit all other electronic documents in image format, or native format if the file is one of the types identified in subpart (a)(i), accompanied by extracted text and the following metadata and information:

Metadata/Document Information	**Description**
Beginning Bates number	The beginning bates number of the document.
Ending Bates number	The last bates number of the document.
Custodian	The name of the custodian of the file.
Modified Date	The date the file was last changed and saved.
Modified Time	The time the file was last changed and saved.
Filename with extension	The name of the file including the extension denoting the application in which the file was created.
Originating Path	File path of the file as it resided in its original environment.
Production Link	Relative file path to production media of submitted native files. Example: FTC-001\NATIVE\001\FTC-00003090.xls.
Hash	The Secure Hash Algorithm (SHA) value for the original native file.

v. Submit documents stored in hard copy in image format accompanied by OCR with the following information:

Metadata/Document Information	**Description**
Beginning Bates number	The beginning bates number of the document.

Ending Bates number	The last bates number of the document.
Custodian	The name of the custodian of the file.

vi. Submit redacted documents in PDF format accompanied by OCR with the metadata and information required by relevant document type in subparts (a)(i) through (a)(v) above. For example, if the redacted file was originally an attachment to an email, provide the metadata and information specified in subpart (a)(iii) above. Additionally, please provide a basis for each privilege claim as detailed in Instruction 6.

b. Submit data compilations in electronic format, specifically Microsoft Excel spreadsheets or delimited text formats such as CSV files, with all underlying data un-redacted and all underlying formulas and algorithms intact.

c. If the Company intends to utilize any electronic search terms, de-duplication or email threading software or services when collecting or reviewing information that is stored in the Company's computer systems or electronic storage media, or if the Company's computer systems contain or utilize such software, the Company must contact the Commission to determine, with the assistance of the appropriate Commission representative, whether and in what manner the Company may use such software or services when producing materials in response to this CID.

d. Produce electronic file and image submissions as follows:

i. For productions over 10 gigabytes, use IDE, EIDE, and SATA hard disk drives, formatted in Microsoft Windows-compatible, uncompressed data in a USB 2.0 external enclosure;

ii. For productions under 10 gigabytes, CD-R CD-ROM optical disks formatted to ISO 9660 specifications, DVD-ROM optical disks for Windows-compatible personal computers, and USB 2.0 Flash Drives are acceptable storage formats; and

iii. <u>All documents produced in electronic format shall be scanned for and free of viruses prior to submission. The Commission will return any infected media for replacement, which may affect the timing of the Company's compliance with this CID.</u>

iv. Encryption of productions using NIST FIPS-compliant cryptographic hardware or software modules, with passwords sent under separate cover, is strongly encouraged.[1]

[1] The National Institute of Standards and Technology (NIST) issued Federal Information Processing Standard (FIPS) Publications 140-1 and 140-2, which detail certified cryptographic

e. Each production shall be submitted with a transmittal letter that includes the FTC matter number; production volume name; encryption method/software used; passwords for any password protected files; list of custodians and document identification number range for each; total number of documents; and a list of load file fields in the order in which they are organized in the load file.

7. All documents responsive to these requests:

a. Shall be produced in complete form, unredacted unless privileged, and in the order in which they appear in the Company's files;

b. Shall be marked on each page with corporate identification and consecutive document control numbers when produced in image format;

c. Shall be produced in color where necessary to interpret the document (if the coloring of any document communicates any substantive information, or if black and white photocopying or conversion to TIFF format of any document (e.g., a chart or graph) makes any substantive information contained in the document unintelligible, the Company must submit the original document, a like-color photocopy, or a JPEG format image);

d. Shall be accompanied by an affidavit of an officer of the Company stating that the copies are true, correct, and complete copies of the original documents; and

e. Shall be accompanied by an index that identifies (i) the name of each person from whom responsive documents are submitted; and (ii) the corresponding consecutive document control number(s) used to identify that person's documents. The Commission representative will provide a sample index upon request.

8. If any documents are withheld from production based on a claim of privilege, Respondent shall provide, pursuant to 16 C.F.R. § 3.38A, a schedule which describes the nature of documents, communications, or tangible things not produced or disclosed, in a manner that will enable Complaint Counsel to assess the claim of privilege.

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modules for use by the U.S. Federal government and other regulated industries that collect, store, transfer, share, and disseminate sensitive but unclassified information. More information about FIPS 140-1 and 140-2 can be found at http://csrc.nist.gov/publications/PubsFIPS.html.

9. If Respondent is unable to answer any question fully, supply such information as is available. Explain why such answer is incomplete, the efforts made by Respondent to obtain the information, and the source from which the complete answer may be obtained. If books and records that provide accurate answers are not available, enter best estimates and describe how the estimates were derived, including the sources or bases of such estimates. Estimated data should be followed by the notation "est." If there is no reasonable way for Respondent to make an estimate, provide an explanation.

10. If documents responsive to a particular specification no longer exist for reasons other than the ordinary course of business or the implementation of the Company's document retention policy but Respondent has reason to believe have been in existence, state the circumstances under which they were lost or destroyed, describe the documents to the fullest extent possible, state the specification(s) to which they are responsive, and identify Persons having knowledge of the content of such documents.

11. The Company must provide the Commission with a statement identifying the procedures used to collect and search for electronically stored documents and documents stored in paper format. The Company must also provide a statement identifying any electronic production tools or software packages utilized by the company in responding to this subpoena for: keyword searching, Technology Assisted Review, email threading, de-duplication, global de-duplication or near-de-duplication, and

    a. if the company utilized keyword search terms to identify documents and information responsive to this subpoena, provide a list of the search terms used for each custodian;

    b. if the company utilized Technology Assisted Review software;

        i. describe the collection methodology, including: how the software was utilized to identify responsive documents; the process the company utilized to identify and validate the seed set documents subject to manual review; the total number of documents reviewed manually; the total number of documents determined nonresponsive without manual review; the process the company used to determine and validate the accuracy of the automatic determinations of responsiveness and nonresponsiveness; how the company handled exceptions ("uncategorized documents"); and if the company's documents include foreign language documents, whether reviewed manually or by some technology-assisted method; and

        ii. provide all statistical analyses utilized or generated by the company or its agents related to the precision, recall, accuracy, validation, or quality of its document production in response to this subpoena; and identify the person(s) able to testify on behalf

of the company about information known or reasonably available to the organization, relating to its response to this specification.

c. if the Company intends to utilize any de-duplication or email threading software or services when collecting or reviewing information that is stored in the Company's computer systems or electronic storage media in response to this subpoena, or if the Company's computer systems contain or utilize such software, the Company must contact a Commission representative to determine, with the assistance of the appropriate government technical officials, whether and in what manner the Company may use such software or services when producing materials in response to this subpoena

Any questions you have relating to the scope or meaning of anything in this request or suggestions for possible modifications thereto should be directed to Maren Schmidt at (202) 326-3084. The response to the request shall be addressed to the attention of Maren Schmidt, Federal Trade Commission, 400 7th Street SW, Washington, D.C. 20024, and delivered between 8:30 a.m. and 5:00 p.m. on any business day to the Federal Trade Commission.

Dated: May 30, 2017

By: */s/ Bradley S. Albert*_____

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

Counsel Supporting the Complaint

CERTIFICATE OF SERVICE

I hereby certify that on May 30, 2017, I caused the foregoing Complaint Counsel's Second Set of Requests for Production to be served via email on:

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

By: */s/ Rebecca Weinstein*
Rebecca Weinstein
Federal Trade Commission
Bureau of Competition
400 7th Street SW
Washington, D.C. 20024
rweinstein@ftc.gov
(202) 326-2922

Exhibit M

From:	Albert, Bradley Scott
To:	Fabish, Anna; Meier, Markus H.; Butrymowicz, Daniel W.; Mark, Synda; Schmidt, J. Maren; Towey, Jamie; Sprague, Eric M.; Loughlin, Chuck; Weinstein, Rebecca; Clark, Alexandra; Leefer, Nicholas
Cc:	Hassi, Ted; Antalics, Michael E.; Parker, Richard; McIntyre, Stephen; Hendricks, Benjamin J.; Brogan, Eileen M.; Morries, Kendra
Subject:	RE: In re Impax Laboratories, Inc. (FTC Docket No. 9373) - Documents involving Carole Ben-Maimon
Date:	Wednesday, May 31, 2017 9:43:24 AM

Anna –

As you well know, it is not acceptable to produce relevant documents at midnight before a deposition. Moreover, it is inconsistent with the spirit of the commitment you made in this litigation to try to produce such documents a week before any deposition. We issued our document request over three months ago. You have known about the date for this deposition for many weeks. You have had more than enough time to produce these materials so that we would have a legitimate opportunity to review them before the deposition today.

We intend to seek an order from the Court requiring you to produce relevant custodial documents in a timely manner, unless you agree to following two provisions:

(1) Impax will produce documents involving or referencing a particular witness at least four business days before that witness's deposition; and
(2) If Impax fails to meet the conditions in No. 1, Impax will not object to recalling that witness in Washington D.C. to provide testimony on the late-produced documents.

Please let us know by 4:00 pm eastern time today whether you agree.

Regards

Brad

From: Fabish, Anna [mailto:afabish@omm.com]
Sent: Tuesday, May 30, 2017 9:55 PM
To: Meier, Markus H.; Albert, Bradley Scott; Butrymowicz, Daniel W.; Mark, Synda; Schmidt, J. Maren; Towey, Jamie; Sprague, Eric M.; Loughlin, Chuck; Weinstein, Rebecca; Clark, Alexandra; Leefer, Nicholas
Cc: Hassi, Ted; Antalics, Michael E.; Parker, Richard; McIntyre, Stephen; Hendricks, Benjamin J.; Brogan, Eileen M.; Morries, Kendra
Subject: In re Impax Laboratories, Inc. (FTC Docket No. 9373) - Documents involving Carole Ben-Maimon

Counsel:

Later tonight, Impax will make its Production No. 8, which will contain documents involving or referencing Carole Ben-Maimon. Because Ms. Ben-Maimon is scheduled to be deposed tomorrow, we will be providing courtesy copies of the documents involving Ms. Ben-Maimon that Complaint Counsel has not previously received via email as well. There are nine such documents. Kendra Morries, copied here, will send these documents in a series of separate emails in response to this email chain. (My attempts to send all documents via a single zip file were unsuccessful).

Given the late hour and the off-site location of the deposition tomorrow, we will attempt to provide paper copies of these documents at tomorrow's deposition.

A link to Production No. 8, as well as a production cover letter, will follow later this evening under separate cover.

Best,

Anna

O'Melveny

Anna M. Fabish
Counsel
afabish@omm.com
O: +1-213-430-7512

O'Melveny & Myers LLP
400 South Hope Street, 18th Floor
Los Angeles, CA 90071
Website | LinkedIn | Twitter

Notice of Electronic Service

I hereby certify that on June 09, 2017, I filed an electronic copy of the foregoing Respondent Impax Laboratories, Inc.'s Opposition to Complaint Counsel's Motion to Compel Timely Production of Documents, 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 09, 2017, I served via E-Service an electronic copy of the foregoing Respondent Impax Laboratories, Inc.'s Opposition to Complaint Counsel's Motion to Compel Timely Production of Documents, upon:

Bradley Albert
Attorney
Federal Trade Commission
balbert@ftc.gov
Complaint

Daniel Butrymowicz
Attorney
Federal Trade Commission
dbutrymowicz@ftc.gov
Complaint

Nicholas Leefer
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Alpa D. Davis
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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 09, 2017, I served via other means, as provided in 4.4(b) of the foregoing Respondent Impax Laboratories, Inc.'s Opposition to Complaint Counsel's Motion to Compel Timely Production of Documents, upon:

Ted Hassi
Attorney
O'Melveny & Myers LLP
ehassi@omm.com
Respondent

Eileen Brogan
Attorney