EXHIBIT 1

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

IN RE: XYREM (SODIUM OXYBATE) ANTITRUST LITIGATION THIS FILING RELATES TO: ALL CLASS ACTIONS	Case No. 3:20-md-02966-RS **[PROPOSED] FINAL ORDER AND JUDGMENT APPROVING CLASS ACTION SETTLEMENT AND CERTIFYING SETTLEMENT CLASS**

On February 28, 2023, Class Representative Plaintiffs[1] entered into a settlement agreement with Defendants Amneal Pharmaceuticals LLC ("Amneal") and Lupin Ltd, Lupin Pharmaceuticals Inc., and Lupin, Inc. ("Lupin," and, collectively, the "Settling Defendants").[2] The Amnea/Lupin Settlement resolved Class Representative Plaintiffs' antitrust, consumer protection, and unjust enrichment claims against the Settling Defendants for allegedly engaging in a course of conduct to prevent or delay generic competition and maintain a monopoly with respect to brand name prescription drug Xyrem. On March 3, 2023, Class Representative Plaintiffs moved the Court for preliminary approval of the proposed class action settlement, the terms and conditions of which are set forth in the Settlement Agreement filed with the Court. The Court granted preliminary approval on May 12, 2023 (ECF 500).

Class Representative Plaintiffs moved the Court for final approval of the proposed class action settlement. The Court has read and considered Class Representative Plaintiffs' Notice of Motion and Motion for Final Approval of the Class Action Settlement and Certification of the Settlement Class ("Motion") and supporting documents, including the Joint Declaration of Co-Lead Counsel and the Declartion of Eric J. Miller. (ECF 547)

For the reasons described more fully below, the Court GRANTS final approval of the Amneal/Lupin Settlement and certifies the Settlement Class for settlement purposes only.

I. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Notice and Administration

Following entry of the Court's preliminary approval order, the Class Settlement Administrator established a settlement website at inrexyremantitrustlitigation.com, which included,

[1] The capitalized terms used in this Order shall have the same meaning as defined in the Class Settlement Agreement except as otherwise noted.

[2] The proposed settlement does not include Jazz Pharmaceuticals Plc, Jazz Pharmaceuticals, Inc., and Jazz Pharmaceuticals Ireland Limited (collectively, "Jazz"), Hikma Labs, Inc. (formerly known as Roxane Laboratories, Inc.), Hikma Pharmaceuticals USA Inc. (formerly known as West-Ward Pharmaceuticals Corp.), Eurohealth (USA), Inc., Hikma Pharmaceuticals plc. (collectively, "Hikma"), or Par Pharmaceuticals, Inc. ("Par"). Par remains a Defendant in this action, but proceedings as to Par were stayed in August 2022, due to its Notice of Suggestion of Bankruptcy Upon the Record. *See* ECF 311. No class or individual claims against the non-settling Defendants will be released, and the litigation against those Defendants will continue.

among other things: the long-form notice (which explained the procedures for class members to object or exclude themselves), contact information for the Class Settlement Administrator, the Settlement Agreement, and Court documents related to the Form and Manner of Notice. (*See* ECF 547). The Settlement Administrator also operated a toll-free number for Settlement Class member inquiries (*Id.*).

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

The Court finds that the Notice Plan provided the best practicable notice to the Settlement Class members and satisfies the requirements of due process.

Settlement Class members were given until November 27, 2023, to object or to exclude themselves from the proposed Settlement. Sixteen third party payor class members have opted out and no objections have been filed.

B. Certification of the Settlement Class

For purposes of the Class Settlement only and this Order and Judgment, Class Representative Plaintiffs have moved to certify the following Settlement Class: "All persons and entities in the United States that, for consumption by themselves, their families, their members, employees, insureds, participants, or beneficiaries, and other than 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." The Execution Date, and thus the end of the settlement class period, is February 28, 2023. Excluded from the Settlement Class are: (1) Defendants and their counsel, officers, directors, management, employees, parents, subsidiaries, and affiliates; (2) Express Scripts Specialty Distribution Services, Inc. and any of its counsel, officers, directors, management, employees, parents, subsidiaries, and affiliates; (3) federal and state governmental entities, not including cities, towns, 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.

The Court has certified for litigation purposes similar classes asserting antitrust and consumer protection claims against the Remaining Defendants. The Settlement Class is co-extensive with the certified classes, except that the Settlement Class claims have a different end date, have an earlier start date, include purchasers nationwide, and include purchases of Xywav in addition to Xyrem. The an end date based on when the parties settled is appropriate and necessary for administration purposes. *See Foster v. Adams & Assocs*., 2021 WL 4924849, at *3 (N.D. Cal. Oct. 21, 2021) (granting modification to the previously certified class to specify end date). And the start date is similarly justifiable. The class period in the operative complaint began in 2015, and as such, this date was the date the parties had in mind when they negotiated the settlement. There is also good reason to settle the claims of purchasers nationwide, particularly in light of the certified nationwide injunctive relief class. Including nationwide and Xywav purchases in the settled claims does not change the overall common nature of the claims or the benefits derived from the Settlement, and does not alter the Court's class certification analysis, except that the predominance analysis operates differently and is more relaxed in the settlement context. *See In re Hyundai & Kia Fuel Econ. Litig.*, 926 F.3d 539, 558 (9th Cir. 2019). The Court finds that the Settlement Class largely overlaps with the classes certified by the Court and that, for settlement purposes only, there is a sound basis for the differences in the Settlement Class definition.

Accordingly, the Court finds as follows, for purposes of Settlement only:

a. Members of the Settlement Class are so numerous as to make joinder impracticable. Express Scripts Specialty Distribution Service, the sole pharmacy which dispenses all Xyrem and Xywav, confirms that tens of thousands of prescriptions for Xyrem and/or Xywav are filled each month. Accordingly, the proposed Settlement Class likely contains hundreds or thousands of members.

b. There are questions of law and fact common to the Settlement Class. The litigation will focus on Defendants' alleged anticompetitive conduct, including whether the Defendants

entered into unlawful agreements in restraint of trade to prevent or delay entry of generic competition. *See In re High-Tech Emp. Antitrust Litig.*, 985 F. Supp. 2d 1167, 1180 (N.D. Cal. 2013) ("Antitrust liability alone constitutes a common question that 'will resolve an issue that is central to the validity' of each class member's claim 'in one stroke . . . because proof . . . will focus on defendants' conduct and not on the conduct of individual class members.'") (citing *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011)).

c. Th common questions of law and fact predominate over any questions affecting only individual Settlement Class members for purposes of the Settlement because the Defendants' conduct—*i.e.* whether it was illegal and what impact it had on the prices paid by class members—will drive the litigation. That is particularly true in the settlement context. As the Ninth Circuit has held, "predominance is easier to satisfy in the settlement context." *Jabbari v. Farmer*, 965 F.3d 1001, 1006 (9th Cir. 2020); *see also Sullivan v. DB Inv., Inc.*, 667 F.3d 273, 304 n. 29 (3d Cir. 2011) (*en banc*) (courts are "more inclined to find the predominance test met in the settlement context") (internal quotation marks and alteration omitted). That is because "[s]ettlement may 'obviate the need to litigate individual issues that would make a trial unmanageable,' making common questions more important in the relative analysis." *Jabbari*, 965 F.3d at 1005-06 (quoting *Hyundai*, 926 F.3d at 558). While the Court in its certification order excluded Xywav from the litigation classes (*see* ECF 500 at 16), this does not preclude certification of the Settlement Class as the settlement obviates the need to determine which Xywav patients would or could have been prescribed Xyrem instead. *See In re ZF-TRW Airbag Control Units Prod. Liab. Litig.*, 2023 WL 6194109, at *12 (C.D. Cal. July 31, 2023) ("A class may be certifiable for settlement even though it may not be certifiable for litigation where the settlement obviates the need to litigate individualized issues that would make a trial unmanageable.") (internal quotations and citations omitted).

d. Class Representative Plaintiffs' claims are typical of the claims of the Settlement Class members for purposes of the Settlement. Class Representative Plaintiffs' injuries (supracompetitive prices) stem from the same course of conduct (Defendants' anticompetitive

conduct) and seek to recover pursuant to the same legal theories (unlawful restraint of trade and monopolization).

e. Class Representative Plaintiffs and their counsel have fairly and adequately protected the interests of the Settlement Class members in this action, and will continue to do so. Each plaintiff has the same goal as members of the Settlement Class (*i.e.*, proving the Defendants acted unlawfully and that they paid, and continue to pay, overcharges as a result). Class Representative Plaintiffs' interests are aligned with, and not in conflict with, those of Settlement Class members. The record reflects that each Class Representative Plaintiff has dedicated substantial time and effort to this litigation by working with their counsel; reviewing pleadings; responding to discovery; searching for, collecting, and producing documents; and preparing to sit for depositions, among other things.

f. A class action is superior to all other available methods for fairly and efficiently resolving this action. A class action avoids congesting the Court with the need to repeatedly adjudicate such actions; prevents the possibility of inconsistent results; and allows class members an opportunity for redress that might otherwise be denied.

The Court further finds, for the reasons stated in the Motion, that Class Representative Plaintiffs and co-Lead class counsel should be appointed to represent the Settlement Class. The Court appoints Dena C. Sharp of Girard Sharp LLP and Michael M. Buchman of Motley Rice LLC as co-lead class counsel for the Settlement Class.

C. Final Approval of Settlement

A court may approve a proposed class action settlement only "after a hearing and on finding that it is fair, reasonable, and adequate after considering whether:

> (A) the class representatives and class counsel have adequately represented the class; (B) the proposal was negotiated at arm's length; (C) the relief provided for the class is adequate, taking into account: (i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims; (iii) the terms of any proposed award of attorney's fees, including timing of payment; and (iv) any agreement required to be identified under Rule 23(e)(3); and (D) the proposal treats class members equitably relative to each other.

Fed. R. Civ. P. 23(e)(2).[3] In reviewing the proposed settlement, the Court need not address whether the settlement is ideal or the best outcome, but only whether the settlement is fair, free of collusion, and consistent with plaintiff's fiduciary obligations to the class. *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998).

For the reasons detailed below, the Court finds that the proposed settlement is fair, reasonable, and adequate under the Rule 23(e)(2) factors. Continued litigation against the Settling Defendants involves substantial risks and would complicate the litigation against the Remaining Defendants. Defendants dispute Class Representative Plaintiffs' theories of anticompetitive harm and causation. There would also have been a battle of the experts regarding, among other things, whether the Settling Defendants' agreements with Jazz were anticompetitive; the anticompetitive effects of Settling Defendants' conduct; and what damages, if any, should be awarded. Proceeding to trial as against the Settling Defendants would have been costly, recovery was not guaranteed, and there was the possibility of protracted appeals. The Amneal/Lupin Settlement avoids these risks while providing substantial benefits to the Settlement Class, was the product of arms-length negotiations among experienced counsel, and there is no factual basis to support any allegation of collusion or self-dealing.

[3] Prior to the amendments to Rule 23, which took effect December 1, 2018, the Ninth Circuit had enumerated a similar list of factors to consider in evaluating a proposed class settlement. *See Churchill Vill., L.L.C. v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004) (enumerating the following factors: "(1) the strength of the plaintiffs' case; (2) the risk, expense, complexity, and likely duration of further litigation; (3) the risk of maintaining class action status throughout the trial; (4) the amount offered in settlement; (5) the extent of discovery completed and the stage of the proceedings; (6) the experience and views of counsel; (7) the presence of a governmental participant; and (8) the reaction of the class members to the proposed 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, this Court applies the framework of Rule 23 while "continuing to draw guidance from the Ninth Circuit's factors and relevant precedent." *Hefler v. Wells Fargo & Co.*, 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. Class Representative Plaintiffs and Class Counsel Have Adequately Represented the Settlement Class

In the Preliminary Approval Order, the Court found that the Class Representative Plaintiffs, as well as co-lead class counsel and members of the Plaintiffs' Steering Commitee ("Class Counsel"), adequately represented the interests of the certified classes. The Court has seen no evidence to contradict its previous finding, and the Court reconfirms it here with respect to Class Representative Plaintiffs and Class Counsel, who have vigorously prosecuted this action through discovery, motion practice, mediation, and preparations for trial. Class Counsel "possessed sufficient information to make an informed decision about settlement." *Hefler*, 2018 WL 6619983, at *6.

2. The Class Settlement Was Negotiated at Arm's Length

The Amneal/Lupin Settlement is the product of serious, non-collusive, arm's length negotiations by experienced counsel. Prior to reaching a settlement, the parties engaged in extensive fact discovery. The record was thus sufficiently developed to full inform the parties and enable them to evaluate the strengths and weaknesses of their respectives positions. *See Nat'l Rural Telecomm. Coop. v. DIRECTV*, 221 F.R.D. 523, 528 (C.D. Cal. 2004); 4 A. Conte & H. Newberg on Class Actions at § 11.24 (4th ed. 2002) ("A court is more likely to approve a settlement if most of the discovery is completed because it suggests that the parties arrived at a compromise based on a full understanding of the legal and factual issues surrounding the case.").

The Court has independently and carefully reviewed the record for any signs of collusion and self-dealing and finds no such signs. The Court finds that Class Counsel did not compromise the claims of the Settlement Class in exchange for higher fees as there has been no agreement concerning attorneys' fees or otherwise disadvantaging the Settlement Class.

3. The Settlement Provides Adequate Recovery to the Class

In the Rule 23(e) analysis, "[t]he relief that the settlement is expected to provide to class members is a central concern." Fed. R. Civ. P. 23(e)(2)(C)-(D) advisory committee's note to 2018 amendment. "The Court therefore examines 'the amount offered in settlement.'" *Hefler*, 2018 WL 6619983 *8 (quoting *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998)).

The Settling Defendants have agreed to pay $3.4 million, which will be used to pay costs and expenses incurred in the ongoing litigation against the Remaining Defendants. The terms provide

substantial benefit to Settlement Class members, as the proceeds of the Settlement will be used to advance the pursuit of recoveries from the Remaining Defendants. The Amneal/Lupin Settlement does not encumber other, separate claims that class members might have, nor does it prevent the Settlement Class from seeking the full measure of the anticompetitive overcharge damages that may be recovered from Jazz and Hikma. The Court finds that this recovery is fair, reasonable, and adequate given the risks of proceeding to trial against the Settling Defendants and the continued availability of recoveries from the Remaining Defendants.

4. The Risk of Continued Litigation

The amount provided for in the Amneal/Lupin Settlement is also reasonable in light of the risks of continued litigation. There are substantial disputes as to whether Class Representative Plaintiffs will be able to prove at trial that Amneal and Lupin's conduct, as later-filing generics, caused the anticompetitive overcharges that the Class has paid. Both sides believed they had persuasive facts to support their positions. Defendants would have attacked Class Representative Plaintiffs' theories of anticompetitive harm and causation at summary judgment. Trial would have involved a clash of expert analysis as to: whether the Settling Defendants' agreements with Jazz were anticompetitive; the anticompetitive effects of Settling Defendants' conduct; and what damages, if any, should be awarded. Success at trial was far from guaranteed. Amneal and Lupin were prepared to assert procompetitive justifications and causation and injury affirmative defenses. And even if Class Representative Plaintiffs succeeded at trial, appeals would undoubtedly have followed.

5. Attorneys' Fees and Expenses

The parties have reached no agreement regarding the amounts of attorneys' fees, expenses, and service wards to be paid. *See, e.g.*, *Hyundai.*, 926 F.3d at 569-70 (rejecting fairness objection because class 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"). Class Representative Plaintiffs and Class Counsel have not sought the payment of any attorneys' fees or the reimbursement of any accrued expenses from the Settlement Fund. This factor thus weighs in favor of approval.

6. Other Agreements

The Court is required to consider "any agreements required to be identified under Rule 23(e)(3)." The Court has reviewed the Settlement Agreement and relevant accompanying materials. The Court is also aware that the Amneal/Lupin Settlement provides for the creation of a escrow account to hold assets on behalf of the Settlement Class and for use in the continued litigation against the Remaining Defendants for the benefit of the Settlement Class. The Court find that such an agreement is appropriate.

7. The Settlement is Reasonable and Treats Class Members Equitably

The Settlement Fund of $3,400,000 and any accrued interest or earnings after deposit will be held in escrow and used to pay litigation costs and expenses incurred in Class Representative Plaintiffs' continued litigation against the remaining Defendants. The relief thus treats class members equitably relative to each other because the class will benefit from the continued litigation against the Remaining Defendants.

8. The Response of Class Members

Out of the thousands of notices delivered and the millions of impressions from banner and social media ads, sixteen opt-outs and no objections have been received. ECF 547 at 4. These figures represent a very positive response from the class. *See Churchill,* 361 F.3d at 577 (noting a court may infer appropriately that a class action settlement is fair, adequate, and reasonable when few class members object to it); *Zepeda v. PayPal, Inc*., 2017 WL 1113293, at *16 (N.D. Cal. Mar. 24, 2017) ("[T]he indisputably low number of objections and opt-outs, standing alone, presents a sufficient basis upon which a court may conclude that the reaction to settlement by the class has been favorable); *Cruz v. Sky Chefs, Inc.*, 2014 WL 7247065, at *5 (N.D. Cal. Dec. 19, 2014) ("A court may appropriately infer that a class action settlement is fair, adequate, and reasonable when few class members object to it."). Accordingly, the response of the Settlement Class weighs in favor of approval.

D. Releases and Effect of This Order

By operation of this Order and Judgment, once the Settlement becomes Final as set forth in the Settlement Agreement, Settlement Class members, including the Class Representative Plaintiffs,

release and forever discharge and hold harmless the Settling Defendants and the Released Parties of any and all Releaseed Claims. The claims of Class Representative Plaintiffs against the Settling Defendants are hereby dismissed with prejudice.

E. Costs of Administering the Settlement

The Settlement Administrator has submitted $195,926.52 in invoices to-date and projects that it will incur approximately $5,000 in additional billing to complete the notice program and related activities. Given the uncertainty in the final amounts needed to complete settlement administration, the Court authorizes payment to the Settlement Administrator of *up to* $203,000.00. Class Counsel shall, however, only authorize payments to the Settlement Administrator for actual costs incurred. Any difference between the actual costs incurred by the Settlement Administrator and the $203,000.00 approved amount shall remain a part of the Settlement Fund.

F. Other Effects of This Order

No action taken by the parties, either previously or in connection with the negotiations or proceedings connected with the Settlement, shall be deemed or construed to be an admission of the truth or falsity of any claims or defenses heretofore made or an acknowledgment or admission by any party of any fault, liability or wrongdoing of any kind whatsoever to any other party. Neither the Settlement nor any act performed or document executed pursuant to or in furtherance of the Settlement: (a) is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any claim made by the Settlement Class members or Class Counsel, or of any wrongdoing or liability of the persons or entities released under this Order and Judgment and the Settlement, or (b) is or may be deemed to be, or may be used as an admission of, or evidence of, any fault or omission of any of the persons or entities released under this Order and Judgment and the Settlement, in any proceeding in any court, administrative agency, or other tribunal.

This Order and Judgment shall constitute a final judgment under Federal Rule of Civil Procedure 54(b) binding the Released Parties and Settlement Class members with respect to the Released Claims.

No payments shall be made from the Settlement Fund, or from any account holding the Settlement Fund, without the written authorization of Class Counsel.

No Settlement Class member or any other person may sue or have any claim or cause of action against the Class Representative Plaintiffs, Class Counsel or any person designated by Class Counsel, or the Settlement Administrator arising from or relating to the Settlement, the Released Claims, or the litigation.

Without affecting the finality of the Judgment hereby entered, the Court reserves exclusive jurisdiction over the implementation of the Settlement.

There is no just reason for delay in the entry of this Order and Judgment, and immediate entry by the Clerk of the Court is expressly directed.

Dated: _____ _____, 2024

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Hon. Richard Seeborg
Chief U.S. District Court Judge