

EXHIBIT 4

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

IN RE OPANA ER ANTITRUST LITIGATION	MDL No. 2580 Lead Case No. 14-cv-10150
THIS DOCUMENT RELATES TO: ALL END-PAYOR ACTIONS	Hon. Harry D. Leinenweber

DECLARATION OF MEREDITH ROSENTHAL, PH.D.
IN SUPPORT OF END-PAYOR PLAINTIFFS' PLAN OF ALLOCATION

1. My name is Meredith Rosenthal. I am a Professor of Health Economics and Policy at the Harvard T.H. Chan School of Public Health in Boston, Massachusetts and an Academic Affiliate of Greylock McKinnon Associates (GMA), a consulting and litigation support firm. My qualifications and compensation are described in my previous reports submitted in this matter;¹ therefore, I do not repeat them here.

2. I was asked by Counsel for the End-Payor Plaintiffs to develop a method for calculating the allocation of the Net Settlement Fund (as defined in the Plan of Allocation) between the pool for consumer Class members (the “Consumer Pool”) and the pool for third-party payors (the “Third-Party Payor Pool”). I used the following method:

- a. I first calculated the average consumer overcharge damages across all scenarios. I did so by summing the consumer damages in the Class states across all 25 scenarios indicated in my final damage calculation from my October 18, 2021 report, and dividing by 25.² This resulted in an average consumer overcharge of \$27,246,901.
- b. I then calculated the average total damages net of rebates across all scenarios. I did so by summing the total overcharge damages net of TPP rebates³ across all 25 scenarios and dividing by 25.⁴ This resulted in an

¹ Expert Report of Meredith Rosenthal, Ph.D. in Support of Class Certification, March 25, 2019; Expert Rebuttal Report of Meredith Rosenthal, Ph.D. in Support of Class Certification, November 5, 2019; Supplemental Expert Report of Meredith Rosenthal, Ph.D., in Support of the End-Payor Classes, July 26, 2021; Errata to Supplemental Expert Report of Meredith Rosenthal, Ph.D., October 18, 2021 (hereafter, “October 18, 2021 Report”).

² October 18, 2021 Report.

³ I used damages net of TPP rebates on the conservative assumption that manufacturer rebates to pharmacy benefit managers were remitted in full to their TPP clients. However, as noted in my March 25, 2019 Report, I understand that there may be legal reasons for excluding rebates from overcharge calculations. *See* March 25, 2019 Report ¶ 72.

⁴ October 18, 2021 Report.

average total damage amount of \$61,556,300.

- c. I then divided the average consumer damages across all scenarios by the average total damages across all scenarios to calculate the average consumer share of the overcharge damages. I also calculated the consumer share for each of the 25 scenarios. For the individual scenarios, consumer shares ranged from 40%-51%. Across all scenarios, I calculated an average consumer share of 44.26%.⁵ I determined that this is a reasonable consumer share of the Net Settlement Fund.
- d. I subtracted the consumer share for each of the 25 scenarios from one, which yielded the third-party payor share of the net overcharge damages. For the individual scenarios, third-party payor shares ranged from 49%-60%. Across all scenarios, I calculated an average third-party payor share of 55.74%. I determined this is a reasonable third-party payor share of the Net Settlement Fund.⁶

3. Using this method, I determined that the Consumer Pool would be 44.26% of the Net Settlement Fund, and the Third-Party Payor Pool would be 55.74% of the Net Settlement Fund.⁷

⁵ These calculations are presented in Attachment 1.

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⁷ I was asked by counsel to evaluate whether the allocation should also be adjusted to account for variation in the per-mg pricing for different dosage strengths of Opana ER. I conducted a preliminary analysis of the IQVIA data, and, while there is some minor variation in the price per-mg across dosage strengths, it is unlikely that this variation would result in significant differences in the distribution of overcharges across class members (particularly among TPP class members with multiple members).



Meredith Rosenthal
August 12, 2022

Class State Overcharges and Consumer and TPP Share

Taken from Rosenthal Supplemental Report Errata, Attachments C-L, submitted October 18, 2021.

		Attachments C and D			
Scenario	Generic Launch	Total Net of TPP		Consumer Share	TPP Share
		Consumer	Rebates		
1	Apr-2011	\$28,548,087	\$58,395,243	49%	51%
2	May-2011	\$27,093,431	\$54,270,116	50%	50%
3	Jun-2011	\$25,481,441	\$50,768,805	50%	50%
4	Jul-2011	\$24,118,528	\$47,469,617	51%	49%
5	Aug-2011	\$22,686,156	\$44,616,235	51%	49%

Average Consumer Share	Average TPP Share
44.26%	55.74%

Average Consumer Overcharge Amount	Average Total Overcharges Net of TPP Rebates
\$27,246,901	\$61,556,300

		Attachments E and F			
Scenario	Generic Launch	Total Net of TPP		Consumer Share	TPP Share
		Consumer	Rebates		
1	Apr-2011	\$29,362,498	\$63,679,507	46%	54%
2	May-2011	\$27,905,383	\$59,469,498	47%	53%
3	Jun-2011	\$26,291,851	\$55,923,441	47%	53%
4	Jul-2011	\$24,926,254	\$52,535,879	47%	53%
5	Aug-2011	\$23,491,534	\$49,619,980	47%	53%

		Attachments G and H			
Scenario	Generic Launch	Total Net of TPP		Consumer Share	TPP Share
		Consumer	Rebates		
1	Apr-2011	\$30,199,545	\$69,047,637	44%	56%
2	May-2011	\$28,739,928	\$64,751,316	44%	56%
3	Jun-2011	\$27,124,829	\$61,159,681	44%	56%
4	Jul-2011	\$25,756,505	\$57,682,418	45%	55%
5	Aug-2011	\$24,319,402	\$54,702,958	44%	56%

		Attachments I and J			
Scenario	Generic Launch	Total Net of TPP		Consumer Share	TPP Share
		Consumer	Rebates		
1	Apr-2011	\$31,055,266	\$74,505,464	42%	58%
2	May-2011	\$29,593,104	\$70,121,347	42%	58%
3	Jun-2011	\$27,976,413	\$66,483,308	42%	58%
4	Jul-2011	\$26,605,320	\$62,914,968	42%	58%
5	Aug-2011	\$25,165,798	\$59,870,837	42%	58%

		Attachments K and L			
Scenario	Generic Launch	Total Net of TPP		Consumer Share	TPP Share
		Consumer	Rebates		
1	Apr-2011	\$31,926,991	\$80,060,007	40%	60%
2	May-2011	\$30,462,245	\$75,586,629	40%	60%
3	Jun-2011	\$28,843,937	\$71,901,336	40%	60%
4	Jul-2011	\$27,470,031	\$68,240,580	40%	60%
5	Aug-2011	\$26,028,054	\$65,130,698	40%	60%