

1 ROBBINS GELLER RUDMAN
 & DOWD LLP
 2 SHAWN A. WILLIAMS (213113)
 Post Montgomery Center
 3 One Montgomery Street, Suite 1800
 San Francisco, CA 94104
 4 Telephone: 415/288-4545
 415/288-4534 (fax)
 5 shawnw@rgrdlaw.com
 – and –
 6 SPENCER A. BURKHOLZ (147029)
 THEODORE J. PINTAR (131372)
 7 LUKE O. BROOKS (212802)
 ERIC I. NIEHAUS (239023)
 8 JEFFREY J. STEIN (265268)
 ERIKA OLIVER (306614)
 9 NATALIE F. LAKOSIL (322836)
 655 West Broadway, Suite 1900
 10 San Diego, CA 92101
 Telephone: 619/231-1058
 11 619/231-7423 (fax)
 spenceb@rgrdlw.com
 12 tedp@rgrdlaw.com
 lukeb@rgrdlaw.com
 13 eniehaus@rgrdlaw.com
 jstein@rgrdlaw.com
 14 eoliver@rgrdlaw.com
 nlakosil@rgrdlaw.com

15 Lead Counsel for Plaintiffs

16 UNITED STATES DISTRICT COURT
 17 NORTHERN DISTRICT OF CALIFORNIA
 18 OAKLAND DIVISION

19 GREG FLEMING, Individually and on Behalf)
 of All Others Similarly Situated,)

20 Plaintiff,)

21 vs.)

22 IMPAX LABORATORIES INC., et al.,)
 23)

24 Defendants.)

Case No. 4:16-cv-06557-HSG

CLASS ACTION

DECLARATION OF LUKE O. BROOKS IN
 SUPPORT OF MOTION FOR: (1) FINAL
 APPROVAL OF CLASS ACTION
 SETTLEMENT; (2) APPROVAL OF PLAN
 OF ALLOCATION; (3) AWARD OF
 ATTORNEYS' FEES AND EXPENSES;
 AND (4) AWARDS TO PLAINTIFFS
 PURSUANT TO 15 U.S.C. §78u-4(a)(4)

DATE: March 31, 2022

TIME: 2:00 p.m.

CTRM: 2, 4th Floor

JUDGE: Hon. Haywood S. Gilliam, Jr.

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28		DECLARATION OF LUKE O. BROOKS IN SUPPORT OF MOTION FOR: (1) FINAL APPROVAL OF CLASS ACTION SETTLEMENT; (2) APPROVAL OF PLAN OF ALLOCATION; (3) AWARD OF ATTORNEYS’ FEES AND EXPENSES; AND (4) AWARDS TO PLAINTIFFS PURSUANT TO 15 U.S.C. §78U-4(A)(4) - 4:16-cv- 06557-HSG 4884-9530-7784.v1	

1 I, LUKE O. BROOKS, declare as follows:

2 1. I am an attorney duly licensed to practice before all courts of the State of California.
3 I am a member of the law firm of Robbins Geller Rudman & Dowd LLP (“Robbins Geller” or “Lead
4 Counsel”), and counsel for New York Hotel Trades Council & Hotel Association of New York City,
5 Inc. Pension Fund (“New York Pension Fund” or “Lead Plaintiff”) and proposed class representative
6 Sheet Metal Workers’ Pension Plan of Southern California, Arizona and Nevada (“Sheet Metal
7 Workers’ Fund” or “Class Representative” and together with New York Pension Fund, the
8 “Plaintiffs” or “Funds”). I have been actively involved in the prosecution of this Action since 2017
9 and am closely familiar with its proceedings (the “Litigation” or “Action”).¹ I have personal
10 knowledge of the majority of the matters set forth herein based upon my active participation in and
11 supervision of all material aspects of the Litigation. As to the remaining matters, I have reviewed
12 our litigation files and consulted with other attorneys and support staff who worked on this case. I
13 could and would testify completely to the matters set forth herein if called upon to do so.

14 2. I submit this declaration in support of Lead Plaintiff’s motion for: (a) final approval
15 of the \$33,000,000 all-cash settlement on behalf of the Class (the “Settlement”); (b) approval of the
16 proposed Plan of Allocation; (c) an award of attorneys’ fees and expenses; and (d) awards to
17 Plaintiffs in accordance with 15 U.S.C. §78u-4(a)(4).

18 **I. PRELIMINARY STATEMENT**

19 3. The \$33,000,000 proposed Settlement is the culmination of over four years of hard-
20 fought litigation. As detailed below, Plaintiffs, through Lead Counsel, zealously prosecuted their
21 claims throughout this Action, successfully appealing the Court’s dismissal order to the Ninth
22 Circuit and rescuing the case from outright dismissal without recovery. The Settlement, which
23 represents approximately 12.5% of the estimated recoverable damages (as calculated by Plaintiffs’
24 consultant), is an exceptional result for the Class.

25 ¹ Unless otherwise defined herein, capitalized terms shall have the meanings ascribed in the
26 Second Amended Stipulation of Settlement, dated October 27, 2021 (the “Second Amended
27 Stipulation”), and filed as Exhibit A to Lead Plaintiff’s Second Supplemental Memorandum in
Further Support of Motion for Preliminary Approval of Proposed Settlement (ECF No. 121).

1 4. As further detailed herein, proceeding to further pleading challenges, class
2 certification, summary judgment, and then a jury trial would each present substantial risks. In
3 agreeing to settle the Action now, Plaintiffs and Lead Counsel carefully considered the strengths of
4 their case, as well as the substantial risks they faced by continuing the Litigation. In opting to settle,
5 Plaintiffs and Lead Counsel concluded that settlement on the terms they obtained was in the Class’s
6 best interest. Representatives of Plaintiffs – who supervised Lead Counsel and remained well
7 informed during the settlement negotiations – ultimately approved the Settlement. *See* Declaration
8 of John Heim in Support of Lead Plaintiff’s Motion for Final Approval of Settlement (“New York
9 Pension Fund Decl.”), ¶4; Declaration of Vernon Shaffer in Support of Lead Plaintiff’s Motion for
10 Final Approval of Settlement (“Sheet Metal Workers’ Fund Decl.”), ¶¶3-4, submitted herewith.

11 5. As detailed below, Plaintiffs achieved the proposed Settlement after more than four
12 years of litigation, during which time they, *inter alia*:

- 13 • successfully moved to appoint New York Pension Fund as Lead Plaintiff, and
14 Robbins Geller as Lead Counsel, in January 2017;
- 15 • conducted an extensive investigation culminating in the filing of the Amended
16 Complaint for Violation of the Federal Securities Laws (“FAC”) in April 2017;
- 17 • opposed Defendants’ motion to dismiss the FAC in July 2017;
- 18 • after the Court dismissed the FAC with leave to amend on September 7, 2018 (the
19 “FAC MTD Order”), conducted further factual investigation culminating in the filing
20 of the comprehensive Second Amended Complaint for Violation of the Federal
21 Securities Laws (“SAC”) in October 2018;
- 22 • opposed Defendants’ motion to dismiss the SAC in January 2019 and presented oral
23 argument on May 2, 2019;
- 24 • after the Court issued an order dismissing the SAC without leave to amend on
25 August 12, 2019 (the “SAC MTD Order”), briefed and argued an appeal to the Ninth
26 Circuit, culminating in the partial reversal of the SAC MTD Order in January 2021
27 (the “Appellate Opinion”);
- 28 • following the Ninth Circuit’s decision reversing in part and affirming in part this
29 Court’s dismissal of the SAC, moved, in the Ninth Circuit and before this Court, for
30 an order allowing Sheet Metal Workers’ Fund to intervene to protect the interests of
31 the Class;

- 1 • after remand back to this Court, opposed Defendants’ second motion to dismiss the
2 SAC in May 2021; and
- 3 • prepared a detailed mediation statement and participated in a full-day mediation and
4 follow-up mediation sessions and negotiations, culminating in the settlement of the
5 Action in principle.

6 6. The substantial investigation, motion practice, and appellate practice outlined herein
7 meaningfully informed Lead Counsel of the case’s strengths and weaknesses. Lead Counsel
8 consistently considered this information in determining the best course of action for the Class. And,
9 while Plaintiffs are confident that proceeding to discovery could unveil evidence in further support
10 of their claims, Plaintiffs understand the substantial risk of proceeding with further motion practice
11 at the pleading phase and beyond.

12 7. Lead Plaintiff alleges that in violation of §§10(b) and 20(a) of the Securities
13 Exchange Act of 1934 (“Exchange Act”) and Rule 10b-5 promulgated thereunder, Defendants
14 engaged in a fraudulent scheme to artificially inflate the price of Impax’s common stock and 2%
15 Convertible Senior Notes due 2022 (“Impax Securities”) by making materially false and misleading
16 statements and/or omissions regarding the Company’s generic drug portfolio. ¶¶226-437.²
17 Defendants, on the other hand, have argued that they did not make any materially false or misleading
18 statements or omissions during the Class Period; that even if they had made false or misleading
19 statements, Plaintiffs would be unable to prove scienter because Defendants lacked the requisite
20 intent; and that they did not cause any investor losses. *See, e.g.*, ECF No. 50 at 6-18. There is no
21 doubt that Defendants would have continued to vigorously pursue these defenses throughout the
22 Litigation and at trial.

23 8. Accordingly, the proposed Settlement avoids the substantial additional costs and risks
24 of further litigating liability and damages if this case were to continue. Indeed, Plaintiffs faced
25 substantial risk that this Court would again dismiss the SAC in its entirety at the pleading stage,
26 based on issues it expressly did not address – and the Ninth Circuit therefore did not review – in the

27 ² All “¶” or “¶¶” references are to the SAC, unless otherwise stated.

1 SAC MTD Order. Even in the event Plaintiffs proceeded beyond the pleading phase, they faced
2 substantial risks that the Class would not be certified, or that the case would be fully or partially
3 adjudicated against them following a motion for summary judgment from Defendants. Given the
4 significant risks in continuing to litigate this Action, Plaintiffs and Lead Counsel concluded that the
5 \$33,000,000 Settlement is in the best interest of the Class.

6 9. The proposed Settlement is the direct result of Plaintiffs' and Lead Counsel's skill
7 and relentless efforts over the past four years to obtain an exceptional recovery on behalf of the
8 Class. The Settlement is also the product of the parties' serious, extensive arm's-length negotiations
9 and mediation sessions, facilitated by the Honorable Layn R. Phillips (Ret.), one of the nation's
10 foremost mediators. These negotiations were conducted by experienced counsel from both sides
11 who are closely connected to the Litigation.

12 10. Plaintiffs also seek approval of the proposed Plan of Allocation, which Lead Counsel
13 submits is fair and reasonable. Lead Counsel drafted the Plan of Allocation with the assistance of
14 Plaintiffs' damages and loss causation consultant. As further described below and in the Notice, the
15 Plan of Allocation provides formulas for calculating the recognized claim of each Class Member,
16 based on such information as when the person purchased and sold its Impax Securities on the open
17 market. Each Authorized Claimant, including Plaintiffs, will receive a *pro rata* distribution pursuant
18 to the Plan of Allocation, and Plaintiffs will be subject to the same formula for distribution of the Net
19 Settlement Fund. Importantly, the Plan of Allocation does not treat the Plaintiffs or any other Class
20 Member preferentially.

21 11. Lead Counsel prosecuted the Litigation on a wholly contingent basis, advancing and
22 incurring substantial litigation expenses and charges over the years. Lead Counsel shouldered
23 substantial risk in doing so, and, to this date, has not received any compensation for its efforts.
24 Accordingly, in consideration of its extensive efforts on behalf of the Class, Lead Counsel is
25 applying for an award of attorneys' fees in the amount of 30% of the Settlement Amount, plus
26 interest.

1 12. The requested fee is within the range of fees awarded in similar Private Securities
2 Litigation Reform Act of 1995 (“PSLRA”) securities class action settlements, and is fully justified in
3 light of the substantial benefits conferred on the Class, the significant risks overcome in achieving
4 the Settlement, the quality of representation, and the nature and extent of the legal services Lead
5 Counsel performed in this complex litigation. To date, no Class Members have objected, which
6 suggests Class-wide approval of both the Settlement and the requested fees. Lead Counsel submits
7 that the fee application is fair to the Class under all applicable standards and warrants the Court’s
8 approval.

9 13. Lead Counsel also seeks an award in the amount of \$176,501.78, plus interest, for
10 expenses and charges reasonably and necessarily committed to the prosecution of the Litigation over
11 the last four years. These expenses include: (i) fees and expenses of consultants whose services were
12 required for a fulsome investigation and analysis of the case; (ii) online factual and legal research;
13 (iii) administrative expenses; and (iv) mediation expenses.

14 14. Finally, Plaintiffs seek awards pursuant to 15 U.S.C. §78u-4(a)(4) in connection with
15 their representation of the Class. New York Pension Fund seeks \$9,462.50, and Sheet Metal
16 Workers’ Fund seeks \$1,176.10. New York Pension Fund actively monitored Lead Counsel’s
17 progress and the events in this case throughout the Litigation, and participated in the successful full-
18 day mediation and follow-up sessions. Sheet Metal Workers’ Fund intervened in the case following
19 the Ninth Circuit’s decision reversing in part and affirming in part the Court’s dismissal. Faced with
20 the possibility that New York Pension Fund’s individual claims might be subjected to a claim of
21 mootness in light of the Ninth Circuit’s decision and the timing of New York Pension Fund’s stock
22 purchases, Sheet Metal Workers’ Fund moved to intervene as an additional named plaintiff to protect
23 the interests of the Class. Both Plaintiffs approved both the Settlement and the requested attorneys’
24 fees and expense awards. New York Pension Fund Decl., ¶¶4-5; Sheet Metal Workers’ Fund Decl.,
25 ¶¶4-5.

26 15. The following summarizes the principal events during the Litigation and the legal
27 services Lead Counsel provided to Plaintiffs and the Class.

28 DECLARATION OF LUKE O. BROOKS IN SUPPORT OF MOTION FOR: (1) FINAL APPROVAL OF CLASS
ACTION SETTLEMENT; (2) APPROVAL OF PLAN OF ALLOCATION; (3) AWARD OF ATTORNEYS’ FEES
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1 **II. HISTORY OF THE ACTION**

2 **A. New York Pension Fund Is Appointed Lead Plaintiff**

3 16. On November 11, 2016, the initial complaint was filed in this Action alleging that
4 Defendants violated §§10(b) and 20(a) of the Exchange Act by issuing materially false and
5 misleading statements and omissions between February 20, 2014 and November 2, 2016, inclusive.
6 ECF No. 1.

7 17. On January 9, 2017, New York Pension Fund moved to have itself appointed as Lead
8 Plaintiff and Robbins Geller appointed as Lead Counsel. ECF No. 13. The Court subsequently
9 granted the motion, appointing New York Pension Fund as Lead Plaintiff and Robbins Geller as
10 Lead Counsel on February 15, 2017. ECF No. 29.

11 **B. Lead Plaintiff Vigorously Pursues Its Claims at the Pleading Stage**

12 18. Lead Counsel conducted an extensive factual investigation prior to filing the FAC,
13 analyzing years of Impax's public filings with the Securities and Exchange Commission, media
14 reports, analyst reports, and trading data. In addition, Lead Counsel, through and in conjunction
15 with a private investigative firm, located and conducted interviews with witnesses believed to
16 potentially have information about the claims at issue in the Action, including former Impax
17 employees. Lead Counsel also retained and consulted extensively with an expert in antitrust matters
18 in order to navigate the complicated antitrust claims related to the Action and generate statistical
19 analysis supporting Lead Plaintiff's claims. Prior to filing the FAC, Lead Counsel also performed
20 legal research to evaluate exactly which theories of liability Lead Plaintiff could allege and how to
21 allege them. Following that investigation, Lead Plaintiff filed the FAC on April 17, 2017. ECF No.
22 32.

23 19. The 174-page FAC alleged violations of §§10(b) and 20(a) of the Exchange Act and
24 Rule 10b-5 promulgated thereunder on behalf of all persons who purchased or otherwise acquired
25 Impax Securities between February 20, 2014 and January 11, 2017, inclusive. *Id.*, ¶2. The FAC
26 alleges that Defendants violated the securities laws by making materially false and misleading
27 statements and omissions pertaining to Impax. *Id.*, ¶¶191-320. Specifically, the FAC alleges that

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1 Defendants concealed that the profits from two generic drugs had been inflated by illegal and
2 unsustainable price-fixing arrangements with competitors (*id.*, ¶¶191-304), made false statements
3 and omissions concerning declining revenues and market share for the generic drug diclofenac and
4 Impax’s generic drug portfolio (*id.*, ¶¶305-314), and misrepresented the competitive environment for
5 generic drug budesonide (*id.*, ¶¶315-320). The FAC further alleges that when relevant truth
6 regarding the alleged misstatements was revealed through a series of partial disclosures in 2015-
7 2017, artificial inflation was removed from the share prices of Impax Securities, causing the Class to
8 suffer damages. *Id.*, ¶¶392-411.

9 20. On June 1, 2017, Defendants moved to dismiss the FAC in its entirety, raising several
10 challenges under the Federal Rules of Civil Procedure (“FRCP”) and the PSLRA. ECF No. 50.
11 Among other things, Defendants argued that Lead Plaintiff failed to adequately allege material
12 falsity, scienter and loss causation. *Id.* Lead Plaintiff opposed Defendants’ motion on July 17, 2017
13 (ECF No. 52), and Defendants replied on August 16, 2017 (ECF No. 56). In the FAC MTD Order
14 on September 7, 2018, the Court granted Defendants’ motion to dismiss as to each of Lead
15 Plaintiff’s theories of liability, but provided it with an opportunity to amend the FAC. ECF No. 66.

16 21. In response to the FAC MTD Order, Lead Plaintiff conducted further factual
17 investigation, including locating and distilling documents and testimony from the publicly available
18 voluminous records of other cases against Impax, and working with a private investigative firm
19 conducting interviews of additional former Impax employees. This effort culminated in the filing of
20 the SAC on October 26, 2018. ECF No. 71.

21 22. The 196-page SAC substantially supplemented Lead Plaintiff’s allegations, and
22 supported those allegations with citations to reliable outside sources, such as governmental
23 investigations and publicly available documents and testimony. Generally, however, the SAC
24 maintained Lead Plaintiff’s focus on violations of §§10(b) and 20(a) of the Exchange Act and Rule
25 10b-5 promulgated thereunder on behalf of all persons who purchased or otherwise acquired Impax
26 Securities between February 20, 2014 and January 11, 2017, inclusive. ¶1. As with the FAC, the

27 SAC alleged that Defendants concealed anticompetitive price-fixing and market allocation
28
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1 agreements with competitors (¶¶226-350), misrepresented and concealed declining revenues and
2 market share for diclofenac and the generic drug portfolio (¶¶351-397), and misrepresented the
3 competitive environment for budesonide (¶¶398-437).

4 23. Defendants moved to dismiss the SAC on December 6, 2018, asserting that with
5 respect to Lead Plaintiff's price-fixing allegations, scienter and loss causation were not adequately
6 pleaded, and that the material falsity and scienter allegations were insufficient to state a claim arising
7 out of the alleged false statements concerning diclofenac and budesonide. ECF No. 72. Lead
8 Plaintiff opposed Defendants' motion to dismiss the SAC on January 17, 2019 (ECF No. 73), and
9 Defendants replied on February 7, 2019 (ECF No. 76). On May 2, 2019, the Court heard oral
10 argument on Defendants' motion to dismiss the SAC.

11 24. On August 12, 2019, the Court granted Defendants' motion to dismiss the SAC with
12 prejudice. ECF No. 86. The Court found that Lead Plaintiff had failed to sufficiently plead loss
13 causation for its price-fixing allegations (*id.* at 5), failed to plead falsity for its diclofenac allegations
14 (*id.* at 6), and failed to sufficiently plead scienter as to its budesonide allegations (*id.* at 9). The
15 Court expressly did not consider, and therefore reached no opinion concerning, the other elements of
16 Lead Plaintiff's securities fraud claims. *Id.* at 4, 6, 9.

17 **C. Lead Plaintiff Successfully Appeals the SAC MTD Order to the Ninth**
18 **Circuit, Rescuing the Case from Dismissal Without Recovery**

19 25. On September 5, 2019, following dismissal of the SAC with prejudice, Lead Plaintiff
20 filed a notice of appeal regarding the SAC MTD Order, expressing its intent to appeal the ruling to
21 the Ninth Circuit. ECF No. 87. On February 14, 2020, Lead Plaintiff filed its opening brief with the
22 Ninth Circuit, which included a thorough argument explaining why each finding against the Class
23 from the SAC MTD Order was incorrect and should be reversed. Case No. 19-16744 ("Appeal"),
24 ECF No. 10. Defendants filed their answering brief on May 15, 2020 (Appeal, ECF No. 15), New
25 York Pension Fund filed its reply on August 4, 2020 (Appeal, ECF No. 25), and the parties appeared
26 remotely for oral argument on December 9, 2020.

1 26. On January 11, 2021, the Ninth Circuit issued the Appellate Opinion, reversing in
2 part and affirming in part the SAC MTD Order, and remanding the matter back to this Court.
3 Appeal, ECF No. 41. Lead Plaintiff’s relentless briefing and oral argument had paid off. The Ninth
4 Circuit agreed that, among other things, the SAC sufficiently alleged loss causation from the alleged
5 price-fixing as two of the corrective disclosures, in May and August of 2015 (*Id.* at 2), and
6 sufficiently alleged falsity concerning the diclofenac allegations (*id.* at 4). The Ninth Circuit
7 affirmed, however, the SAC MTD Order to the extent it dismissed the budesonide allegations and
8 found New York Pension Fund did not sufficiently plead loss causation as to the two alleged
9 corrective disclosures, in November 2016 and January 2017. *Id.* at 4, 8. The Ninth Circuit then
10 remanded the matter back to this Court for further consideration.

11 27. On January 25, 2021, Defendants petitioned for a rehearing *en banc* (Appeal, ECF
12 No. 42), which the Ninth Circuit unanimously denied on March 24, 2021 (Appeal, ECF No. 47).

13 **D. Sheet Metal Workers’ Fund Moves to Intervene and Defendants**
14 **Move to Dismiss the SAC a Second Time**

15 28. Since the Appellate Opinion affirmed dismissal of the two latest alleged corrective
16 disclosures relating to the price-fixing allegations, the Class Period was effectively shortened, ending
17 on August 9, 2016 instead of Lead Plaintiff’s originally pled end date of January 11, 2017. SAC at
18 187, 188. This change arguably subjected New York Pension Fund’s individual claims to a
19 mootness challenge because it purchased Impax common stock on August 22 and 23, 2016, *i.e.*, after
20 the final remaining corrective disclosure, potentially leaving putative Class Members with upheld
21 claims unprotected.

22 29. In an effort to protect its claims and those of other putative Class Members, Sheet
23 Metal Workers’ Fund, which purchased Impax common stock during the narrowed Class Period,
24 moved with Robbins Geller as counsel to intervene in the appeal. Appeal, ECF No. 43. New York
25 Pension Fund joined the motion. *Id.* at 1. On March 24, 2021, the Ninth Circuit denied Sheet Metal
26 Workers’ Fund’s motion without prejudice to seek leave to intervene with the district court on
27 remand. Appeal, ECF No. 48.

1 30. The mandate issued on April 1, 2021 (Appeal, ECF No. 50), and upon remand the
2 Funds renewed the motion for Sheet Metal Workers' Fund to intervene as an additional named
3 plaintiff. ECF No. 93. Meanwhile, Defendants expressed their intent to file a motion to dismiss the
4 Action on the grounds that New York Pension Fund lacked standing. The parties stipulated to a
5 concurrent briefing schedule for the two related motions (ECF No. 95), which the Court granted
6 (ECF No. 98). In accordance with the schedule, on April 19, 2021, Defendants filed their second
7 motion to dismiss the SAC (ECF No. 96); on May 17, 2021, Defendants filed their opposition to the
8 motion to intervene (ECF No. 102) and Lead Plaintiff filed its opposition to the motion to dismiss
9 (ECF No. 101); and on June 1, 2021, Plaintiffs filed their reply in support of the motion to intervene
10 (ECF No. 105) and Defendants filed their reply in support of the motion to dismiss (ECF No. 106).
11 The Court took both motions under submission on June 25, 2021. ECF No. 108. The Settlement
12 was reached during the pendency of both motions.

13 **III. THE SETTLEMENT**

14 31. The \$33,000,000 Settlement is the result of extensive arm's-length negotiations
15 between the parties for over a year. The Settlement unmistakably provides the Class with a
16 substantial benefit and eliminates the significant risks of proceeding with litigation. Lead Counsel
17 believes that the Settlement is fair, reasonable, and an exceptional result for Class Members,
18 considering the risk of falling short, and recovering nothing, at future inflection points, including
19 another motion to dismiss, class certification, motion for summary judgment, and trial.

20 **A. Reaching the Settlement**

21 32. The parties engaged the Honorable Layn R. Phillips (Ret.) in direct settlement
22 discussions during the course of the Litigation. Judge Phillips is a retired federal judge with
23 substantial experience mediating securities fraud class actions.

24 33. On September 17, 2020, the parties participated in a full-day Zoom mediation before
25 Judge Phillips. In advance of the mediation, the parties prepared and exchanged detailed mediation
26 submissions, with each side discussing the strengths and weaknesses of their claims and defenses.

27 At the mediation, the parties responded to merits- and damages-related questions from Judge Phillips

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1 and his staff. Although the parties made substantial progress during the mediation session, they did
2 not reach an agreement to settle the Action.

3 34. Although the case did not resolve at the first mediation, the mediation efforts
4 continued. The parties conducted further mediation sessions and negotiations, overseen by Judge
5 Phillips. The parties, who had very different views on the potential recoverable damages, also
6 exchanged detailed information concerning the methodologies, inputs and assumptions that went
7 into each side's damages estimates. Ultimately, these subsequent mediation efforts resulted in Judge
8 Phillips issuing a mediator's proposal to resolve the Action for an all cash payment of \$33,000,000
9 on June 26, 2021, which both parties eventually accepted.

10 35. Thereafter, on July 30, 2021, Lead Plaintiff filed the Notice of Unopposed Motion
11 and Unopposed Motion for Preliminary Approval of Proposed Settlement, and Memorandum of
12 Points and Authorities in Support Thereof, including attachments ("Preliminary Approval Motion"),
13 which outlined the agreement in detail. ECF No. 110. On October 14, 2021, the Court heard the
14 motion and provided comments, which prompted Lead Plaintiff to file a supplemental brief in
15 support of preliminary approval on October 20, 2021. ECF No. 118. On October 25, 2021, the
16 Court posted further comments on the docket (ECF No. 120), which Lead Plaintiff addressed with a
17 second supplemental brief and attachments, including the Second Amended Stipulation on October
18 28, 2021 (ECF No. 121). On November 22, 2021, this Court issued its Order Granting Preliminary
19 Approval of Settlement (the "Preliminary Approval Order"), which granted preliminary approval of
20 the parties' Second Amended Stipulation, approved the form and manner of notice to the Class, and
21 requested a stipulated schedule for the final approval hearing. ECF No. 122.

22 **B. Reasons for the Settlement**

23 36. Plaintiffs and Lead Counsel strongly endorse the Settlement. Plaintiffs are
24 sophisticated institutional investors, and New York Pension Fund has actively overseen the
25 prosecution of this Litigation since 2017. Lead Counsel, meanwhile, specializes in complex
26 securities litigation, and is highly experienced in such litigation. *See* accompanying Declaration of
27 Luke O. Brooks Filed on Behalf of Robbins Geller Rudman & Dowd LLP in Support of Application
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1 for Award of Attorneys' Fees and Expenses ("RGRD Declaration"), Ex. F. Based on their
2 experience and intimate knowledge from litigating this case, Lead Counsel and Plaintiffs determined
3 that the Settlement was in the best interest of the Class.

4 37. An all cash payment of \$33,000,000 represents a significant recovery for the Class in
5 light of the Court's prior misgivings about the sufficiency of Lead Plaintiff's allegations, and the
6 multiple opportunities for dismissal still available to Defendants. The most imminent threat of
7 dismissal arises from Defendants' pending motion to dismiss. ECF No. 96. As discussed above,
8 Defendants filed a motion contending that New York Pension Fund purportedly lacks standing
9 because it did not purchase shares within the narrowed Class Period, despite Sheet Metal Workers'
10 Fund already-filed, renewed motion to intervene. ECF No. 93. But Plaintiffs cannot be sure how the
11 Court would rule on either motion, and imminent dismissal on this basis is a real possibility.

12 38. Even if the Court agreed that either Plaintiff had standing to sue, they would still face
13 substantial risk of dismissal at the pleading phase. Defendants would likely move to dismiss the
14 SAC on a number of grounds the Ninth Circuit did not address in its Appellate Opinion, including
15 that the SAC fails to plead facts creating a strong inference that Defendants made the alleged
16 statements with scienter – actual knowledge or deliberate recklessness of their falsity. Notably, in
17 the FAC MTD Order, this Court held that "the FAC's scienter allegations are insufficient to survive
18 Defendants' dismissal motion." ECF No. 66 at 6. There is substantial risk that the Court would
19 reach the same conclusion with respect to the SAC.

20 39. Even if Plaintiffs advance past the pleading stage, continuing to litigate would present
21 numerous additional risks. For instance, Plaintiffs risk that the Class would not be certified or that
22 Defendants would prevail on the merits after a summary judgment motion or trial. Regarding a
23 decision on the merits, Plaintiffs must meet their burden of proof for all elements of their claims,
24 while Defendants need only succeed on one defense to defeat the entire Action.

25 40. Securities class actions face serious risks of dismissal and non-recovery at all stages,
26 and these risks were heightened in this difficult action. For example, the need to prove an antitrust
27 "case within a case" to establish liability – specifically, the falsity of Defendants' public statements

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1 related to Impax's alleged anti-competitive conduct – greatly amplified Plaintiffs' litigation risks.
2 Lead Counsel anticipates that Defendants would take the position that, in order to establish liability,
3 Plaintiffs would have had to prove an underlying antitrust conspiracy against Impax before they
4 could establish any alleged securities law violations. Defendants have argued that Impax was not
5 named in any of the government actions and likely would have argued following discovery that
6 Plaintiffs could not establish that Impax participated in a wide-ranging antitrust conspiracy, or that
7 the dramatic price increases at issue were the result of legitimate business actions.

8 41. With respect to the allegations relating to their statements pertaining to diclofenac,
9 Defendants have argued that the statements were either non-actionable puffery, true statements of
10 historical fact, non-actionable opinions, or forward-looking statements subject to the PSLRA's safe
11 harbor. They also have asserted that Plaintiffs would not be able to establish scienter. For example,
12 with respect to Defendants' May 10, 2015 statement about diclofenac and Impax's generic portfolio
13 decline, Defendants argued that Defendant Wilkinson made an error, at most, and that he corrected
14 that error later the same day. Although Defendants did not prevail on this argument at the pleading
15 stage, there is substantial risk that the Court at summary judgment or the jury at trial would conclude
16 that Wilkinson misspoke by conflating the figures for Impax's first-quarter portfolio price decline
17 and its first-quarter revenue decline attributable to price, rather than acting with the requisite intent.
18 With respect to the guidance allegations, Defendants argued that Impax had no motive to issue
19 guidance it knew the Company could not meet, and that the miss was simply the product of
20 Defendants' failure to identify the sudden shift in the diclofenac market quickly enough to avoid
21 making the challenged guidance.

22 42. While Plaintiffs believe they had strong arguments in response, it is clear that if the
23 Court or a jury were to have credited such arguments at summary judgment or trial, any class
24 recovery could have been eliminated outright.

25 43. In addition to the risk of outright dismissal, Plaintiffs also face substantial risk that
26 the potential recoverable damages could be trimmed significantly, as they were by the Appellate
27 Opinion that narrowed the Class Period. The class certification, summary judgment, and trial stages

1 each present an opportunity for Defendants to further narrow the Class Period, or strike specific
2 corrective disclosures, which would limit recoverable damages significantly. Defendants have
3 repeatedly argued that the alleged corrective disclosures on May 11, 2015 and August 10, 2015 were
4 not “corrective” because they did not disclose Impax’s participation in a price-fixing scheme and
5 therefore the declines that occurred on those days were not proximately caused by the fraud.
6 Plaintiffs would need to continue to combat such arguments.

7 44. In addition to risks associated with potentially losing on the merits, Plaintiffs face the
8 inevitable certainty that there would be substantial delay in their recovery by proceeding with the
9 Litigation. A final decision on the merits after a jury trial and any appeals, even if Plaintiffs cleared
10 all the obstacles described above, would take several years to obtain.

11 45. In contrast to these risks, the Settlement now guarantees a prompt and sizeable
12 recovery for the Class without the risks of lesser or no recovery associated with further litigation.
13 Plaintiffs and Lead Counsel have assessed and weighed the risks and the potential for significant
14 delay against the benefit of substantial recovery now, and have determined that the Settlement
15 represents an exceptional result for the Class.

16 **C. The Plan of Allocation Is Fair and Reasonable**

17 46. Plaintiffs have proposed a Plan of Allocation to govern the method by which Class
18 Members’ claims will be calculated, *i.e.*, how the proceeds of the Settlement will be allocated among
19 Class Members who suffered economic losses as a result of the alleged fraud. The Plan of
20 Allocation provides that the Net Settlement Fund will be distributed to Class Members who submit
21 timely, valid Proofs of Claim and whose claims for recovery have been permitted under the terms of
22 the Settlement Agreement (“Authorized Claimants”). The Plan of Allocation provides that Class
23 Members will only be eligible to participate in the distribution of the Net Settlement Fund if they
24 purchased or otherwise acquired Impax Securities during the Class Period (as narrowed by the
25 Appellate Opinion) and have a Recognized Loss Amount as described in the Notice.

26 47. Lead Counsel developed the Plan of Allocation in conjunction with its loss causation
27 and damages consultant who calculated the estimated alleged artificial inflation in both Impax
28

1 common stock and Impax 2% Convertible Senior Notes due 2022 proximately caused by
2 Defendants' alleged false and misleading statements and material omissions. To do this, the
3 consultant considered the market and industry adjusted price changes for such securities. *See*
4 Declaration of Luiggy Segura Regarding (A) Notice Dissemination; (B) Publication/Transmission of
5 Summary Notice; and (C) Requests for Exclusion Received to Date ("Segura Decl."), Ex. A, Notice
6 at 8-14, submitted herewith.

7 48. Under the Plan of Allocation, for each Class Period purchase of Impax Securities that
8 is properly documented, a "Recognized Loss Amount" will be calculated according to the formulas
9 described in the Notice. In simple terms, the calculation of a Claimant's Recognized Loss Amount
10 is based on a formula that takes into account such information as: (a) when a Claimant's share was
11 purchased and sold; (b) the amount of the alleged artificial inflation per share at the time of purchase
12 and sale; and (c) the purchase price of the share. Because the alleged corrective disclosures reduced
13 the artificial inflation in stages over the course of the Class Period, the Recognized Loss Amounts of
14 Claimants may vary.

15 49. In sum, the Plan of Allocation represents a reliable and time-tested method by which
16 to weigh, in a fair and equitable manner, the claims of Authorized Claimants against one another for
17 the purpose of making *pro rata* allocations of the Net Settlement Fund.

18 **IV. THE APPLICATION FOR ATTORNEYS' FEES AND EXPENSES**

19 50. The successful prosecution of this Litigation required Counsel and their para-
20 professionals to perform 4,718 hours of work, valued at \$3,815,664.75, and incur \$176,501.78 in
21 expenses and charges, as detailed in the accompanying RGRD Declaration.

22 51. Based on the result achieved, the unique risks of this case, and Lead Counsel's
23 extensive efforts on behalf of the Class, including obtaining a reversal on appeal that revived the
24 fully-dismissed case, Lead Counsel is applying for compensation from the Settlement Fund on a
25 percentage basis in the amount of 30% of the Settlement Amount, and for \$176,501.78 in litigation
26 expenses and charges, plus interest at the same rate and for the same time as that earned on the
27 Settlement Fund. In addition, Lead Plaintiff seeks an award of \$9,462.50, and Class Representative

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1 seeks an award of \$1,176.10, pursuant to 15 U.S.C. §78u-4(a)(4) in connection with Plaintiffs’
2 representation of the Class.

3 52. Lead Counsel and Plaintiffs respectfully submit that the fees and expenses described
4 above should be granted.

5 **A. The Requested Attorneys’ Fees Are Fair and Reasonable**

6 **1. The Results**

7 53. The fact that Lead Counsel was able to obtain such an exceptional result for the Class
8 supports the requested fee. The \$33,000,000 cash Settlement represents approximately 12.5% of
9 estimated recoverable damages, and is more than seven times the size of the median percentage
10 recovery for securities class actions settled in 2020. *See* Preliminary Approval Motion at 10.

11 54. The extraordinary result in this case is particularly impressive given the procedural
12 posture of the Litigation. The case was twice dismissed by the district court, revived by an appeal to
13 the Ninth Circuit, and is facing a third motion to dismiss, with future dispositive motions expected.

14 **2. The Complexity and Risk Inherent in the Litigation**

15 55. The requested fee is also reasonable in light of the very significant risks Plaintiffs
16 faced over the four-plus years the case was litigated, as well as the complexity of the Litigation,
17 including an appeal.

18 56. The Litigation was highly complex, both procedurally and substantively, which
19 rendered the path to resolution time-consuming, challenging, and fraught with risk. Lead Counsel
20 vigorously prosecuted the Class’ claims for over four years, before multiple judges, against a top-tier
21 law firm. In doing so, Lead Counsel undertook extensive investigative efforts and engaged in
22 substantial briefing of complex legal and factual issues on motions to dismiss and intervene, and in
23 connection with Lead Plaintiff’s appeal before the Ninth Circuit.

24 57. Lead Counsel undertook this complicated case on a wholly-contingent basis, and
25 pursued the Class’s claims against a large, sophisticated corporation with endless resources to fight
26 such allegations. Notably, no other party moved for lead plaintiff in this Action and no other counsel
27

1 sought to be appointed lead counsel.³ *See* ECF No. 29 at 1. This lack of interest in representing the
2 Class further underscores the exceptionally risky nature of this case.

3 58. Lead Counsel conducted an extensive pre-filing investigation; wrote, filed, and
4 opposed dismissal of the FAC; engaged in further investigation after the FAC was dismissed; wrote,
5 filed, and opposed dismissal of the SAC; successfully appealed dismissal of the SAC to the Ninth
6 Circuit; and intervened with Sheet Metal Workers' Fund to protect against a claim of mootness or
7 lack of standing. The Litigation settled only after Lead Counsel overcame a relentless stream of
8 complex legal and factual challenges, and rescued the case from outright dismissal with no recovery.

9 59. The requested fee is also reasonable in light of the substantial risks Plaintiffs faced.
10 This case posed higher risk than most securities class actions from the outset. The risk of outright
11 dismissal increased substantially as this Court determined that the FAC failed to state a claim, and
12 was far more probable than not after the district court dismissed the SAC with prejudice, but Lead
13 Counsel proceeded with an expensive and time consuming amendment and appeal in order to secure
14 recovery for the Class.

15 60. In light of the complexity of the factual and legal issues presented during the
16 Litigation and the substantial risks that Plaintiffs overcame at the pleading and appellate phases,
17 Lead Counsel submits that the requested 30% fee is fair, reasonable, and should be approved.

18 **3. The Contingent Nature of the Fee and the Financial Burden**
19 **Carried by Lead Counsel**

20 61. Lead Counsel prosecuted this Litigation on an "at-risk" contingent-fee basis. At the
21 outset in 2017, Lead Counsel knew it was embarking on complex and expensive litigation with no
22 guarantee of compensation for the time, money and effort it poured into this case over its multi-year
23 lifespan. Accordingly, Lead Counsel fully assumed the risk of an unsuccessful result and to date has
24 received no compensation for services rendered or the significant expenses incurred in litigating this
25 Action.

26 ³ One other party filed a motion for lead plaintiff in a related action filed in the District of New
27 Jersey, but abandoned that motion during the lead plaintiff process. *See* ECF No. 18 at 1.

1 62. In undertaking the responsibility for prosecuting the Litigation, Lead Counsel assured
2 that sufficient attorney resources were dedicated to advancing Plaintiffs' and the Class's claims over
3 the years, and that sufficient funds were available to advance the expenses required to zealously
4 pursue such complex litigation. Lead Counsel received no compensation, while at the same time
5 incurring over \$3.8 million in lodestar and over \$176,000 in litigation expenses and charges in
6 prosecuting this Litigation for the benefit of the Class.

7 63. Lead Counsel also shouldered the risk that no recovery would be achieved. Lead
8 Counsel knows from experience that success in contingent-fee litigation is never assured, and that
9 the commencement of a securities class action in no way guarantees a recovery. Instead, it takes
10 diligence, commitment, and years of tireless work by skilled counsel to secure recovery for the
11 Class. For example, in the case, Lead Plaintiff's claims were twice dismissed at the pleadings stage,
12 and it took a labor-intensive appeal to the Ninth Circuit to reverse the dismissal in part and secure a
13 favorable settlement for the Class.

14 64. Courts have repeatedly found that having experienced and able counsel enforce the
15 securities laws promotes the public interest. Vigorous private enforcement of the federal securities
16 laws can only occur if private plaintiffs – particularly institutional investors like Plaintiffs – can
17 obtain some parity in representation with that available to large corporate defendants. If this
18 important public policy is to be carried out, courts should award fees that will adequately
19 compensate private plaintiffs' counsel, taking into account the enormous risks inherent in
20 prosecuting securities class actions on a contingent-fee basis.

21 **4. The Standing and Expertise of Lead Counsel**

22 65. Lead Counsel is among the most experienced and skilled securities litigation law
23 firms in the field, as illustrated by Lead Counsel's firm biography attached as Exhibit F to the RGRD
24 Declaration. Indeed, Lead Counsel has consistently obtained significant recoveries for defrauded
25 investors, including in: *In re Enron Corp. Sec. Litig.*, No. H-01-3624 (S.D. Tex.) (recovering in
26 excess of \$7.2 billion for investors); *Jaffe v. Household Int'l, Inc.*, No. 02-C-05893 (N.D. Ill.)
27 (largest securities class action settlement following a trial: \$1.575 billion); *In re Valeant Pharms.*

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1 *Int'l, Inc. Sec. Litig.*, No. 3:15-cv-07658 (D.N.J.) (largest pharmaceutical securities class action
 2 settlement ever: \$1.21 billion); *In re Am. Realty Cap. Props., Inc., Litig.*, No. 1:15-mc-00040
 3 (S.D.N.Y.) (recovering \$1.025 billion for investors); *In re UnitedHealth Group, Inc. PSLRA Litig.*,
 4 No. 06-CV-1691 (D. Minn.) (recovering over \$925 million).

5 66. The quality of work Lead Counsel provided in attaining the Settlement should also be
 6 evaluated in light of the quality of opposing counsel in this Litigation. Over the course of the
 7 Litigation, Defendants were well-represented by a team of attorneys from Latham & Watkins LLP, a
 8 prominent international law firm. Faced with knowledgeable, experienced, and formidable opposing
 9 counsel, Lead Counsel were nonetheless able to withstand multiple dismissals and still persuade
 10 Defendants to settle the Action for \$33,000,000.

11 **5. The Class's Reaction to Date**

12 67. The Notice advises the Class that Lead Counsel intends to request an award of
 13 attorneys' fees in an amount not to exceed 30% of the Settlement Amount, plus interest, and for
 14 payment of litigation expenses not to exceed \$250,000, plus interest. *See* Segura Decl., Notice at ¶5.
 15 The Notice provided Class Members until March 4, 2022 to submit objections to Lead Counsel's fee
 16 and expense application.

17 68. While the time to object to the fee and expense application has not expired, it is my
 18 understanding that to date, no Class Members have objected to the Settlement, demonstrating
 19 widespread acceptance of the deal and its terms.

20 **B. Application for Litigation Expenses and Charges**

21 69. In addition to fees, Lead Counsel requests \$176,501.78 for expenses and charges
 22 reasonably and necessarily incurred in prosecuting Plaintiffs' claims for the past four years. Lead
 23 Counsel respectfully submits that this amount is appropriate, fair and reasonable and should be
 24 approved.

25 70. Since 2017, Lead Counsel knew it may never recover any of the expenses it incurred
 26 in prosecuting this case. Lead Counsel also understood that, even assuming the case was ultimately
 27 successful, an award of expenses would not compensate them for the lost use of the funds they had

1 dedicated to this Litigation. Accordingly, Lead Counsel were motivated to, and did, take steps to
2 minimize expenses where practicable without jeopardizing the vigorous and efficient prosecution of
3 this Litigation.

4 71. As set forth in the RGRD Declaration, the expenses, charges and costs incurred were
5 necessary and appropriate in light of the complex nature of the Action and were associated with,
6 among other things, hiring consultants, service of process, online legal and factual research, and
7 mediation.

8 72. Lead Plaintiff also seeks an award of \$9,462.50, and Class Representative seeks an
9 award of \$1,176.10, pursuant to 15 U.S.C. §78u-4(a)(4) in connection with their representation of
10 the Class. Plaintiffs dedicated time and resources to monitoring the developments in the Litigation,
11 and participating in settlement negotiations. *See* New York Pension Fund Decl. and Sheet Metal
12 Workers' Fund Decl., submitted herewith.

13 **V. CONCLUSION**

14 73. In light of the \$33,000,000 Settlement obtained by Plaintiffs and Lead Counsel, the
15 substantial risks Lead Counsel faced, the exceptional quality of Lead Counsel's work, the contingent
16 nature of the requested fee, and the substantial complexity of the case, Plaintiffs and their Counsel
17 respectfully submit that the Court should approve the Settlement and Plan of Allocation as fair,
18 reasonable, and adequate, approve Lead Counsel's application for an award of attorneys' fees and
19 expenses, and approve Plaintiffs' request for awards pursuant to 15 U.S.C. §78u-4(a)(4).

20 I declare under penalty of perjury that the foregoing is true and correct. Executed this 18th
21 day of January, 2022, at San Diego, California.

22
23 s/ Luke O. Brooks
24 LUKE O. BROOKS