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MEMORANDUM

TO: Health and Welfare Plan Clients

FROM: Slevin & Hart, P.C.

DATE: November 23, 2021

RE: Opana ER[®] Class Action

This memorandum is to notify the Fund of a class action lawsuit that is pending in the U.S. District Court for the Northern District of Illinois against Endo Health Solutions Inc., Endo Pharmaceuticals Inc., Penwest Pharmaceuticals Co., and Impax Laboratories, Inc. in connection with the sale of various brand and generic versions of the drug Opana ER[®] ("Covered Drugs"). The lawsuit alleges that the defendants violated certain state antitrust, consumer protection, and unjust enrichment laws, causing class members to overpay for the Covered Drugs.

If the Fund is an eligible class member, the Fund does not have to take any action to preserve its rights as part of the class at this time. However, if the Fund wants to "opt out" of class membership in order to bring its own legal action on these claims against the same defendants, it must do so by December 6, 2021. If the Fund chooses to opt-out, the attached notice provides instructions on how to do that. We assume the Fund will want to participate in this class action and not opt-out, unless the Fund has incurred significant claim costs for the Covered Drugs or is already involved in another lawsuit against the defendants.

There are two classes of plaintiffs, the Antitrust/Consumer Class and the Unjust Enrichment Class ("Class" or "Classes"), which generally include all persons or entities who paid for Covered Drugs in certain specified states from April 2011 through September 2018. The eligibility requirements for each Class and a list of applicable states are included in the attached Notice. Additional information regarding this class action is available at www.opanaerantitrustlitigation.com.

The court has made no decision on the merits of the claims and a trial is scheduled to begin on June 7, 2022. **If and when there is a proof of claim deadline set by which the Fund can claim a portion of any class action recovery, we will let you know.**

Please contact us with any questions.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

NOTICE OF PENDENCY OF CLASS ACTION

**Purchased Opana ER® and/or Its Generic Equivalent?
A Class Action Lawsuit May Affect Your Rights.**

*This Notice is being provided by Order of the U.S. District Court.
It is not a solicitation from a lawyer. You are not being sued.*

- A lawsuit is pending in the United States District Court for the Northern District of Illinois (the “Court”) against Endo Health Solutions Inc., Endo Pharmaceuticals Inc., Penwest Pharmaceuticals Co. (collectively, “Endo”), and Impax Laboratories, Inc. (“Impax” and, together with Endo, “Defendants”).
- Plaintiffs Plumbers and Pipefitters Local 178 Health & Welfare Trust Fund, Louisiana Health Service & Indemnity Company, d/b/a Blue Cross and Blue Shield of Louisiana, Fraternal Order of Police, Miami Lodge 20, Insurance Trust Fund, Wisconsin Masons’ Health Care Fund, Pennsylvania Employees Benefit Trust Fund, and International Union of Operating Engineers, Local 138 Welfare Fund (collectively, the “End-Payor Plaintiffs” or “Plaintiffs”) claim that Defendants violated certain state antitrust, consumer protection, and unjust enrichment laws in the United States, harming competition and causing class members to overpay for brand and generic versions of Opana ER 5 mg, 10 mg, 20 mg, 30 mg, and/or 40 mg (collectively, “Opana ER products”) sold by Endo and Impax. Defendants deny that they violated any laws.
- On August 11, 2021, the Court determined that the claims brought by the End-Payor Plaintiffs could proceed as a class action. Your legal rights and options are explained below.
- The Court has not decided whether Defendants did anything wrong. There is no money available now, and there is no guarantee that there will be. However, if you are a member of one or both of the Classes (explained below), **your legal rights are affected, and you have a choice to make now.**
- **PLEASE NOTE: This is NOT a recall, safety, or other similar notice. This lawsuit is not about the safety or efficacy of Opana ER products. This Notice is only for purposes of advising you of certain rights. You are not being asked to submit a claim.**

THE CERTIFIED CLASSES

The End-Payor Plaintiff Classes certified by the Court (hereinafter referred to as the “Classes”) include the following persons and entities:

- **Antitrust/Consumer Protection Class:** All persons or entities who indirectly purchased, paid for, and/or provided reimbursement for some or all of the purchase price for brand or generic Opana ER 5 mg, 10 mg, 20 mg, 30 mg, and/or 40 mg sold by Defendants, other than for resale, in the states and commonwealths of Arizona, California, Florida, Hawaii, Iowa, Maine, Michigan, Minnesota, Missouri, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Oregon, South Dakota, Tennessee, Vermont, West Virginia, Wisconsin, and the District of Columbia from April 2011 through September 2018; and
- **Unjust Enrichment Subclasses:** All persons or entities who from April 2011 through September 2018 indirectly purchased, paid for, and/or provided reimbursement for some or all of the purchase price for brand or generic Opana ER 5 mg, 10 mg, 20 mg, 30 mg, and/or 40 mg sold by Defendants, other than for resale, in the following states and commonwealths:
 - **Subclass 1:** Iowa, Michigan, Oregon, West Virginia
 - **Subclass 2:** Maine, New Mexico, Wisconsin
 - **Subclass 3:** Hawaii, Massachusetts*, Mississippi*, Nebraska, Vermont
 - **Subclass 4:** Florida, Minnesota, Missouri, Nevada, Pennsylvania, South Dakota, Utah

- **Subclass 5:** Arizona*, North Dakota.

** With respect to Arizona, Massachusetts, and Mississippi unjust enrichment claims, class members must have purchased, paid for, and/or provided reimbursement for some or all of the purchase price of brand or generic Opana ER from June 4, 2011, through September 2018.*

YOUR LEGAL RIGHTS AND OPTIONS	
DO NOTHING	If you do nothing and you are a member of one of the End-Payor Plaintiff Classes, you will remain part of the End-Payor Plaintiff Classes, you will potentially receive a share of any money or benefits that may come from a trial or a settlement in the future, and you will be bound by any judgment or order for or against Defendants. But you will give up all rights to be part of any other lawsuit that asserts claims related to the allegations or claims against Defendants in this case.
EXCLUDE YOURSELF FROM THE CLASS	This option allows you to exclude yourself from the End-Payor Plaintiff Classes and retain the right to file a separate lawsuit against Defendants asserting claims related to the allegations or claims against Defendants in this case. If you exclude yourself, you will not be bound by any judgment or order for or against Defendants and will not share in any money or benefits obtained for the End-Payor Plaintiff Classes. The exclusion deadline is December 6, 2021.

BASIC INFORMATION ABOUT THE LAWSUIT
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1. What is the lawsuit about?

The End-Payor Plaintiffs claim that Defendants violated certain state antitrust, consumer protection, and unjust enrichment laws, harming competition and causing class members to overpay for Opana ER products. Specifically, Plaintiffs allege that in June 2010, Endo and Impax entered into a “pay for delay” or “reverse payment” agreement, delaying the launch of Impax’s generic version of Opana ER until January 2013. Absent the alleged reverse payment agreement, Plaintiffs claim that Impax would have launched its generic version of Opana ER earlier than January 2013 and that Endo would have launched an authorized generic version of Opana ER at or about the same time as Impax launched its generic product. Plaintiffs allege that the prices of brand and generic versions of Opana ER sold by Defendants were higher than they would have been absent the alleged unlawful conduct, causing drug purchasers to overpay for brand and generic Opana ER. Defendants deny all these allegations, that they violated any law, or that Plaintiffs are entitled to damages or any relief.

The litigation is proceeding as a class action and, at this point, the Court has not found that Defendants engaged in any wrongdoing.

2. What is a class action and who is involved?

In a class action lawsuit, one or more people called “Class Representatives” sue on behalf of other consumers and entities who have similar claims. The consumers and entities together are part of the “Classes” or “Members of the Classes.” The Class Representatives who filed the lawsuit are called the Plaintiffs. The companies and people they sued are called Defendants. One court resolves the issues for everyone in the Classes—except for those people who choose to exclude themselves from the Classes.

3. Why is this lawsuit a class action?

The Court decided that certain claims in this lawsuit can move toward a trial as a class action because they meet the requirements of the relevant Federal Rules of Civil Procedure governing class actions.

4. What is the status of the lawsuit?

The lawsuit is currently pending in the United States District Court for the Northern District of Illinois before United States District Judge Harry D. Leinenweber. The case name is *In re Opana ER Antitrust Litigation*, and the civil action number is 1:14-cv-10150 (N.D. Ill.).

The first end-payor class action lawsuits were filed in June 2014, and in April 2015 the Court appointed Labaton Sucharow LLP and Freed Kanner London & Millen LLC as Interim Co-Lead Counsel to conduct this litigation on behalf of all end-payors of Opana ER and generic Opana ER. Over the past six years, Interim Co-Lead Counsel have pursued the case on behalf of all members of the End-Payor Plaintiff Classes, by, among other things:

- investigating and drafting two consolidated amended complaints;
- opposing two rounds of motions to dismiss by Defendants;
- conducting an extensive review of defendants' and non-parties' document productions, which consisted of well over one million pages;
- deposing and defending over two dozen fact and expert witnesses;
- filing multiple briefs in support of class certification, including reply and sur-reply briefs, and an appeal pursuant to Rule 23(f) of the Federal Rules of Civil Procedure;
- retaining 13 experts who submitted reports on class and merits issues;
- filing and defending against *Daubert* motions seeking to exclude expert reports; and
- filing briefs in opposition to Defendants' motions for summary judgment.

A trial of the case has been scheduled by the Court to begin on June 7, 2022, in the United States District Court for the Northern District of Illinois, Everett McKinley Dirksen United States Courthouse, 219 South Dearborn Street, Chicago, Illinois 60604. Any changes to the date or location of the trial will be posted to the website www.opanaerantitrustlitigation.com.

Unless a settlement is reached with Defendants, Plaintiffs must prove their claims at trial. There is no guarantee that Plaintiffs will win or obtain money for the End-Payor Plaintiff Classes at trial, or following any appeal, even if such an appeal is after a verdict in Plaintiffs' favor. If Defendants win at trial and you did not timely and validly exclude yourself from the Classes, you will not be able to file a new lawsuit against the Defendants asserting claims related to the allegations against them in this case.

5. What are Plaintiffs asking for?

As a result of Defendants' allegedly unlawful conduct, Plaintiffs are seeking to recover overcharges they claim Class Members paid on purchases and reimbursements of brand and generic versions of Opana ER 5 mg, 10 mg, 20 mg, 30 mg, and 40 mg, sold by Defendants (on behalf the Antitrust/Consumer Protection Class), as well as disgorge unlawful profits retained on the sale of those products (on behalf of the Unjust Enrichment Subclasses). If Plaintiffs prevail at trial, Plaintiffs may be entitled, under certain state laws, to a multiple of any monetary damages awarded to the End-Payor Plaintiff Classes. To the extent permitted by any applicable law, Plaintiffs will also seek attorneys' fees and litigation costs.

6. Is there any money available now?

No money or benefits are available now because the case is not resolved. There is no guarantee that money or benefits will be obtained in the future. If they are, another notice will inform you how to submit a claim form to request a share based on qualifying purchases of brand or generic Opana ER from Endo or Impax between April 2011 and September 2018.

DETERMINING IF YOU ARE A MEMBER OF THE CLASSES

7. I purchased brand/generic Opana ER. How do I know if I am a member of the End-Payor Plaintiff Classes?

You are a member of the End-Payor Plaintiff Classes if:

You purchased, paid for, or provided reimbursement for some or all of the purchase price of brand or generic Opana ER sold by Endo or Impax for the purpose of consumption, and not resale, by yourself, your family member(s), insureds, plan participants, employees, or beneficiaries, at any time from April 2011 through September 2018 in any of the following states or commonwealths: Arizona*, California, Florida, Hawaii, Iowa, Maine, Massachusetts*, Michigan, Minnesota, Missouri, Mississippi*, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Pennsylvania, Oregon, South Dakota, Tennessee, Utah, Vermont, West Virginia, Wisconsin, and the District of Columbia.

** With respect to Arizona, Massachusetts, and Mississippi unjust enrichment claims, Class Members must have purchased, paid for, and/or provided reimbursement for some or all of the purchase price of brand or generic Opana ER from June 4, 2011 through September 2018.*

The following are **NOT** members of the Classes:

- o Defendants and their counsel, officers, directors, management, employees, subsidiaries, or affiliates;
- o Persons or entities whose only purchases of or reimbursements or payments for brand or generic Opana ER were of or for the generic Opana ER product sold by Actavis South Atlantic LLC or its successors;
- o All governmental entities and Medicare Part D plans and beneficiaries, except for non-Medicare Part D government-funded employee benefit plans;
- o All persons or entities who purchased Opana ER for purposes of resale or directly from Defendants or their affiliates;
- o Fully insured health plans (plans that purchased insurance from another third-party payor covering 100 percent of the plan's reimbursement obligations to its members);
- o Flat co-payers (consumers who paid the same co-payment amount for brand and generic drugs);
- o Any consumer who purchased only Endo's brand version of Opana ER after the AB-rated generic version became available in January 2013 (i.e., "brand loyalists");
- o Consumers with copay insurance plans who purchased *only generic* versions of Opana ER (i.e., "generic-only copay consumers");
- o Pharmacy Benefit Managers;
- o All Counsel of Record; and
- o The Court, Court personnel and any member of their immediate families.

If you are still unsure whether you are in the End-Payor Plaintiff Classes, please contact A.B. Data, Ltd. by email at info@opanaerantitrustlitigation.com or by telephone at 877-888-6423.

IF YOU DO NOTHING

8. What happens if I do nothing at all?

If you are a Class Member and do nothing, you are choosing to remain a Class Member. This means that you will be bound by the outcome of the case, whether a judgment is rendered for or against Defendants. And in the event that the Classes recover money from the Defendants, you will be able to participate in any monetary recovery if you have a valid claim and file a claim form on timely basis.

If you exclude yourself, you will not be able to participate in any monetary recovery that may be obtained by the Classes, but you will maintain the right to file a separate lawsuit or be part of any other lawsuit asserting claims against Defendants concerning or relating to the claims and factual allegations in this lawsuit.

EXCLUDING YOURSELF FROM THE CLASSES

9. What does it mean to request to be excluded from the End-Payor Plaintiff Classes?

If you do not want to be part of the End-Payor Plaintiff Classes and want to keep your right to sue Defendants relating to Defendants' alleged conduct as described in this Notice (see Question 1, above), then you must take steps to remove yourself from the Classes. This is called excluding yourself, or "opting out" of the Classes. If you exclude yourself, you will not be eligible to receive any payment from future settlements or judgments in this lawsuit, but you will not be bound by any judgment or order rendered for or against Defendants.

10. How do I exclude myself from the End-Payor Plaintiff Classes?

If you wish to exclude yourself from the End-Payor Plaintiff Classes, you have two options for doing so:

(1) send a letter by mail stating that you wish to be excluded from the End-Payor Plaintiff Classes in *In re Opana ER Antitrust Litigation*, Case No. 1:14-cv-10150 (N.D. Ill.). You must include your full name, address, telephone number, and signature and mail your request for exclusion, postmarked no later than **December 6, 2021**, to:

Opana ER Class Action
Attn: Exclusions
c/o A.B. Data, Ltd.
P.O. Box 173001
Milwaukee, WI 53217

(2) email your exclusion request to info@opanaerantitrustlitigation.com. Any email exclusion requests must be submitted no later than **December 6, 2021**.

A separate exclusion request must be submitted by each third-party payor electing to be excluded from the Class. Any third-party payor included in the Class that does not submit a valid request for exclusion providing all necessary information will remain a member of the Class.

Any entity (whether a member of the Classes or not) that wants to opt out the claims of Class Members that the entity represents (*e.g.*, welfare funds or employers for whom the entity acts as an Administrative Services Organization) must also provide a declaration under oath from an authorized representative of each such Class Member attesting to the entity's authority to opt the Class Member's claims out of the Classes, identifying specific language from any written agreement that provides the entity with such authority and attaching any such written agreement. The entity seeking to opt out the Class Member must mail this information to the address above or email that information to the Notice Administrator at info@opanaerantitrustlitigation.com no later than **December 6, 2021**.

This may be the only opportunity you will have to exclude yourself from the Classes.

You may not exclude yourself by telephone.

11. If I do not exclude myself, can I sue later?

No. Unless you exclude yourself from the Classes now, you give up the right to sue Defendants for the claims in this case. You must exclude yourself from the End-Payor Plaintiff Classes to be able to bring your own, separate lawsuit(s) against Defendants. Again, the exclusion deadline is **December 6, 2021**. If there is a settlement or a recovery in the future, you may not be given another opportunity to exclude yourself from the End-Payor Plaintiff Classes.

THE LAWYERS REPRESENTING YOU

12. **As a member of the End-Payor Plaintiff Classes, do I have a lawyer representing my interests in this class action?**

Yes. The Court has appointed lawyers to represent the members of the End-Payor Plaintiff Classes. These lawyers are called Class Counsel. You may also hire your own attorney, at your expense. Lawyers from the following firms are court-appointed lead counsel representing the End-Payor Plaintiff Classes:

END PAYOR Co-LEAD CLASS COUNSEL	
LABATON SUCHAROW LLP 140 Broadway New York, NY 10005	FREED KANNER LONDON & MILLEN LLC 2201 Waukegan Road, Suite 130 Bannockburn, IL 60015

13. **How will the lawyers be compensated? Will the Class Representatives receive a service award?**

You are not individually responsible for paying Class Counsel. In the event of a judgment against Defendants after trial or a settlement, Class Counsel will ask the Court to approve and award attorneys' fees and expenses. They also may ask for service awards for the Class Representatives. The amount of these fees, costs, and awards, if any, will ultimately be determined by the Court.

14. **Should I get my own lawyer?**

You do not need to hire your own lawyer because Class Counsel is working on behalf of the End-Payor Plaintiff Classes. If you hire your own lawyer, he or she must file a Notice of Appearance with the Court. If you hire your own lawyer, you will have to make your own arrangements for compensating that lawyer.

GETTING MORE INFORMATION

15. **Where do I get more information?**

This Notice contains a summary of relevant Court papers. You can review relevant decisions and orders and additional information about this lawsuit on the case website at www.opanaerantitrustlitigation.com. You may also contact the Notice Administrator, A.B. Data, Ltd., by mail at P.O. Box 173067, Milwaukee, WI 53217, email at info@opanaerantitrustlitigation.com, or phone at 877-888-6423. Complete copies of all public pleadings, Court rulings, and other filings are available for review by accessing the Court docket for this case, for a fee, through the Court's Public Access to Court Electronic Records (PACER) system at <https://ecf.ilnd.uscourts.gov>, or by visiting the office of the Clerk of the Court for the United States District Court for the Northern District of Illinois, Everett McKinley Dirksen United States Courthouse, 219 South Dearborn Street, Chicago, Illinois 60604, between 8:30 a.m. and 4:30 p.m., Monday through Friday, excluding Court holidays.

PLEASE DO NOT CONTACT THE COURT OR THE COURT CLERK'S OFFICE TO INQUIRE ABOUT THIS CASE.

DATED: SEPTEMBER 23, 2021

BY ORDER OF THE UNITED STATES DISTRICT
COURT NORTHERN DISTRICT OF ILLINOIS,
HARRY D. LEINENWEBER