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

12
13 In re LIDODERM ANTITRUST
LITIGATION

MDL Docket No. 14-md-02521-WHO

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15 This document relates to all:
16 END-PAYOR ACTIONS
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**NOTICE OF AMENDED END-PAYOR
SUMMARY NOTICES AND
DEFENDANTS' NON-OPPOSITION TO
END-PAYOR PLAINTIFFS' MOTION
TO AUTHORIZE DISTRIBUTION OF
NOTICE**

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**NOTICE OF AMENDED END-PAYOR SUMMARY NOTICES AND DEFENDANTS' NON-
OPPOSITION TO END-PAYOR PLAINTIFFS' MOTION TO AUTHORIZE DISTRIBUTION OF
NOTICE**

Case No. 3:14-md-02521-WHO

1 On May 30, 2017, End-Payor Plaintiffs filed a Motion to Authorize Distribution of Notice to the
2 End-Payor Class (“Notice Motion”). ECF 741. Since the filing of the Notice Motion, End-Payor
3 Plaintiffs and Defendants have continued to meet and confer regarding Defendants’ position on the
4 motion.

5 As discussed with the Court during the June 6, 2017 Case Management Conference, Defendants
6 have requested one modification to End-Payor Plaintiffs’ proposed Summary Notices, which were
7 attached as Exhibits 2 and 3 to the Declaration of Dena C. Sharp in support of the Notice Motion.
8 ECFs 741-3 and 741-4. End-Payor Plaintiffs do not oppose Defendants’ requested modification and
9 have attached revised Summary Notices as Exhibits 1 and 2 to this filing. With the substitution of the
10 revised Summary Notices, Defendants do not oppose the Notice Motion, but reserve the right to seek
11 relief if the Ninth Circuit grants, or orders further briefing on, Defendants’ petition under Federal Rule
12 of Civil Procedure 23(f).

13 End-Payor Plaintiffs also submit with this filing a revised proposed order granting the Notice
14 Motion and approving the revised Summary Notices.

15
16 Dated: June 8, 2017

17 Respectfully submitted by:

18 **For the End-Payor Plaintiffs:**

19 /s/ Dena C. Sharp

20 Daniel C. Girard (SBN 114826)

21 Dena C. Sharp (SBN 245869)

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8 *Attorneys for Defendant Endo*
9 *Pharmaceuticals Inc.*

10 **ATTESTATION STATEMENT**

11 I, Dena C. Sharp, am the ECF User whose identification and password are being used to file this
12 NOTICE OF AMENDED END-PAYOR SUMMARY NOTICES AND DEFENDANTS' NON-
13 OPPOSITION TO END-PAYORS PLAINTIFFS' MOTION TO AUTHORIZE DISTRIBUTION OF
14 NOTICE. Pursuant to Civil L.R. 5-1(i)(3), I attest under penalty of perjury that concurrence in this
15 filing has been obtained from all counsel.

16 */s/ Dena C. Sharp* _____
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EXHIBIT 1

LEGAL NOTICE

**If you paid for Lidoderm
or its generic equivalent
(lidocaine patch 5%), a
class action lawsuit may
affect your rights.**

1-855-298-0603

www.lidodermantitrustlitigation.com

You may be affected by a class action lawsuit against Endo Pharmaceuticals Inc., Teikoku Pharma USA, Inc., Teikoku Seiyaku Co., Ltd., Actavis, Inc., Watson Laboratories, Inc., and Allergan, PLC (together "Defendants"). The lawsuit is brought by consumers and third-party payors of branded and generic Lidoderm ("End-Payors") who allege that Defendants violated state laws by entering into an agreement to delay the availability of generic versions of Lidoderm. End-Payor Plaintiffs seek reimbursement of the amounts allegedly overcharged. Defendants deny any wrongdoing and the Court has not found that Defendants violated any law.

ARE YOU AFFECTED?

As a consumer, you may be a member of the End-Payor Class if, in AZ, CA, FL, KS, MA, ME, MN, NC, ND, NH, NM, NY, NV, SD, TN, WI, and/or WV and for consumption by yourself or your family member, you paid for some or all of the purchase price of (i) branded Lidoderm for the time period August 23, 2012 through September 14, 2013; and/or (ii) AB-rated generic Lidoderm for the time period September 15, 2013 through August 1, 2014.

The End-Payor Class Does NOT Include:

(a) Defendants and their officers, directors, management, employees, subsidiaries, and affiliates; (b) the judges in this case and members of their immediate families, and those who (c) after September 15, 2013, paid and/or provided reimbursements for branded Lidoderm and did not purchase or reimburse for generic Lidoderm; (d) purchased Lidoderm or generic Lidoderm only via a "single flat co-pay," i.e. a fixed dollar co-payment that does not vary on the basis of the purchased drug's status as branded or generic (e.g., \$20 for both branded and generic drugs); (e) purchased Lidoderm or generic Lidoderm only after September 15, 2013, via a "flat generic co-pay, i.e. a fixed dollar copayment (e.g., \$10 for generic drugs) regardless of the co-payment applicable to branded drugs; and (f) purchased or received Lidoderm or its AB-rated generic equivalent through a Medicaid program only.

YOUR RIGHTS AND OPTIONS

DO NOTHING AND STAY IN THE END-PAYOR CLASS:

If you do nothing you will stay in the End-Payor Class and will be permitted to share in any recovery that may occur in this case. You will be bound by past and any future court rulings on, or settlement of, the claims against Defendants, and you will not be able to pursue your own claims against them.

EXCLUDE YOURSELF FROM THE END-PAYOR CLASS:

If you exclude yourself from the End-Payor Class (i.e. opt out), you will not be entitled to any recovery that may occur in this case. You will not be bound by any past or future rulings against Defendants and may pursue your own claims against Defendants. The deadline to exclude yourself from the End-Payor Class is: September XX, 2017.

WANT MORE INFORMATION?

Go to the website, call toll-free, or write to Lidoderm End-Payor Notice Administrator, P.O. Box XXXXX, City, ST XXXXX-XXXX-3229, for more information, including more complete information regarding End-Payor Class membership and your rights.

A trial in this case, *In re Lidoderm Antitrust Litigation*, No. 3:14-md-02521, is currently scheduled to begin on December 4, 2017. You may hire your own lawyer at your own expense, but you do not have to.

EXHIBIT 2

LEGAL NOTICE

If you paid for Lidoderm or its generic equivalent (lidocaine patch 5%) for your members, employees, insureds, participants, or beneficiaries, a class action lawsuit may affect your rights.

1-855-298-0603

www.lidodermantitrustlitigation.com

You may be affected by a class action lawsuit against Endo Pharmaceuticals Inc., Teikoku Pharma USA, Inc., Teikoku Seiyaku Co., Ltd., Actavis, Inc., Watson Laboratories, Inc., and Allergan, PLC (together "Defendants"). The lawsuit is brought by consumers and third-party payors of branded and generic Lidoderm ("End-Payors") who allege that Defendants violated state laws by entering into an agreement to delay the availability of generic versions of Lidoderm. End-Payor Plaintiffs seek reimbursement of the amounts allegedly overcharged. Defendants deny any wrongdoing and the Court has not found that Defendants violated any law.

ARE YOU AFFECTED?

As a third-party-payor, you may be a member of the End-Payor Class if, in AZ, CA, FL, KS, MA, ME, MN, NC, ND, NH, NM, NY, NV, SD, TN, WI, and/or WV and for consumption your insureds, plan participants or beneficiaries, you paid and/or provided reimbursements for some or all of the purchase price of (i) branded Lidoderm for the time period August 23, 2012 through September 14, 2013; and/or (ii) AB-rated generic Lidoderm for the time period September 15, 2013 through August 1, 2014.

If not already included in the above categories, the End-Payor Class also includes third-party payors CVS Caremark, Cigna, Envision Pharmaceutical Services, MedImpact Healthcare Systems, Inc., Comprehensive Health Management, Inc. Part D, and Express Scripts Senior Care to the extent they provided, under their Medicare Part D plans, reimbursements for some or all of the price of branded Lidoderm purchased in Class States for the time period September 15, 2013 through August 1, 2014.

The End-Payor Class Does NOT Include: (a) Defendants and their officers, directors, management, employees, subsidiaries, and affiliates; (b) those who, after September 15, 2013, paid and/or provided reimbursements for branded Lidoderm and did not purchase or reimburse for generic Lidoderm, except third-party payors CVS Caremark, Cigna, Envision Pharmaceutical Services, MedImpact Healthcare Systems, Inc., Comprehensive Health Management, Inc. Part D, or Express Scripts Senior Care for their Part D insurance; (c) government entities, other than government-funded employee benefit plans; (d) fully insured health plans (i.e., plans that purchased insurance that covered 100 percent of the plan's reimbursement obligations to all of its members); (e) pharmacy benefit managers; and (f) the judges in this case and members of their immediate families.

YOUR RIGHTS AND OPTIONS

DO NOTHING AND STAY IN THE END-PAYOR CLASS: If you do nothing you will stay in the End-Payor Class and will be permitted to share in any recovery that may occur in this case. You will be bound by past and any future court rulings on, or settlement of, the claims against Defendants, and you will not be able to pursue your own claims against them.

EXCLUDE YOURSELF FROM THE END-PAYOR CLASS: If you exclude yourself from the End-Payor Class (*i.e.* opt out), you will not be entitled to any recovery that may occur in this case. You will not be bound by any past or future rulings against Defendants and may pursue your own claims against Defendants. The deadline to exclude yourself from the End-Payor Class is: September XX, 2017. This will be the only opportunity for third-party payors to exclude themselves from the End-Payor Class.

WANT MORE INFORMATION?

Go to the website, call toll-free, or write to Lidoderm End-Payor Notice Administrator, P.O. Box XXXXXX, City, ST XXXXX-XXXX-3229, for more information, including more complete information regarding End-Payor Class membership and your rights.

A trial in this case, *In re Lidoderm Antitrust Litigation*, No. 3:14-md-02521, is currently scheduled to begin on December 4, 2017. You may hire your own lawyer at your own expense, but you do not have to.

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**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

**[PROPOSED] ORDER APPROVING
NOTICE PLAN AND AUTHORIZING
DISTRIBUTION OF NOTICE TO THE
END-PAYOR CLASS**

1 The Court has considered End-Payor Plaintiffs' Motion to Authorize Distribution of Notice to
2 the End-Payor Class (ECF 741), Notice of Amended End-Payor Summary Notices and Defendants'
3 Non-Opposition to End-Payor Plaintiffs' Motion to Authorize Distribution of Notice (ECF 747), and
4 including all related arguments and briefing presented.

5 The Court finds that the proposed notice program and forms of notice satisfy the requirements
6 of Fed. R. Civ. P. 23(c)(2), and hereby **GRANTS** the Motion and **ORDERS** as follows:

7 1. The Court appoints Kurtzman Carson Consultants ("KCC") as Notice Administrator.
8 2. The Court approves the Long-Form Notice attached as Exhibit 1 to the Declaration of
9 Dena Sharp filed concurrently with End-Payor Plaintiffs' Motion (ECF 741-2) and the amended
10 Summary Notices attached as Exhibit 1 and 2 to the Notice of Amended End-Payor Summary Notices
11 and Non-Opposition to End-Payor Plaintiffs' Motion to Authorize Distribution of Notice (ECFs 747-
12 1 and 747-2).

13 3. End-Payor Plaintiffs and KCC shall adhere to the following schedule:
14 a. Within 14 days of this Order: activate website and toll-free number
15 b. Within 21 days of this Order: complete mailing of Long-Form Notice to third-
16 party payors
17 c. Within 30 days of this Order: initiate publication notice
18 d. Within 70 days of this Order (or by August 15, 2017, whichever is sooner):
19 complete publication notice.

20 4. Members of the End-Payor Class may request to be excluded from the Class.
21 Exclusion requests must be postmarked no later than September 14, 2017. KCC shall monitor and
22 record any and all opt-out requests that are received.

23 5. By September 14, 2017, KCC shall file a declaration confirming that it has distributed
24 Notice in accordance with the Notice Plan and this Order.

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IT IS SO ORDERED.

DATED: _____

THE HONORABLE WILLIAM H. ORRICK
United States District Court Judge