

1 **BERNSTEIN LITOWITZ BERGER**  
 2 **& GROSSMANN LLP**  
 3 BRETT M. MIDDLETON (Bar No. 199427)  
 4 12481 High Bluff Drive, Suite 300  
 5 San Diego, California 92130  
 6 Tel: (858) 793-0070  
 7 Fax: (858) 293-0323  
 8 brettm@blbglaw.com

6 *Attorneys for Plaintiff International Union*  
 7 *of Operating Engineers Local 478*

8 *[Additional Counsel on Signature Page]*

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

13 INTERNATIONAL UNION OF  
 14 OPERATING ENGINEERS LOCAL 478,  
 15 Derivatively on Behalf of Nominal Defendant  
 16 IMPAX LABORATORIES, INC.,

16 Plaintiff,

17 vs.

18 LARRY HSU, G. FREDERICK  
 19 WILKINSON, LESLIE Z. BENET, ROBERT  
 20 L. BURR, ALLEN CHAO, NIGEL T.  
 21 FLEMING, MICHAEL MARKBREITER,  
 22 MICHAEL J. NESTOR, MARY K.  
 23 PENDERGAST, BRYAN M. REASONS,  
 24 and PETER R. TERRERI,

23 Defendants.

Case No.: 14-cv-04980-SC

**STIPULATION AND ~~PROPOSED~~  
 RESCHEDULING ORDER**

SHAREHOLDER DERIVATIVE ACTION

26 WHEREAS, on November 10, 2014, plaintiff International Union of Operating Engineers  
 27 Local 478 (“Plaintiff” or “IUOE”) initiated this shareholder derivative action on behalf of  
 28 nominal defendant Impax Laboratories, Inc. (“Impax”) and against defendants Larry Hsu, G.

1 Frederick Wilkinson, Leslie Z. Benet, Robert L. Burr, Allen Caho, Nigel T. Fleming, Michael  
2 Markbreiter, Michael J. Nestor, Mary K. Pendergast, Bryan M. Reasons, and Peter R. Terreri  
3 (collectively, “Defendants”), by and through their respective counsel;

4 WHEREAS, on November 19, 2014, Plaintiff sent Defendants Waiver of the Service of  
5 Summons forms, which Defendants executed, and now Defendants response to the complaint is  
6 due on January 20, 2015;

7 WHEREAS, on December 17, 2014, Plaintiff IUOE and plaintiff in *Randall K. Wickey v.*  
8 *Larry Hsu, et al.*, No. 14-cv-04266-JD (“*Wickey*”) jointly filed an unopposed motion to  
9 consolidate the *Wickey* and *IUOE* actions, the hearing for which has been set by the Honorable  
10 Judge Donato for January 21, 2015, one day after Defendants’ currently scheduled response date  
11 to the complaint in this action (ECF No. 24);

12 WHEREAS, on December 17, 2014, in light of the pending motion for consolidation,  
13 Judge Donato granted the parties’ stipulated request to vacate Defendants’ scheduled response  
14 date to the complaint in *Wickey*, and ordered the same schedule as proposed in this Stipulation,  
15 with Defendants’ motion to dismiss due either within 45 days of plaintiffs filing an amended  
16 consolidated complaint, or 30 days from the date Judge Donato denies the motion for  
17 consolidation (ECF Nos. 20, 23);

18 WHEREAS, the parties agree that it would be a waste of judicial resources for  
19 Defendants to prepare and file a motion to dismiss prior to Judge Donato’s ruling on plaintiffs’  
20 motion for consolidation;

21 NOW THEREFORE, the undersigned parties, by and through their counsel of record,  
22 stipulate as follows:

- 23 1. The current January 20, 2015 deadline for Defendants’ motion to dismiss is  
24 vacated.
- 25 2. If Judge Donato grants plaintiffs’ motion for consolidation, Defendants shall file  
26 and serve their motion to dismiss within 45 days of plaintiffs filing a consolidated  
27 complaint.

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1 3. If the Court denies plaintiffs' motion for consolidation, Defendants shall file and  
2 serve their motion to dismiss the complaint filed in this action within 30 days of  
3 such ruling.

4 4. The Case Management Conference set for February 24, 2015, is vacated and shall  
5 be set for a future date following a ruling on Defendants' motion to dismiss.

6 DATED: December 23, 2014

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8 **BERNSTEIN LITOWITZ BERGER  
& GROSSMANN LLP**

**LATHAM & WATKINS LLP**

9  
10 By: /s/ Brett M. Middleton  
Brett M. Middleton

By: /s/ Peter A. Wald  
Peter A. Wald

11 Brett M. Middleton (Bar No. 199427)  
12 12481 High Bluff Drive, Suite 300  
13 San Diego, California 92130  
14 Telephone: (858) 793-0070  
Facsimile: (858) 293-0323  
brettm@blbglaw.com

Peter A. Wald (Bar No. 85705)  
Marcy C. Priedeman (Bar No. 258505)  
505 Montgomery St., Suite 2000  
San Francisco, California 94111  
Telephone: (415) 391-0600  
Facsimile: (415) 395-8095  
peter.wald@lw.com  
marcy.priedeman@lw.com

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-and-

16 David L. Wales (admitted *pro hac vice*)  
17 Adam Hollander (admitted *pro hac vice*)  
18 1285 Avenue of the Americas  
19 New York, NY 10019  
20 Telephone: (212) 554-1409  
Facsimile: (212) 554-4444  
davidw@blbglaw.com  
adam.hollander@blbglaw.com

Patrick E. Gibbs (Bar No. 183174)  
140 Scott Drive  
Menlo Park, California 94025-1008  
Telephone: (650) 328-4600  
Facsimile: (650) 463-2600  
patrick.gibbs@lw.com

21 Frank R. Schirripa  
22 HACH ROSE SCHIRRIPA & CHEVERIE LLP  
23 185 Madison Avenue  
24 New York, NY 10016  
25 Telephone: (212) 213-8833  
Facsimile: (212) 779-0028  
fschirripa@hrsclaw.com

*Counsel for Defendants Larry Hsu, G.  
Frederick Wilkinson, Leslie Z. Benet, Robert L.  
Burt, Allen Chao, Nigel T. Fleming, Michael  
Mark Breiter, Michael J. Nestor, Mary K.  
[redacted] and Bryan M. Reasons*

26 *Counsel for Plaintiff Interfac  
27 Operating Engineers Local 77*

*Defendant Impax Laboratories, Inc.*

