

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

In re LIDODERM ANTITRUST LITIGATION

MDL Docket No. 14-md-02521-WHO

THIS DOCUMENT RELATES TO:
END-PAYOR PLAINTIFF ACTIONS

**ORDER PRELIMINARILY APPROVING
SETTLEMENTS, APPROVING NOTICE
AND CLAIMS PLAN, AND APPROVING
PLAN OF ALLOCATION**

1 On March 20, 2018, End-Payor Plaintiffs, on behalf of themselves and the End-Payor Class,
2 entered into separate settlement agreements with (a) defendant Endo Pharmaceuticals Inc. (“Endo”);
3 (b) defendants Teikoku Pharma USA, Inc. and Teikoku Seiyaku Co., Ltd. (together, “Teikoku”); (c)
4 defendants Actavis, Inc. (f/k/a Watson Pharmaceuticals, Inc.), Watson Laboratories, Inc., Actavis plc,
5 Anda Inc., Anda Pharmaceuticals, Inc., and Valmed Pharmaceuticals, Inc. (together, “Watson” and
6 together with Endo and Teikoku, “Defendants”) (the “Settlement Agreements” or “Settlements”). The
7 Court has considered End-Payor Plaintiffs’ Motion for Preliminary Approval of Settlements, Approval
8 of Notice and Claims Plan, and Approval of Plan of Allocation, which was not opposed, and on April
9 24, 2018, held a hearing concerning the motion. The Court finds that the Settlements warrant
10 preliminary approval and that notice of the Settlements should be distributed to the End-Payor Class.

11 The Court **GRANTS** the Motion and **ORDERS** as follows:

12 1. Terms capitalized in this Order and not otherwise defined herein have the same
13 meanings as those used in the Settlement Agreements and exhibits thereto.

14 **I. Previously Certified Class**

15 2. In light of this Court’s previous order dated February 21, 2017 (ECF 670) certifying the
16 End-Payor Class pursuant to Fed. R. Civ. P. 23(a) and (b)(3), the exclusion notices received during the
17 opt-out period established by the order, and the now proposed Settlements, the Class is defined as
18 follows:

- 19 (a) All persons and entities in the United States and its territories who, in
20 Arizona, California, Florida, Kansas, Maine, Massachusetts, Minnesota,
21 Nevada, New Hampshire, New Mexico, New York, North Carolina, North
22 Dakota, South Dakota, Tennessee, West Virginia, or Wisconsin (“Class
23 States”), for consumption by themselves or their family member, or by their
24 insureds, plan participants or beneficiaries, paid and/or provided
25 reimbursements for some or all of the purchase price of:
- 26 i. Branded Lidoderm for the time period August 23, 2012 through
27 September 14, 2013; and/or
 - 28 ii. AB-rated generic Lidoderm for the time period September 15, 2013
through August 1, 2014;

-and-

1 (b) Third-party payors Cigna, MedImpact Healthcare Systems, Inc.,
2 Comprehensive Health Management, Inc. Part D, and Express Scripts Senior
3 Care to the extent they provided, under their Medicare Part D plans,
4 reimbursements for some or all of the price of branded Lidoderm purchased in
5 Class States for the time period September 15, 2013 through August 1, 2014.

6 Excluded from the End-Payor Class are:

- 7 (a) Defendants and their officers, directors, management, employees, subsidiaries,
8 and affiliates;
- 9 (b) Those who, after September 15, 2013, paid and/or provided reimbursements
10 for branded Lidoderm and did not purchase or reimburse for generic
11 Lidoderm, except third-party payors Cigna, MedImpact Healthcare Systems,
12 Inc., Comprehensive Health Management, Inc. Part D, or Express Scripts
13 Senior Care for their Part D insurance;
- 14 (c) Government entities, other than government-funded employee benefit plans;
- 15 (d) Fully insured health plans (*i.e.*, plans that purchased insurance that covered
16 100 percent of the plan's reimbursement obligations to all of its members);
- 17 (e) "Single flat co-pay" consumers who purchased Lidoderm or generic Lidoderm
18 only via a fixed dollar co-payment that does not vary on the basis of the
19 purchased drug's status as branded or generic (*e.g.*, \$20 for both branded and
20 generic drugs);
- 21 (f) "Flat generic co-pay" consumers who, after September 15, 2013, purchased
22 generic Lidoderm via a fixed dollar copayment (*e.g.* \$10 for generic drugs)
23 regardless of the co-payment applicable to branded drugs;
- 24 (g) Consumers who purchased or received Lidoderm or its AB-rated generic
25 equivalent through a Medicaid program only;
- 26 (h) Pharmacy benefit managers; and
- 27 (i) The judges in this case and members of their immediate families.

28 3. The following entities are excluded from the End-Payor Class, as they previously
excluded themselves from the Class and have not sought to opt back in: Carter Bank &
Trust; CVS Health Corporation; Darby Dental Supply, LLC; Powell's City of Books; Rite Aid

1 Corporation; The Western Union Co.; Wisconsin Evangelical Lutheran Synod; and Wood
2 Group Management Services, Inc. *See* Order Regarding Opt-Outs, ECF 946 (Dec. 28, 2017)¹.

3 **II. Preliminary Approval**

4 4. This Court has jurisdiction over this action and each of the parties to the Settlements.

5 5. The Court finds that the proposed Settlements, which were arrived at by Court-ordered
6 mediation under the auspices of Chief Magistrate Judge Joseph C. Spero and arm's-length negotiations
7 by experienced counsel after over four years of litigation, will likely warrant final approval as fair,
8 reasonable, and adequate and that notice of the Settlements should be sent to the End-Payor Class.

9 6. The Court will make a final determination concerning the fairness, reasonableness, and
10 adequacy of the Settlements after further consideration at a final approval hearing.

11 7. Pending final approval of the Settlement and the entry of final judgment, any and all
12 proceedings (other than those incidental to the settlement process) against Defendants in the Action
13 and *Government Employees Health Association, Inc. v. Endo Pharmaceuticals Inc., et al.*, No. 14-
14 2180 (N.D. Cal.) are stayed.

15 8. The Settlement Fund shall be maintained as a "qualified settlement fund" consistent with
16 the terms of the Settlements. The Court appoints Computershare Trust Co., N.A., as Escrow Agent.

17 9. Neither the contents of this Order nor the Settlement Agreement nor any other
18 Settlement-related document or related proceedings shall constitute, be construed as or be deemed to
19 be evidence of or an admission or concession by any Defendant as to the validity of any claim that has
20 been or could have been asserted against a Defendant or as to any liability by a Defendant to the End-
21 Payor Class.

22 **III. Notice and Claims Plan**

23 10. The Court finds that the plan for distributing notice of the Settlements to the End-Payor
24 Class satisfies the requirements of Fed. R. Civ. P. 23(e)(1) and due process and is a reasonable manner
25 of distributing notice to class members who would be bound by the Settlements.

26 _____
27 ¹ The End-Payor Class includes the entities that previously filed opt-out requests, subsequently
28 withdrew those requests and re-joined in the End-Payor Class. Those entities are identified in ECF 997.

1 11. The Court appoints Kurtzman Carson Consultants (“KCC”) as Notice and Claims
2 Administrator.

3 12. The Court approves the Long-Form Notice and Short Form Notices, Exhibits D-F to the
4 Settlement Agreements, as amended and submitted at ECF 1014. The Notices apprise the End-Payor
5 Class of the essential terms of the Settlements, their legal rights and options, the steps class members
6 must take to object to the Settlements and submit claims, information concerning Class Counsel’s
7 request for payment of attorneys’ fees, expenses, and service awards, and all relevant deadlines.

8 13. The Court approves the claim forms, as amended, as fair, reasonable, and adequate.

9 14. The Court finds that no further opportunity to opt-out is required under Rule 23(e)(4).

10 15. Defendants shall provide notice of the Settlements as required by 28 U.S.C. § 1715.

11 **IV. Plan of Allocation**

12 16. The Court finds that the Plan of Allocation is fair, reasonable, and adequate.

13 17. Although certain large insurers (which are identified in ECF 997) that had previously
14 opted out of the End-Payor Class and have decided to return to the End-Payor Class will receive an
15 initial portion of their claims payment before other claimants, the insurers will only receive their *pro*
16 *rata* share of the settlement proceeds and their initial payment will not delay the distribution of
17 settlement funds to other class members.

18 **V. Schedule**

19 18. The parties shall adhere to the following schedule:

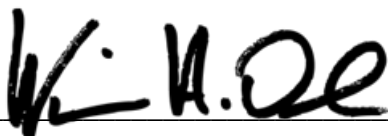
Event	Calendar Date²	Days After Entry of Preliminary Approval Order
Activation of website and toll-free number	May 23, 2018	21 days
Complete mailing of Long-Form Notice to third-party payors.	June 1, 2018	30 days

20
21
22
23
24
25
26
27
28
² The dates in the “Calendar Date” column assume that preliminary approval is granted on May 2, 2018.

1	Initiate publication notice	June 6, 2018	35 days
2	Complete publication notice	July 31, 2018	90 days
3	End-Payor Plaintiffs shall submit (1) a motion for	July 31, 2018	90 days
4	final approval and (2) a motion for the payment of		
5	attorneys' fees, reimbursement of expenses, and		
6	service awards to the Class Representatives		
7	Deadline for submission of oppositions / objections	August 21, 2018	111 days
8	to final approval and fee motions		
9	Deadline for submission of notices of intent to	August 21, 2018	111 days
10	appear at the fairness hearing		
11	Deadline for End-Payor Plaintiffs to file replies in	September 4,	125 days
12	support of final approval and fee motions	2018	
13	Hearing on final approval and fee motions	September 12,	133 days
14		2018	
15	Postmark date for members of the End-Payor Class	October 1, 2018	152 days
16	to submit claims and any required supporting		
17	material		
18	First distribution of settlement funds ³	Early March 2019	10-11 months

18 **IT IS SO ORDERED.**

20 DATED: May 1, 2018

19 
 21 THE HONORABLE WILLIAM H. ORRICK
 22 United States District Court Judge

26 _____
 27 ³ The first distribution follows Endo's Second Payment, which is subject to the terms of the Settlement
 28 Agreement.