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18 UNITED STATES DISTRICT COURT  
19 NORTHERN DISTRICT OF CALIFORNIA  
20 OAKLAND DIVISION

21 GREG FLEMING, Individually and on Behalf )  
22 of All Others Similarly Situated, )  
23 Plaintiff, )  
24 vs. )  
25 IMPAX LABORATORIES INC., et al., )  
26 Defendants. )

Case No. 4:16-cv-06557-HSG  
CLASS ACTION  
AMENDED STIPULATION OF  
SETTLEMENT

1 This Stipulation of Settlement (the “Stipulation”) is made and entered into by and between  
2 Lead Plaintiff New York Hotel Trades Council & Hotel Association of New York City, Inc. Pension  
3 Fund (“Lead Plaintiff” or the “Fund”), and proposed class representative Sheet Metal Workers’  
4 Pension Plan of Southern California, Arizona and Nevada (“Sheet Metal Workers’ Fund” and  
5 together with Lead Plaintiff, the “Plaintiffs”), on behalf of themselves and the proposed Class  
6 (defined below), on the one hand, by and through their counsel of record in the Action (as defined  
7 herein), and Defendants Impax Laboratories, LLC (formerly known as Impax Laboratories, Inc.)  
8 (“Impax” or the “Company”), George Frederick Wilkinson, Dr. Larry Hsu, Dr. Carole Ben-Maimon,  
9 and Bryan M. Reasons (collectively, “Defendants”) on the other hand, by and through their counsel  
10 of record in the Action.

11 All words or terms used herein that are capitalized shall have the meanings ascribed to those  
12 words or terms as set forth herein and in ¶1 hereof entitled “Definitions.”

13 **I. THE LITIGATION**

14 This is a consolidated securities class action brought against Defendants by the Fund  
15 individually and on behalf of all persons or entities who purchased or otherwise acquired Impax  
16 common stock or 2% Convertible Senior Notes between February 20, 2014 and August 9, 2016,  
17 inclusive (the “Class Period”).

18 On November 11, 2016, the initial complaint in *Fleming v. Impax Laboratories Inc., et al.*,  
19 No. 4:16-cv-06557, was filed in the United States District Court for the Northern District of  
20 California (the “Court”). ECF No. 1. On January 9, 2017, the Fund moved for appointment as lead  
21 plaintiff and approval of its selection of counsel. ECF No. 13.

22 On February 15, 2017, the Court issued an order appointing the Fund as lead plaintiff and  
23 approving its selection of Robbins Geller Rudman & Dowd LLP as lead counsel. ECF No. 29.

24 Lead Plaintiff filed the Amended Complaint for Violation of the Federal Securities Laws  
25 (“Amended Complaint”) on April 17, 2017, alleging violations of §§10(b) and 20(a) of the Securities  
26 Exchange Act of 1934 (“1934 Act”). ECF No. 32.

27 On June 1, 2017, Defendants moved to dismiss the Amended Complaint and filed a Request  
28 for Judicial Notice. ECF Nos. 50-51. Lead Plaintiff filed its opposition to the motion to dismiss and

1 its request for judicial notice on July 17, 2017. ECF Nos. 52-53. The Court took the motion to  
2 dismiss under submission on September 11, 2017, and dismissed the Amended Complaint with leave  
3 to amend on September 7, 2018. ECF Nos. 58, 66. Lead Plaintiff filed its Second Amended  
4 Complaint for Violation of the Federal Securities Laws (the “SAC”) on October 26, 2018. ECF No.  
5 71.

6 Defendants moved to dismiss the SAC on December 6, 2018 (ECF No. 72), and Lead  
7 Plaintiff filed its opposition on January 17, 2019 (ECF No. 73). Defendants filed their reply on  
8 February 7, 2019, and the Court heard oral argument on the motion on May 2, 2019. ECF Nos. 76-  
9 77. On August 12, 2019, the Court dismissed the SAC with prejudice (“August 12 Order”). ECF  
10 No. 86.

11 Lead Plaintiff appealed the August 12 Order. *See* ECF No. 87. On February 14, 2020, the  
12 Fund filed its opening brief. App. ECF No. 10. Defendants filed their answering brief on May 15,  
13 2020, and the Fund filed its reply brief on August 4, 2020. App. ECF Nos. 15, 25. The Ninth  
14 Circuit heard oral argument on December 9, 2020, and took the matter under submission. *See* App.  
15 ECF No. 40.

16 On January 11, 2021, the Ninth Circuit issued its memorandum disposition, affirming in part  
17 and reversing in part the August 12 Order. App. ECF No. 41-1. On January 25, 2021, Defendants  
18 filed their petition for panel rehearing and rehearing *en banc*. App. ECF No. 42.

19 On February 8, 2021, Sheet Metal Workers’ Fund filed a motion to intervene with the Ninth  
20 Circuit, in which Lead Plaintiff joined. App. ECF No. 43. Defendants filed their response to the  
21 motion on February 18, 2021, and the Funds filed their reply on February 25, 2021. App. ECF Nos.  
22 45-46.

23 On March 24, 2021, the Ninth Circuit denied Defendants’ petition for rehearing. App. ECF  
24 No. 47. The Ninth Circuit also denied the Sheet Metal Workers’ Fund’s motion to intervene  
25 “without prejudice to seek leave to intervene on remand.” App. ECF No. 48 at 2.

26 The mandate issued on April 1, 2021. App. ECF No. 50.

27 On April 5, 2021, Plaintiffs filed their motion to intervene with the Court. ECF No. 93. On  
28 April 19, 2021, Defendants moved to dismiss the SAC arguing that Plaintiffs lacked standing. ECF

1 No. 96. On May 17, 2021, the Lead Plaintiff filed its opposition to Defendants' motion to dismiss,  
2 and Defendants filed their opposition to the Plaintiffs' motion to intervene. ECF Nos. 101-102. On  
3 June 1, 2021, the Plaintiffs and Defendants filed their replies in further support of their respective  
4 motions. ECF Nos. 106-107. The Court took the matters under submission on June 25, 2021. ECF  
5 No. 108.

6 On September 17, 2020, the parties attended a full-day mediation with the Hon. Layn Phillips  
7 (Ret.). The parties negotiated in good faith but did not reach an agreement, and litigation continued.  
8 The parties continued their negotiation efforts while litigating the Action. After extensive  
9 negotiations, the parties reached an agreement-in-principle to settle the case on the terms set forth  
10 herein.

11 **II. PLAINTIFFS' CLAIMS AND BENEFITS OF SETTLEMENT**

12 Plaintiffs believe that the claims asserted in the Action have merit and that the evidence  
13 developed to date supports the claims asserted. However, Plaintiffs and Lead Counsel recognize and  
14 acknowledge the expense and length of continued proceedings necessary to prosecute the Action  
15 through class certification, discovery, summary judgment, and trial (and any possible appeals).  
16 Plaintiffs and Lead Counsel also have taken into account the uncertain outcome and the risk of any  
17 litigation, especially in complex actions such as the Action, as well as the difficulties and delays  
18 inherent in such litigation. For example, the Court to date has only upheld Plaintiffs' loss causation  
19 allegations with respect to the earliest four corrective disclosures. Lead Counsel also are mindful of  
20 the inherent problems of proof and the possible defenses to the claims alleged in the Action. Based  
21 on their evaluation, Plaintiffs and Lead Counsel believe that the Settlement set forth in this  
22 Stipulation confers substantial monetary benefits upon the Class and is in the best interests of the  
23 Class.

24 **III. DEFENDANTS' DENIALS OF LIABILITY**

25 Defendants have denied and continue to deny each and all of the claims, contentions, and  
26 allegations made by Lead Plaintiff in the Action. They have expressly denied and continue to deny  
27 that they have violated the federal securities laws or any other laws, or have otherwise misled  
28 investors as alleged in the Action. Defendants have denied and continue to deny the allegations that

1 any of the Defendants made any material misstatements or omissions or engaged in any fraudulent  
2 scheme; and that any member of the Class has suffered damages resulting from the conduct alleged  
3 in the Action. In addition, Defendants maintain that they have meritorious defenses to the claims  
4 alleged in the Action.

5 Nonetheless, Defendants have concluded that further litigation could be protracted,  
6 burdensome, expensive, and distracting. Defendants also have taken into account the uncertainty,  
7 risks, and costs inherent in any litigation, especially in complex cases such as this Action.  
8 Defendants have, therefore, determined that it is desirable and beneficial to them that the Action be  
9 fully, finally, and forever resolved, discharged, and settled in the manner and upon the terms and  
10 conditions set forth in this Stipulation.

11 NOW THEREFORE, without any concession by Plaintiffs that the Action lacks merit, and  
12 without any concession by Defendants of any liability or wrongdoing or lack of merit in their  
13 defenses, it is hereby **STIPULATED AND AGREED**, by and among the parties to this Stipulation  
14 (“Parties”), through their respective attorneys, subject to approval by the Court pursuant to Rule  
15 23(e) of the Federal Rules of Civil Procedure, that, in consideration of the benefits flowing to the  
16 Parties hereto, all Released Claims (including Unknown Claims) and all Released Defendants’  
17 Claims (including Unknown Claims), as against all Released Parties, shall be fully, finally, and  
18 forever compromised, settled, released, discharged, and dismissed with prejudice, and without costs  
19 (except as provided in the Stipulation), upon and subject to the following terms and conditions:

20 **1. Definitions**

21 As used in this Stipulation, the following terms shall have the meanings set forth below.

22 1.1 “Action” means the civil action captioned *Fleming v. Impax Laboratories Inc., et al.*,  
23 No. 4:16-cv-06557-HSG (N.D. Cal.), pending in the United States District Court for the Northern  
24 District of California before the Honorable Haywood S. Gilliam, Jr.

25 1.2 “Authorized Claimant” means a Class Member whose claim for recovery from the  
26 Settlement has been allowed pursuant to the terms of the Stipulation.

1           1.3     “Claims Administrator” means the firm of JND Legal Administration. Defendants  
2 shall have no involvement in the retention of the Claims Administrator or any other claims  
3 administrator.

4           1.4     “Class” or “Class Member” means all Persons that purchased or acquired Impax  
5 common stock or 2% Convertible Senior Notes between February 20, 2014 and August 9, 2016,  
6 inclusive. Excluded from the Class are: (i) Defendants; (ii) members of the immediate families of  
7 the Individual Defendants; (iii) Impax’s subsidiaries; (iv) the officers and directors of Impax during  
8 the Class Period; (v) any entity in which any Defendant has a controlling interest; and (vi) the legal  
9 representatives, heirs, successors and assigns of any such excluded person or entity. Also excluded  
10 from the Class will be any Person who timely and validly seeks exclusion from the Class.

11           1.5     “Class Period” means the period from February 20, 2014 through August 9, 2016,  
12 inclusive.

13           1.6     “Defendants” means Impax, George Frederick Wilkinson, Dr. Larry Hsu, Dr. Carole  
14 Ben-Maimon, and Bryan M. Reasons.

15           1.7     “Defendants’ Counsel” means the law firm of Latham & Watkins LLP.

16           1.8     “Effective Date” means the date upon which the Settlement shall have become  
17 effective, as set forth in ¶7.1, below.

18           1.9     “Escrow Account” means the separate escrow account designated and controlled by  
19 Lead Counsel into which the Settlement Amount will be deposited for the benefit of the Class.

20           1.10    “Escrow Agent” means Lead Counsel.

21           1.11    “Fee and Expense Application” means Lead Counsel’s application for an award of  
22 attorneys’ fees and litigation expenses, and any award to Plaintiffs pursuant to 15 U.S.C. §78u-  
23 4(a)(4) of the PSLRA in connection with their representation of the Class.

24           1.12    “Final” means, with respect to any order of court, including, without limitation, the  
25 Judgment, that such order represents a final and binding determination of all issues within its scope  
26 and is not subject to further review on appeal or otherwise. Without limitation, an order becomes  
27 “Final” when: (i) no appeal has been filed and the prescribed time for commencing any appeal has  
28 expired; or (ii) an appeal has been filed and either (a) the appeal has been dismissed and the

1 prescribed time, if any, for commencing any further appeal has expired, or (b) the order has been  
2 affirmed in all material respects and the prescribed time, if any, for commencing any further appeal  
3 has expired. For purposes of this definition of “Final,” an “appeal” includes any motion to alter or  
4 amend under Rule 52(b) or Rule 59(e) of the Federal Rules of Civil Procedure, any appeal as of  
5 right, discretionary appeal, interlocutory appeal, petition for writ of certiorari, or other proceeding  
6 involving writs of certiorari or mandamus, and any other proceedings of like kind. However, any  
7 appeal or proceeding seeking subsequent judicial review pertaining solely to the Plan of Allocation,  
8 or to the Court’s award of attorneys’ fees or expenses, shall not in any way delay or affect the time  
9 set forth above for the Judgment to become Final or otherwise preclude the Judgment from  
10 becoming Final.

11 1.13 “Individual Defendants” means former Impax officers George Frederick Wilkinson,  
12 Dr. Larry Hsu, Dr. Carole Ben-Maimon, and Bryan M. Reasons.

13 1.14 “Judgment” means the proposed judgment to be entered by the Court approving the  
14 Settlement, substantially in the form attached hereto as Exhibit B.

15 1.15 “Lead Counsel” means Robbins Geller Rudman & Dowd LLP.

16 1.16 “Lead Plaintiff” means New York Hotel Trades Council & Hotel Association of New  
17 York City, Inc. Pension Fund.

18 1.17 “Mediator” means the Hon. Layn Phillips (Ret.).

19 1.18 “Net Settlement Fund” means the Settlement Fund less: (i) Court-awarded attorneys’  
20 fees and expenses and any award to Plaintiffs pursuant to 15 U.S.C. §78u-4(a)(4); (ii) Notice and  
21 Administration Expenses; (iii) Taxes and Tax Expenses; and (iv) any other fees or expenses  
22 approved by the Court.

23 1.19 “Notice” means the Notice of Pendency and Proposed Settlement of Class Action to  
24 be sent to Class Members, which shall be substantially in the form attached hereto as Exhibit A-1.

25 1.20 “Person(s)” means any individual, corporation (including all divisions and  
26 subsidiaries), general or limited partnership, limited liability partnership, domestic partnership,  
27 marital community, association, joint stock company, joint venture, or joint venturer, limited liability  
28

1 company, professional corporation, estate, legal representative, trust, unincorporated association,  
2 government or any political subdivision or agency thereof, and any other business or legal entity.

3 1.21 “Plaintiffs” means Lead Plaintiff New York Hotel Trades Council & Hotel  
4 Association of New York City, Inc. Pension Fund and proposed class representative Sheet Metal  
5 Workers’ Pension Plan of Southern California, Arizona & Nevada.

6 1.22 “Plaintiffs’ Counsel” means Robbins Geller Rudman & Dowd LLP and Pitta LLP.

7 1.23 “Plan of Allocation” means the plan for allocating the Net Settlement Fund as set  
8 forth in the Notice, or such other plan of allocation as the Court may approve.

9 1.24 “Preliminary Approval Order” means the proposed Order Preliminarily Approving  
10 Settlement and Providing for Notice, substantially in the form attached hereto as Exhibit A.

11 1.25 “Proof of Claim” or “Claim Form” means the Proof of Claim for submitting a claim,  
12 which shall be substantially in the form attached hereto as Exhibit A-2.

13 1.26 “Related Persons” means, with respect to the Defendants, each and all of their  
14 respective present or former parents, subsidiaries, affiliates, successors and assigns, and each and all  
15 of the present or former officers, directors, employees, employers, attorneys, accountants, financial  
16 advisors, commercial bank lenders, insurers, reinsurers, investment bankers, representatives, general  
17 and limited partners and partnerships, heirs, executors, administrators, successors, affiliates, agents,  
18 spouses, associates, and assigns of each or any of them or any trust of which any Defendant is the  
19 settlor or which is for the benefit of any Defendant and any entity in which any such Defendant has a  
20 controlling interest.

21 1.27 “Released Claims” means any and all claims, rights, liabilities, and causes of action  
22 of every nature and description, including both known claims and Unknown Claims, whether  
23 contingent or absolute, mature or unmature, discoverable or undiscoverable, liquidated or  
24 unliquidated, accrued or unaccrued, including those that are concealed or hidden, regardless of legal  
25 or equitable theory, that Lead Plaintiff or any other member(s) of the Class asserted or could have  
26 asserted in any forum that both (i) arise out of, are based upon, or are related in any way to the  
27 allegations, transactions, facts, events, matters, occurrences, disclosures, statements, representations,  
28 or omissions referred to in the Action, and (ii) relate to the purchase or acquisition of Impax



1 common stock or 2% Convertible Senior Notes by the Class during the Class Period.  
2 Notwithstanding the foregoing, “Released Claims” does not include claims relating to the  
3 enforcement of the Settlement.

4 1.28 “Released Defendant Parties” means each and all of the Defendants, and each of their  
5 Related Persons.

6 1.29 “Released Defendants’ Claims” means all claims and causes of action of every nature  
7 and description, including both known claims and Unknown Claims (as defined below), whether  
8 arising under federal, state, common or foreign law, or any other law, that Defendants could have  
9 asserted against any of the Released Plaintiff Parties, including Lead Counsel, that arise out of or  
10 relate in any way to the institution, prosecution, or settlement of the claims in the Action, except for  
11 claims relating to the enforcement of the Settlement.

12 1.30 “Released Parties” means the Released Defendant Parties and the Released Plaintiff  
13 Parties.

14 1.31 “Released Plaintiff Parties” means the Plaintiffs, each and every Class Member,  
15 Plaintiffs’ Counsel, and each of their respective past or present trustees, officers, directors, partners,  
16 employees, contractors, auditors, principals, agents, attorneys, predecessors, successors, assigns,  
17 insurers, parents, subsidiaries, general or limited partners or partnerships, and limited liability  
18 companies; and the spouses, members of the immediate families, representatives, and heirs of any  
19 Released Plaintiff Party who is an individual, as well as any trust of which any Released Plaintiff  
20 Party is the settlor or which is for the benefit of any of their immediate family members. Released  
21 Plaintiff Parties does not include any Person who timely and validly seeks exclusion from the Class.

22 1.32 “Settlement” means the resolution of the Action in accordance with the terms and  
23 provisions of the Stipulation.

24 1.33 “Settlement Amount” means thirty-three million U.S. dollars (\$33,000,000.00) in  
25 cash.

26 1.34 “Settlement Fund” means the Settlement Amount and any interest earned thereon.

27 1.35 “Settlement Hearing” means the hearing to be held by the Court to determine whether  
28 (i) the Settlement is fair, reasonable, and adequate and should be approved; (ii) the Plan of

1 Allocation is fair, reasonable, and adequate and should be approved; and (iii) Lead Counsel’s request  
2 for an award of attorneys’ fees and expenses should be approved.

3 1.36 “Settling Parties” means Plaintiffs, on behalf of the Class, and Defendants.

4 1.37 “Stipulation” means this Stipulation of Settlement.

5 1.38 “Summary Notice” means the Summary Notice for publication, which shall be  
6 substantially in the form attached hereto as Exhibit A-3.

7 1.39 “Tax Expenses” means expenses and costs incurred in connection with the calculation  
8 and payment of taxes or the preparation of tax returns and related documents, including, without  
9 limitation, expenses of tax attorneys and/or accountants and mailing and distribution costs relating to  
10 filing (or failing to file) the returns described in ¶2.8.

11 1.40 “Taxes” means all taxes (including any estimated taxes, interest or penalties) arising  
12 with respect to the income earned by the Settlement Fund as described in ¶2.8.

13 1.41 “Unknown Claims” means any and all Released Claims that Plaintiffs or any other  
14 Class Member do not know or suspect to exist in his, her, or its favor at the time of the release of the  
15 Released Defendant Parties, and any and all Released Defendants’ Claims that any Defendant does  
16 not know or suspect to exist in his, her or its favor, which if known by him, her or it, might have  
17 affected his, her or its decision to enter into this Settlement, execute this Stipulation, and agree to all  
18 the various releases set forth herein, or might have affected his, her or its decision not to object to  
19 this Settlement or not exclude himself, herself or itself from the Class. Unknown Claims include,  
20 without limitation, those claims in which some or all of the facts composing the claim may be  
21 unsuspected, undisclosed, concealed, or hidden. With respect to any and all Released Claims and  
22 Released Defendants’ Claims, the Released Parties stipulate and agree that, upon the Effective Date,  
23 Plaintiffs and Class Members (as regards the Released Claims) and the Defendants (as regards the  
24 Released Defendants’ Claims) shall expressly waive and relinquish, and each Class Member shall be  
25 deemed to have and by operation of law and of the Judgment shall have, expressly waived and  
26 relinquished, to the fullest extent permitted by law, any and all provisions, rights and benefits  
27 conferred by California Civil Code §1542, or any law of any state or territory of the United States, or  
28

1 principle of common law or of international or foreign law, which is similar, comparable, or  
2 equivalent to Cal. Civ. Code §1542, which provides:

3 **A general release does not extend to claims which the creditor or**  
4 **releasing party does not know or suspect to exist in his or her favor at the time**  
5 **of executing the release and that, if known by him or her, would have materially**  
6 **affected his or her settlement with the debtor or released party.**

7 **2. The Settlement**

8 **a. The Settlement Fund**

9 2.1 In full settlement of the Released Claims, Defendants shall cause the Settlement  
10 Amount to be transferred to an account controlled by the Escrow Agent no later than seventeen (17)  
11 calendar days after the later of: (i) entry of the Preliminary Approval Order; (ii) the certification of  
12 the Class and appointment of one or more of the Plaintiffs and Lead Counsel as counsel for the  
13 Class; and (iii) the provision to Defendants of information necessary to effectuate a payment of  
14 funds, including the beneficiary account name, the U.S. bank name, address, account number and  
15 ABA bank code (*i.e.*, routing number), and the payment reference (the later of the foregoing (i), (ii),  
16 and (iii) being hereinafter referred to as the “Payment Date”). These funds, together with any  
17 interest and income earned thereon once transferred, shall constitute the Settlement Fund.

18 2.2 If the entire Settlement Amount is not deposited into the Escrow Account by the  
19 Payment Date, Lead Counsel may terminate the Settlement but only if: (i) Defendants have received  
20 from Lead Counsel written notice of Lead Counsel’s intention to terminate the Settlement; and  
21 (ii) the entire Settlement Amount is not transferred to the Escrow Account within three (3) business  
22 days after Lead Counsel has provided such written notice.

23 **b. The Escrow Agent**

24 2.3 The Escrow Agent shall invest the Settlement Fund deposited pursuant to ¶2.1 hereof  
25 in instruments backed by the full faith and credit of the United States Government or fully insured by  
26 the United States Government or an agency thereof and shall reinvest the proceeds of these  
27 instruments as they mature in similar instruments at their then-current market rates. All costs and  
28 risks related to the investment of the Settlement Fund in accordance with the guidelines set forth in  
this paragraph shall be borne by the Settlement Fund.

1           2.4     The Escrow Agent shall not disburse the Settlement Fund except: (a) as provided in  
2 the Stipulation; (b) by an order of the Court; or (c) with the written agreement of counsel for the  
3 Settling Parties.

4           2.5     Subject to further order(s) and/or directions as may be made by the Court, or as  
5 provided in the Stipulation, the Escrow Agent is authorized to execute such transactions as are  
6 provided for under the terms of the Stipulation. The Released Parties shall have no responsibility  
7 for, interest in, or liability whatsoever with respect to, the actions of the Escrow Agent, or any  
8 transaction executed by the Escrow Agent.

9           2.6     All funds held by the Escrow Agent shall be deemed and considered to be in *custodia*  
10 *legis* of the Court, and shall remain subject to the jurisdiction of the Court, until such time as such  
11 funds shall be distributed pursuant to the Stipulation and/or further order(s) of the Court.

12           2.7     Prior to the Effective Date and without further order of the Court, up to \$500,000 of  
13 the Settlement Fund may be used by Lead Counsel to pay reasonable costs and expenses actually  
14 incurred in connection with providing notice to the Class, locating Class Members, soliciting claims,  
15 assisting with the submission of claims, processing Proofs of Claim, administering and distributing  
16 the Net Settlement Fund to Authorized Claimants, and paying escrow fees and costs, if any (“Notice  
17 and Administration Expenses”). After the Effective Date, Lead Counsel may pay all further  
18 reasonable Notice and Administration Expenses, regardless of amount, without further order of the  
19 Court.

20                   **c.     Taxes**

21           2.8     (a)     The Settling Parties agree to treat the Settlement Fund as being at all times a  
22 “Qualified Settlement Fund” within the meaning of Treasury Regulation §1.468B-1. In addition, the  
23 Escrow Agent shall timely make such elections as necessary or advisable to carry out the provisions  
24 of this ¶2.8, including the “relation-back election” (as defined in Treasury Regulation §1.468B-1)  
25 back to the earliest permitted date. Such elections shall be made in compliance with the procedures  
26 and requirements contained in such regulations. It shall be the responsibility of the Escrow Agent to  
27 timely and properly prepare and deliver the necessary documentation for signature by all necessary  
28 parties, and thereafter to cause the appropriate filing to occur.

1 (b) For the purpose of §1.468B of the Internal Revenue Code of 1986, as  
2 amended, and the regulations promulgated thereunder, the “administrator” shall be the Escrow  
3 Agent. The Escrow Agent shall timely and properly file all informational and other tax returns  
4 necessary or advisable with respect to the Settlement Fund (including, without limitation, the returns  
5 described in Treasury Regulation §1.468B-2(k)). Such returns (as well as the election described in  
6 ¶2.8(a) hereof) shall be consistent with this ¶2.8 and in all events shall reflect that all Taxes  
7 (including any estimated Taxes, interest, or penalties) on the income earned by the Settlement Fund  
8 shall be paid out of the Settlement Fund as provided in ¶2.8(c) hereof.

9 (c) All (a) Taxes (including any estimated Taxes, interest, or penalties) arising  
10 with respect to the income earned by the Settlement Fund, including any Taxes or tax detriments that  
11 may be imposed upon the Released Defendant Parties or their counsel with respect to any income  
12 earned by the Settlement Fund for any period during which the Settlement Fund does not qualify as a  
13 “Qualified Settlement Fund” for federal or state income tax purposes, and (b) Tax Expenses,  
14 including expenses and costs incurred in connection with the operation and implementation of this  
15 ¶2.8 (including, without limitation, expenses of tax attorneys and/or accountants and mailing and  
16 distribution costs and expenses relating to filing (or failing to file) the returns described in this ¶2.8),  
17 shall be paid out of the Settlement Fund; in all events the Released Defendant Parties and their  
18 counsel shall have no liability or responsibility for the Taxes or the Tax Expenses. Further, Taxes  
19 and Tax Expenses shall be treated as, and considered to be, a cost of administration of the Settlement  
20 Fund and shall be timely paid by the Escrow Agent out of the Settlement Fund without prior order  
21 from the Court, and the Escrow Agent shall be obligated (notwithstanding anything herein to the  
22 contrary) to withhold from distribution to Authorized Claimants any funds necessary to pay such  
23 amounts, including the establishment of adequate reserves for any Taxes and Tax Expenses (as well  
24 as any amounts that may be required to be withheld under Treasury Regulation §1.468B-2(1)(2));  
25 neither the Released Defendant Parties nor their counsel are responsible nor shall they have any  
26 liability therefor. The Settling Parties hereto agree to cooperate with the Escrow Agent, each other,  
27 and their tax attorneys and accountants to the extent reasonably necessary to carry out the provisions  
28 of this ¶2.8.

1                   **d.       Termination of Settlement**

2           2.9       In the event the Stipulation is not approved or is terminated, canceled, or fails to  
3 become effective for any reason, including, without limitation, in the event the Stipulation is not  
4 approved or Judgment is reversed or vacated following any appeal taken therefrom, the Settlement  
5 Fund (including accrued interest), less expenses actually incurred or due and owing for Notice and  
6 Administration Expenses, Taxes or Tax Expenses pursuant to ¶¶2.7 or 2.8, shall be refunded  
7 pursuant to ¶¶6.2 and 7.4 and written instructions from Defendants' Counsel to the party, parties or  
8 insurers that paid the Settlement Amount within twenty-one (21) days from the date of the notice  
9 from counsel for Defendants pursuant to ¶7.4.

10                   **3.       Preliminary Approval Order and Settlement Hearing**

11           3.1       Promptly after execution of the Stipulation, Lead Counsel shall submit the Stipulation  
12 together with its exhibits (the "Exhibits") to the Court and shall apply for entry of an order (the  
13 "Preliminary Approval Order"), requesting, *inter alia*, the preliminary approval of the Settlement set  
14 forth in the Stipulation, certification of the Class and appointment of Lead Counsel as counsel for the  
15 Class for settlement purposes, and approval for the mailing of the Notice and publication of the  
16 Summary Notice, in the forms of Exhibits A-1 and A-3, respectively, attached hereto. The Notice  
17 shall include the general terms of the Settlement set forth in the Stipulation, the proposed Plan of  
18 Allocation, the general terms of the Fee and Expense Application, and the date of the Settlement  
19 Hearing.

20           3.2       Lead Counsel shall request that, after notice is given to the Class, the Court hold the  
21 Settlement Hearing and approve the Settlement of the Action as set forth herein. At or after the  
22 Settlement Hearing, Lead Counsel also shall request that the Court approve the proposed Plan of  
23 Allocation and the Fee and Expense Application.

24                   **4.       Releases**

25           4.1       Upon the Effective Date, Plaintiffs and each of the Class Members (who have not  
26 validly opted out of the Class), on behalf of themselves, and their respective former and present  
27 officers, directors, employees, agents, affiliates, parents, subsidiaries, insurers, reinsurers, heirs,  
28 executors, administrators, predecessors, successors, and assigns in their capacities as such, shall be

1 deemed to have, and by operation of law and of the Judgment shall have, fully, finally, and forever  
2 released, relinquished, waived, and discharged against the Released Defendant Parties (whether or  
3 not such Class Members execute and deliver the Proof of Claim) any and all Released Claims  
4 (including, without limitation, Unknown Claims).

5 4.2 Upon the Effective Date, Plaintiffs and each of the Class Members (who have not  
6 validly opted out of the Class) shall be permanently barred and enjoined from the institution,  
7 maintenance, prosecution, or enforcement against any Released Defendant Party, in any state or  
8 federal court or arbitral forum, or in the court of any foreign jurisdiction, of any and all Released  
9 Claims (including, without limitation, Unknown Claims). The Court shall retain exclusive  
10 jurisdiction to interpret and enforce the permanent injunction described in this paragraph.

11 4.3 The Proof of Claim to be executed by Class Members shall release all Released  
12 Claims against the Released Defendant Parties and shall be substantially in the form contained in  
13 Exhibit A-2 attached hereto; provided, however, that the failure of a Class Member to submit such  
14 Proof of Claim shall have no effect on the provisions of the foregoing ¶¶4.1 and 4.2, inclusive,  
15 which shall remain in full force and effect as to each of the Class Members (who have not validly  
16 opted out of the Class) irrespective of any lack of submission of a Proof of Claim.

17 4.4 Upon the Effective Date, each of the Released Defendant Parties, on behalf of  
18 themselves, and their respective former and present officers, directors, employees, agents, affiliates,  
19 parents, subsidiaries, insurers, reinsurers, heirs, executors, administrators, predecessors, successors,  
20 and assigns in their capacities as such, shall be deemed to have, and by operation of the Judgment  
21 shall have, fully, finally, and forever released, relinquished, and discharged the Released Plaintiff  
22 Parties, including Plaintiffs' Counsel, from all Released Defendants' Claims (including, without  
23 limitation, Unknown Claims).

24 **5. Administration and Calculation of Claims, Final Awards, and**  
25 **Supervision and Distribution of the Settlement Fund**

26 5.1 The Claims Administrator, subject to such supervision and direction of the Court as  
27 may be necessary or as circumstances may require, shall provide notice of the Settlement to the  
28

1 Class, shall administer and calculate the claims submitted by Class Members, and shall oversee  
2 distribution of the Net Settlement Fund to Authorized Claimants.

3           5.2     Within ten (10) calendar days after the Court enters the Preliminary Approval Order,  
4 Defendants and their counsel shall provide Lead Counsel or the Claims Administrator, without any  
5 charge to Plaintiffs or the Class, record shareholder lists, as appropriate for providing notice to the  
6 Class. The parties shall determine an appropriate electronic format for provision of this information.

7           5.3     In accordance with the schedule set forth in the Preliminary Approval Order, Lead  
8 Counsel will cause the Notice, substantially in the form of Exhibit A-1 attached hereto, and a Proof  
9 of Claim, substantially in the form of Exhibit A-2 attached hereto, to be mailed by the Claims  
10 Administrator to all shareholders of record, or nominees. The Notice and Proof of Claim shall also  
11 be posted on the Settlement website. In accordance with the schedule set forth in the Preliminary  
12 Approval Order, the Summary Notice, substantially in the form of Exhibit A-3 attached hereto, will  
13 also be published once in the national edition of *The Wall Street Journal* and once over a national  
14 newswire service. The cost of providing such notice shall be paid out of the Settlement Fund.

15           5.4     The Settlement Fund shall be applied as follows:

16                   (a)     to pay all Notice and Administration Expenses;

17                   (b)     to pay all Taxes and Tax Expenses described in ¶2.8 hereof;

18                   (c)     to pay Lead Counsel’s attorneys’ fees and expenses (the “Fee and Expense  
19 Award”) and the award to Plaintiffs pursuant to 15 U.S.C. §78u-4(a)(4), if and to the extent allowed  
20 by the Court; and

21                   (d)     to distribute the Net Settlement Fund to Authorized Claimants as allowed by  
22 the Stipulation, the Plan of Allocation, or the Court.

23           5.5     Upon the Effective Date and thereafter, and in accordance with the terms of the  
24 Stipulation, the Plan of Allocation, or such further approval and further order(s) of the Court as may  
25 be necessary or as circumstances may require, the Net Settlement Fund shall be distributed to  
26 Authorized Claimants, subject to and in accordance with ¶¶5.6-5.9 below.

27           5.6     Each Person claiming to be an Authorized Claimant shall be required to submit to the  
28 Claims Administrator a completed Proof of Claim, substantially in the form of Exhibit A-2 attached



1 hereto, postmarked by no later than ninety (90) calendar days after the Notice Date (as defined in  
2 Exhibit A attached hereto), or such other time as may be set by the Court (the “Bar Date”), signed  
3 under penalty of perjury and supported by such documents as are specified in the Proof of Claim and  
4 as are reasonably available to such Person.

5           5.7     Except as otherwise ordered by the Court, all Class Members who fail to submit a  
6 Proof of Claim by the Bar Date, or such other period as may be ordered by the Court, or who submit  
7 a Proof of Claim that is rejected, shall be forever barred from receiving any payments pursuant to the  
8 Stipulation and the Settlement set forth herein, but will in all other respects be subject to and bound  
9 by the provisions of the Stipulation, the releases contained herein, and the Judgment.  
10 Notwithstanding the foregoing, Lead Counsel shall have the discretion (but not the obligation) to  
11 accept late-submitted claims for processing so long as the distribution of the Net Settlement Fund to  
12 Authorized Claimants is not materially delayed thereby.

13           5.8     The Claims Administrator shall calculate the claims of Authorized Claimants in  
14 accordance with the Plan of Allocation set forth in the Notice and approved by the Court. Following  
15 the Effective Date, the Claims Administrator shall send to each Authorized Claimant his, her, or its  
16 *pro rata* share of the Net Settlement Fund.

17           5.9     Defendants shall not have a reversionary interest in the Net Settlement Fund. If there  
18 is any balance remaining in the Net Settlement Fund after a reasonable amount of time following the  
19 date of the initial distribution of the Net Settlement Fund, Lead Counsel shall, if feasible, reallocate  
20 such balance among Authorized Claimants who negotiated the checks sent to them in the initial  
21 distribution in an equitable and economical fashion. These reallocations shall be repeated until the  
22 balance remaining in the Net Settlement Fund is *de minimis* and such remaining balance shall then  
23 be donated to the University of San Francisco School of Law’s Investor Justice Clinic.

24           5.10    The Released Defendant Parties shall have no responsibility for, interest in, or  
25 liability whatsoever with respect to the processing, review, determination or calculation of any  
26 claims, the distribution of the Net Settlement Fund, the Plan of Allocation, the payment or  
27 withholding of Taxes, or any losses incurred in connection therewith.

28

1           5.11 Defendants shall take no position with respect to the Plan of Allocation or any other  
2 such plan as may be approved by the Court.

3           5.12 It is understood and agreed by the Settling Parties that any proposed Plan of  
4 Allocation of the Net Settlement Fund, including, but not limited to, any adjustments to an  
5 Authorized Claimant's claim set forth therein, is not a part of the Stipulation and is to be considered  
6 by the Court separately from the Court's consideration of the fairness, reasonableness, and adequacy  
7 of the Settlement set forth in the Stipulation, and any order or proceeding relating to the Plan of  
8 Allocation shall not operate to terminate or cancel the Stipulation or affect the finality of the Court's  
9 Judgment approving the Stipulation and the Settlement set forth therein, or any other orders entered  
10 pursuant to the Stipulation. Class Members and Defendants shall be bound by the terms of this  
11 Stipulation, irrespective of whether the Court disapproves or modifies the Plan of Allocation.

12           5.13 No Person shall have any claim against Plaintiffs, the Class, Plaintiffs' Counsel,  
13 Released Defendant Parties, Defendants' Counsel, or the Claims Administrator based on  
14 distributions made substantially in accordance with the Settlement, the Stipulation, and the Plan of  
15 Allocation, or otherwise as further ordered by the Court.

16           **6. Lead Counsel's Attorneys' Fees and Expenses**

17           6.1 Lead Counsel may submit an application or applications (the "Fee and Expense  
18 Application") for: (a) an award of attorneys' fees; plus (b) expenses or charges in connection with  
19 prosecuting the Action; plus (c) any interest on such attorneys' fees and expenses at the same rate  
20 and for the same periods as earned by the Settlement Fund (until paid) as may be awarded by the  
21 Court. Any and all such fees, expenses and costs awarded by the Court shall be payable solely out of  
22 the Settlement Fund. In addition, Plaintiffs may submit an application for an award from the  
23 Settlement Fund pursuant to 15 U.S.C. §78u-4(a)(4) in connection with their representation of the  
24 Class.

25           6.2 The attorneys' fees and expenses, as awarded by the Court, shall be paid to Lead  
26 Counsel from the Settlement Fund, as ordered, immediately upon entry of the Court's order  
27 awarding such fees and expenses. This provision shall apply notwithstanding timely objection to,  
28 potential for appeal from, or collateral attack on, the Settlement or the award of fees and expenses.

1 Lead Counsel shall thereafter allocate the attorneys' fees amongst other Plaintiffs' Counsel in a  
2 manner that Lead Counsel in good faith believes reflects the contributions of such counsel to the  
3 prosecution and resolution of the Action. Any such awards shall be paid solely by the Settlement  
4 Fund. In the event that the Judgment or the order awarding such fees and expenses paid to Lead  
5 Counsel pursuant to ¶6.1 and this ¶6.2 is reversed or modified, or if the Settlement is cancelled or  
6 terminated for any reason, then Lead Counsel shall, in an amount consistent with such reversal or  
7 modification, refund such fees or expenses to the Settlement Fund pursuant to ¶2.9, plus the interest  
8 earned thereon, within twenty-one (21) days from receiving notice from Defendants' counsel or from  
9 a court of competent jurisdiction. Any refunds required pursuant to this paragraph shall be the  
10 several obligation of each Plaintiffs' Counsel to make appropriate refunds or repayments to the  
11 Settlement Fund. Each Plaintiffs' Counsel, as a condition of receiving such fees or expenses on  
12 behalf of itself and each partner and/or shareholder of it, agrees that its law firm and its partners  
13 and/or shareholders are subject to the jurisdiction of the Court for the purpose of enforcing the  
14 provisions of this paragraph.

15           6.3     The procedure for and the allowance or disallowance by the Court of the Fee and  
16 Expense Application, to be paid out of the Settlement Fund, are not part of the Settlement set forth in  
17 the Stipulation, and any order or proceeding relating to the Fee and Expense Application, or any  
18 appeal from any order relating thereto or reversal or modification thereof, shall not operate to  
19 terminate or cancel the Stipulation, or affect or delay the finality of the Judgment approving the  
20 Stipulation and the Settlement of the Action.

21           6.4     Defendants shall not have any responsibility for any payment of attorneys' fees and  
22 expenses to Lead Counsel or any Class Member's counsel apart from payment of the Settlement  
23 Amount pursuant to ¶2.1.

24           **7.       Conditions of Settlement, Effect of Disapproval, Cancellation, or**  
25           **Termination**

26           7.1     The Effective Date of the Stipulation shall be conditioned on the occurrence of all of  
27 the following events:  
28

1 (a) execution of the Stipulation and such other documents as may be required to  
2 obtain final Court approval of the Stipulation in a form satisfactory to the Settling Parties;

3 (b) certification of the Class and appointment of one or more of the Plaintiffs and  
4 Lead Counsel as counsel for the Class;

5 (c) the Settlement Amount has been deposited into the Escrow Account;

6 (d) Defendants have not exercised their option to terminate the Stipulation  
7 pursuant to ¶7.3 hereof;

8 (e) the Court has entered the Preliminary Approval Order, substantially in the  
9 form of Exhibit A hereto, as required by ¶3.1 hereof;

10 (f) the Court has entered the Judgment that, *inter alia*, dismisses with prejudice  
11 the Action, as to Lead Plaintiff and the Defendants, as set forth above; and

12 (g) the Judgment has become Final, as defined in ¶1.13 hereof.

13 7.2 Upon the occurrence of all of the events referenced in ¶7.1 hereof, any and all  
14 remaining interest or right of Defendants in or to the Settlement Fund, if any, shall be absolutely and  
15 forever extinguished. If all of the conditions specified in ¶7.1 hereof are not met, then the  
16 Stipulation shall be canceled and terminated subject to ¶7.4 hereof unless Lead Counsel and counsel  
17 for Defendants on behalf of their respective clients mutually agree in writing to proceed with the  
18 Settlement.

19 7.3 If, prior to the Settlement Hearing, Persons who otherwise would be members of the  
20 Class have timely and validly requested exclusion from the Class in accordance with the provisions  
21 of the Preliminary Approval Order and the Notice given pursuant thereto, and if the total number of  
22 shares of Impax common stock purchased or acquired by such Persons during the Class Period  
23 equals or exceeds an amount specified in a separate Supplemental Agreement Regarding Requests  
24 for Exclusion (“Supplemental Agreement”) executed between Lead Plaintiff and Defendants, then  
25 Defendants shall have the option to terminate this Stipulation and Settlement in accordance with the  
26 procedures set forth in the Supplemental Agreement. The Supplemental Agreement will not be filed  
27 with the Court unless and until a dispute between Lead Plaintiff and Defendants concerning its  
28 interpretation or application arises.

1           7.4     Unless otherwise ordered by the Court, in the event the Stipulation shall terminate, or  
2 be canceled, or shall not become effective for any reason, within twenty-one (21) days after written  
3 notification of such event is sent by counsel for Defendants or to the Escrow Agent, the Settlement  
4 Fund (including accrued interest), less expenses which have either been incurred or disbursed  
5 pursuant to ¶¶2.7 or 2.8 hereof, shall be refunded pursuant to written instructions from Defendants’  
6 Counsel to the party, parties or insurers that paid the Settlement Amount. At the request of counsel  
7 for Defendants, the Escrow Agent or its designee shall apply for any tax refund owed on the  
8 Settlement Fund and pay the proceeds, after deduction of any expenses incurred in connection with  
9 such application(s) for refund, at the written direction of Defendants’ Counsel to the party, parties or  
10 insurers that paid the Settlement Amount.

11           7.5     In the event that the Stipulation is not approved by the Court or the Settlement set  
12 forth in the Stipulation is terminated or fails to become effective in accordance with its terms, the  
13 Settling Parties shall be restored to their respective positions in the Action as of June 27, 2021. In  
14 such event, the terms and provisions of the Stipulation, with the exception of ¶¶1.1-1.41, 2.7-2.8,  
15 7.2, and 8.3 hereof, shall have no further force and effect with respect to the Settling Parties and  
16 shall not be used in this Action or in any other proceeding for any purpose, and any Judgment or  
17 order entered by the Court in accordance with the terms of the Stipulation shall be treated as vacated,  
18 *nunc pro tunc*, and the Settling Parties shall be deemed to return to their status as of June 27, 2021.  
19 No order of the Court or modification or reversal on appeal of any such order of the Court  
20 concerning the Plan of Allocation or the amount of any attorneys’ fees and expenses, and interest  
21 awarded by the Court to Lead Counsel or Plaintiffs shall constitute grounds for cancellation or  
22 termination of the Stipulation.

23           7.6     If, before the Settlement becomes Final, any Defendant files for protection under the  
24 Bankruptcy Code, or any similar law, or a trustee, receiver, conservator, or other fiduciary is  
25 appointed under bankruptcy, or any similar law, and in the event of the entry of a final order of a  
26 court of competent jurisdiction determining the transfer of money or any portion thereof to the  
27 Escrow Agent by or on behalf of any Defendant to be a preference, voidable transfer, fraudulent  
28 transfer or similar transaction and any portion thereof is required to be returned, and such amount is

1 not promptly deposited with the Escrow Agent by others, then, at the election of Plaintiffs, the  
2 Settling Parties shall jointly move the Court to vacate and set aside the release given and the  
3 Judgment entered in favor of the Defendants and that the Defendants and Plaintiffs and the members  
4 of the Class shall be restored to their litigation positions as of June 27, 2021.

5 **8. Miscellaneous Provisions**

6 8.1 The Settling Parties (a) acknowledge that it is their intent to consummate this  
7 Stipulation; and (b) agree to cooperate to the extent reasonably necessary to effectuate and  
8 implement all terms and conditions of the Stipulation and to exercise their best efforts to accomplish  
9 the foregoing terms and conditions of the Stipulation expeditiously.

10 8.2 The Settling Parties intend this Settlement to be a final and complete resolution of all  
11 disputes between them with respect to the Action. The Settlement shall not be deemed an admission  
12 by any Settling Party or any of the Released Parties as to the merits of any claim or defense. The  
13 Settling Parties and their counsel agree that they shall not assert any claims of any violation of Rule  
14 11 of the Federal Rules of Civil Procedure relating to the institution, prosecution, defense or  
15 settlement of the Action, and the Final Judgment shall contain a finding that all Settling Parties and  
16 their counsel complied with the requirements of Rule 11 with respect to the institution, prosecution,  
17 defense, and resolution of the Action. The Settling Parties agree that the amount paid to the  
18 Settlement Fund and the other terms of the Settlement were negotiated in good faith at arm's length  
19 by the Settling Parties and reflect a settlement that was reached voluntarily after consultation with  
20 competent legal counsel. The Settling Parties reserve their right to rebut, in a manner that such party  
21 determines to be appropriate, any contention made in any public forum regarding the Action,  
22 including that the Action was brought or defended in bad faith or without a reasonable basis.

23 8.3 Neither the Stipulation nor the Settlement contained herein, nor any act performed or  
24 document executed pursuant to or in furtherance of the Stipulation or the Settlement: (a) is or may be  
25 deemed to be or may be used as an admission of, or evidence of, the validity of any Released Claim,  
26 or of any wrongdoing or liability of the Released Defendant Parties; or (b) is or may be deemed to be  
27 or may be used as an admission of, or evidence of, any fault or omission of any of the Released  
28 Defendant Parties; or (c) is or may be deemed to be or may be used as an admission or evidence that

1 any claims asserted by Plaintiffs were not valid or that the amount recoverable was not greater than  
2 the Settlement Amount, in any civil, criminal, or administrative proceeding in any court,  
3 administrative agency, or other tribunal. The Released Defendant Parties may file the Stipulation  
4 and/or the Judgment in any action that may be brought against them in order to support a defense or  
5 counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement,  
6 judgment bar or reduction or any other theory of claim preclusion or issue preclusion or similar  
7 defense or counterclaim.

8 8.4 Whether or not the Stipulation is approved by the Court and whether or not the  
9 Stipulation is consummated, or the Effective Date occurs, the Parties and their counsel shall use their  
10 best efforts to keep all negotiations, discussions, acts performed, agreements, drafts, documents  
11 signed and proceedings in connection with the Stipulation confidential.

12 8.5 All agreements made and orders entered during the course of the Action relating to  
13 the confidentiality of documents and information shall survive this Stipulation.

14 8.6 All of the Exhibits to the Stipulation are material and integral parts hereof and are  
15 fully incorporated herein by this reference.

16 8.7 The Stipulation may be amended or modified only by a written instrument signed by  
17 or on behalf of all Settling Parties or their respective successors-in-interest.

18 8.8 No waiver of any term or provision of this Stipulation, or of any breach or default  
19 hereof or hereunder, shall be valid or effective unless in writing and signed by or on behalf of all  
20 Settling Parties or their respective successors-in-interest. No waiver of any term or provision of this  
21 Stipulation, or of any breach or default hereof or hereunder, shall be construed as a waiver of the  
22 same or any other term or provision or of any previous or subsequent breach thereof.

23 8.9 The Stipulation and the Exhibits attached (together with the Supplemental Agreement  
24 referred to in ¶7.3) hereto constitute the entire agreement among the Settling Parties and no  
25 representations, warranties, or inducements have been made to any Settling Party concerning the  
26 Stipulation or its Exhibits other than the representations, warranties, and covenants contained and  
27 memorialized in such documents. Except as otherwise provided herein (or, as between Defendants,  
28 in any separate agreements between them), each Settling Party shall bear its own costs.

1           8.10    The Settlement is not conditioned upon the settlement or approval of settlement of  
2 any derivative suits or other suits.

3           8.11    This Stipulation shall be construed and interpreted to effectuate the intent of the  
4 Settling Parties, which is to resolve completely those claims and disputes, including in the Action,  
5 and as more fully described herein. If any provision of this Stipulation shall be determined to be  
6 invalid, void, or illegal, such provision shall be construed and amended in a manner that would  
7 permit its enforcement, but in no event shall such provision affect, impair, or invalidate any other  
8 provision hereof.

9           8.12    Neither the Class Members nor Defendants shall be bound by the Stipulation if the  
10 Court modifies material terms thereof; provided, however, that it shall not be a basis for Class  
11 Members to terminate the Settlement if the Court modifies any proposed Plan of Allocation or  
12 criteria for allocation of the Net Settlement Fund amongst Authorized Claimants, or the Plan of  
13 Allocation is modified on appeal. Nor shall it be a basis to terminate the Stipulation if the Court  
14 disapproves of or modifies the terms of this Stipulation with respect to attorneys' fees or expenses or  
15 the distribution of the Net Settlement Fund. Notwithstanding any such modification of the terms or  
16 Plan of Allocation or the Stipulation with respect to attorneys' fees or expenses, Defendants and  
17 Defendants' insurers shall be entitled to all benefits of the Settlement and shall not, under any  
18 circumstances, be called upon to contribute additional funds in addition to the Settlement Fund.

19           8.13    Lead Counsel, on behalf of the Class, is expressly authorized by Plaintiffs to take all  
20 appropriate action required or permitted to be taken by the Class pursuant to the Stipulation to  
21 effectuate its terms and also is expressly authorized to enter into any modifications or amendments to  
22 the Stipulation on behalf of the Class which it deems appropriate.

23           8.14    Each counsel or other Person executing the Stipulation or any of its Exhibits on  
24 behalf of any Settling Party hereby warrants that such Person has the full authority to do so.

25           8.15    All notices, requests, demands, claims, and other communications hereunder shall be  
26 in writing and shall be deemed duly given: (i) when delivered personally to the recipient; (ii) one (1)  
27 business day after being sent to the recipient by UPS (charges prepaid); or (iii) five (5) business days  
28



1 after being mailed to the recipient by certified or registered mail, return receipt requested and  
2 postage prepaid, and addressed to the intended recipient as set forth below:

3 If to Plaintiffs or to Plaintiffs' Counsel:

4 Luke O. Brooks  
5 Robbins Geller Rudman & Dowd LLP  
6 655 West Broadway, Suite 1900  
7 San Diego, CA 92101

8 If to Defendants or to Defendants' Counsel:

9 Christopher S. Turner  
10 LATHAM & WATKINS LLP  
11 555 Eleventh Street, NW, Suite 1000  
12 Washington, DC 20004-1304

13 8.16 The Stipulation may be executed in one or more counterparts. All executed  
14 counterparts and each of them shall be deemed to be one and the same instrument. A complete set of  
15 executed counterparts shall be filed with the Court.

16 8.17 The Stipulation shall be binding upon, and inure to the benefit of, the heirs,  
17 successors, and assigns of the Settling Parties hereto.

18 8.18 The Court shall retain jurisdiction with respect to implementation and enforcement of  
19 the terms of the Stipulation, and all Settling Parties hereto submit to the jurisdiction of the Court for  
20 purposes of implementing and enforcing the Settlement embodied in the Stipulation.

21 8.19 Pending approval of the Court of the Stipulation and its Exhibits, all proceedings in  
22 this Action shall be stayed, and all members of the Class shall be barred and enjoined from  
23 prosecuting any of the Released Claims against any of the Released Defendant Parties.

24 8.20 This Stipulation and the Exhibits hereto shall be considered to have been negotiated,  
25 executed, and delivered, and to be wholly performed, in the State of California, and the rights and  
26 obligations of the parties to the Stipulation shall be construed and enforced in accordance with, and  
27 governed by, the internal, substantive laws of the State of California, without giving effect to that  
28 State's choice-of-law principles.

8.21 This Stipulation shall not be construed more strictly against one party than another  
merely by virtue of the fact that it, or any part of it, may have been prepared by counsel for one of

1 the Settling Parties, it being recognized that it is the result of arm's-length negotiations between the  
2 Settling Parties and the Settling Parties have contributed substantially and materially to the  
3 preparation of this Stipulation.

4 IN WITNESS WHEREOF, the Parties have caused this Stipulation to be executed, by their  
5 duly authorized attorneys, as of October 18, 2021.

6 ROBBINS GELLER RUDMAN  
7 & DOWD LLP  
8 SPENCER A. BURKHOLZ  
9 THEODORE J. PINTAR  
10 LUKE O. BROOKS  
11 ERIC I. NIEHAUS  
12 ANGEL P. LAU  
13 JEFFREY J. STEIN  
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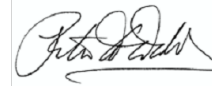
Lead Counsel for Plaintiffs

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 – and –  
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16 Lead Counsel for Plaintiff

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

20 GREG FLEMING, Individually and on Behalf )  
 of All Others Similarly Situated, )  
 21 )  
 Plaintiff, )  
 22 )  
 vs. )  
 23 )  
 IMPAX LABORATORIES INC., et al., )  
 24 )  
 Defendants. )  
 25 )

Case No. 4:16-cv-06557-HSG  
CLASS ACTION  
 [PROPOSED] ORDER PRELIMINARILY  
 APPROVING SETTLEMENT AND  
 PROVIDING FOR NOTICE  
 EXHIBIT A

26  
 27  
 28

1 WHEREAS, an action is pending before this Court entitled *Fleming v. Impax Laboratories*  
2 *Inc., et al.*, Case No. 4:16-cv-06557-HSG (the “Litigation”);

3 WHEREAS, the parties having made application, pursuant to Federal Rule of Civil  
4 Procedure 23(e), for an order preliminarily approving the settlement of this Litigation, in  
5 accordance with a Stipulation of Settlement dated July 30, 2021 (the “Stipulation”), which,  
6 together with the Exhibits annexed thereto, sets forth the terms and conditions for a proposed  
7 settlement of the Litigation and for dismissal of the Litigation with prejudice upon the terms and  
8 conditions set forth therein; and the Court having read and considered the Stipulation and the  
9 Exhibits annexed thereto; and

10 WHEREAS, unless otherwise defined, all terms used herein have the same meanings as set  
11 forth in the Stipulation.

12 NOW, THEREFORE, IT IS HEREBY ORDERED:

13 1. After a preliminary review, the Settlement appears to be fair, reasonable, and  
14 adequate. The Settlement: (a) resulted from arm’s-length negotiations overseen by an experienced  
15 mediator; and (b) is sufficient to warrant (i) notice thereof as set forth below; and (ii) a full hearing  
16 on the Settlement. Accordingly, the Court does hereby preliminarily approve the Stipulation and  
17 the Settlement set forth therein, subject to further consideration at the Settlement Hearing  
18 described below.

19 2. A hearing (the “Settlement Hearing”) shall be held before this Court on  
20 \_\_\_\_\_, 2021, at \_\_: \_\_.m. [a date that is at least 100 days from the date of this Order], at the  
21 United States District Court for the Northern District of California, Oakland Division, Oakland  
22 Courthouse, Courtroom 2 – 4th Floor, 1301 Clay Street, Oakland, CA 94612, for the following  
23 purposes:

- 24 a. to determine whether the Settlement is fair, reasonable, and adequate, and  
25 should be approved by the Court;
- 26 b. to finally determine whether Judgment as provided under the Stipulation  
27 should be entered, dismissing the Second Amended Complaint on the merits

28 [PROPOSED] ORDER PRELIMINARILY APPROVING SETTLEMENT AND PROVIDING FOR  
NOTICE

- 1 and with prejudice, and to determine whether the release by the Class of the  
2 Released Defendant Parties as set forth in the Stipulation, should be ordered,  
3 along with a permanent injunction barring efforts to bring any Released  
4 Claims or Released Defendants' Claims extinguished by the Settlement;
- 5 c. to finally determine whether the proposed Plan of Allocation for the  
6 distribution of the Net Settlement Fund is fair and reasonable and should be  
7 approved by the Court;
- 8 d. to consider the application of Lead Counsel for an award of attorneys' fees  
9 and expenses, and any application for an award to the Plaintiffs;
- 10 e. to consider Class Members' objections to the Settlement, Plan of Allocation  
11 or application for fees and expenses; and
- 12 f. to rule upon such other matters as the Court may deem appropriate.

13 3. The Court may adjourn the Settlement Hearing without further notice to the  
14 members of the Class, and reserves the right to approve the Settlement with such modifications as  
15 may be agreed upon or consented to by the parties and without further notice to the Class where  
16 to do so would not impair Class Members' rights in a manner inconsistent with Rule 23 and due  
17 process of law. The Court further reserves the right to enter its Judgment approving the Settlement  
18 and dismissing the Second Amended Complaint, on the merits and with prejudice, regardless of  
19 whether it has approved the Plan of Allocation or awarded attorneys' fees and expenses or made  
20 awards to the Plaintiffs.

21 4. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the Court hereby  
22 certifies, for the sole purpose of effectuating the Settlement, a Class defined as follows:

23 All Persons that purchased or acquired Impax common stock or 2% Convertible  
24 Senior Notes between February 20, 2014 and August 9, 2016, inclusive ("Class  
25 Period"). Excluded from the Class are: (i) Defendants; (ii) members of the  
26 immediate families of the Individual Defendants; (iii) Impax's subsidiaries; (iv) the  
27 officers and directors of Impax during the Class Period; (v) any entity in which any  
28 Defendant has a controlling interest; and (vi) the legal representatives, heirs,  
successors and assigns of any such excluded person or entity. Also excluded from  
the Class will be any Person who timely and validly seeks exclusion from the Class.

1           5. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, and for purposes of  
2 settlement only, Sheet Metal Workers’ Pension Plan of Southern California, Arizona & Nevada  
3 (“Sheet Metal Workers’ Fund”) is appointed as representative of the Class, and Lead Counsel  
4 Robbins Geller Rudman & Dowd LLP is appointed as Class Counsel for the Class.

5           6. With respect to the Class, this Court finds, for purposes of effectuating the  
6 Settlement only, that the prerequisites for a class action under Rules 23(a) and (b)(3) of the Federal  
7 Rules of Civil Procedure have been satisfied in that: (a) the members of the Class are so numerous  
8 that joinder of all Class Members in the Litigation is impracticable; (b) there are questions of law  
9 and fact common to the Class; (c) the claims of Sheet Metal Workers’ Fund are typical of the  
10 claims of the Class; (d) Sheet Metal Workers’ Fund and its counsel have fairly and adequately  
11 represented and protected the interests of all Class Members; (e) the questions of law and fact  
12 common to the Class predominate over any questions affecting only individual members of the  
13 Class; and (f) a class action is superior to other available methods for the fair and efficient  
14 adjudication of the controversy, considering: (i) the interests of the members of the Class in  
15 individually controlling the prosecution of the separate actions; (ii) the extent and nature of any  
16 litigation concerning the controversy already commenced by members of the Class; (iii) the  
17 desirability or undesirability of concentrating the litigation of these claims in this particular forum;  
18 and (iv) the difficulties likely to be encountered in the management of the Litigation.

19           7. The Court approves, as to form and content, the Notice of Pendency and Proposed  
20 Settlement of Class Action (the “Notice”), the Proof of Claim and Release form (the “Proof of  
21 Claim”), and the Summary Notice, annexed hereto as Exhibits A-1, A- 2, and A-3, respectively,  
22 and finds that the mailing and distribution of the Notice and publishing of the Summary Notice,  
23 substantially in the manner and form set forth in ¶¶10-11 of this Order, meet the requirements of  
24 Federal Rule of Civil Procedure 23 and due process, and is the best notice practicable under the  
25 circumstances and shall constitute due and sufficient notice to all Persons entitled thereto.

1           8.       The firm of JND Legal Administration (“Claims Administrator”) is hereby  
2 appointed to supervise and administer the notice procedure as well as the processing of claims as  
3 more fully set forth below.

4           9.       Impax shall provide, or cause to be provided, to Lead Counsel or the Claims  
5 Administrator, at no cost to Plaintiffs, the Settlement Fund, Lead Counsel or the Claims  
6 Administrator, within ten (10) calendar days after the Court enters this Order, documentation or  
7 data in the possession of Impax or its present or former stock transfer agents sufficient to identify  
8 to the extent available the record holders of Impax common stock or 2% Convertible Senior Notes  
9 during the period from February 20, 2014 through August 9, 2016, inclusive, and their last known  
10 addresses or other similar information. The parties shall determine an appropriate electronic  
11 format for provision of this information.

12           10.      Lead Counsel, through the Claims Administrator, shall commence mailing the  
13 Notice and Proof of Claim, substantially in the forms annexed hereto, within twenty (20) calendar  
14 days after the Court signs this Order (the “Notice Date”), or by \_\_\_\_\_, 2021, by first-class  
15 mail to all Class Members who can be identified with reasonable effort, and to be posted on the  
16 Settlement website at [www.ImpaxSecuritiesSettlement.com](http://www.ImpaxSecuritiesSettlement.com).

17           11.      Not later than seven (7) calendar days after the Notice Date, the Claims  
18 Administrator shall cause the Summary Notice to be published once in the national edition of *The*  
19 *Wall Street Journal* and once over a national newswire service.

20           12.      At least seven (7) calendar days prior to the Settlement Hearing, Lead Counsel shall  
21 serve on Defendants’ Counsel and file with the Court proof, by affidavit or declaration, of such  
22 mailing and publishing.

23           13.      Nominees who purchased or acquired Impax common stock or 2% Convertible  
24 Senior Notes for the beneficial ownership of Class Members during the Class Period shall (a)  
25 within seven (7) calendar days of receipt of the Notice and the Proof of Claim (“Notice Packet”),  
26 request from the Claims Administrator sufficient copies of the Notice Packet to forward to all such  
27 beneficial owners and within seven (7) calendar days of receipt of those Notice Packets forward



1 them to all such beneficial owners; or (b) within seven (7) calendar days of receipt of the Notice  
2 Packet, send a list of the names and addresses of all such beneficial owners to the Claims  
3 Administrator in which event the Claims Administrator shall promptly mail the Notice Packet to  
4 such beneficial owners. Lead Counsel shall, if requested, reimburse banks, brokerage houses or  
5 other nominees solely for their reasonable out-of-pocket expenses incurred in providing notice to  
6 beneficial owners who are Class Members out of the Settlement Fund, which expenses would not  
7 have been incurred except for the sending of such notice, subject to further order of this Court with  
8 respect to any dispute concerning such compensation.

9 14. In order to be entitled to participate in the recovery from the Settlement Fund after  
10 the Effective Date, each Class Member shall take the following action and be subject to the  
11 following conditions:

12 a. A properly completed and executed Proof of Claim must be submitted to  
13 the Claims Administrator, at the post office box or electronic mailbox  
14 indicated in the Notice and Proof of Claim, postmarked no later than ninety  
15 (90) calendar days from the Notice Date. Such deadline may be further  
16 extended by Order of the Court. Each Proof of Claim shall be deemed to  
17 have been submitted when legibly postmarked (if properly addressed and  
18 mailed by first-class mail). Any Proof of Claim submitted in any other  
19 manner shall be deemed to have been submitted when it was actually  
20 received by the Claims Administrator at the address designated in the  
21 Notice.

22 b. The Proof of Claim submitted by each Class Member must satisfy the  
23 following conditions: (i) it must be properly filled out, signed and submitted  
24 in a timely manner in accordance with the provisions of the preceding  
25 subparagraph; (ii) it must be accompanied by adequate supporting  
26 documentation for the transactions reported therein, in the form of broker  
27 confirmation slips, broker account statements, an authorized statement from

1 the broker containing the transactional information found in a broker  
2 confirmation slip, or such other documentation as is deemed adequate by  
3 the Claims Administrator or Lead Counsel; (iii) if the person executing the  
4 Proof of Claim is acting in a representative capacity, a certification of his  
5 current authority to act on behalf of the Class Member must be provided  
6 with the Proof of Claim; and (iv) the Proof of Claim must be complete and  
7 contain no material deletions or modifications of any of the printed matter  
8 contained therein and must be signed under penalty of perjury.

9 c. Once the Claims Administrator has considered a timely submitted Proof of  
10 Claim, it shall determine whether such claim is valid, deficient or rejected.  
11 For each claim determined to be either deficient or rejected, the Claims  
12 Administrator shall send a deficiency letter or rejection letter as appropriate,  
13 describing the basis on which the claim was so determined. Persons who  
14 timely submit a Proof of Claim that is deficient or otherwise rejected shall  
15 be afforded a reasonable time (at least twenty (20) calendar days) to cure  
16 such deficiency if it shall appear that such deficiency may be cured.

17 d. For the filing of and all determinations concerning their Proof of Claim,  
18 each Class Member shall submit to the jurisdiction of the Court.

19 15. Any Class Member who does not timely submit a valid and timely Proof of Claim  
20 within the time provided for, shall be barred from sharing in the distribution of the proceeds of the  
21 Settlement Fund, but will in all other respects be subject to and bound by the provisions of the  
22 Stipulation and the Judgment, if entered. Notwithstanding the foregoing, Lead Counsel shall have  
23 the discretion (but not an obligation) to accept late-submitted claims for processing by the Claims  
24 Administrator so long as distribution of the Settlement Fund to Authorized Claimants is not  
25 materially delayed thereby, but will bear no liability for failing to accept such late claims.

1           16. Any member of the Class may enter an appearance in the Litigation, at their own  
2 expense, individually or through counsel of their own choice. If they do not enter an appearance,  
3 they will be represented by Lead Counsel.

4           17. All Class Members shall be bound by all determinations and judgments in this  
5 Litigation, whether favorable or unfavorable, unless such persons request to be excluded, or “opt  
6 out,” from the Class. A Class Member wishing to be excluded from the Class must submit to the  
7 Claims Administrator a request for exclusion (“Request for Exclusion”), by first-class mail, or  
8 otherwise hand-deliver it, such that it is received no later than twenty-one (21) calendar days prior  
9 to the Settlement Hearing, or \_\_\_\_\_, 20\_\_, to the address listed in the Notice. A Request  
10 for Exclusion must be signed and must legibly state: (a) the name, address, and telephone number  
11 of the Person requesting exclusion; (b) the number of shares of Impax common stock or 2%  
12 Convertible Senior Notes that the Person requesting exclusion (i) owned as of the opening of  
13 trading on February 20, 2014, and (ii) purchased, acquired and/or sold during the Class Period, as  
14 well as the number of shares, dates and prices for each such purchase, acquisition and sale; and (c)  
15 that the Person wishes to be excluded from the Class in *Fleming v. Impax Laboratories Inc., et al.*,  
16 No. 4:16-cv-06557-SSG. All Persons who submit valid and timely Requests for Exclusion in the  
17 manner set forth in this paragraph shall have no rights under the Stipulation, shall not share in the  
18 distribution of the Net Settlement Fund, and shall not be bound by the Stipulation or any Final  
19 Judgment. Unless otherwise ordered by the Court, any Class Member who does not submit a valid  
20 and timely written Request for Exclusion as provided by this paragraph shall be bound by the  
21 Stipulation.

22           18. The Claims Administrator or Lead Counsel shall cause to be provided to  
23 Defendants’ Counsel copies of all Requests for Exclusion as expeditiously as possible, but in no  
24 event later than five (5) business days of receipt thereof and in any event at least fourteen (14)  
25 calendar days before the Settlement Hearing.

26           19. The Court will consider comments or objections to the Settlement, the Plan of  
27 Allocation, or Lead Counsel’s request for an award of attorneys’ fees and expenses, including an

28 [PROPOSED] ORDER PRELIMINARILY APPROVING SETTLEMENT AND PROVIDING FOR  
NOTICE

1 award to the Plaintiffs as provided for by 15 U.S.C. §78u-4(a)(4), only if such comments or  
2 objections and any supporting papers are submitted to the Court either by mailing them to the Class  
3 Action Clerk, United States District Court for the Northern District of California, Oakland  
4 Division, 1301 Clay Street, Oakland, CA 94612, or by filing them in person at any location of the  
5 United States District Court for the Northern District of California. Such comments or objections  
6 must be received or filed, not simply postmarked, at least twenty-one (21) calendar days prior to  
7 the Settlement Hearing, or \_\_\_\_\_, 20\_\_\_. Attendance at the Settlement Hearing is not  
8 necessary but any Person wishing to be heard orally in opposition to the Settlement, the Plan of  
9 Allocation, or the application for attorneys' fees and expenses or awards to the Plaintiffs is required  
10 to indicate in their written objection whether they intend to appear at the Settlement Hearing. The  
11 notice of objection must include documentation establishing the objecting Person's membership  
12 in the Class, including the number of shares of Impax common stock or 2% Convertible Senior  
13 Notes that the objecting Person (i) owned as of the opening of trading on February 20, 2014, and  
14 (ii) purchased, acquired and/or sold during the Class Period, as well as the dates and prices for  
15 each such purchase, acquisition or sale, and contain a statement of reasons for the objection,  
16 including whether it applies only to the objector, to a specific subset of the Class, or to the entire  
17 Class. The objection must identify all other class action settlements the objector and his, her or its  
18 counsel has previously objected to, copies of any papers, briefs, or other documents upon which  
19 the objection is based, and the objector's signature, even if represented by counsel. Any member  
20 of the Class who does not make his, her or its objection in the manner provided shall be deemed  
21 to have waived such objection and shall forever be foreclosed from making any objection to the  
22 fairness or adequacy of the Settlement as set forth in the Stipulation, to the Plan of Allocation, or  
23 to the award of attorneys' fees and expenses to Lead Counsel or awards to the Plaintiffs unless  
24 otherwise ordered by the Court. Class Members do not need to appear at the Settlement Hearing  
25 or take any other action to indicate their approval.

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1           20. All funds held by the Escrow Agent shall be deemed and considered to be in  
2 *custodia legis* of the Court, and shall remain subject to the jurisdiction of the Court, until such time  
3 as such funds shall be distributed pursuant to the Stipulation and/or further order(s) of the Court.

4           21. All opening briefs and supporting documents in support of the Settlement, the Plan  
5 of Allocation, and any application by Lead Counsel for attorneys' fees and expenses and awards  
6 to the Plaintiffs shall be filed and served no later than thirty-five (35) calendar days before the  
7 Settlement Hearing, or \_\_\_\_\_, 20\_\_\_. Replies to any objections shall be filed and served at  
8 least seven (7) calendar days prior to the Settlement Hearing, or \_\_\_\_\_, 20\_\_.

9           22. The Released Defendant Parties shall have no responsibility for the Plan of  
10 Allocation or any application for attorneys' fees or expenses submitted by Lead Counsel, and such  
11 matters will be considered separately from the fairness, reasonableness, and adequacy of the  
12 Settlement. Any order or proceeding relating to the Plan of Allocation or any application for  
13 attorneys' fees or expenses, or any appeal from any order relating thereto or reversal or  
14 modification thereof, shall not operate to terminate or cancel the Stipulation, or affect or delay the  
15 finality of the Judgment approving the Stipulation and the settlement of the Litigation.

16           23. At or after the Settlement Hearing, the Court shall determine whether the Plan of  
17 Allocation proposed by Lead Counsel, and any application for attorneys' fees or payment of  
18 expenses shall be approved.

19           24. All reasonable expenses incurred in identifying and notifying Class Members, as  
20 well as administering the Settlement Fund, shall be paid as set forth in the Stipulation.

21           25. Neither the Stipulation, nor any of its terms or provisions, nor any of the  
22 negotiations or proceedings connected with it, shall be construed as an admission or concession  
23 by the Defendants of the truth of any of the allegations in the Litigation, or of any liability, fault,  
24 or wrongdoing of any kind.

25           26. If the Stipulation and the Settlement set forth therein is not approved or  
26 consummated for any reason whatsoever, the Stipulation and Settlement and all proceedings had  
27

1 in connection therewith shall be without prejudice to the rights of the Settling Parties *status quo*  
2 *ante*.

3 27. Pending final determination of whether the proposed Settlement should be  
4 approved, neither the Class Representatives, nor any Class Member, directly or indirectly,  
5 representatively, or in any other capacity, shall commence or prosecute against any of the Released  
6 Defendant Parties, any action or proceeding in any court or tribunal asserting any of the Released  
7 Claims.

8 28. The Court's orders entered during this Litigation relating to the confidentiality of  
9 information shall survive this Settlement.

10 IT IS SO ORDERED.

11 DATED: \_\_\_\_\_

\_\_\_\_\_  
12 THE HONORABLE HAYWOOD S. GILLIAM, JR.  
13 UNITED STATES DISTRICT JUDGE  
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28 [PROPOSED] ORDER PRELIMINARILY APPROVING SETTLEMENT AND PROVIDING FOR  
NOTICE

EXHIBIT A- 4:16-cv-06557-HSG  
4841-9470-0529.v2

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16 Lead Counsel for Plaintiff

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

20 GREG FLEMING, Individually and on Behalf )  
21 of All Others Similarly Situated, )  
22 Plaintiff, )  
23 vs. )  
24 IMPAX LABORATORIES INC., et al., )  
25 Defendants. )

Case No. 4:16-cv-06557-HSG  
CLASS ACTION  
NOTICE OF PENDENCY AND PROPOSED  
SETTLEMENT OF CLASS ACTION  
EXHIBIT A-1

1                    *A Federal Court authorized this Notice. This is not a solicitation from a lawyer.*

2  
3        **NOTICE OF PENDENCY OF CLASS ACTION:** Please be advised that your rights may be  
4        affected by the above-captioned class action lawsuit pending in this Court (the “Litigation”) if  
5        you purchased or otherwise acquired the common stock or 2% Convertible Senior Notes of  
6        Impax Laboratories, Inc. (now known as Impax Laboratories, LLC) (“Impax” or the  
7        “Company”) from February 20, 2014 through August 9, 2016, inclusive (the “Class Period”).

8        **NOTICE OF SETTLEMENT:** Please also be advised that the Plaintiffs New York Hotel  
9        Trades Council & Hotel Association of New York City, Inc. Pension Fund and Sheet Metal  
10       Workers’ Pension Plan of Southern California, Arizona and Nevada (“Plaintiffs”), on behalf of  
11       the Class (as defined in ¶1 below), have reached a proposed settlement of the Litigation for a  
12       total of \$33 million in cash that will resolve all claims in the Litigation (the “Settlement”).

13       **This Notice explains important rights you may have, including your possible receipt of cash  
14       from the Settlement. Your legal rights will be affected whether or not you act. Please read this  
15       Notice carefully!**

16            1.        **Description of the Litigation and the Class:** This Notice relates to a proposed  
17        Settlement of a class action lawsuit pending against the following defendants: Impax, George  
18        Frederick Wilkinson, Dr. Larry Hsu, Dr. Carole Ben-Maimon, and Bryan M. Reasons  
19        (“Defendants”) (collectively, with Plaintiffs, the “Settling Parties”). The proposed Settlement, if  
20        approved by the Court, will apply to the following Class (the “Class”): all Persons that purchased or  
21        acquired Impax common stock or 2% Convertible Senior Notes during the Class Period. Excluded  
22        from the Class are: (i) Defendants; (ii) members of the immediate families of the Individual  
23        Defendants; (iii) Impax’s subsidiaries; (iv) the officers and directors of Impax during the Class  
24        Period; (v) any entity in which any Defendant has a controlling interest; and (vi) the legal  
25        representatives, heirs, successors and assigns of any such excluded person or entity. Also excluded  
26        from the Class will be any Person who timely and validly seeks exclusion from the Class. Anyone  
27        with questions as to whether or not they are excluded from the Class may call the Claims  
28        Administrator toll-free at 1-833-823-0051.

29            2.        **Statement of Class’s Recovery:** Subject to Court approval, and as described more  
30        fully in ¶¶44-50 below, Plaintiffs, on behalf of the Class, have agreed to settle all Released Claims  
31        (as defined in ¶45 below) against Defendants and other Released Defendant Parties (as defined in  
32        ¶47 below) in exchange for a settlement payment of \$33 million in cash (the “Settlement Amount”)  
33        to be deposited into an escrow account. The Net Settlement Fund (the Settlement Fund less Taxes  
34        and Tax Expenses, Notice and Administration Expenses, and attorneys’ fees and litigation expenses  
35        and awards to the Plaintiffs) will be distributed in accordance with a plan of allocation (the “Plan of  
36        Allocation”) that will be approved by the Court and will determine how the Net Settlement Fund  
37        shall be distributed to members of the Class. The Plan of Allocation is a basis for determining the  
38        relative positions of Class Members for purposes of allocating the Net Settlement Fund. The  
39        proposed Plan of Allocation is included in this Notice, and may be modified by the Court without  
40        further notice.

41            3.        **Statement of Average Distribution Per Share:** The Settlement Fund consists of the  
42        \$33 million Settlement Amount plus interest earned. Assuming all potential Class Members elect to  
43        participate, the estimated average recovery is \$0.44 per damaged share before fees and expenses.

44        NOTICE OF PENDENCY AND PROPOSED SETTLEMENT OF CLASS ACTION

45        EXHIBIT A-1 - 4:16-cv-06557-HSG

46        4815-1844-0447.v1



1 Class Members may recover more or less than this amount depending on, among other factors, the  
 2 aggregate value of the Recognized Claims represented by valid and acceptable Claim Forms as  
 3 explained in the Plan of Allocation; when their shares were purchased or acquired and the price at  
 4 the time of purchase or acquisition; whether the shares were sold, and if so, when they were sold and  
 for how much. In addition, the actual recovery of Class Members may be further reduced by the  
 payment of fees and costs from the Settlement Fund, as approved by the Court.

5 4. **Statement of the Parties’ Position on Damages:** Defendants deny all claims of  
 6 wrongdoing, that they engaged in any wrongdoing, that they are liable to Plaintiffs and/or the Class  
 7 and that Plaintiffs or other members of the Class suffered any injury. Moreover, the parties do not  
 8 agree on the amount of recoverable damages if Plaintiffs were to prevail on each of the claims. The  
 9 issues on which the parties disagree include, but are not limited to, whether: (1) the statements made  
 10 or facts allegedly omitted were material, false or misleading; (2) Defendants are otherwise liable  
 under the securities laws for those statements or omissions or any alleged scheme to defraud; and  
 (3) all or part of the damages allegedly suffered by members of the Class were caused by economic  
 conditions or factors other than the allegedly false or misleading statements or omissions.

11 5. **Statement of Attorneys’ Fees and Expenses Sought:** Lead Counsel will apply to  
 12 the Court, on behalf of all Plaintiffs’ Counsel, for an award of attorneys’ fees from the Settlement  
 13 Fund of no more than 30% of the Settlement Amount, plus interest earned at the same rate and for  
 14 the same period as earned by the Settlement Fund. In addition, Lead Counsel also will apply to the  
 15 Court for payment from the Settlement Fund for Plaintiffs’ Counsel’s litigation expenses (reasonable  
 16 expenses or charges of Plaintiffs’ Counsel in connection with commencing and prosecuting the  
 17 Litigation), in a total amount not to exceed \$250,000, plus interest earned at the same rate and for the  
 same period as earned by the Settlement Fund. If the Court approves Lead Counsel’s fee and  
 expense application, the estimated average cost per damaged share is \$0.14. In addition, Lead  
 Counsel may apply for awards to the Plaintiffs in connection with their representation of the Class in  
 an amount not to exceed \$15,000, combined.

18 6. **Identification of Attorneys’ Representatives:** Plaintiffs and the Class are being  
 19 represented by Robbins Geller Rudman & Dowd LLP (“Lead Counsel”). Any questions regarding the  
 Settlement should be directed to Luke O. Brooks, Esq. at Robbins Geller Rudman & Dowd LLP, 655  
 20 W. Broadway, Suite 1900, San Diego, CA 92101, (800) 449-4900, lukeb@rgrdlaw.com.

**YOUR LEGAL RIGHTS AND OPTIONS IN THE SETTLEMENT**

DO NOTHING	Get no payment. Remain a Class Member. Give up your rights.
REMAIN A MEMBER OF THE CLASS AND SUBMIT A CLAIM FORM POSTMARKED NO LATER THAN [____], 2021	This is the only way to be potentially eligible to receive a payment. If you wish to obtain a payment as a member of the Class, you will need to file a claim form (the “Claim Form” or “Proof of Claim Form”), which is included with this Notice, postmarked no later than _____, 2021.
EXCLUDE YOURSELF FROM THE CLASS (OPT OUT) BY SUBMITTING	Receive no payment pursuant to this Settlement. This is the only option that allows you to ever

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<p>A WRITTEN REQUEST FOR EXCLUSION SO THAT IT IS <b>RECEIVED</b> NO LATER THAN [____], 2021</p>	<p>potentially be part of any other lawsuit against any of the Defendants or the other Released Defendant Parties concerning the Released Claims. Should you elect to exclude yourself from the Class, you should understand that Defendants and the other Released Defendant Parties will have the right to assert any and all defenses they may have to any claims that you may seek to assert, including, without limitation, the defense that any such claims are untimely under applicable statutes of limitations and statutes of repose.</p>
<p>OBJECT TO THE SETTLEMENT SO THAT IT IS <b>RECEIVED</b> NO LATER THAN [____], 2021</p>	<p>Write to the Court about your view on the Settlement, or why you don't think the Settlement is fair to the Class.</p> <p>If you do not exclude yourself from the Class, you may object to the Settlement, the Plan of Allocation, or the request for attorneys' fees and litigation expenses. You must still submit a Claim Form in order to be potentially eligible to receive any money from the Settlement Fund.</p>
<p>GO TO THE HEARING ON [____], 2021, AT __:__.m., AND FILE A NOTICE OF INTENTION TO APPEAR SO THAT IT IS <b>RECEIVED</b> NO LATER THAN [____], 2021</p>	<p>Ask to speak in Court about the fairness of the Settlement, the proposed Plan of Allocation, or the request for attorneys' fees and litigation expenses.</p>

<p style="text-align: center;"><b>WHAT THIS NOTICE CONTAINS</b></p>	
<p>Why Did I Get This Notice?</p>	<p>Page ____</p>
<p>What Is This Case About? What Has Happened So Far?</p>	<p>Page ____</p>
<p>How Do I Know If I Am Affected By The Settlement?</p>	<p>Page ____</p>
<p>What Are Plaintiffs' Reasons For The Settlement?</p>	<p>Page ____</p>
<p>What Might Happen If There Were No Settlement?</p>	<p>Page ____</p>
<p>How Much Will My Payment Be?</p>	<p>Page ____</p>
<p>What Rights Am I Giving Up By Agreeing To The Settlement?</p>	<p>Page ____</p>
<p>What Payment Are The Attorneys For The Class Seeking? How Will The Lawyers Be Paid?</p>	<p>Page ____</p>
<p>How Do I Participate In The Settlement? What Do I Need To Do?</p>	<p>Page ____</p>
<p>What If I Do Not Want To Be A Part Of The Settlement? How Do I Exclude Myself?</p>	<p>Page ____</p>
<p>When And Where Will The Court Decide Whether To Approve The Settlement? Do I Have To Come To The Hearing?</p>	<p>Page ____</p>
<p>May I Speak At The Hearing If I Don't Like The Settlement?</p>	<p>Page ____</p>

1	What If I Bought Shares On Someone Else’s Behalf?	Page
2	Can I See The Court File? Whom Should I Contact If I Have Questions?	Page

### WHY DID I GET THIS NOTICE

7. The purpose of this Notice is to inform you about: (a) this Litigation, (b) the certification of the Class, (c) the terms of the proposed Settlement, and (d) your rights in connection with a hearing to be held before the United States District Court, Northern District of California, Oakland Division (the “Court”), on \_\_\_\_\_, 2021, at \_\_\_\_\_m., to consider the fairness, reasonableness, and adequacy of the Settlement and related matters. This Notice also describes the steps to be taken by those who wish to be excluded from the Class and, for those who remain Class Members, the steps necessary to seek to be potentially eligible to share in the distribution of the Net Settlement Fund in the event the Settlement is approved by the Court.

8. A class action is a type of lawsuit in which the claims of a number of individuals are resolved together, thus providing the class members with both consistency and efficiency. In a class action lawsuit, the Court selects one or more people, known as class representatives, to sue on behalf of all people with similar claims, commonly known as the class or the class members. (For more information on excluding yourself from the Class, please read “What If I Do Not Want To Be A Part Of The Settlement? How Do I Exclude Myself?” located below.) In the Litigation, the Court has appointed Plaintiffs New York Hotel Trades Council & Hotel Association of New York City, Inc. Pension Fund and the Sheet Metal Workers’ Pension Plan of Southern California, Arizona & Nevada as the representatives of the Class and Lead Counsel as Class Counsel, for purposes of the Settlement.

9. The Court in charge of this case is the United States District Court for the Northern District of California, Oakland Division, and the case is known as *Fleming v. Impax Laboratories Inc., et al.*, Case No. 4:16-cv-06557-HSG. The judge presiding over this case is the Honorable Haywood S. Gilliam, Jr., United States District Judge. The people who are suing are called plaintiffs, and those who are being sued are called defendants. In this case, the Defendants are Impax, George Frederick Wilkinson, Dr. Larry Hsu, Dr. Carole Ben-Maimon, and Bryan M. Reasons.

10. This Notice explains the lawsuit, the Settlement, your legal rights, what benefits are available, who is eligible for them, and how to get them. The purpose of this Notice is to inform you of this case, that it is a class action, how you might be affected, and how to exclude yourself from the Settlement if you wish to do so. It also is being sent to inform you of the terms of the proposed Settlement, and of a hearing to be held by the Court to consider the fairness, reasonableness, and adequacy of the proposed Settlement, the proposed Plan of Allocation, and the application by Lead Counsel for attorneys’ fees and litigation expenses (the “Settlement Hearing”).

11. The Settlement Hearing will be held on \_\_\_\_\_, 2021, at \_\_\_\_\_m., before the Honorable Haywood S. Gilliam, Jr., at the United States District Court, Northern District of California, Oakland Division, Oakland Courthouse, Courtroom 2 – 4th Floor, 1301 Clay Street, Oakland, CA 94612, for the following purposes:

(a) to determine whether the proposed Settlement on the terms and conditions

- 1 provided for in the Stipulation is fair, reasonable, and adequate and should be  
2 approved by the Court;
- 3 (b) to determine whether the Judgment as provided for under the Stipulation of  
4 Settlement dated July 30, 2021 (the “Stipulation”) should be entered;
- 5 (c) to determine whether the proposed Plan of Allocation for the net proceeds of the  
6 Settlement is fair and reasonable and should be approved by the Court;
- 7 (d) to determine whether the application by Lead Counsel for an award of attorneys’  
8 fees and litigation expenses should be approved; and
- 9 (e) to rule upon such other matters as the Court may deem appropriate.

10 12. This Notice does not express any opinion by the Court concerning the merits of  
11 any claim in the Litigation, and the Court still has to decide whether to approve the Settlement. If  
12 the Court approves the Settlement, payments to Authorized Claimants will be made after any  
13 appeals are resolved, and after the completion of all claims processing. This process takes time.  
14 Please be patient.

15 **WHAT IS THIS CASE ABOUT? WHAT HAS HAPPENED SO FAR?**

16 13. This Litigation arises under Sections 10(b) and 20(a) of the Securities Exchange  
17 Act of 1934, and alleges that during the period between February 20, 2014 and August 9, 2016,  
18 inclusive (the “Class Period”), Defendants Impax, George Frederick Wilkinson, Dr. Larry Hsu,  
19 Dr. Carole Ben-Maimon, and Bryan M. Reasons made materially false and misleading statements  
20 about Impax’s business performance and conditions. More specifically, Plaintiffs allege that  
21 during the Class Period, Defendants misled investors regarding Impax’s collusion with  
22 pharmaceutical industry peers to fix generic drug prices and the impact of competition and price  
23 erosion on its sales of certain key products in its generics portfolio.

24 14. Plaintiffs allege that during the Class Period, Defendants knew or recklessly  
25 disregarded that Impax’s profits were inflated by collusive agreements with the Company’s peers  
26 to fix the prices of digoxin and pyridostigmine bromide. Plaintiffs further allege that, pursuant to  
27 the industrywide conspiracy’s “rules of the road,” Impax was required to, and did, cede market  
28 share to manufacturers as they entered the market in order to maintain supracompetitive pricing.  
As a result, Impax reported declines in gross margins attributed to, in large part, a decline in  
digoxin sales on May 11, 2015 after the market closed. Impax also announced that the Antitrust  
Division of the DOJ had issued a grand jury subpoena to Impax relating to price fixing of four  
generic drugs, including digoxin. Following the May 11 disclosures, Impax’s stock price declined  
2.7% or \$1.10 per share at closing on May 12, 2015. On August 10, 2015, Impax announced a  
reduction in gross margin guidance from mid-50% to low-50%, allegedly due to pressure on  
digoxin, causing Impax’s stock price to decline 3% or \$2.07 per share. Plaintiffs allege that  
Defendants partially offset the diminishing returns on its digoxin scheme by giving investors false  
information about the true cause, extent, and impact of revenue declines on Impax’s generic drug  
portfolio, and in particular diclofenac sodium gel 3%, and falsely reaffirmed guidance relating to  
Impax’s generic drug portfolio that they knew they could not meet. On June 21, 2016, Impax  
updated its guidance and revealed it expected greater competition for generic products,

1 particularly diclofenac, resulting in lower revenues and gross margins. That day, Impax common  
2 stock declined 11% or \$3.53 per share, and its 2% Convertible Senior Notes declined \$40 per  
3 \$1,000 par value. On August 9, 2016, Impax announced quarterly results and provided updated  
4 guidance that reduced forecasted revenues by \$49 to \$89 million, with analysts attributing at least  
5 a substantial portion to diclofenac. Digoxin revenues also declined, contributing an estimated  
6 15% to the revenue shortfall. Impax’s stock price declined 23% or \$7.29 per share, and its 2%  
7 Convertible Senior Notes declined \$78 per \$1,000 par value.

8  
9 15. On October 26, 2018, Lead Plaintiff filed its Second Amended Complaint for  
10 Violation of the Federal Securities Laws. On December 6, 2018, Defendants moved to dismiss  
11 this complaint, which was opposed by Lead Plaintiff. On August 12, 2019, the Court issued an  
12 order granting Defendants’ motion to dismiss. The United States Court of Appeals for the Ninth  
13 Circuit affirmed in part and reversed in part this decision on January 11, 2021.

14 16. In the course of the Litigation, the Settling Parties engaged the services of the Hon.  
15 Layn Phillips (Ret.), of Phillips ADR, a nationally recognized mediator. The Settling Parties  
16 engaged in a mediation session with Judge Phillips on September 17, 2020. While the Settling  
17 Parties did not reach an agreement to settle the Litigation at the mediation, the Settling Parties  
18 continued settlement negotiations with the assistance of Judge Phillips, who provided the Settling  
19 Parties with a Mediator’s Proposal on June 26, 2021. The Settling Parties each accepted the  
20 Mediator’s Proposal to settle the Litigation for \$33 million.

21  
22 **HOW DO I KNOW IF I AM AFFECTED BY THE SETTLEMENT?**

23 17. If you are a member of the Class, you are subject to the Settlement unless you  
24 timely request to be excluded. The Class consists of all Persons that purchased or acquired Impax  
25 common stock or 2% Convertible Senior Notes between February 20, 2014 and August 9, 2016,  
26 inclusive. Excluded from the Class are: (i) Defendants; (ii) members of the immediate families of  
27 the Individual Defendants; (iii) Impax’s subsidiaries; (iv) the officers and directors of Impax  
during the Class Period; (v) any entity in which any Defendant has a controlling interest; and (vi)  
the legal representatives, heirs, successors and assigns of any such excluded person or entity.  
Also excluded from the Class will be any Person who timely and validly seeks exclusion from the  
Class. Anyone with questions as to whether or not they are excluded from the Class may call the  
Claims Administrator toll-free at 1-833-823-0051. (See “What If I Do Not Want To Be A Part Of  
The Settlement? How Do I Exclude Myself?,” below.)

RECEIPT OF THIS NOTICE DOES NOT NECESSARILY MEAN THAT YOU  
ARE A CLASS MEMBER OR THAT YOU ARE ENTITLED TO RECEIVE  
PROCEEDS FROM THE SETTLEMENT. IF YOU WISH TO BE  
POTENTIALLY ELIGIBLE TO RECEIVE A DISTRIBUTION OF THE  
SETTLEMENT PROCEEDS, YOU MUST COMPLETE, SIGN AND SUBMIT  
THE ENCLOSED CLAIM FORM POSTMARKED NO LATER THAN  
[ \_\_\_\_\_ ], 2021.

28 **WHAT ARE PLAINTIFFS’ REASONS FOR THE SETTLEMENT?**

18. Plaintiffs and Lead Counsel believe that the claims asserted against Defendants

1 have merit. Plaintiffs and Lead Counsel recognize, however, the expense and length of continued  
2 proceedings necessary to pursue their claims against Defendants through trial and appeals, as well  
3 as the difficulties in establishing liability, obtaining class certification and establishing damages.  
4 Plaintiffs and Lead Counsel have considered the amount of the Settlement, as well as the  
5 uncertain outcome and risk in complex lawsuits like this one. Such risks include, in particular, the  
6 risk that another motion to dismiss that Defendants filed after the Ninth Circuit’s decision would  
7 be granted and the risk, among others, that Plaintiffs would be unsuccessful in proving that  
8 Defendants’ alleged misstatements were materially false and misleading, made with scienter (that  
9 is, the requisite state of mind), or caused compensable damages to the Class.

10 19. In light of the amount of the Settlement and the immediacy of recovery to the  
11 Class, Plaintiffs and Lead Counsel believe that the proposed Settlement is fair, reasonable and  
12 adequate, and in the best interests of the Class. Plaintiffs and Lead Counsel believe that the  
13 Settlement provides a substantial benefit now, namely \$33 million in cash (less the various  
14 deductions described in this Notice), as compared to the risk that the claims would produce a  
15 smaller recovery, or no recovery after summary judgment, trial and appeals, possibly years in the  
16 future.

17 20. Defendants have denied and continue to deny each and all of the claims alleged by  
18 Plaintiffs in the Litigation. Defendants expressly have denied and continue to deny all charges of  
19 wrongdoing or liability against them arising out of any of the conduct, statements, acts or  
20 omissions alleged, or that could have been alleged, in the Litigation. Defendants also have denied  
21 and continue to deny, among other things, the allegations that Plaintiffs or the Class have suffered  
22 any damage, that Plaintiffs or the Class were harmed by the conduct alleged in the Litigation, or  
23 that the Litigation is properly certifiable as a class action for litigation purposes.

24 **WHAT MIGHT HAPPEN IF THERE WERE NO SETTLEMENT?**

25 21. If there were no Settlement and Plaintiffs failed to establish any essential legal or  
26 factual element of the alleged claims, neither Plaintiffs nor the Class would recover anything from  
27 Defendants. If Plaintiffs were not to succeed in obtaining class certification, Defendants may  
28 have asserted the defense that the claims of Class Members were untimely under applicable  
29 statutes of limitations and statutes of repose. Also, if Defendants were successful in proving any  
30 of their defenses, the Class likely would recover substantially less than the amount provided in the  
31 Settlement, or nothing at all.

32 **HOW MUCH WILL MY PAYMENT BE?**

33 22. Defendants have agreed to cause to be paid Thirty-Three Million Dollars  
34 (\$33,000,000.00) in cash into escrow for the benefit of the Class. At this time, it is not possible to  
35 make any determination as to how much individual Class Members may receive from the  
36 Settlement. Plaintiffs have proposed a plan for allocating the Net Settlement Fund to those Class  
37 Members who timely submit valid Proof of Claim Forms. The Plan of Allocation proposed by  
38 Plaintiffs is set forth below, and additional information is available on the website created for  
39 purposes of this Settlement, [www.ImpaxSecuritiesSettlement.com](http://www.ImpaxSecuritiesSettlement.com).

40 23. Payment pursuant to the Plan of Allocation shall be conclusive against all

1 Authorized Claimants. No person or entity shall have any claim based on distributions made  
2 substantially in accordance with the Stipulation and the Settlement contained therein, the Plan of  
3 Allocation, or further order(s) of the Court against Lead Counsel, the Plaintiffs, Class Members,  
4 the Claims Administrator, Defendants and the other Released Defendant Parties (defined below),  
5 or any person or entity designated by Lead Counsel. All members of the Class who fail to timely  
6 submit an acceptable Claim Form by the deadline set by the Court, or such other deadline as may  
7 be ordered by the Court, or otherwise allowed, shall be forever barred from receiving any  
8 payments pursuant to the Settlement, but will in all other respects be subject to and bound by the  
9 terms of the Settlement, including Class Members' release of all Released Claims.

24. The Court has reserved jurisdiction to allow, disallow, or adjust on equitable  
grounds the claim of any member of the Class.

25. The Plan of Allocation set forth below is the proposed plan submitted by Plaintiffs  
and Lead Counsel for the Court's approval. The Court may approve this plan as proposed or it  
may modify it without further notice to the Class.

26. Each claimant shall be deemed to have submitted to the jurisdiction of the United  
States District Court for the Northern District of California, Oakland Division, with respect to his,  
her or its Claim Form.

27. Persons and entities that exclude themselves from the Class will not be eligible to  
receive a distribution from the Net Settlement Fund and should not submit Proof of Claim Forms.

### PLAN OF ALLOCATION

28. The objective of the Plan of Allocation is to equitably distribute the settlement  
proceeds to those Class Members who suffered economic losses as a proximate result of the  
alleged wrongdoing. In developing the Plan of Allocation, Plaintiffs' damages expert calculated  
the potential amount of estimated alleged artificial inflation in Impax common stock and 2%  
Convertible Senior Notes which allegedly was proximately caused by Defendants' alleged false  
and misleading statements and material omissions. In calculating the estimated alleged artificial  
inflation allegedly caused by Defendants' alleged misrepresentations and omissions, Plaintiffs'  
damages expert considered the market and industry adjusted price changes in Impax's stock price  
following certain corrective disclosures regarding Impax and the allegations in the Second  
Amended Complaint.

29. The calculations made pursuant to the Plan of Allocation are not intended to be  
estimates of, nor indicative of, the amounts that Class Members might have been able to recover  
after a trial. Nor are the calculations pursuant to the Plan of Allocation intended to be estimates of  
the amounts that will be paid to Authorized Claimants pursuant to the Settlement. The  
computations under the Plan of Allocation are only a method to weigh the claims of Authorized  
Claimants against one another for the purposes of making *pro rata* allocations of the Net  
Settlement Fund.

30. The Net Settlement Fund will be allocated to Authorized Claimants as follows: (a)  
at least 95% of the Net Settlement Fund will be allocated collectively to Impax common stock;

1 and (b) no more than 5% of the Net Settlement Fund will be allocated to 2% Convertible Senior  
2 Notes.

### 3 CALCULATION OF RECOGNIZED LOSS AMOUNTS

4 31. In order to have recoverable damages, a disclosure of the alleged truth omitted or  
5 concealed by the misrepresentations must be the cause of the decline in the price of Impax  
6 common stock. In this case, Plaintiffs allege that Defendants made false statements and omitted  
7 material facts during the Class Period, which had the effect of artificially inflating the prices of  
8 Impax common stock.

9 32. Based on the formula set forth below, a “Recognized Loss Amount” will be  
10 calculated for each purchase or acquisition of Impax common stock and 2% Convertible Senior  
11 Notes during the Class Period that is listed in the Proof of Claim Form and for which adequate  
12 documentation is provided. In the calculations below, if a Recognized Loss Amount calculates to  
13 a negative number, that Recognized Loss Amount shall be zero.

#### 14 **A. Impax Common Stock**

15 The Impax common stock allocation is primarily based on the price declines following the  
16 four corrective disclosures below:

- 17 • Market adjusted price decline on May 12, 2015, of \$1.10 per share;
- 18 • Market adjusted price decline on August 10, 2015, of \$2.07 per share;
- 19 • Market adjusted price decline on June 21, 2016, of \$3.53 per share; and
- 20 • Market adjusted price decline on August 9, 2016, of \$7.29 per share.

21 (a) For shares of Impax common stock *purchased from February 20, 2014,*  
22 *through August 8, 2016, inclusive*, the claim per share shall be as follows:

23 (i) *If sold from February 20, 2014 through August 8, 2016, inclusive*,  
24 the claim per share shall be the lesser of:

- 25 1) the inflation per share in Table A at the time of purchase less  
26 the inflation per share in Table A at the time of sale; or
- 27 2) the difference between the purchase price per share and the  
28 sales price per share.

(ii) *If sold from August 8, 2016 through November 4, 2016, inclusive*,  
the claim per share shall be the least of:

- 1) the inflation per share in Table A at the time of purchase;
- 2) the difference between the purchase price per share and the  
sales price per share; or
- 3) the difference between the purchase price per share and the



1 average closing price per share up to the date of sale as set forth in Table B below.

2 (iii) If *retained at the close of trading on November 4, 2016*, the claim  
 3 per share shall be the lesser of:

- 4 1) the inflation per share in Table A at the time of purchase; or  
 5 2) the difference between the purchase price per share and  
 6 \$23.34 per share.

7 **TABLE A**

Purchase or Sale Date	Inflation
February 20, 2014 through May 11, 2015	\$4.79
May 12, 2015 through August 9, 2015	\$3.69
August 10, 2015 through February 21, 2016	\$1.62
February 22, 2016 through June 20, 2016	\$10.82
June 21, 2016 through August 8, 2016	\$7.29

16 **TABLE B**

Date	Closing Price	Average Closing Price from August 9, 2016 Through Sale Date	Date	Closing Price	Average Closing Price from August 9, 2016 Through Sale Date
8/9/2016	\$23.43	\$23.43	9/23/2016	\$26.49	\$24.30
8/10/2016	\$21.98	\$22.71	9/26/2016	\$25.40	\$24.33
8/11/2016	\$22.06	\$22.49	9/27/2016	\$25.67	\$24.37
8/12/2016	\$21.72	\$22.30	9/28/2016	\$24.73	\$24.38
8/15/2016	\$22.97	\$22.43	9/29/2016	\$23.59	\$24.36
8/16/2016	\$22.87	\$22.51	9/30/2016	\$23.70	\$24.34
8/17/2016	\$23.19	\$22.60	10/3/2016	\$23.81	\$24.32
8/18/2016	\$23.55	\$22.72	10/4/2016	\$24.00	\$24.32
8/19/2016	\$23.35	\$22.79	10/5/2016	\$24.23	\$24.31
8/22/2016	\$24.01	\$22.91	10/6/2016	\$23.83	\$24.30
8/23/2016	\$23.87	\$23.00	10/7/2016	\$23.56	\$24.29
8/24/2016	\$23.79	\$23.07	10/10/2016	\$24.01	\$24.28
8/25/2016	\$23.83	\$23.12	10/11/2016	\$23.09	\$24.25
8/26/2016	\$23.94	\$23.18	10/12/2016	\$22.38	\$24.21
8/29/2016	\$23.94	\$23.23	10/13/2016	\$22.48	\$24.18
8/30/2016	\$24.42	\$23.31	10/14/2016	\$21.70	\$24.12
8/31/2016	\$24.19	\$23.36	10/17/2016	\$21.75	\$24.08
9/1/2016	\$23.94	\$23.39	10/18/2016	\$22.10	\$24.04
9/2/2016	\$24.03	\$23.43	10/19/2016	\$21.90	\$23.99
9/6/2016	\$24.24	\$23.47	10/20/2016	\$21.90	\$23.95
9/7/2016	\$24.47	\$23.51	10/21/2016	\$21.85	\$23.91
9/8/2016	\$24.24	\$23.55	10/24/2016	\$21.70	\$23.87
9/9/2016	\$24.28	\$23.58	10/25/2016	\$21.80	\$23.84
9/12/2016	\$25.33	\$23.65	10/26/2016	\$21.35	\$23.79
9/13/2016	\$25.01	\$23.71	10/27/2016	\$21.45	\$23.75
9/14/2016	\$25.39	\$23.77	10/28/2016	\$20.70	\$23.70
9/15/2016	\$25.88	\$23.85	10/31/2016	\$20.10	\$23.64
9/16/2016	\$26.15	\$23.93	11/1/2016	\$20.95	\$23.59
9/19/2016	\$26.18	\$24.01	11/2/2016	\$20.50	\$23.54
9/20/2016	\$26.14	\$24.08	11/3/2016	\$16.50	\$23.43
9/21/2016	\$26.45	\$24.16	11/4/2016	\$17.75	\$23.34
9/22/2016	\$26.44	\$24.23			

## B. 2% Convertible Senior Notes

The Impax Convertible Senior Notes allocation is primarily based on the price declines following the two corrective disclosures below:

- Price decline on June 21, 2016, of \$40 per \$1,000 par value Convertible Senior Note; and,
- Price decline on August 9, 2016, of \$78 per \$1,000 par value Convertible Senior Note.

(a) For Impax Convertible Senior Notes *purchased prior to February 22, 2016*, the claim per \$1,000 par value Convertible Senior Note shall be as follows:

(i) If *sold prior to August 9, 2016*, the claim per \$1,000 par value Convertible Senior Note share shall be \$0.

1 (ii) If *sold from August 9, 2016 through November 4, 2016, inclusive*,  
2 the claim per \$1,000 par value Convertible Senior Note shall be the lesser of:

- 3 1) \$12 per \$1,000 par value Convertible Senior Note; or  
4 2) the difference between the purchase price per \$1,000 par  
value Convertible Senior Note and the sales price per \$1,000 par value Convertible Senior Note.

5 (iii) If *retained at the close of trading on November 4, 2016*, the claim  
6 per share shall be the lesser of:

- 7 1) \$12 per \$1,000 par value Convertible Senior Note; or  
8 2) the difference between the purchase price per \$1,000 par  
9 value Convertible Senior Note and \$832 per \$1,000 par value Convertible Senior Note.

10 (b) For Impax Convertible Senior Notes purchased from *February 22, 2016,*  
11 *through June 20, 2016, inclusive*, the claim per \$1,000 par value Convertible Senior Note shall  
be as follows:

12 (i) If *sold prior to June 21, 2016*, the claim per \$1,000 par value  
Convertible Senior Note share shall be \$0.

13 (ii) If *sold from June 21, 2016 through August 8, 2016, inclusive*, the  
14 claim per \$1,000 par value Convertible Senior Note shall be the lesser of:

- 15 1) \$40 per \$1,000 par value Convertible Senior Note; or  
16 2) the difference between the purchase price per \$1,000 par  
17 value Convertible Senior Note and the sales price per \$1,000 par value Convertible Senior Note.

18 (iii) If *sold from August 9, 2016 through November 4, 2016, inclusive*,  
19 the claim per \$1,000 par value Convertible Senior Note shall be the lesser of:

- 20 1) \$78 per \$1,000 par value Convertible Senior Note; or  
21 2) the difference between the purchase price per \$1,000 par  
value Convertible Senior Note and the sales price per \$1,000 par value Convertible Senior Note.

22 (iv) If *retained at the close of trading on November 4, 2016*, the claim  
23 per share shall be the lesser of:

- 24 1) \$78 per \$1,000 par value Convertible Senior Note; or  
25 2) the difference between the purchase price per \$1,000 par  
26 value Convertible Senior Note and \$832 per \$1,000 par value Convertible Senior Note.

27 (c) For Impax Convertible Senior Notes *purchased from June 21, 2016,*  
28 *through August 8, 2016, inclusive*, the claim per \$1,000 par value Convertible Senior Note shall

1 be as follows:

2 (i) If ***sold prior to August 8, 2016***, the claim per \$1,000 par value  
3 Convertible Senior Note share shall be \$0.

4 (ii) If ***sold from August 9, 2016 through November 4, 2016, inclusive***,  
5 the claim per \$1,000 par value Convertible Senior Note shall be the lesser of:

6 1) \$78 per \$1,000 par value Convertible Senior Note; or

7 2) the difference between the purchase price per \$1,000 par  
8 value Convertible Senior Note and the sales price per \$1,000 par value Convertible Senior Note.

9 (iii) If ***retained at the close of trading on November 4, 2016***, the claim  
10 per share shall be the lesser of:

11 1) \$78 per \$1,000 par value Convertible Senior Note; or

12 2) the difference between the purchase price per \$1,000 par  
13 value Convertible Senior Note and \$832 per \$1,000 par value Convertible Senior Note.

#### 14 **ADDITIONAL PROVISIONS**

15 33. The Net Settlement Fund will be allocated among all Authorized Claimants based  
16 on the amount of each Authorized Claimant's Recognized Claim (defined below).

17 34. If a Class Member has more than one purchase/acquisition or sale of Impax  
18 common stock or Convertible Senior Note, purchases/acquisitions and sales shall be matched on a  
19 First In, First Out ("FIFO") basis. Class Period sales will be matched first against any holdings at  
20 the beginning of the Class Period, and then against purchases/acquisitions in chronological order,  
21 beginning with the earliest purchase/acquisition made during the Class Period.

22 35. A Claimant's "Recognized Claim" under the Plan of Allocation shall be the sum of  
23 his, her or its Recognized Loss Amounts.

24 36. The Net Settlement Fund will be distributed to Authorized Claimants on a *pro rata*  
25 basis based on the relative size of their Recognized Claims. Specifically, a "Distribution  
26 Amount" will be calculated for each Authorized Claimant, which shall be the Authorized  
27 Claimant's Recognized Claim divided by the total Recognized Claims of all Authorized  
28 Claimants, multiplied by the total amount in the Net Settlement Fund. If any Authorized  
29 Claimant's Distribution Amount calculates to less than \$10.00, it will be increased to \$10.00.

30 37. Purchases or acquisitions and sales of Impax common stock or Convertible Senior  
31 Note shall be deemed to have occurred on the "contract" or "trade" date as opposed to the  
32 "settlement" or "payment" date. The receipt or grant by gift, inheritance or operation of law of  
33 Impax common stock or Convertible Senior Note during the Class Period shall not be deemed a  
34 purchase, acquisition or sale of Impax common stock or Convertible Senior Note for the  
35 calculation of an Authorized Claimant's Recognized Loss Amount, nor shall the receipt or grant  
36 be deemed an assignment of any claim relating to the purchase/acquisition of any Impax common  
37 stock or Convertible Senior Note unless (i) the donor or decedent purchased or otherwise acquired

1 such Impax common stock or Convertible Senior Note during the Class Period; (ii) no Claim  
2 Form was submitted by or on behalf of the donor, on behalf of the decedent, or by anyone else  
3 with respect to those shares; and (iii) it is specifically so provided in the instrument of gift or  
assignment.

4 38. The date of covering a “short sale” is deemed to be the date of purchase or  
5 acquisition of the Impax common stock. The date of a “short sale” is deemed to be the date of  
6 sale of the Impax common stock. Under the Plan of Allocation, however, the Recognized Loss  
7 Amount on “short sales” is zero. In the event that a claimant has an opening short position in  
Impax common stock, the earliest Class Period purchases or acquisitions of Impax common stock  
shall be matched against such opening short position, and not be entitled to a recovery, until that  
short position is fully covered.

8 39. Option contracts are not securities eligible to participate in the Settlement. With  
9 respect to Impax common stock purchased or sold through the exercise of an option, the  
10 purchase/sale date of the common stock is the exercise date of the option and the purchase/sale  
price of the common stock is the exercise price of the option.

11 40. To the extent a claimant had a market gain with respect to his, her, or its overall  
12 transactions in Impax common stock or Convertible Senior Note during the Class Period, the  
13 value of the claimant’s Recognized Claim shall be zero. Such claimants shall in any event be  
14 bound by the Settlement. To the extent that a claimant suffered an overall market loss with  
15 respect to his, her, or its overall transactions in Impax common stock or Convertible Senior Note  
during the Class Period, but that market loss was less than the total Recognized Claim calculated  
above, then the claimant’s Recognized Claim shall be limited to the amount of the actual market  
loss.

16 41. After the initial distribution of the Net Settlement Fund, the Claims Administrator  
17 shall make reasonable and diligent efforts to have Authorized Claimants cash their distribution  
18 checks. To the extent any monies remain in the fund within a reasonable time after the initial  
19 distribution, if Lead Counsel, in consultation with the Claims Administrator, determine that it is  
20 cost-effective to do so, the Claims Administrator shall conduct a re-distribution of the funds  
21 remaining after payment of any unpaid fees and expenses incurred in administering the  
22 Settlement, including for such re-distribution, to Authorized Claimants who have cashed their  
23 initial distributions. Additional re-distributions to Authorized Claimants who have cashed their  
24 prior checks may occur thereafter if Lead Counsel, in consultation with the Claims Administrator,  
determine that additional re-distributions, after the deduction of any additional fees and expenses  
incurred in administering the Settlement, including for such re-distributions, would be cost-  
effective. At such time as it is determined that the re-distribution of funds remaining in the Net  
Settlement Fund is not cost-effective, the remaining balance shall be contributed to the University  
of San Francisco School of Law’s Investor Justice Clinic.

25 42. Payment pursuant to the Plan of Allocation, or such other plan of allocation as may  
26 be approved by the Court, shall be conclusive against all Authorized Claimants. No person shall  
27 have any claim against the Plaintiffs, Lead Counsel, Plaintiffs’ damages expert, or the Claims  
28 Administrator or other agent designated by Lead Counsel, or the Defendants’ releasees and/or  
their respective counsel, arising from distributions made substantially in accordance with the  
Stipulation, the Plan of Allocation approved by the Court, or further orders of the Court. The

1 Plaintiffs, and Defendants, their respective counsel, Plaintiffs’ damages expert, and all other  
2 releasees shall have no responsibility or liability whatsoever for the investment or distribution of  
3 the Settlement Fund, the Net Settlement Fund, the Plan of Allocation, or the determination,  
4 administration, calculation, or payment of any Claim Form or nonperformance of the Claims  
Administrator, the payment or withholding of taxes (including interest and penalties) owed by the  
Settlement Fund, or any losses incurred in connection therewith.

5 43. The Plan of Allocation set forth herein is the plan that is being proposed to the  
6 Court for its approval by Plaintiffs after consultation with their damages expert. The Court may  
7 approve this plan as proposed or it may modify the Plan of Allocation without further notice to the  
8 Class. Any orders regarding any modification of the Plan of Allocation will be posted on the  
Settlement website.

9 **WHAT RIGHTS AM I GIVING UP BY AGREEING TO THE SETTLEMENT?**

10 44. If the Settlement is approved, the Court will enter a judgment (the “Judgment”).  
11 The Judgment will dismiss with prejudice the claims against Defendants and will provide that  
12 Plaintiffs, and all other Released Plaintiff Parties (as defined in ¶48 below) shall have waived,  
13 released, discharged, and dismissed each and every one of the Released Claims (as defined in ¶45  
14 below), including Unknown Claims (as defined in ¶49 below), against each and every one of the  
15 Released Defendant Parties (as defined in ¶47 below) and shall forever be barred and enjoined  
16 from commencing, instituting, prosecuting, or maintaining any and all of the Released Claims  
17 against any and all of the Released Defendant Parties, whether or not they execute and deliver the  
18 Claim Form or share in the Settlement Fund. Claims to enforce the terms of the Settlement are  
19 not released.

20 45. “Released Claims” means any and all claims, rights, liabilities, and causes of  
21 action of every nature and description, including both known claims and Unknown Claims,  
22 whether contingent or absolute, mature or unmature, discoverable or undiscoverable, liquidated or  
23 unliquidated, accrued or unaccrued, including those that are concealed or hidden, regardless of  
24 legal or equitable theory, that Lead Plaintiff or any other member(s) of the Class asserted or could  
25 have asserted in any forum that both (i) arise out of, are based upon, or are related in any way to  
26 the allegations, transactions, facts, events, matters, occurrences, disclosures, statements,  
27 representations, or omissions referred to in the Action, and (ii) relate to the purchase or  
28 acquisition of Impax common stock or 2% Convertible Senior Notes by the Class during the Class  
Period. Notwithstanding the foregoing, “Released Claims” does not include claims relating to the  
enforcement of the Settlement.

46. “Released Defendants’ Claims” means all claims and causes of action of every  
nature and description, including both known claims and Unknown Claims (as defined below),  
whether arising under federal, state, common or foreign law, or any other law, that Defendants  
could have asserted against any of the Released Plaintiff Parties, including Lead Counsel, that  
arise out of or relate in any way to the institution, prosecution, or settlement of the claims in the  
Action, except for claims relating to the enforcement of the Settlement.

47. “Released Defendant Parties” means each and all of the Defendants, and each of

1 their Related Persons.

2 48. “Released Plaintiff Parties” means the Plaintiffs, each and every Class Member,  
3 Plaintiffs’ Counsel, and each of their respective past or present trustees, officers, directors,  
4 partners, employees, contractors, auditors, principals, agents, attorneys, predecessors, successors,  
5 assigns, insurers, parents, subsidiaries, general or limited partners or partnerships, and limited  
6 liability companies; and the spouses, members of the immediate families, representatives, and  
7 heirs of any Released Plaintiff Party who is an individual, as well as any trust of which any  
8 Released Plaintiff Party is the settlor or which is for the benefit of any of their immediate family  
9 members. Released Plaintiff Parties does not include any Person who timely and validly seeks  
10 exclusion from the Class.

11 49. “Unknown Claims” means any and all Released Claims that Plaintiffs or any other  
12 Class Member do not know or suspect to exist in his, her, or its favor at the time of the release of  
13 the Released Defendant Parties, and any and all Released Defendants’ Claims that any Defendant  
14 does not know or suspect to exist in his, her or its favor, which if known by him, her or it, might  
15 have affected his, her or its decision to enter into this Settlement, execute the Stipulation, and  
16 agree to all the various releases set forth herein, or might have affected his, her or its decision not  
17 to object to this Settlement or not exclude himself, herself or itself from the Class. Unknown  
18 Claims include, without limitation, those claims in which some or all of the facts composing the  
19 claim may be unsuspected, undisclosed, concealed, or hidden. With respect to any and all  
20 Released Claims and Released Defendants’ Claims, the Released Parties stipulate and agree that,  
21 upon the Effective Date, Plaintiffs and Class Members (as regards the Released Claims) and the  
22 Defendants (as regards the Released Defendants’ Claims) shall expressly waive and relinquish,  
23 and each Class Member shall be deemed to have and by operation of law and of the Judgment  
24 shall have, expressly waived and relinquished, to the fullest extent permitted by law, any and all  
25 provisions, rights and benefits conferred by California Civil Code §1542, or any law of any state  
26 or territory of the United States, or principle of common law or of international or foreign law,  
27 which is similar, comparable, or equivalent to Cal. Civ. Code §1542, which provides:

18 **A general release does not extend to claims which the creditor or  
19 releasing party does not know or suspect to exist in his or her favor at the  
20 time of executing the release and that, if known by him or her, would have  
21 materially affected his or her settlement with the debtor or released party.**

22 50. The Judgment also will provide that Defendants and each of the other Released  
23 Defendant Parties shall be deemed to have waived, released, discharged, and dismissed as against  
24 the Released Plaintiff Parties all Released Defendants’ Claims which includes all claims and  
25 causes of action of every nature and description, including both known claims and Unknown  
26 Claims, whether arising under federal, state, common or foreign law, or any other law, that  
27 Defendants could have asserted against any of the Released Plaintiff Parties, including Lead  
28 Counsel, that arise out of or relate in any way to the institution, prosecution, or settlement of the  
29 claims in the Litigation, except for claims relating to the enforcement of the Settlement.

30 **WHAT PAYMENT ARE THE ATTORNEYS FOR THE CLASS SEEKING? HOW  
31 WILL THE LAWYERS BE PAID?**





1 submit an objection.

2 **WHAT IF I DO NOT WANT TO BE A PART OF THE SETTLEMENT?**  
3 **HOW DO I EXCLUDE MYSELF?**

4 56. Each Class Member will be bound by all determinations and judgments in this  
5 lawsuit concerning the Settlement, whether favorable or unfavorable, unless such person or entity  
6 mails, by first-class mail (or its equivalent outside the U.S.), or otherwise delivers a written  
7 request for exclusion from the Class, addressed to *Impax Securities Settlement*, EXCLUSIONS,  
8 c/o JND Legal Administration, PO Box 91417, Seattle, WA 98111. The exclusion request must  
9 be *received* no later than \_\_\_\_\_, 2021. Each request for exclusion must clearly indicate the  
10 name, address and telephone number of the person or entity seeking exclusion, that the sender  
11 requests to be excluded from the Class in *Fleming v. Impax Laboratories Inc., et al.*, Case No.  
12 4:16-cv-06557-HSG, and must be signed by such person. Such persons or entities requesting  
13 exclusion are also directed to provide the following information: the number of shares of Impax  
14 common stock or the 2% Convertible Senior Notes that the Person requesting exclusion (i) owned  
15 as of the opening of trading on February 20, 2014; and (ii) purchased, acquired and/or sold from  
16 February 20, 2014 through August 9, 2016, inclusive, as well as the number of shares, dates and  
17 prices for each such purchase, acquisition and sale. The request for exclusion shall not be  
18 effective unless it provides the required information and is made within the time stated above, or  
19 the exclusion is otherwise accepted by the Court. Should you elect to exclude yourself from the  
20 Class, you should understand that Defendants and the other Released Defendant Parties will have  
21 the right to assert any and all defenses they may have to any claims that you may seek to assert,  
22 including, without limitation, the defense that any such claims are untimely under applicable  
23 statutes of limitations and statutes of repose.

24 57. If you do not want to be part of the Class, you must follow these instructions for  
25 exclusion even if you have pending, or later file, another lawsuit, arbitration, or other proceeding  
26 relating to any Released Claim against any of the Released Defendant Parties. Excluding yourself  
27 from the Class is the only option that allows you to be part of any other current or future lawsuit  
28 against Defendants or any of the other Released Defendant Parties concerning the Released  
Claims. Please note, however, if you decide to exclude yourself from the Class, you may be time-  
barred from asserting the claims covered by the Litigation by a statute of repose.

58. If you ask to be excluded, do not submit a Claim Form because you cannot receive  
any payment from the Net Settlement Fund. If a person or entity requests to be excluded from the  
Class, that person or entity will not receive any benefit provided for in the Stipulation.

59. If the requests for exclusion from the Settlement exceed a certain amount, as set  
forth in a separate confidential supplemental agreement between Plaintiffs and Defendants (the  
"Supplemental Agreement"), Defendants shall have, in their discretion, the option to terminate the  
Settlement in accordance with the procedures set forth in the Supplemental Agreement.

26 **WHEN AND WHERE WILL THE COURT DECIDE WHETHER TO APPROVE THE**  
27 **SETTLEMENT?**  
28 **DO I HAVE TO COME TO THE HEARING?**

**MAY I SPEAK AT THE HEARING IF I DON'T LIKE THE SETTLEMENT?**

60. **If you do not wish to object in person to the proposed Settlement, the proposed Plan of Allocation, and/or the application for attorneys’ fees and litigation expenses, you do not need to attend the Settlement Hearing. You can object to or participate in the Settlement without attending the Settlement Hearing.**

61. The Settlement Hearing will be held on \_\_\_\_\_, 2021, at \_\_\_\_\_ .m., before the Honorable Haywood S. Gilliam, Jr., at the United States District Court, Northern District of California, Oakland Division, Oakland Courthouse, Courtroom 2 – 4th Floor, 1301 Clay Street, Oakland, CA 94612. The Court reserves the right to approve the Settlement or the Plan of Allocation, Lead Counsel’s motion for an award of attorneys’ fees and expenses, and/or any other matter related to the Settlement at or after the Settlement Hearing without further notice to the members of the Class.

62. Any Class Member who does not request exclusion such that it is received no later than \_\_\_\_\_, 2021, may object to the Settlement, the Plan of Allocation, or Lead Counsel’s request for an award of attorneys’ fees and litigation expenses.<sup>1</sup> You can ask the Court to deny approval by filing an objection. You cannot ask the Court to order a different settlement; the Court can only approve or reject the settlement. If the Court denies approval, no settlement payments will be sent out and the lawsuit will continue. If that is what you want to happen, you must object.

63. Any objection to the proposed Settlement must be in writing. If you file a timely written objection, you may, but are not required to, appear at the Settlement Hearing, either in person or through your own attorney. If you appear through your own attorney, you are responsible for hiring and paying that attorney. All written objections and supporting papers must (a) clearly identify the case name and number (*Fleming v. Impax Laboratories Inc., et al.*, Case No. 4:16-cv-06557-HSG), (b) be submitted to the Court either by mailing them to the Class Action Clerk, United States District Court for the Northern District of California, Oakland Division, 1301 Clay Street, Suite 400 S, Oakland, CA 94612, or by filing them in person at any location of the United States District Court for the Northern District of California, and (c) be filed or postmarked on or before \_\_\_\_\_, 2021.

64. The notice of objection must include documentation establishing the objecting Person’s membership in the Class, including the number of shares of Impax common stock or the 2% Convertible Senior Notes that the objecting Person (1) owned as of the opening of trading on February 20, 2014, and (2) purchased, acquired and/or sold during the Class Period, as well as the dates and prices for each such purchase, acquisition and sale, and contain a statement of reasons for the objection, copies of any papers, briefs, or other documents upon which the objection is based, a statement of whether the objector intends to appear at the Settlement Hearing, and the objector’s signature, even if represented by counsel. The objection must state whether it applies only to the objector, to a specific subset of the Class, or to the entire Class. In addition, the objector must identify all class action settlements to which the objector and his, her or its counsel

<sup>1</sup> Plaintiffs’ initial motion papers in support of these matters will be filed with the Court on or before \_\_\_\_\_, 2021.

1 has previously objected. Documentation establishing membership in the Class must consist of  
2 copies of brokerage confirmation slips or monthly brokerage account statements, or an authorized  
3 statement from the objector's broker containing the transactional and holding information found  
4 in a broker confirmation slip or account statement. Objectors who desire to present evidence at  
5 the Settlement Hearing in support of their objection must include in their written objection or  
6 notice of appearance the identity of any witnesses they may call to testify and any exhibits they  
7 intend to introduce into evidence at the hearing.

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65. You may not object to the Settlement or any aspect of it, if you exclude yourself from the Class.

66. You may file a written objection without having to appear at the Settlement Hearing. You may not appear at the Settlement Hearing to present your objection, however, unless you have first filed a written objection in accordance with the procedures described above, unless the Court orders otherwise.

67. You are not required to hire an attorney to represent you in making written objections or in appearing at the Settlement Hearing. If you decide to hire an attorney, which will be at your own expense, however, he or she must file a notice of appearance with the Court so that the notice is received on or before \_\_\_\_, 2021.

68. The Settlement Hearing may be adjourned by the Court without further written notice to the Class, other than a posting of the adjournment on the Settlement website, [www.ImpaxSecuritiesSettlement.com](http://www.ImpaxSecuritiesSettlement.com). If you plan to attend the Settlement Hearing, you should confirm the date and time with Lead Counsel.

**Unless the Court orders otherwise, any Class Member who does not object in the manner described above will be deemed to have waived any objection and shall be forever foreclosed from making any objection to the proposed Settlement, the proposed Plan of Allocation, or Lead Counsel's request for an award of attorneys' fees and litigation expenses. Class Members do not need to appear at the hearing or take any other action to indicate their approval.**

#### WHAT IF I BOUGHT SHARES ON SOMEONE ELSE'S BEHALF?

69. Nominees who purchased or acquired Impax common stock or the 2% Convertible Senior Notes for beneficial owners who are Class Members are directed to: (a) request within seven (7) calendar days of receipt of this Notice additional copies of the Notice and the Claim Form from the Claims Administrator for such beneficial owners; or (b) send a list of the names and addresses of such beneficial owners to the Claims Administrator within seven (7) calendar days after receipt of this Notice. If a nominee elects to send the Notice to beneficial owners, such nominee is directed to mail the Notice within seven (7) calendar days of receipt of the additional copies of the Notice from the Claims Administrator, and upon such mailing, the nominee shall send a statement to the Claims Administrator confirming that the mailing was made as directed, and the nominee shall retain the list of names and addresses for use in connection with any possible future notice to the Class. Upon full compliance with these instructions, including the timely mailing of the Notice to beneficial owners, such nominees may seek reimbursement of

1 their reasonable expenses actually incurred in complying with these instructions by providing the  
2 Claims Administrator with proper documentation supporting the expenses for which  
3 reimbursement is sought and reflecting compliance with these instructions, including timely  
4 mailing of the Notice, if the nominee elected or elects to do so. Such properly documented  
5 expenses incurred by nominees in compliance with the terms of these instructions will be paid  
6 from the Settlement Fund. Copies of this Notice may also be obtained by calling toll-free 1-833-  
7 823-0051, and may be downloaded from the Settlement website,  
8 www.ImpaxSecuritiesSettlement.com.

6 **CAN I SEE THE COURT FILE?**  
7 **WHOM SHOULD I CONTACT IF I HAVE QUESTIONS?**

8  
9 70. This Notice contains only a summary of the terms of the proposed Settlement.  
10 More detailed information about the matters involved in the Litigation is available at  
11 www.ImpaxSecuritiesSettlement.com, including, among other documents, copies of the Stipulation  
12 and Proof of Claim Form. This Notice summarizes the proposed Settlement. For the precise  
13 terms and conditions of the Settlement, please see the settlement agreement available at  
14 www.ImpaxSecuritiesSettlement.com, or by contacting Lead Counsel below. You may also  
15 access the Court docket in this case, for a fee, through the Court's Public Access to Court  
16 Electronic Records (PACER) system at <https://ecf.cand.uscourts.gov>, or by visiting the office of  
17 the Clerk of the Court for the United States District Court for the Northern District of California,  
18 Oakland Division, 1301 Clay Street, Suite 400 S, Oakland, CA 94612, between 9:00 a.m. and  
19 4:00 p.m., Monday through Friday, excluding Court holidays. All inquiries concerning this  
20 Notice or the Claim Form should be directed to:

21 *Impax Securities Settlement*  
22 c/o JND Legal Administration  
23 PO Box 91417  
24 Seattle, WA 98111

25 **-or-**

26 Luke O. Brooks, Esq.  
27 ROBBINS GELLER RUDMAN & DOWD LLP  
28 655 W. Broadway, Suite 1900  
San Diego, CA 92101  
(800) 449-4900  
lukeb@rgrdlaw.com  
Lead Counsel

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**DO NOT CALL OR WRITE THE COURT, DEFENDANTS, DEFENDANTS'  
COUNSEL, OR THE OFFICE OF THE CLERK OF COURT  
REGARDING THIS NOTICE.**

Dated: \_\_\_\_\_, 2021

By Order of the Court  
United States District Court  
Northern District of California  
Oakland Division

1 ROBBINS GELLER RUDMAN  
 & DOWD LLP  
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 Post Montgomery Center  
 3 One Montgomery Street, Suite 1800  
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 4 Telephone: 415/288-4545  
 415/288-4534 (fax)  
 5 shawnw@rgrdlaw.com  
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 THEODORE J. PINTAR (131372)  
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 ERIC I. NIEHAUS (239023)  
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 nlakosil@rgrdlaw.com

16 Lead Counsel for Plaintiff

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

20	GREG FLEMING, Individually and on Behalf )	Case No. 4:16-cv-06557-HSG
21	of All Others Similarly Situated, )	
	)	<u>CLASS ACTION</u>
22	Plaintiff, )	
	)	PROOF OF CLAIM FORM
23	vs. )	
	)	EXHIBIT A-2
24	IMPAX LABORATORIES INC., et al., )	
	)	
25	Defendants. )	
26	_____ )	

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*Impax Securities Settlement*  
c/o JND Legal Administration  
PO Box 91417  
Seattle, WA 98111  
Toll-Free Number: 1-833-823-0051  
Email: [info@ImpaxSecuritiesSettlement.com](mailto:info@ImpaxSecuritiesSettlement.com)  
Website: [www.ImpaxSecuritiesSettlement.com](http://www.ImpaxSecuritiesSettlement.com)

**PROOF OF CLAIM**

To be eligible to receive a share of the Net Settlement Fund in connection with the Settlement of this Litigation, you must complete and sign this Proof of Claim Form (“Claim Form”) and mail it by first-class mail to the above address, *postmarked no later than \_\_\_\_\_, 2021 or submit it online at the above website on or before \_\_\_\_\_, 2021.*

Failure to submit your Claim Form by the date specified will subject your claim to rejection and may preclude you from being eligible to receive any money in connection with the Settlement.

**Do not mail or deliver your Claim Form to the Court, the parties to the Litigation, or their counsel. Submit your Claim Form only to the Claims Administrator at the address set forth above.**

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1 **PART I – INSTRUCTIONS**

2 **A. GENERAL INSTRUCTIONS**

3 1. To recover as a member of the Class based on your claims in the action entitled  
4 *Fleming v. Impax Laboratories Inc., et al.*, Case No. 4:16-cv-06557-HSG (the “Litigation”), you  
5 must complete and, on page [ ] hereof, sign this Proof of Claim and Release (“Claim Form”). If  
6 you fail to file a properly addressed (as set forth in paragraph 3 below) Claim Form, your claim may  
7 be rejected, and you may be precluded from any recovery from the Net Settlement Fund created in  
8 connection with the proposed settlement of the Litigation.

9 2. Submission of this Claim Form, however, does not assure that you will share in the  
10 proceeds of settlement in the Litigation.

11 3. YOU MUST MAIL OR SUBMIT ONLINE YOUR COMPLETED AND SIGNED  
12 CLAIM FORM ON OR BEFORE \_\_\_\_\_, 2021, ADDRESSED AS FOLLOWS:

13 *Impax Securities Settlement*  
14 c/o JND Legal Administration  
15 PO Box 91417  
16 Seattle, WA 98111  
17 www.ImpaxSecuritiesSettlement.com

18 If you are NOT a member of the Class, as defined below and in the Notice of Pendency and  
19 Proposed Settlement of Class Action (the “Notice”), DO NOT submit a Claim Form.

20 4. If you are a member of the Class and you do not timely and validly request exclusion  
21 from the Class, you are bound by the terms of any judgment entered in the Litigation, including the  
22 releases provided therein, WHETHER OR NOT YOU SUBMIT A CLAIM FORM.

23 5. It is important that you completely read and understand the Notice that accompanies  
24 this Claim Form, including the Plan of Allocation of the Net Settlement Fund set forth in the Notice.  
25 The Notice describes the proposed Settlement, how Class Members are affected by the Settlement,  
26 and the manner in which the Net Settlement Fund will be distributed if the Settlement and Plan of  
27 Allocation are approved by the Court. The Notice also contains the definitions of many of the  
28 defined terms (which are indicated by initial capital letters) used in this Claim Form. By signing and

1 submitting this Claim Form, you will be certifying that you have read and that you understand the  
2 Notice, including the terms of the releases described therein and provided for herein.

3 **B. CLAIMANT IDENTIFICATION**

4 1. If you purchased or acquired Impax common stock or 2% Convertible Senior Notes  
5 and held the certificate(s) in your name, you are the beneficial purchaser or acquirer as well as the  
6 record purchaser or acquirer. If, however, the certificate(s) were registered in the name of a third  
7 party, such as a nominee or brokerage firm, you are the beneficial purchaser and the third party is the  
8 record purchaser.

9 2. Use Part II of this form entitled "Claimant Identification" to identify the beneficial  
10 owner(s) of Impax common stock or 2% Convertible Senior Notes. The complete name(s) of the  
11 beneficial owner(s) must be entered. If you held the eligible Impax common stock or 2%  
12 Convertible Senior Notes in your own name, you are the beneficial owner as well as the record  
13 owner. If, however, your shares of eligible Impax common stock or 2% Convertible Senior Notes  
14 were registered in the name of a third party, such as a nominee or brokerage firm, you are the  
15 beneficial owner of these shares, but the third party is the record owner. THIS CLAIM MUST BE  
16 FILED AND SIGNED BY THE ACTUAL BENEFICIAL PURCHASER(S) OR ACQUIRER(S)  
17 OR THE LEGAL REPRESENTATIVE OF SUCH PURCHASER(S) OR ACQUIRER(S) OF THE  
18 IMPAX COMMON STOCK OR 2% CONVERTIBLE SENIOR NOTES UPON WHICH THIS  
19 CLAIM IS BASED.

20 3. All joint purchasers must sign this Claim Form and be identified in Part II. The  
21 Social Security (or taxpayer identification) number and telephone number of the beneficial owner  
22 may be used in verifying the claim. Failure to provide the foregoing information could delay  
23 verification of your claim or result in rejection of the claim.

24 4. **One Claim should be submitted for each separate legal entity.** Separate Claim  
25 Forms should be submitted for each separate legal entity (*e.g.*, a claim from joint owners should not  
26 include separate transactions of just one of the joint owners, and an individual should not combine  
27 his or her IRA transactions with transactions made solely in the individual's name). Conversely, a  
28 single Claim Form should be submitted on behalf of one legal entity including all transactions made

1 by that entity on one Claim Form, no matter how many separate accounts that entity has (*e.g.*, a  
2 corporation with multiple brokerage accounts should include all transactions made in all accounts on  
3 one Claim Form).

4 5. Agents, executors, administrators, guardians, and trustees must complete and sign the  
5 Claim Form on behalf of persons represented by them, and they must:

- 6 (a) expressly state the capacity in which they are acting;  
7 (b) identify the name, account number, Social Security Number (or taxpayer  
8 identification number), address, and telephone number of the beneficial  
9 owner of (or other person or entity on whose behalf they are acting with  
10 respect to) the Impax common stock or 2% Convertible Senior Notes; and  
11 (c) furnish herewith evidence of their authority to bind to the Claim Form the  
12 person or entity on whose behalf they are acting. (Authority to complete and  
13 sign a Claim Form cannot be established by stockbrokers demonstrating only  
14 that they have discretionary authority to trade securities in another person's  
15 accounts.)

13 6. By submitting a signed Claim Form, you will be swearing that you:

- 14 (a) own or owned the Impax common stock or 2% Convertible Senior Notes you  
15 have listed in the Claim Form; or  
16 (b) are expressly authorized to act on behalf of the owner thereof.

17 **C. CLAIM FORM**

18 1. Use Part III of this form entitled "Schedule of Transactions in Impax Common Stock"  
19 and use Part IV of this form entitled "Schedule of Transactions in 2% Convertible Senior Notes" to  
20 supply all required details of your transaction(s) in Impax common stock and Notes. If you need  
21 more space or additional schedules, attach separate sheets giving all of the required information in  
22 substantially the same form. Sign and print or type your name on each additional sheet.

23 2. On the schedules, provide all of the requested information with respect to all of your  
24 purchases and acquisitions and all of your sales of Impax common stock and 2% Convertible Senior  
25 Notes that took place at any time on or between and including February 20, 2014 and November 4,  
26 2016, whether such transactions resulted in a profit or a loss. Failure to report all such transactions  
27 may result in the rejection of your claim. Also, list the number of shares of Impax common stock  
28 held at the close of trading on February 19, 2014, August 9, 2016, and November 4, 2016.

1           3.       List each transaction in the Class Period separately and in chronological order, by  
2 trade date, beginning with the earliest. You must accurately provide the month, day and year of each  
3 transaction you list.

4           4.       You are required to submit genuine and sufficient documentation for all of your  
5 transactions in and holdings of Impax common stock or 2% Convertible Senior Notes set forth in the  
6 Claim Form. Documentation may consist of copies of brokerage confirmation slips or monthly  
7 brokerage account statements, or an authorized statement from your broker containing the  
8 transactional and holding information found in a broker confirmation slip or account statement. The  
9 parties and the Claims Administrator do not independently have information about your investments  
10 in Impax common stock or 2% Convertible Senior Notes. IF SUCH DOCUMENTS ARE NOT IN  
11 YOUR POSSESSION, PLEASE OBTAIN COPIES OF THE DOCUMENTS OR EQUIVALENT  
12 DOCUMENTS FROM YOUR BROKER. FAILURE TO SUPPLY THIS DOCUMENTATION  
13 MAY RESULT IN THE REJECTION OF YOUR CLAIM. DO NOT SEND ORIGINAL  
14 DOCUMENTS. **Please keep a copy of all documents that you send to the Claims**  
15 **Administrator. Also, do not highlight any portion of the Claim Form or any supporting**  
16 **documents.**

17           5.       The above requests are designed to provide the minimum amount of information  
18 necessary to process the simplest claims. The Claims Administrator may request additional  
19 information as required to efficiently and reliably calculate your losses. In the event the Claims  
20 Administrator cannot perform the calculation accurately or at a reasonable cost to the Class with the  
21 information provided, the Claims Administrator may condition acceptance of the claim upon the  
22 production of additional information and/or the claimant's responsibility for any increased costs due  
23 to the nature and/or scope of the claim.

24           6.       If the Court approves the Settlement, payments to eligible Authorized Claimants  
25 pursuant to the Plan of Allocation (or such other plan of allocation as the Court approves) will be  
26 made after any appeals are resolved, and after the completion of all claims processing. The claims  
27 process will take substantial time to complete fully and fairly. Please be patient.

28



1 **YOU DO NOT RECEIVE AN ACKNOWLEDGEMENT POSTCARD WITHIN 60 DAYS,**  
2 **CALL THE CLAIMS ADMINISTRATOR TOLL FREE AT 1-833-823-0051.**

3 **PART II: CLAIMANT IDENTIFICATION**

4  
5 \_\_\_\_\_  
Beneficial Owner's Name (First, Middle, Last)

6  
7 \_\_\_\_\_  
Joint Beneficial Owner's Name (if applicable) (First, Middle, Last)

8  
9 \_\_\_\_\_  
Name of Representative, if applicable (executor, administrator, trustee, c/o, etc.), if different  
from Beneficial Owner

10 \_\_\_\_\_  
Street Address

11  
12 \_\_\_\_\_  
City State or Province

13  
14 \_\_\_\_\_  
Zip Code or Postal Code Country

15  
16 \_\_\_\_\_  
Social Security Number or Taxpayer Identification Number Individual Corporation/Other

17  
18 \_\_\_\_\_  
Area Code Telephone Number (work)

19  
20 \_\_\_\_\_  
Area Code Telephone Number (home)

21  
22 \_\_\_\_\_  
23 Record Owner's Name (if different from beneficial owner listed above)

24 **PART III: SCHEDULE OF TRANSACTIONS IN IMPAX COMMON STOCK**

25  
26 Please be sure to include proper documentation with your Claim Form as described in detail in ¶C.4  
of the Instructions. Do not include information regarding securities other than Impax common stock.

27  
28

1 A. Number of shares of Impax common stock held at the close of trading on  
 2 February 19, 2014. (Must be documented.) If none, write “zero”:  
 \_\_\_\_\_

3 B. Purchases or acquisitions of Impax common stock (February 20, 2014-  
 4 November 4, 2016, inclusive) (Must be documented.):

Date of Purchase/ Acquisition (Trade Date) Mo. / Day / Year	Number of Shares Purchased or Acquired	Purchase / Acquisition Price Per Share	Total Purchase or Acquisition Price (excluding any taxes, commissions, and fees)
/ /		\$	\$
/ /		\$	\$
/ /		\$	\$
/ /		\$	\$

10 IMPORTANT: If any purchase listed covered a “short sale,” please mark Yes:  Yes

11 C. Sales of Impax common stock (February 20, 2014-November 4, 2016,  
 inclusive) (Must be documented.):

Trade Date Mo. / Day / Year	Number of Shares Sold	Sale Price Per Share	Total Sales Price (not deducting any taxes, commissions, and fees)
/ /		\$	\$
/ /		\$	\$
/ /		\$	\$
/ /		\$	\$

18 D. Number of shares of Impax common stock held at the close of trading on  
 19 August 9, 2016. (Must be documented.) If none, write “zero”:  
 \_\_\_\_\_

20 E. Number of shares of Impax common stock held at the close of trading on  
 21 November 4, 2016. (Must be documented.) If none, write “zero”:  
 \_\_\_\_\_

22 If you require additional space, attach extra schedules in the same format as above. Sign and  
 23 print your name on each additional page.

24 **YOU MUST READ AND SIGN THE RELEASE ON PAGE \_\_. FAILURE TO SIGN**  
 25 **THE RELEASE MAY RESULT IN A DELAY IN PROCESSING OR THE REJECTION OF**  
 26 **YOUR CLAIM.**

**PART IV – SCHEDULE OF TRANSACTIONS IN 2% CONVERTIBLE SENIOR NOTES**

List each individual purchase and sale of Impax 2% Convertible Senior Notes from *February 20, 2014 through November 4, 2016*, inclusive, as follows: (a) the trade date; (b) the type of transaction; (c) the principal amount (face value or par value); and (d) the total amount paid (including commissions, taxes and fees) or the total amount received (net of commissions, taxes and fees). If you require additional space, attach extra sheets in the same format as below.

(a) Trade Date Mo. / Day / Year (List in chronological order)	(b) Transaction Type Buy (B) Sell(S)	(c) Principal Amount (Face value or par value)	(d) Total Transaction Amount
/ /		\$	\$
/ /		\$	\$
/ /		\$	\$
/ /		\$	\$

List each *sale* that occurred from *February 20, 2014 through November 4, 2016*, inclusive as follows:

(a) Trade Date Mo. / Day / Year (List in chronological order)	(b) Transaction Type	(c) Principal Amount (Face value or par value)	(d) Total Transaction Amount (net of commissions, taxes and fees)
/ /	S	\$	\$
/ /	S	\$	\$
/ /	S	\$	\$
/ /	S	\$	\$

**PART V – SUBMISSION TO JURISDICTION OF COURT AND ACKNOWLEDGMENTS**

I (We) submit this Claim Form under the terms of the Stipulation of Settlement dated July 30, 2021 (“Stipulation”) described in the Notice. I (We) also submit to the jurisdiction of the United States District Court for the Northern District of California, Oakland Division, with respect to my (our) claim as a Class Member (as defined in the Notice) and for purposes of enforcing the release set forth herein. I (We) further acknowledge that I am (we are) bound by and subject to the terms of any judgment that may be entered in the Litigation. I (We) agree to furnish additional information to Lead Counsel and/or the Claims Administrator to support this claim if required to do so. I (We) have not submitted any other claim covering the same purchases, acquisitions, or sales of Impax



1 common stock or 2% Convertible Senior Notes during the Class Period and know of no other Person  
2 having done so on my (our) behalf.

3 **PART VI – RELEASE**

4 1. I (We) hereby acknowledge full and complete satisfaction of, and do hereby fully,  
5 finally and forever settle, release, relinquish and discharge all of the Released Claims (including  
6 Unknown Claims) against each and all of the Released Defendant Parties, all as defined herein and  
7 in the Notice and Stipulation.

8 2. This release shall be of no force or effect unless and until the Court approves the  
9 Stipulation and it becomes effective on the Effective Date.

10 3. I (We) hereby warrant and represent that I (we) have not assigned or transferred or  
11 purported to assign or transfer, voluntarily or involuntarily, any matter released pursuant to this  
12 release or any other part or portion thereof and have not submitted any other claim covering the same  
13 purchases of Impax common stock or 2% Convertible Senior Notes and know of no other person  
14 having done so on my (our) behalf.

15 4. I (We) hereby warrant and represent that I (we) have included all requested  
16 information about all of my (our) purchases or acquisitions of Impax common stock or 2%  
17 Convertible Senior Notes during the Class Period, as well as the number of securities held at the  
18 close of trading on February 19, 2014, August 9, 2016, and November 4, 2016.

19 5. The number(s) shown on this form is (are) the correct SSN/TIN(s).

20 6. I (We) waive the right to trial by jury, to the extent it exists, and agree to the  
21 determination by the Court of the validity or amount of this claim, and waive any right of appeal or  
22 review with respect to such determination.

23 7. I (We) certify that I am (we are) NOT subject to backup withholding under the  
24 provisions of Section 3406(a)(1)(C) of the Internal Revenue Code.

25 (NOTE: If you have been notified by the Internal Revenue Service that you are subject to  
26 backup withholding, you must cross out Item 7 above.)  
27  
28

1 I (We) declare under penalty of perjury under the laws of the United States of America that  
2 the foregoing information supplied by the undersigned is true and correct.

3 Executed this \_\_\_\_ day of \_\_\_\_\_, 20\_\_,

4 (Month/Year)

5  
6 in \_\_\_\_\_, \_\_\_\_\_.  
(City) (State/Country)

7  
8 \_\_\_\_\_  
(Sign your name here)

9  
10 \_\_\_\_\_  
(Type or print your name here)

11  
12 \_\_\_\_\_  
(Capacity of person(s) signing, *e.g.*,  
13 Beneficial Purchaser or Acquirer,  
14 Executor or Administrator)

15 For Joint Beneficial Purchaser, if any:

16 \_\_\_\_\_  
(Sign your name here)

17  
18 \_\_\_\_\_  
(Type or print your name here)

19  
20 ACCURATE CLAIMS PROCESSING TAKES A  
21 SIGNIFICANT AMOUNT OF TIME.  
22 THANK YOU FOR YOUR PATIENCE.

23 Reminder Checklist:

- 24 1. Please sign the above release and acknowledgment.  
25 2. Remember to attach copies of supporting documentation, if available.  
26 3. Do not send original stock certificates. Attach only *copies* of acceptable supporting  
27 documentation as these documents will not be returned to you.  
28 4. Keep a copy of your Claim Form and all supporting documentation for your records.

1           5.       The Claims Administrator will acknowledge receipt of your Claim Form by mail,  
2 within 60 days. Your claim is not deemed filed until you receive an acknowledgement postcard. **If**  
3 **you do not receive an acknowledgement postcard within 60 days, please call the Claims**  
4 **Administrator toll free at 1-833-823-0051.**

5           6.       If you move, please send us your new address.

6           7.       If you have any questions or concerns regarding your claim, contact the Claims  
7 Administrator at Impax Securities Settlement, c/o JND Legal Administration, PO Box 91417,  
8 Seattle, WA 98111, by email at [info@ImpaxSecuritiesSettlement.com](mailto:info@ImpaxSecuritiesSettlement.com), or by toll-free phone at 1-  
9 833-823-0051, or you may visit [www.ImpaxSecuritiesSettlement.com](http://www.ImpaxSecuritiesSettlement.com). DO NOT call Impax, the  
10 other Defendants, or their counsel with questions regarding your claim.

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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 ANGEL P. LAU (286196)  
 JEFFREY J. STEIN (265268)  
 9 ERIKA OLIVER (306614)  
 NATALIE F. LAKOSIL (322836)  
 10 655 West Broadway, Suite 1900  
 San Diego, CA 92101  
 11 Telephone: 619/231-1058  
 619/231-7423 (fax)  
 12 spenceb@rgrdlw.com  
 tedp@rgrdlaw.com  
 13 lukeb@rgrdlaw.com  
 eniehaus@rgrdlaw.com  
 14 alau@rgrdlaw.com  
 jstein@rgrdlaw.com  
 15 eoliver@rgrdlaw.com  
 nlakosil@rgrdlaw.com

16 Lead Counsel for Plaintiff

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

20	GREG FLEMING, Individually and on Behalf )	Case No. 4:16-cv-06557-HSG
21	of All Others Similarly Situated, )	
22	Plaintiff, )	<u>CLASS ACTION</u>
23	vs. )	SUMMARY NOTICE
24	IMPAX LABORATORIES INC., et al., )	EXHIBIT A-3
25	Defendants. )	

1 **IF YOU PURCHASED OR ACQUIRED IMPAX LABORATORIES, INC. (NOW KNOWN AS**  
2 **IMPAX LABORATORIES, LLC) (“IMPAX”) COMMON STOCK OR 2% CONVERTIBLE**  
3 **SENIOR NOTES FROM FEBRUARY 20, 2014 THROUGH AUGUST 9, 2016, INCLUSIVE**  
4 **(THE “CLASS”), YOU COULD RECEIVE A PAYMENT FROM A CLASS ACTION**  
5 **SETTLEMENT. CERTAIN PERSONS ARE EXCLUDED FROM THE DEFINITION OF THE**  
6 **CLASS AS SET FORTH IN THE STIPULATION OF SETTLEMENT.**

7 PLEASE READ THIS NOTICE CAREFULLY. YOUR RIGHTS MAY BE AFFECTED  
8 BY A CLASS ACTION LAWSUIT PENDING IN THIS COURT.

9 YOU ARE HEREBY NOTIFIED, pursuant to Rule 23 of the Federal Rules of Civil  
10 Procedure and Order of the United States District Court for the Northern District of California,  
11 Oakland Division, that the above-captioned litigation (the “Litigation”) has been certified as a class  
12 action for the purposes of settlement only and that a Settlement has been proposed for  
13 \$33,000,000.00 in cash. A hearing will be held on \_\_\_\_\_, 2021, at \_\_:\_\_.m., before the  
14 Honorable Haywood S. Gilliam, Jr., at the United States District Court, Northern District of  
15 California, Oakland Division, Oakland Courthouse, Courtroom 2 – 4th Floor, 1301 Clay Street,  
16 Oakland, CA 94612, for the purpose of determining whether: (1) the proposed Settlement should be  
17 approved by the Court as fair, reasonable and adequate; (2) the proposed Plan of Allocation for  
18 distribution of the Settlement proceeds is fair, reasonable and adequate and therefore should be  
19 approved; and (3) the application of Lead Counsel for the payment of attorneys’ fees and expenses  
20 from the Settlement Fund, including interest earned thereon, should be approved.

21 **IF YOU ARE A MEMBER OF THE CLASS DESCRIBED ABOVE, YOUR RIGHTS**  
22 **MAY BE AFFECTED BY THE SETTLEMENT OF THE LITIGATION, AND YOU MAY**  
23 **BE ENTITLED TO SHARE IN THE SETTLEMENT FUND.** If you have not received a  
24 detailed Notice of Pendency and Proposed Settlement of Class Action (the “Notice”) and a copy of  
25 the Proof of Claim, you may obtain a copy of these documents by contacting the Claims  
26 Administrator: *Impax Securities Settlement*, c/o JND Legal Administration, PO Box 91417, Seattle,  
27 WA 98111; 1-833-823-0051. You may also obtain copies of the Stipulation of Settlement, Notice  
28 and Proof of Claim at [www.ImpaxSecuritiesSettlement.com](http://www.ImpaxSecuritiesSettlement.com).

If you are a Class Member, to be eligible to share in the distribution of the Net Settlement  
Fund, you must submit a Proof of Claim by mail postmarked no later than \_\_\_\_\_, 2021, or

1 submit it online by that date. If you are a Class Member and do not submit a valid Proof of Claim,  
2 you will not be eligible to share in the distribution of the Net Settlement Fund, but you will still be  
3 bound by any judgment entered by the Court in this Litigation (including the releases provided for  
4 therein).

5 To exclude yourself from the Class, you must mail a written request for exclusion so that it is  
6 received by \_\_\_\_\_, 2021, in accordance with the instructions set forth in the Notice. If you  
7 are a Class Member and do not exclude yourself from the Class, you will be bound by any judgment  
8 entered by the Court in this Litigation (including the releases provided for therein) whether or not  
9 you submit a Proof of Claim. If you submit a written request for exclusion, you will have no right to  
10 recover money pursuant to the Settlement.

11 Any objection to the proposed Settlement, the Plan of Allocation of Settlement proceeds, or  
12 the fee and expense application must be filed with the Court no later than \_\_\_\_\_, 2021.

13 **PLEASE DO NOT CONTACT THE COURT, THE CLERK'S OFFICE, DEFENDANTS, OR**  
14 **DEFENDANTS' COUNSEL REGARDING THIS NOTICE.** If you have any questions about the  
15 Settlement, or your eligibility to participate in the Settlement, you may contact Lead Counsel at the  
16 following address or by calling 1-800-449-4900:

17 ROBBINS GELLER RUDMAN  
18 & DOWD LLP  
19 LUKE O. BROOKS  
655 West Broadway, Suite 1900  
San Diego, CA 92101

20 DATED: \_\_\_\_\_

21 BY ORDER OF THE COURT  
22 UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

23  
24  
25  
26  
27  
28

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 ANGEL P. LAU (286196)  
JEFFREY J. STEIN (265268)  
9 ERIKA OLIVER (306614)  
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10 655 West Broadway, Suite 1900  
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11 Telephone: 619/231-1058  
619/231-7423 (fax)  
12 spenceb@rgrdlw.com  
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14 alau@rgrdlaw.com  
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15 eoliver@rgrdlaw.com  
nlakosil@rgrdlaw.com

16 Lead Counsel for Plaintiff

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

20 GREG FLEMING, Individually and on Behalf )  
21 of All Others Similarly Situated, )  
22 Plaintiff, )  
23 vs. )  
24 IMPAX LABORATORIES INC., et al., )  
25 Defendants. )

Case No. 4:16-cv-06557-HSG  
CLASS ACTION  
[PROPOSED] FINAL JUDGMENT AND  
ORDER OF DISMISSAL WITH PREJUDICE  
EXHIBIT B

1 This matter came before the Court for hearing pursuant to the Order of this Court, dated  
2 \_\_\_\_\_, on the application of the Settling Parties for approval of the Settlement set forth  
3 in the Stipulation of Settlement dated July 30, 2021 (the “Stipulation”). Due and adequate notice  
4 having been given to the Class as required in the Order, the Court having considered all papers  
5 filed and proceedings held herein and otherwise being fully informed in the premises and good  
6 cause appearing therefore, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

7 1. This Judgment incorporates by reference the definitions in the Stipulation, and all  
8 terms used herein shall have the same meanings as set forth in the Stipulation, unless otherwise  
9 stated herein.

10 2. This Court has jurisdiction over the subject matter of the Action and over all parties  
11 to the Action, including all members of the Class.

12 3. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the Court hereby  
13 affirms its determinations in the Preliminary Approval Order, which certified, for purposes of  
14 effectuating the Settlement, a Class defined as all Persons that purchased or acquired Impax  
15 common stock or 2% Convertible Senior Notes between February 20, 2014 and August 9, 2016,  
16 inclusive. Excluded from the Class are: (i) Defendants; (ii) members of the immediate families  
17 of the Individual Defendants; (iii) Impax’s subsidiaries; (iv) the officers and directors of Impax  
18 during the Class Period; (v) any entity in which any Defendant has a controlling interest; and (vi)  
19 the legal representatives, heirs, successors and assigns of any such excluded person or entity. Also  
20 excluded from the Class will be any Person who timely and validly seeks exclusion from the Class.

21 4. With respect to the Class, this Court finds for the purposes of effectuating the  
22 Settlement that: (a) the members of the Class are so numerous that joinder of all Class Members  
23 in the Action is impracticable; (b) there are questions of law and fact common to the Class; (c) the  
24 claims of the Plaintiffs are typical of the claims of the Class; (d) Plaintiffs, and their counsel have  
25 fairly and adequately represented and protected the interests of the Class Members; (e) the  
26 questions of law and fact common to the Class predominate over any questions affecting only  
27 individual members of the Class; and (f) a class action is superior to other available methods for  
28 the fair and efficient adjudication of the controversy, considering: (i) the interests of the members



1 of the Class in individually controlling the prosecution of the separate actions; (ii) the extent and  
2 nature of any litigation concerning the controversy already commenced by members of the Class;  
3 (iii) the desirability or undesirability of concentrating the litigation of these claims in this particular  
4 forum; and (iv) the difficulties likely to be encountered in the management of the Action.

5 5. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the Court certifies  
6 Sheet Metal Workers' Pension Plan of Southern California, Arizona & Nevada as the  
7 representative of the Class. Lead Counsel are also certified as counsel to the class representatives,  
8 and the Class in the Action.

9 6. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, this Court hereby  
10 approves the Settlement set forth in the Stipulation and finds that:

11 (a) the Stipulation and the Settlement contained therein are, in all respects, fair,  
12 reasonable and adequate;

13 (b) there was no collusion in connection with the Stipulation;

14 (c) the Stipulation was the product of informed, arm's-length negotiations  
15 among competent, able counsel; and

16 (d) the record is sufficiently developed and complete to have enabled Plaintiffs  
17 and Defendants to have adequately evaluated and considered their positions.

18 7. Accordingly, the Court authorizes and directs implementation and performance of  
19 all the terms and provisions of the Stipulation, as well as the terms and provisions hereof. Except  
20 as to any individual claim of those Persons who have validly and timely requested exclusion from  
21 the Class (identified in Exhibit 1 hereto), the Action and all claims contained therein are dismissed  
22 with prejudice as to the Plaintiffs, and the other Class Members and as against each and all of the  
23 Released Defendant Parties. The Settling Parties are to bear their own costs except as otherwise  
24 provided in the Stipulation.

25 8. No Person shall have any claim against the Plaintiffs, Lead Counsel, or the Claims  
26 Administrator, or any other Person designated by Lead Counsel based on determinations or  
27 distributions made substantially in accordance with the Stipulation and the Settlement contained  
28 therein, the Plan of Allocation, or further order(s) of the Court.

1           9.       Upon the Effective Date, the Plaintiffs, and each of the Class Members shall be  
2 deemed to have, and by operation of this Judgment shall have, fully, finally and forever waived,  
3 released, discharged, and dismissed each and every one of the Released Claims against each and  
4 every one of the Released Defendant Parties with prejudice on the merits, whether or not the  
5 Plaintiffs, or such Class Member executes and delivers the Proof of Claim and whether or not the  
6 Plaintiffs, or each of the Class Members ever seeks or obtains any distribution from the Settlement  
7 Fund. Claims to enforce the terms of the Stipulation are not released.

8           10.       Upon the Effective Date, the Defendants and each and every Released Defendant  
9 Party shall be deemed to have, and by operation of this Judgment shall have, fully, finally and  
10 forever waived, released, discharged, and dismissed the Released Plaintiff Parties from all  
11 Released Defendants' Claims (including, without limitation, Unknown Claims). Claims to enforce  
12 the terms of the Stipulation are not released.

13           11.       Upon the Effective Date, the Plaintiffs, all Class Members and anyone claiming  
14 through or on behalf of any of them are forever barred and enjoined from commencing, instituting,  
15 asserting or continuing to prosecute any action or proceeding in any court of law or equity,  
16 arbitration tribunal, administration forum or other forum of any kind any of the Released Claims  
17 (including, without limitation, Unknown Claims) against any of the Released Defendant Parties.

18           12.       The distribution of the Notice and publication of the Summary Notice as provided  
19 for in the Preliminary Approval Order constituted the best notice practicable under the  
20 circumstances, including individual notice to Class Members who could be identified through  
21 reasonable effort. The notice provided was the best notice practicable under the circumstances of  
22 those proceedings and of the matters set forth therein, including the proposed Settlement set forth  
23 in the Stipulation, to all Persons entitled to such notice, and said notice fully satisfied the  
24 requirements of Federal Rule of Civil Procedure 23, due process and any other applicable law,  
25 including the Private Securities Litigation Reform Act of 1995. No Class Member is relieved from  
26 the terms of the Settlement, including the releases provided for therein, based upon the contention  
27 or proof that such Class Member failed to receive actual or adequate notice. A full opportunity  
28 has been offered to the Class Members to object to the proposed Settlement and to participate in

1 the hearing thereon. The Court further finds that the notice provisions of the Class Action Fairness  
2 Act, 28 U.S.C. Section 1715, were fully discharged and that the statutory waiting period has  
3 elapsed. Thus, it is hereby determined that all members of the Class are bound by this Judgment,  
4 except those persons listed on Exhibit 1 to this Judgment.

5 13. Any Plan of Allocation submitted by Lead Counsel or any order entered regarding  
6 any attorneys' fee and expense application shall in no way disturb or affect this Judgment and shall  
7 be considered separate from this Judgment. Any order or proceeding relating to the Plan of  
8 Allocation or any order entered regarding any attorneys' fee and expense application, or any appeal  
9 from any order relating thereto or reversal or modification thereof, shall not affect or delay the  
10 finality of the Final Judgment in this Action.

11 14. Neither the Stipulation nor the Settlement contained therein, nor any act performed  
12 or document executed pursuant to or in furtherance of the Stipulation or the Settlement: (a) is or  
13 may be deemed to be or may be used as an admission of, or evidence of, the validity of any  
14 Released Claim or of any wrongdoing or liability of the Released Defendant Parties; or (b) is or  
15 may be deemed to be or may be used as an admission of, or evidence of, any fault or omission of  
16 any of the Released Defendant Parties; or (c) is or may be deemed to be or may be used as an  
17 admission or evidence that any claims asserted by Lead Plaintiff were not valid or that the amount  
18 recoverable was not greater than the Settlement Amount in any civil, criminal or administrative  
19 proceeding in any court, administrative agency or other tribunal. The Released Defendant Parties  
20 may file the Stipulation and/or this Judgment in any other action that may be brought against them  
21 in order to support a defense or counterclaim based on principles of *res judicata*, collateral  
22 estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim  
23 preclusion or issue preclusion or similar defense or counterclaim.

24 15. Without affecting the finality of this Judgment in any way, this Court hereby retains  
25 continuing jurisdiction over: (a) implementation of the Settlement and any award or distribution  
26 of the Settlement Fund, including interest earned thereon; (b) disposition of the Settlement Fund;  
27 (c) hearing and determining applications for attorneys' fees and expenses in the Action; and (d) all  
28 parties hereto for the purpose of construing, enforcing and administering the Settlement.

1           16.     The Court finds that during the course of the Action, the Settling Parties and their  
2 respective counsel at all times complied with the requirements of Federal Rule of Civil Procedure  
3 11.

4           17.     In the event that the Settlement does not become effective in accordance with the  
5 terms of the Stipulation, or the Effective Date does not occur, or in the event that the Settlement  
6 Fund, or any portion thereof, is returned to the Defendants or their insurers, then this Judgment  
7 shall be rendered null and void to the extent provided by and in accordance with the Stipulation  
8 and shall be vacated; and in such event, all orders entered and releases delivered in connection  
9 herewith shall be null and void to the extent provided by and in accordance with the Stipulation.

10          18.     The Settling Parties shall bear their own costs and expenses except as otherwise  
11 provided in the Stipulation or in this Judgment.

12          19.     Without further order of the Court, the Settling Parties may agree to reasonable  
13 extensions of time to carry out any of the provisions of the Stipulation.

14          20.     The Court directs immediate entry of this Judgment by the Clerk of the Court.

15          21.     The Court's orders entered during this Action relating to the confidentiality of  
16 information shall survive this Settlement.

17                 IT IS SO ORDERED.

18 DATED: \_\_\_\_\_

\_\_\_\_\_  
THE HONORABLE HAYWOOD S. GILLIAM, JR  
UNITED STATES DISTRICT JUDGE

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