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11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13 SAN FRANCISCO DIVISION
14

15 IN RE XYREM (SODIUM OXYBATE)
16 ANTITRUST LITIGATION

CASE NO. 3:20-md-02966-RS

17 This Document Relates to:

**CLASS REPRESENTATIVE PLAINTIFFS’
NOTICE OF MOTION AND MOTION FOR
FINAL APPROVAL OF CLASS ACTION
SETTLEMENT AND CERTIFICATION OF
SETTLEMENT CLASS**

18 All Class Actions
19

MOTION HEARING

20 DATE: January 11, 2024

21 TIME: 1:30 PM

22 LOCATION: Courtroom 3

23 HON. RICHARD SEEBORG
24
25
26
27
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TABLE OF AUTHORITIES

Cases

Adoma v. Univ. of Phoenix Inc.
913 F. Supp. 2d 964 (E.D. Cal. 2012).....7

Allen v. Similasan Corp.,
2017 WL 1346404 (S.D. Cal. Apr. 12, 2017).....15

Amchem Prods., Inc. v. Windsor,
521 U.S. 591 (1997).....17, 18

Churchill Vill., L.L.C. v. Gen. Elec.
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Cruz v. Sky Chefs, Inc.
2014 WL 7247065 (N.D. Cal. Dec. 19, 2014).....12

De La Torre v. CashCall, Inc.,
2017 WL 2670699 (N.D. Cal. June 21, 2017).....15

Foster v. Adams & Assocs.,
2021 WL 4924849 (N.D. Cal. Oct. 21, 2021).....15

Giusti-Bravo v. U.S. Veterans Admin.,
853 F. Supp. 34 (D.P.R. 1993).....9

Hanlon v. Chrysler Corp.
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Hefler v. Pekoc
802 F. App’x 285 (9th Cir. 2020)7

Hefler v. Wells Fargo & Co.
2018 WL 6619983 (N.D. Cal. Dec. 17, 2018)7, 8, 9, 11

In re Apple Inc. Device Performance Litig.
50 F.4th 769 (9th Cir. 2022)18

In re Cipro Cases I & II,
121 Cal. App. 4th 402 (2004)17

In re High-Tech Employee Antitrust Litig.,
985 F. Supp. 2d 1167 (N.D. Cal. 2013)16

In re Hyundai & Kia Fuel Econ. Litig.,
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In re Pac. Enters. Sec. Litig.
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 11 *Nat’l Rural Telecomms. Coop. v. DIRECTV, Inc.*
 12 221 F.R.D. 523 (C.D. Cal. 2004)12
 13 *Ontiveros v. Zamora*
 14 303 F.R.D. 356 (E.D. Cal. 2014)12
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1 **NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL**

2 **PLEASE TAKE NOTICE THAT** on January 11, 2024 at 1:30 PM, in Courtroom 3 of the
3 United States District Court for the Northern District of California, San Francisco Division, located at
4 450 Golden Gate Avenue, San Francisco, CA 94102, Class Representative Plaintiffs, on behalf of a
5 proposed Settlement Class of all persons and entities in the United States that, for the consumption by
6 themselves, their families, their members, employees, insureds, participants, or beneficiaries, and other
7 than for resale, paid and/or provided reimbursement for some or all the purchase price for Xyrem and/or
8 Xywav during the time from January 1, 2015, through February 28, 2023 (the “Execution Date”), will
9 and hereby do move the Court for an order and judgment granting final approval of the Amneal/Lupin
10 Settlement, certifying the proposed Settlement Class for settlement purposes, appointing Class Counsel
11 and Class Representative Plaintiffs to represent the Settlement Class, and approving settlement
12 administration costs.

13 A copy of Class Representative Plaintiffs’ [Proposed] Order Granting Motion for Final
14 Approval of Amneal/Lupin Settlement and Judgment is separately submitted with this Motion. Because
15 the opt-out and objection deadlines are not until November 27, 2023, the [Proposed] Order attached to
16 this motion has placeholders related to the number of opt-outs and objections. Class Representative
17 Plaintiffs will submit an updated [Proposed] Order with their reply brief.

18 Class Representative Plaintiffs’ Motion is based on Federal Rule of Civil Procedure 23, the
19 Northern District’s Procedural Guidance for Class Action Settlement (“District Guidelines”), this Notice
20 of Motion, the supporting Memorandum of Points and Authorities, the joint Declaration of Dena Sharp
21 and Michael Buchman (“Joint Decl.”), the pleadings and papers on file in this Action, and any other
22 matter this Court may take notice of. Although the schedule for settlement-related proceedings (ECF
23 526) also contemplates the potential filing of a motion for the payment of attorneys’ fees and expenses,
24 because Class Representative Plaintiffs are requesting that the settlement proceeds be used to pay for
25 ongoing litigation expenses, co-lead class counsel and the members of the Plaintiffs’ Steering
26 Committee (“Class Counsel”) are not seeking payment of attorneys’ fees or past expenses from the
27 settlement.
28

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Class Representative Plaintiffs move for final approval of a proposed class action settlement (the “Amneal/Lupin Settlement”) with Defendants Amneal Pharmaceuticals LLC (“Amneal”) and Lupin Ltd. and Lupin Pharmaceuticals, Inc. (“Lupin,” and together with “Amneal,” the “Settling Defendants”).¹ The Settlement Agreement provides for a cash settlement fund of \$3,400,000² and evidentiary and other cooperation by each Settling Defendant, in exchange for a release of the class claims against the Settling Defendants. *See* Settlement Agreement, ECF 423-2 at 6.³ This settlement does not include the other Defendants in the litigation: Jazz Pharmaceuticals Plc, Jazz Pharmaceuticals, Inc., and Jazz Pharmaceuticals Ireland Limited (collectively, “Jazz”), and Hikma Labs, Inc. (formerly known as Roxane Laboratories, Inc.), Hikma Pharmaceuticals USA Inc. (formerly known as West-Ward Pharmaceuticals Corp.), Eurohealth (USA), Inc., and Hikma Pharmaceuticals plc. (collectively, “Hikma”) (together, with Jazz, the “Remaining Defendants”).⁴ No class or individual claims against the Remaining Defendants will be released in connection with the Amneal/Lupin Settlement.

The Court previously granted preliminarily approval of the proposed Amneal/Lupin Settlement and directed notice to the proposed Settlement Class. ECF 500 (“Preliminary Approval Order”) and ECF 509 (“Notice Order”). That notice has been viewed millions of times. *See* ECF 547.

The Amneal/Lupin Settlement provides a tangible benefit to Settlement Class members. It is the product of extensive arm’s-length negotiations among experienced lawyers familiar with the legal and factual issues in this case, including an acute awareness of the risks of summary judgment, trial, and an

¹ The capitalized terms are intended to have the same meaning as defined in the Settlement Agreement except as otherwise noted.

² Under the terms of the Settlement Agreement, Amneal has deposited into an escrow account \$1,900,000 and Lupin has deposited \$1,500,000. Each Settling Defendant also agreed to provide certain evidentiary and other cooperation. ECF 423-1 at 6.

³ Unless otherwise noted, docket citations are to the MDL docket.

⁴ Par Pharmaceuticals, Inc. is also named as a Defendant in the Consolidated Class Action Complaint, but claims against Par have been stayed pursuant to bankruptcy proceedings initiated by its parent company, Endo International plc. *See* ECF 311 (Notice of Suggestion of Bankruptcy and Automatic Stay of Proceedings).

1 appeal. The terms of the Amneal/Lupin Settlement treat class members equitably relative to each other.
2 Class Representative Plaintiffs and Class Counsel believe this settlement is fair, reasonable, adequate,
3 in the best interests of the Settlement Class, and respectfully request that the Court grant final approval
4 and certify the Settlement Class.

5 **II. BACKGROUND AND PROCEDURAL HISTORY**

6 Class Representative Plaintiffs and the Settling Defendants seek to resolve the antitrust and
7 consumer protection claims asserted against the Settling Defendants involving alleged restrictions of
8 competition in the market for Xyrem and generic Xyrem. Class Representative Plaintiffs allege that
9 Defendants entered into anticompetitive agreements that delayed full competition from generic Xyrem.
10 The settlement of Class Representative Plaintiffs' claims against the Settling Defendants came after
11 years of hard-fought litigation and provides substantial benefit to settlement class members.

12 **A. The Litigation**

13 As detailed in Class Representative Plaintiffs' Motion for Preliminary Approval (ECF 423) and
14 as summarized below, the Amneal/Lupin Settlement was reached after years of active litigation.

15 In 2020, Class Representative Plaintiffs filed several class actions against Amneal and Lupin, as
16 well as Jazz, Hikma, and Par. On March 8, 2021, Class Representative Plaintiffs filed a Consolidated
17 Class Action Complaint ("CCAC"), which contains seventeen counts asserting various antitrust and
18 consumer protection claims under federal and state law. *See* ECF 62 at 88-121. In the CCAC, Class
19 Representative Plaintiffs sought damages on behalf of classes consisting of all purchasers in the United
20 States and a subset of 36 states, and nationwide injunctive relief.

21 To streamline this litigation, the Honorable Lucy H. Koh directed the parties to identify ten
22 causes of action that would proceed through initial resolution, with litigation of the remaining causes of
23 action to be discussed with the Court thereafter. ECF 66 at 2. After the parties made a submission
24 pursuant to the Court's directive, Judge Koh entered an Order on March 30, 2021, identifying those
25 causes of action. ECF 83. Judge Koh subsequently largely denied Defendants' motion to dismiss Class
26 Representative Plaintiffs' seven state law claims, but granted the motion as to the three federal Sherman
27 Act damages claims. ECF 138 at 80-81.
28

1 Discovery began before motions to dismiss were filed and concluded on January 30, 2023.
2 Defendants have produced millions of pages of documents, provided written discovery and information,
3 and the parties have conducted twenty-nine depositions of Defendants' employees and third parties.
4 Class Representative Plaintiffs have produced relevant documents, searched their files using the parties'
5 agreed-upon search terms, responded to multiple sets of interrogatories, and appeared for depositions.

6 On November 16, 2022, Class Representative Plaintiffs moved to certify two classes of
7 purchasers of Xyrem and Xywav, seeking damages under Fed. R. Civ. P. 23(b)(3) and injunctive relief
8 under Fed. R. Civ. P. 23(b)(2). ECFs 351–53. Defendants opposed and the issue was fully briefed.
9 Defendants also moved to exclude the testimony of each of Class Representative Plaintiffs' experts
10 involved in the motion for class certification. ECF 473. Class Representative Plaintiffs opposed the
11 *Daubert* motions. ECF. No. 479.

12 Both issues were heard on April 19, 2023. ECF 494. And, on May 12, 2023, the Court denied the
13 *Daubert* motions and granted Class Representative Plaintiffs' motion for both classes, both of which
14 consisted of all purchasers of Xyrem, but not Xywav. ECF 500 at 28-29. Under Federal Rule of Civil
15 Procedure 23(a) and 23(b)(3), the Court certified the following Classes:

- 16 • **The Damages Class:** All entities in Arizona, California, Connecticut, District of Columbia,
17 Florida, Hawaii, Iowa, Kansas, Maine, Maryland, Michigan, Minnesota, Mississippi,
18 Missouri, Montana, Nebraska, Nevada, New Hampshire, New Mexico, New York, North
19 Carolina, North Dakota, Oregon, Puerto Rico, Rhode Island, South Dakota, Tennessee, Utah,
20 Vermont, West Virginia, and Wisconsin that, for consumption by their members, employees,
21 insureds, participants, or beneficiaries, and other than for resale, paid and/or provided
22 reimbursement for some or all the purchase price for Xyrem during the time from January 17,
23 2017, through and until May 12, 2023.⁵

24
25
26 ⁵ Excluded from the Health Benefit Plan Payor Class are: (1) Defendants and their counsel, parents,
27 subsidiaries, and affiliates; (2) Express Scripts Specialty Distribution Services, Inc. and any of its
28 counsel, parents, subsidiaries, and affiliates; and (3) federal and state governmental entities. This
exclusion does not include cities, towns, municipalities, or counties or carriers for Federal Employee
Health Benefit plans.

- 1 • **The Injunctive Relief Class:** All individuals and entities in the United States that, for
2 consumption by themselves, their families, or their members, employees, insureds,
3 participants, or beneficiaries, and other than for resale, paid and/or provided reimbursement
4 for some or all the purchase price for Xyrem during the time from January 17, 2017, through
5 and until May 12, 2023.⁶

6 **B. Terms of the Settlement**

7 The parties reached the proposed Settlement now before the Court as a result of hard-fought and
8 adversarial litigation. The Amneal/Lupin Settlement provides for a \$3,400,000 cash payment, no portion
9 of which is eligible to revert to the Settling Defendants after final approval. In exchange, class members
10 agree to release claims against the Settling Defendants only. ECF 423-2 at 6-7, 10-11. As described in
11 Class Representative Plaintiffs’ Motion for Preliminary Approval, the Settlement Fund will be used for
12 the payment of common expenses in connection with the continued prosecution of this litigation. ECF
13 423 at 26-27.

14 In short, the Settlement Agreement provides for a substantial benefit to settlement class members
15 and does not encumber other, separate claims that class members might have.

16 **C. Preliminary Approval and Notice to the Class**

17 In separate Orders dated May 12, 2023, and June 28, 2023, the Court preliminarily approved the
18 Amneal/Lupin Settlement and appointed A.B. Data as the Settlement Administrator. EFC 500 at 27-28;
19 ECF 524. Following the Court’s order, A.B. Data established a settlement website at
20 inrexyremantitrustlitigation.com, which includes: the long-form notice (explaining the procedures to
21 object or exclude themselves); a contact information page that includes an address, email address, and
22 telephone numbers for the Class Settlement Administrator; the Consolidated Class Action Complaint;

23
24 ⁶ Excluded from the Injunctive Relief Class are: (1) Defendants and their counsel, officers, directors,
25 management, employees, parents, subsidiaries, and affiliates, (2) Express Scripts Specialty Distribution
26 Services, Inc. and any of its counsel, officers, directors, management, employees, parents, subsidiaries,
27 and affiliates, (3) federal and state governmental entities. This exclusion does not include cities, towns,
28 municipalities, counties or carriers for Federal Employee Health Benefit plans, (4) any “single flat co-
 pay” consumers whose benefit plan requires a co-payment that does not vary based on the drug's status
 as a brand or generic, and (5) all judges assigned to this case and any members of their immediate
 families.

1 the Amneal/Lupin Settlement Agreement; the Order Granting Class Certification and Preliminary
 2 Approval of the Amneal/Lupin Settlement; and the order approving the form and manner of Notice. *See*
 3 ECF 547. In addition, the Settlement Administrator also operated a toll-free number for Settlement
 4 Class Member inquiries. *Id.*

5 Notice of the Amneal/Lupin Settlement was provided by: (1) direct notice via USPS First-Class
 6 Mail to entities in A.B. Data’s TPP Database; (2) direct notice to the Consumers identified in the
 7 pharmacy dispensing data for Xyrem via email and, for those whose email was not available, via mail;
 8 (3) publication notice of the Amneal/Lupin Settlement, which comprised approximately 12 million
 9 impressions and targeted likely settlement class members, on relevant websites and social media
 10 platforms; and (4) publication on the settlement website. *Id.* at 2-3.

11 **D. Class Response**

12 Although the deadline for opt-out requests and objections is not until November 27, the response
 13 from the class thus far has been positive. As of November 10, 2023, out of the many thousands of class
 14 members, A.B. Data has received sixteen opt out requests from TTPs⁷ and none from consumers. ECF
 15 547 at 4; Joint Decl. at ¶ 11. Furthermore, A.B. Data has received no objection as of November 10,
 16 2023. *Id.* The low number of opt-outs and the absence of objections reflects positively on the
 17 Amneal/Lupin Settlement.

18 **III. ARGUMENT**

19 Final approval is a multi-step inquiry: first, the Court must determine that the settlement
 20 proposal is “fair, reasonable, and adequate;” second, it must determine whether notice has been
 21 provided in a manner consistent with Rule 23 and due process; and third, it must certify the proposed
 22
 23
 24
 25

26 ⁷ United HealthCare Services, Inc. (“UHS”), which has been pursuing its individual claims alongside the
 27 class plaintiffs, submitted a single opt out request on behalf of itself and eighty-three subsidiaries and
 28 affiliates (such as state-specific United health plans). UHS represented in its complaint that it is the
 payor entity for drugs dispensed to all United members, and it obtained assignments from its affiliated
 plan entities solely out of an abundance of caution. *See* UHS Compl. ¶¶ 7-10.

1 settlement class. *See* Fed. R. Civ. P. 23(e)(2); *Adoma v. Univ. of Phoenix Inc.*, 913 F. Supp. 2d 964, 972
 2 (E.D. Cal. 2012). The Amneal/Lupin Settlement satisfies each of these requirements.

3 **A. The Amneal/Lupin Settlement is Fair, Adequate, and Reasonable**

4 A court may approve a proposed class action settlement “only after a hearing and on finding that
 5 it is fair, reasonable, and adequate after considering whether: (A) the class representatives and class
 6 counsel have adequately represented the class; (B) the proposal was negotiated at arm’s length; (C) the
 7 relief provided for the class is adequate, taking into account: (i) the costs, risks, and delay of trial and
 8 appeal; (ii) the effectiveness of any proposed method of distributing relief to the class, including the
 9 method of processing class-member claims;⁸ (iii) the terms of any proposed award of attorney's fees,
 10 including timing of payment; and (iv) any agreement required to be identified under Rule 23(e)(3); and
 11 (D) the proposal treats class members equitably relative to each other.” Fed. R. Civ. P. 23(e)(2).⁹

12 As explained more fully below, the proposed Amneal/Lupin Settlement is fair, reasonable, and
 13 adequate. Class Counsel are highly experienced in complex pharmaceutical and other class litigation,
 14 have actively litigated this case for nearly three years, and negotiated a settlement at arms-length. The
 15 Amneal/Lupin Settlement provides significant benefits for settlement class members. And, with respect
 16 to the continued litigation against the Remaining Defendants, the Amneal/Lupin Settlement streamlines
 17 Class Representative Plaintiffs’ case, eases discovery burdens, and facilitates the preparation for a

18 _____
 19 ⁸ The effectiveness of distribution factor is not applicable here as Class Representative Plaintiffs propose
 20 to reserve the settlement proceed to fund the ongoing litigation against the Remaining Defendants.

21 ⁹ Before Rule 23 was amended in December 2018, the Ninth Circuit had enumerated a similar list of
 22 factors to consider in evaluating a proposed class settlement. *See Churchill Village, L.L.C. v. Gen. Elec.*,
 23 361 F.3d 566, 575 (9th Cir. 2004) (enumerating the following factors: “(1) the strength of the plaintiffs’
 24 case; (2) the risk, expense, complexity, and likely duration of further litigation; (3) the risk of
 25 maintaining class action status throughout the trial; (4) the amount offered in settlement; (5) the extent
 26 of discovery completed and the stage of the proceedings; (6) the experience and views of counsel; (7)
 27 the presence of a governmental participant; and (8) the reaction of the class members to the proposed
 28 settlement”). In the notes accompanying the Rule 23 amendments, the Advisory Committee explained
 that the amendments were not designed “to displace any factor, but rather to focus the court and the
 lawyers on the core concerns of procedure and substance that should guide the decision whether to
 approve the proposal.” Accordingly, courts apply the framework of Rule 23 while “continuing to draw
 guidance from the Ninth Circuit’s factors and relevant precedent.” *Hefler v. Wells Fargo & Co.*, No. 16-
 cv-05479-JST, 2018 WL 6619983, at *4 (N.D. Cal. Dec. 17, 2018), *aff’d sub nom. Hefler v. Pekoc*, 802
 F. App’x 285 (9th Cir. 2020).

1 focused trial.

2 **1. Rule 23(e)(2)(A): Class Representative Plaintiffs and Class Counsel Have**
3 **Adequately Represented the Settlement Class**

4 Class Representative Plaintiffs and Class Counsel have vigorously prosecuted this case through
5 discovery, motion practice, and preparations for trial. Class Counsel thus “possessed sufficient
6 information to make an informed decision about settlement.” *Hefler*, 2018 WL 6619983 *6. Against this
7 backdrop, in its Preliminary Approval Order the Court found that Class Representative Plaintiffs and
8 Class Counsel adequately represented the interests of the Settlement Class. ECF 500 at 7. The ongoing
9 notice program and Class Counsel’s other work to advance the proposed settlement further confirm the
10 Court’s previous finding and support a finding that this element is satisfied. Fed. R. Civ. P. 23(e)(2)(A).

11 **2. Rule 23(e)(2)(B): The Amneal/Lupin Settlement Was Negotiated at Arm’s**
12 **Length**

13 The Amneal/Lupin Settlement is the product of serious, non-collusive, arm’s length negotiations
14 by experienced counsel with the benefit of a full fact discovery record. Class Counsel acted in the best
15 interests of the Settlement Class, and there is no evidence to the contrary—for example, by
16 compromising the claims of the Settlement Class in exchange for higher fees—and there has been no
17 agreement concerning attorneys’ fees or otherwise disadvantaging the Settlement Class.

18 Before agreeing on the terms of the Amneal/Lupin Settlement, the parties engaged in extensive
19 factual investigation, which included dozens of depositions, the production and review of millions of
20 pages of documents, extensive written discovery, robust motion practice, and expert discovery. Joint
21 Decl. at ¶ 5. The record was thus sufficiently developed to fully inform the parties and enable them to
22 adequately evaluate the strengths and weaknesses of their respective positions and risks to both sides if
23 the case did not settle. *See Nat’l Rural Telecomm. Coop. v. DIRECTV*, 221 F.R.D. 523, 528 (C.D. Cal.
24 2004); 4 A. Conte & H. Newberg on Class Actions at § 11.24 (4th ed. 2002) (“A court is more likely to
25 approve a settlement if most of the discovery is completed because it suggests that the parties arrived at
26 a compromise based on a full understanding of the legal and factual issues surrounding the case.”).

1 taking a complex case to trial is a costly endeavor. Even in cases in which there were two classes of
2 purchasers (direct purchasers, and indirect purchasers) splitting the litigation expenses, plaintiffs have
3 easily spent as much, or more, than \$3.4 million. *E.g., In re Restasis Antitrust Litig.*, Case No. 1:18-md-
4 2819, ECF 741 (E.D.N.Y. Aug. 2, 2022) (allowing end-payer plaintiffs \$4,635,684 in expenses, despite
5 separate cost award to direct purchaser plaintiffs).

6 **b) The Risks of Continued Litigation Against the Settling Defendants**

7 Continued litigation against the Settling Defendants involves substantial risks and would
8 complicate the litigation against the Remaining Defendants. Though Class Representative Plaintiffs and
9 their counsel have confidence in their claims, a favorable outcome at trial was not assured. Class
10 Representative Plaintiffs would need to prevail at summary judgement, overcome numerous defenses at
11 trial, and possibly succeed on appeal. Furthermore, Defendants and their experts would surely contest
12 every theory of liability and measure of damages, including, among other things: (i) whether the Settling
13 Defendants' agreements with Jazz were anticompetitive or had procompetitive justifications, (ii)
14 whether the challenged conduct resulted in overcharges to Class Representative Plaintiffs, and (iii)
15 whether the lawsuit is blocked by the statute of limitations and/or laches.

16 There were also substantial questions as to whether Class Representative Plaintiffs would be able
17 to prove at trial that Amneal and Lupin's conduct, as later-filing generics, caused the anticompetitive
18 overcharges that the Class has paid. Trial would have involved a clash of expert analysis as to whether
19 the Settling Defendants' agreements with Jazz were anticompetitive; how damages or restitution should
20 be calculated; and what damages and/or restitution, if any, should be awarded.

21 **c) Attorneys' Fees and Expenses**

22 The payment of attorneys' fees, expenses, and service awards, if any, is subject to approval of the
23 Court based on a finding that such amounts are fair and reasonable. If the Court approves Class
24 Representative Plaintiffs' request to use the Settlement Fund for costs and expenses incurred in the
25 ongoing litigation, Class Representative Plaintiffs do not intend to move for an award of attorneys' fees
26 or service awards from the Settlement. *See* Joint Decl. at ¶ 8. Instead, the entire Settlement Fund (less
27 any administrative expenses) would be used for the payment of common expenses (*i.e.* expert fees,
28 database hosting, depositions, etc.) in connection with the continued prosecution of this litigation on

1 behalf of the Xyrem and Xywav purchasers. Thus, there is thus no aspect of the Amneal/Lupin
 2 Settlement regarding the payment of attorneys' fees and expenses that raises any concern about the
 3 reasonableness, fairness, or adequacy of the Amneal/Lupin Settlement.¹⁰

4 **d) Other Agreements**

5 The Court is required to consider "any agreements required to be identified under Rule 23(e)(3)."
 6 The Court has been provided with the Amneal/Lupin Settlement Agreement and relevant accompanying
 7 materials. *See* ECF 423-2. There are no other agreements made in connection with the settlement.

8 **4. Rule 23(e)(2)(D): The Proposal Treats Class Members Equitably Relative to**
 9 **Each Other**

10 As previously discussed, the Settlement Fund of \$3,400,000 and any accrued interest or earnings
 11 after deposit, will be held in escrow, *see* ECF 423-2 at 6, and used to pay litigation costs and expenses
 12 incurred in Class Representative Plaintiffs' continued litigation against the remaining Defendants. *See*
 13 *id.* at 6-8. The relief thus treats class members equitably relative to each other because the class will
 14 benefit from the continued litigation against the Remaining Defendants.

15 **5. The Amneal/Lupin Settlement Satisfies the Remaining Ninth Circuit**
 16 **Approval Factors**

17 In addition to the framework of Rule 23 as amended in 2018, courts "continu[e] to draw
 18 guidance from the Ninth Circuit's factors and relevant precedent" in evaluating a proposed class
 19 settlement. *Hefler*, 2018 WL 6619983, at *4; *Churchill*, 361 F.3d at 575 (courts should consider "(1) the
 20 strength of the plaintiffs' case; (2) the risk, expense, complexity, and likely duration of further litigation;
 21 (3) the risk of maintaining class action status throughout the trial; (4) the amount offered in settlement;
 22 (5) the extent of discovery completed and the stage of the proceedings; (6) the experience and views of
 23 counsel; (7) the presence of a governmental participant; and (8) the reaction of the class members to the
 24 proposed settlement").

25 _____
 26 ¹⁰ In any event, the parties have reached no agreements regarding the amounts of attorneys' fees,
 27 expenses, and service wards that would be paid. Joint Decl. at ¶ 9; *see, e.g., In re Hyundai & Kia Fuel*
 28 *Econ. Litig.*, 926 F.3d 539, 569-70 (9th Cir. 2019) (en banc) (rejecting objection because counsel "did
 not reach an agreement with the automakers regarding the amount of attorney's fees to which they were
 entitled," which "[p]rovid[es] further assurance that the agreement was not the product of collusion").

1 Many of these factors, such as the strength of plaintiffs’ case, the risk and duration of further
 2 litigation, and the amount offered, overlap with the Rule 23(e)(2)(C) factors and are addressed above.
 3 The remainder favor final approval as well, as described below.

4 **a) The Response of Class Members Has Been Positive**

5 As of November 10, 2023, out of the thousands of notices delivered and the millions of
 6 impressions from banner and social media ads, there were 16 opt-outs and no objections. Joint Decl. at ¶
 7 11. These figures represent a positive response from the class. *See Churchill*, 361 F.3d at 577 (noting a
 8 court may infer appropriately that a class action settlement is fair, adequate, and reasonable when few
 9 class members object to it); *Zepeda v. PayPal, Inc.*, 2017 WL 1113293, at *16 (N.D. Cal. Mar. 24,
 10 2017) (“[T]he indisputably low number of objections and opt-outs, standing alone, presents a sufficient
 11 basis upon which a court may conclude that the reaction to settlement by the class has been favorable);
 12 *Cruz v. Sky Chefs, Inc.*, 2014 WL 7247065, at *5 (N.D. Cal. Dec. 19, 2014) (“A court may appropriately
 13 infer that a class action settlement is fair, adequate, and reasonable when few class members object to
 14 it.”). Consistent with the Court-ordered schedule, Class Representative Plaintiffs will submit updated
 15 opt-out and objections statistics on December 1, 2023, and respond to any objections that may be
 16 submitted on December 11, 2023. ECF 526.

17 **b) Class Counsel Endorses the Settlement**

18 In considering whether to grant final approval, courts afford significant weight to the opinions of
 19 experienced class counsel who are familiar with the litigation. *Ontiveros v. Zamora*, 303 F.R.D. 356,
 20 371 (E.D. Cal. 2014) (citing *Hanlon*, 150 F.3d at 1026); *see also In re Volkswagen “Clean Diesel”*
 21 *Mkt’g, Sales Pracs., and Prods. Liab. Litig.*, 2016 WL 6248426, at *14 (N.D. Cal. Oct. 25, 2016)
 22 (“Courts afford ‘great weight to the recommendation of counsel, who are most closely acquainted with
 23 the facts of the underlying litigation.’”) (quoting *Nat’l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221
 24 F.R.D. 523, 528 (C.D. Cal. 2004)). This is because “[p]arties represented by competent counsel are
 25 better positioned than courts to produce a settlement that fairly reflects each party’s expected outcome in
 26 litigation.” *In re Pac. Enters. Sec. Litig.*, 47 F.3d 373, 378 (9th Cir. 1995).

27 Class Counsel is experienced in complex pharmaceutical and other class litigation and
 28 settlement, including in antitrust cases like this one. Joint Decl. at ¶ 7. Based on this experience, Class

1 Counsel firmly believe that the Amneal/Lupin Settlement provides a positive outcome for class
2 members and, in light of the uncertainties and risks in continued litigation, strongly recommends its
3 approval.

4 **6. The Court-Approved Notice Plan Satisfied Due Process and Adequately**
5 **Provided Notice to Class Members**

6 Rule 23 requires that prior to final approval, “[t]he court must direct notice in a reasonable
7 manner to all class members who would be bound by the proposal.” Fed. R. Civ. P. 23(e)(1). For classes
8 certified under Rule 23(b)(3), “the court must direct to class members the best notice that is practicable
9 under the circumstances, including individual notice to all members who can be identified through
10 reasonable effort.” Fed. R. Civ. P. 23(c)(2)(B). The Rule provides that “notice may be by one or more of
11 the following: United States mail, electronic means, or other appropriate means.” *Id.*

12 A.B. Data has carried out a thorough notice campaign. A.B. Data provided individual notice to
13 TPP class members. ECF 547. The over 62,000 direct notices sent by A.B. Data included 42,006 mail
14 notices to TPPs and intermediaries employed by TPPs,¹¹ 19,789 emails to consumer class members, and
15 1,816 mail notices to consumer class members¹² (where an email address was not available or whose
16 email notices were returned as undeliverable). *Id.* at 1-3.

17 In addition to direct notice, A.B. Data also carried out a robust publication notice campaign. The
18 program includes targeted banner advertising on selected advertising networks and social media, which
19 are targeted to class members. *Id.* at 2. The Digital Notices link directly to the Settlement website. *Id.*
20 The Digital Notices served at least 12 million impressions. *Id.* The Digital Notices began running on
21 July 28, 2023, and ran for 30 days. *Id.*

22 The Settlement Notice represents the best notice practicable. Copies of the final versions of all
23 the notice documents are attached as exhibits to the Miller Declaration (ECF 547 Exs. A-E); they are
24 clear and concise, and directly apprise class members of all the information they need to know to opt out
25

26 ¹¹ 161 of the notices to TPP class members were returned as undeliverable. A.B. Data located updated
27 addresses and remailed 119 of these notices. ECF 547 at 3.

28 ¹² Of the 1,816 notices mailed to consumer class members, 30 notices were returned as undeliverable.
A.B. Data located updated addresses and remailed 14 of these notices. ECF 547 at 3.

1 or object. *See* Fed. R. Civ. P. 23(c)(2)(B). The Notice Plan is consistent with other similar court-
 2 approved notice plans, the requirements of Federal Rule of Civil Procedure 23(c)(2)(B), and the Federal
 3 Judicial Center (“FJC”) guidelines for adequate notice. *See In re Lidoderm Antitrust Litig.*, No. 14-md-
 4 02521 (N.D. Cal June 13, 2017), ECF 751 (approving similar notice plan); *In re Zetia (Ezetimibe)*
 5 *Antitrust Litig.*, 18-md-02836 (E.D. Va. 2022), ECF 1497 (same); *In re Aggrenox Antitrust Litig.*, No.
 6 14-md-02516 (D. Conn. Mar. 6, 2018), ECF 766 (same); *In re Solodyn (Minocycline Hydrochloride)*
 7 *Antitrust Litig.*, No. 14-md-2503 (D. Mass. Dec. 4, 2017), ECF 828 (same).

8 As there is no alternative method of notice that would be practicable here or more likely to notify
 9 class members, the Notice Plan constitutes the best practicable notice to class members and complies
 10 with the requirements of Due Process.

11 **B. The Court Should Certify the Settlement Class**

12 In the Preliminary Approval Order, the Court found that the differences between the certified
 13 classes¹³ and the Settlement Class did not substantively alter the Court’s Rule 23 analysis or provide
 14 any basis for declining to certify the Settlement Class, which is defined as:

15 All persons and entities in the United States that, for consumption by themselves, their
 16 families, their members, employees, insureds, participants, or beneficiaries, and other than
 17 for resale, paid and/or provided reimbursement for some or all the purchase price for
 Xyrem and/or Xywav during the time from January 1, 2015, through the Execution Date.¹⁴

18 ECF 500 at 27. The factors that supported the Court’s prior conclusions remain true, and the Settlement
 19 Class should be certified.

22 ¹³ These were the **Damages Class** (All individuals, in the certain states, who paid for Xyrem between
 23 January 17, 2017 and May 12, 2023) and an **Injunctive Relief Class** (All individuals and entities in the
 United States, who paid for Xyrem between January 17, 2017 and May 12, 2023).

24 ¹⁴ Excluded from the Settlement Class are: (a) Defendants and their counsel, officers, directors,
 25 management, employees, parents, subsidiaries, and affiliates; (b) Express Scripts Specialty Distribution
 26 Services, Inc. and any of its counsel, officers, directors, management, employees, parents, subsidiaries,
 27 and affiliates; (c) federal and state governmental entities, not including cities, towns, municipalities,
 28 counties or carriers for Federal Employee Health Benefit plans; (d) any “single flat co-pay” consumers
 whose benefit plan requires a co-payment that does not vary based on the drug’s status as a brand or
 generic; and (e) all judges assigned to this case and any members of their immediate families. The
 execution date is February 28, 2023. *See* ECF 423-2.

1 Because the Court already certified similar classes in this matter under Rule 23(b)(3), “the only
2 information ordinarily necessary is whether the proposed settlement calls for any change in the class
3 certified, or of the claims, defenses, or issues regarding which certification was granted.” Fed. R. Civ. P.
4 23, 2018 committee notes subdivision(e)(1). The Court must then determine whether the proposed
5 modification alters the reasoning underlying its earlier decision to grant class certification pursuant to
6 Rule 23(b)(3). *See, e.g., Allen v. Similasan Corp.*, 2017 WL 1346404, at *3 (S.D. Cal. Apr. 12, 2017)
7 (approving expansion of settlement class where the expansion did not change the court’s previous class
8 certification analysis of whether Rule 23(a) and 23(b) had been met). If it does not, the Court need not
9 revisit the Rule 23(b) analysis and instead must only “consider[] whether the Settlement is fair,
10 adequate, and reasonable.” *De La Torre v. CashCall, Inc.*, 2017 WL 2670699, at *6 (N.D. Cal. June 21,
11 2017). Plaintiffs must identify and explain any differences between the certified class and the Settlement
12 Class and between the claims in the operative complaint and the Released Claims. *See* District
13 Guidelines ¶ 1(a), (b), (d).

14 The Settlement Class is co-extensive with the certified class, except that the claims for the
15 proposed Settlement Class have a different end date, have an earlier start date, include purchasers
16 nationwide, and include purchases of Xywav in addition to Xyrem. The addition of an end date reflects
17 when the parties settled and is appropriate and necessary for administration purposes. *See Foster v.*
18 *Adams & Assocs.*, 2021 WL 4924849, at *3 (N.D. Cal. Oct. 21, 2021) (granting modification to the
19 previously certified class to specify end date). And the start date of January 1, 2015, is similarly
20 justifiable. As the Court stated in its Order Granting Preliminary Approval, ECF 500 at 28, “2015 was
21 the year included in the class definition in the CAC, and as such, this date was the date Plaintiff had in
22 mind when they began settlement negotiations[.]” Furthermore, the release of damages for two years
23 prior to 2017 is likely a small concession “given the small settlements that individual consumers could
24 have expected.” *Id.* Finally, there is good reason to settle claims of nationwide purchasers in light of the
25 nationwide injunctive relief class and other nationwide claims. *See* ECF 500 at 29. And including
26 nationwide purchasers and Xywav purchasers in the Settlement Class definition likewise does not
27 change the overall common nature of the claims at issue, or the benefits derived from the Settlement.
28

1 The Settlement Class is also appropriately certified under a traditional application of the Rule 23
2 factors. The slight differences between the litigation classes and the proposed Settlement Class do not
3 alter the Court’s prior certification analysis, except that the predominance analysis operates differently,
4 but is less stringently applied in the settlement context. *See Hyundai*, 926 F.3d at 558.

5 **Rule 23(a)(1): Numerosity.** The Settlement Class includes both individual consumers and third-
6 party payors who purchased, paid and/or provided reimbursement for some or all of the cost of Xyrem
7 and/or Xywav prescriptions. Data from Express Scripts Specialty Distribution Services (“ESSDS”), the
8 sole distributor of Xyrem and Xywav, confirms that tens of thousands of prescriptions for Xyrem and/or
9 Xywav are filled each month. *See* ECF 353 at 20. Courts in the Ninth Circuit generally agree that
10 numerosity is satisfied if the class includes forty or more members. *See* ECF 500 at 6. The Settlement
11 Class easily meets that threshold.

12 **Rule 23(a)(2): Commonality.** As in other end-payor pharmaceutical antitrust cases, the
13 Settlement Class satisfies Rule 23(a)(2). This case presents numerous common questions of fact and law
14 that relate to the Settling Defendants’ anticompetitive conduct, including whether the Defendants
15 entered into unlawful agreements in restraint of trade to prevent or delay entry of generic competition.
16 *See* ECF 500 at 7 (listing common questions of law and fact). “Antitrust liability alone constitutes a
17 common question that ‘will resolve an issue that is central to the validity’ of each class member’s claim
18 ‘in one stroke’” because proof of the violation “‘will focus on defendants’ conduct and not on the
19 conduct of individual class members.’” *In re High-Tech Employee Antitrust Litig.*, 985 F. Supp. 2d
20 1167, 1180 (N.D. Cal. 2013) (citing *Dukes*, 564 U.S. at 349). The Settlement Class, therefore, satisfies
21 this requirement.

22 **Rule 23(a)(3): Typicality.** As before, Class Representative Plaintiffs’ claims are typical of the
23 claims of the Settlement Class because: (i) their injury (supracompetitive prices) arises from the same
24 course of conduct (Defendants’ anticompetitive conduct); (ii) their claims rely on the same legal theories
25 (unlawful restraint of trade and monopolization); and (iii) their claims allege damages in the form of
26 overcharges. Accordingly, Class Representative Plaintiffs’ and the Settlement Class’ claims stem from
27 the same practice or course of conduct and “seek to recover pursuant to the same legal theories.” *Wolin*
28 *v. Jaguar Land Rover N. Am., LLC*, 617 F.3d 1168, 1175 (9th Cir. 2010); *see also Just Film v. Buono*,

1 847 F.3d 1108, 1116 (9th Cir. 2017) (class representative’s “claim is typical of the class because it
2 shares ‘some common question of law and fact with class members’ claims”) (quoting Newberg on
3 Class Actions § 3:31 (5th ed.)). Thus, Class Representative Plaintiffs’ claims are typical of the
4 Settlement Class.

5 **Rule 23(a)(4): Adequacy.** Adequacy is also presumed where, as here, a fair settlement was
6 negotiated at arm’s length. 2 Newberg on Class Actions, § 11.28, 11-59. There is no conflict of interest
7 between Class Representative Plaintiffs and settlement class members. *Staton v. Boeing Co.*, 327 F.3d
8 938, 957 (9th Cir. 2003). Class Representative Plaintiffs have fairly and adequately protected the
9 interests of the Settlement Class.

10 **Rule 23(b)(3): Predominance.** Questions common to the Settlement Class predominate over
11 questions affecting only individual class members. Predominance is met when plaintiffs’ claims “depend
12 upon a common contention . . . of such a nature that it is capable of classwide resolution—which means
13 that determination of its truth or falsity will resolve an issue that is central to the validity of each one of
14 the claims in one stroke.” *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011). “Even if just one
15 common question predominates, ‘the action may be considered proper under Rule 23(b)(3) even though
16 other important matters will have to be tried separately.’” *Hyundai*, 926 F.3d at 557 (quoting *Tyson*
17 *Foods, Inc. v. Bouaphakeo*, 577 U.S. 442 (2016)); *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 625
18 (1997) (predominance “is a test readily met in certain cases alleging consumer or securities fraud or
19 violations of the antitrust laws.”).

20 The predominance inquiry is more straightforward in the settlement context because, unlike
21 certification for litigation, “manageability is not a concern in certifying a settlement class where, by
22 definition, there will be no trial.” *Id.* at 556–57. The central question at this stage will be whether this
23 settlement is fair, reasonable, and adequate. *See Hanlon*, 150 F.3d at 1026-27. Even if the Court
24 examines the disputed questions that would be tried absent settlement, Plaintiffs allege common
25 questions of law and fact, including whether Defendants’ conduct violated antitrust and consumer
26 protection laws and delayed the generic entry of Xyrem. *See In re Cipro Cases I & II*, 121 Cal. App. 4th
27 402, 411 (2004) (collecting cases) (“[C]ommon issues usually predominate in cases where the
28

1 Class Counsel have adequately represented the interests of the Settlement Class throughout the course of
 2 the litigation and settlement, and the Court should appoint them to represent the Settlement Class.

3 **C. Costs of Administering the Amneal/Lupin Settlement Are Reasonable**

4 The Settlement Administrator has submitted invoices for its expenses incurred as of October
 5 2023, totaling \$195,926.52. Joint Decl. at ¶ 12. A.B. Data projects that the additional expenses for
 6 completing the Court-approved Notice Plan will not exceed \$5,000. *Id.* Accordingly, Class
 7 Representative Plaintiffs request that the Court approve payment to A.B. Data of up to \$203,000 for
 8 settlement administration costs, which is \$22,000 less than the projected cost in the Long Form Notice.
 9 *Id.*; *See also* ECF 511-2.¹⁵ Class Counsel will, of course, only authorize payment from the Settlement
 10 Fund for costs that are actually incurred by A.B. Data and reasonably spent. Class Representative
 11 Plaintiffs will provide updated information concerning costs incurred and expected future costs in
 12 advance of the Fairness Hearing, and are prepared to provide the Court with periodic updates thereafter
 13 should that be of assistance to the Court.

14 **IV. CONCLUSION**

15 For the foregoing reasons, Class Representative Plaintiffs and Class Counsel respectfully request
 16 that the Court enter the proposed order certifying the Settlement Class, appointing Dena C. Sharp of
 17 Girard Sharp LLP and Michael M. Buchman of Motley Rice LLC as Settlement Class Counsel,
 18 appointing Class Representative Plaintiffs to represent the Settlement Class, granting final approval of
 19 the Amneal/Lupin Settlement, as set forth above and in the accompanying proposed order or such
 20 further and additional relief as the Court deems appropriate.

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 26 ¹⁵ The Settlement Administrator sent a combined notice regarding both the certified class and the
 27 Amneal/Lupin Settlement. The manner of notice—and related costs—would have been the same had the
 28 Settlement Administrator only sent notice of the Amneal/Lupin Settlement. Thus, no part of the
 requested payment to the Settlement Administrator reflects costs incurred only for sending notice of the
 certified class, as opposed to notice of the Amneal/Lupin Settlement.

1 Dated: November 10, 2023

Respectfully submitted,

2
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25 *Co-Lead Counsel and Proposed Settlement*
26 *Class Counsel*
27
28

CERTIFICATE OF SERVICE

I hereby certify that on November 10, 2023, I caused the foregoing document to be electronically filed with the Clerk of the Court using the CM/ECF system, which will automatically send notification of the filing to all counsel of record.

By: /s/ Dena C. Sharp
Dena C. Sharp

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