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15 Lead Counsel for Plaintiffs

16 [Additional counsel appear on signature page.]

17 UNITED STATES DISTRICT COURT
18 NORTHERN DISTRICT OF CALIFORNIA
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 Defendants.)
24

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

CLASS ACTION

REPLY MEMORANDUM AND
STATEMENT OF NON-OPPOSITION IN
FURTHER SUPPORT OF LEAD
PLAINTIFF’S 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.

1 Lead Plaintiff New York Hotel Trades Council & Hotel Association of New York City, Inc.
2 Pension Fund (“Lead Plaintiff”) and class representative Sheet Metal Workers’ Pension Plan of
3 Southern California, Arizona and Nevada (“Class Representative” and together with Lead Plaintiff,
4 the “Plaintiffs”), and Lead Counsel Robbins Geller Rudman & Dowd LLP (“Lead Counsel”)
5 respectfully submit this reply memorandum and statement of non-opposition in further support of
6 Lead Plaintiff’s motion for: (i) final approval of the \$33 million Settlement; (ii) approval of the
7 proposed Plan of Allocation; (iii) award of attorneys’ fees and expenses; and (iv) awards to Plaintiffs
8 pursuant to 15 U.S.C. §78u-4(a)(4) (ECF No. 127, the “Settlement Brief”).¹

9 **I. INTRODUCTION**

10 Plaintiffs and Lead Counsel are pleased to report that the March 4, 2022 deadline for objections
11 and exclusions has passed and no one has objected to the proposed \$33 million Settlement, the Plan of
12 Allocation, or Lead Counsel’s fee and expense application. In addition, no requests for exclusion have
13 been submitted.² The Claims Administrator mailed over 49,600 copies of the Notice of Pendency and
14 Proposed Settlement of Class Action (“Notice”) and Proof of Claim Form (“Proof of Claim”)
15 (together, “Notice Package”) to potential Class Members and nominees (Supp. Mailing Decl., ¶4), and
16 the Summary Notice was published in *The Wall Street Journal* and transmitted over the *PRNewswire*.³
17 The positive reaction of the Class is a testament to the fairness, adequacy, and reasonableness of the
18 proposed Settlement, the proposed Plan of Allocation, and Lead Counsel’s fee and expense
19 application.

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22
23 ¹ Unless otherwise noted, all capitalized terms not defined herein have the same meanings set forth
24 in the Second Amended Stipulation of Settlement, dated October 27, 2021 (ECF No. 121-1).

25 ² See Supplemental Declaration of Luiggy Segura Regarding (A) Notice Dissemination; (B)
26 Update of Call Center Services and Settlement Website; and (C) Requests for Exclusion Received to
Date, ¶8 (“Supp. Mailing Decl.”), submitted herewith.

27 ³ See Declaration of Luiggy Segura Regarding (A) Notice Dissemination; (B)
28 Publication/Transmission of Summary Notice; and (C) , Requests for Exclusion Received to Date,
¶12 (“Initial Mailing Decl.”) (ECF No. 127-4).

1 **II. THE POSITIVE RESPONSE OF THE CLASS FULLY SUPPORTS FINAL**
 2 **APPROVAL OF THE SETTLEMENT AND PLAN OF ALLOCATION**
 3 **AND AN AWARD OF THE REQUESTED ATTORNEYS' FEES AND**
 4 **EXPENSES**

5 **A. The Notice Provided to the Class Met All Due Process Requirements**

6 As detailed in the Settlement Brief (ECF No. 127), the Initial Mailing Declaration (ECF No.
 7 127-4), and the accompanying Supplemental Mailing Declaration, the comprehensive notice program
 8 approved by the Court and implemented here was “the best notice that [was] practicable under the
 9 circumstances, including individual notice to all members who [could] be identified through
 10 reasonable effort.” Fed. R. Civ. P. 23(c)(2)(B). The Claims Administrator mailed over 49,600 Notice
 11 Packages to potential Class Members and nominees. Supp. Mailing Decl., ¶4. The Summary Notice
 12 was published in *The Wall Street Journal* and over the *PRNewswire* on December 27, 2021. Initial
 13 Mailing Decl., ¶12. Certain Settlement documents were also posted to the Settlement website. *Id.*,
 14 ¶14. These publications and this website target investors, and placement of the Notice and Summary
 15 Notice on these platforms was designed to provide notice of the Settlement to those who might not
 16 have received a mailed notice. Based on this evidence of execution of a fulsome notice program, the
 17 Court may conclude that Lead Plaintiff has provided “the best notice that [was] practicable,” as Rule
 18 23 requires and due process demands. *See, e.g., Destefano v. Zynga, Inc.*, No. 12-cv-04007-JSC, 2016
 19 WL 537946, at *7 (N.D. Cal. Feb. 11, 2016) (finding that individual notice mailed to class members
 20 combined with summary publication constituted “the best form of notice available under the
 21 circumstances”).

22 **B. The Reaction of the Class Strongly Supports Approval of the**
 23 **Settlement and Plan of Allocation**

24 The reaction of a class to a settlement is a significant factor in assessing its fairness and
 25 adequacy. As is true here, “the absence of a large number of objections to a proposed class action
 26 settlement raises a strong presumption that the terms of a proposed class [action] settlement . . . are
 27 favorable to the class members.” *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1043 (N.D.
 28 Cal. 2007) (citation omitted); *Zynga*, 2016 WL 537946, at *13 (same); *see also In re Diamond*
Foods, Inc., No. C 11-05386-WHA, 2014 U.S. Dist. LEXIS 3252, at *9 (N.D. Cal. Jan. 10, 2014)

1 (“Also supporting approval is the reaction of class members to the proposed class settlement,” where
2 “29 requests to opt out of the class and no objection to the settlement or the requested attorney’s fees
3 and expenses” were received.). As the Honorable Jeremy Fogel, formerly of this district and now
4 director of the Federal Judicial Center, noted: “[T]he reaction of the class to the proffered
5 settlement . . . is perhaps the most significant factor to be weighed in considering its adequacy.” *In*
6 *re Rambus Inc. Derivative Litig.*, No. C 06-3513 JF (HRL), 2009 U.S. Dist. LEXIS 131845, at *10
7 (N.D. Cal. Jan. 20, 2009) (citation omitted). “Put another way, a ‘court may appropriately infer that
8 a class action settlement is fair, adequate, and reasonable when few class members object to it.’”
9 *Zynga*, 2016 WL 537946, at *13 (quoting *Larsen v. Trader Joe’s Co.*, No. 11-cv-05188-WHO, 2014
10 WL 3404531, at *5 (N.D. Cal. July 11, 2014)). Here, the “unanimous, positive reaction to the
11 Proposed Settlement is compelling evidence that the Proposed Settlement is fair, just, reasonable,
12 and adequate.” *Nat’l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 529 (C.D. Cal.
13 2004).

14 Likewise, the fact that no requests for exclusion have been submitted in response to the
15 mailing of over 49,600 Notice Packages further supports approval of the Settlement. *See, e.g.*,
16 *Zynga*, 2016 WL 537946, at *14 (noting that a low number of exclusions supports the
17 reasonableness of a securities class action settlement).

18 In addition, there has not been a single objection to the proposed Plan of Allocation. This
19 similarly positive reaction provides firm support for its approval. *Atlas v. Accredited Home Lenders*
20 *Holding Co.*, No. 07-CV-00488-H (CAB), 2009 WL 3698393, at *4 (S.D. Cal. Nov. 4, 2009) (noting
21 the “predominantly positive response” to the plan of allocation where only two objections to it were
22 submitted); *see also In re EVCI Career Colls. Holding Corp. Sec. Litig.*, No. 05 Civ. 10240(CM),
23 2007 WL 2230177, at *11 (S.D.N.Y. July 27, 2007) (stating that “[c]ourts also consider the reaction
24 of a class to a plan of allocation” and approving plan where “[n]o objections to the Plan of
25 Allocation have yet been received”).

C. The Reaction of the Class Strongly Supports Approval of the Attorneys’ Fee and Expense Application

As to Lead Counsel’s request for an award of attorneys’ fees and for payment of expenses, the Notice stated that Lead Counsel would request a fee award of no more than 30% of the Settlement Amount and payment of expenses in an amount not to exceed \$250,000. See Initial Mailing Decl., Ex. A, Notice at 2. Lead Counsel filed its Settlement Brief (ECF No. 127) seeking an award of a 30% fee and \$176,501.78 in expenses. The absence of any objections to the requested fee or expense award weighs strongly in favor of approval. See, e.g., *Zynga*, 2016 WL 537946, at *18 (lack of objection also supports requested fee); *Omnivision*, 559 F. Supp. 2d at 1048 (where no objection “raised any concern about the amount of the fee . . . [t]his factor . . . also supports the requested award of 28% of the Settlement Fund”).

III. CONCLUSION

For the reasons set forth herein and in Lead Plaintiff’s previous submissions, Lead Plaintiff respectfully requests that the Court approve the proposed Settlement and Plan of Allocation, as well as the request for attorneys’ fees, payment of expenses, and awards to Plaintiffs pursuant to 15 U.S.C. §78u-4(a)(4).

DATED: March 24, 2022

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that on March 24, 2022, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses on the attached Electronic Mail Notice List, and I hereby certify that I caused the mailing of the foregoing via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

s/ Luke O. Brooks

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Mailing Information for a Case 4:16-cv-06557-HSG Fleming v. Impax Laboratories Inc. et al

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Manual Notice List

The following is the list of attorneys who are **not** on the list to receive e-mail notices for this case (who therefore require manual noticing). You may wish to use your mouse to select and copy this list into your word processing program in order to create notices or labels for these recipients.

- (No manual recipients)