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

In re LIDODERM ANTITRUST LITIGATION

Master File No. 14-md-02521-WHO

MDL No. 2521

THIS DOCUMENT RELATES TO:
END-PAYOR PLAINTIFF ACTIONS

**MOTION TO AUTHORIZE
DISTRIBUTION OF NOTICE TO THE
END-PAYOR CLASS**

ORAL ARGUMENT REQUESTED

Date: July 5, 2017

Time: 2:00 p.m.

Courtroom: 2, 17th Floor

The Honorable William H. Orrick

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NOTICE OF MOTION AND MOTION

TO THE PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on July 5, 2017, at 2:00 p.m., before the Honorable William H. Orrick, plaintiffs Allied Services Division Welfare Fund, City of Providence, International Union of Operating Engineers Local 49 Health and Welfare Fund, International Union of Operating Engineers Local 132 Health and Welfare Fund, Iron Workers District Council of New England Welfare Fund, NECA-IBEW Welfare Trust Fund, United Food and Commercial Workers Local 1776 & Participating Employers Health and Welfare Fund, Welfare Plan of the International Union of Operating Engineers Locals 137, 137A, 137B, 137C, 137R, and Letizia Gallotto (“End-Payor Plaintiffs”) will and do hereby move the Court, pursuant to Federal Rule of Civil Procedure 23(c)(2)(B) and the Court’s Order Granting Motions for Class Certification and Denying Daubert Motions (ECF No. 670), for an order approving End-Payor Plaintiffs’ proposed plan for distributing notice to the End-Payor Class (“Notice Plan”) and authorizing the distribution of notice. End-Payor Plaintiffs’ motion is supported by the Declaration of Dena C. Sharp and the exhibits thereto, and End-Payor Plaintiffs also submit a Proposed Order Approving Notice Plan and Authorizing Distribution of Notice to the End-Payor Class.¹

STATEMENT OF THE ISSUE TO BE DECIDED

The issue to be decided is whether the Court should, under Federal Rule of Civil Procedure 23(c)(2)(B), authorize notice to the End-Payor Class in accordance with the proposed Notice Plan.

MEMORANDUM OF LAW

I. INTRODUCTION

End-Payor Plaintiffs respectfully request that the Court enter an order under Federal Rule of Civil Procedure 23(c) approving their proposed form and manner of providing notice of the pendency of this class action to the recently-certified End-Payor Class, and appointing a notice administrator.

End-Payor Plaintiffs’ proposed form of notice complies with the requirements of Rule 23(c). The proposed Long-Form and Summary Notices state in concise and easily understood language the

¹ The schedule set forth in End-Payor Plaintiffs’ Proposed Order is dependent on several factors, including the timing of publications distributed on a monthly basis. If adjustments to the proposed schedule become necessary, End-Payor Plaintiffs will notify the Court.

1 nature of the action, the definition of the certified End-Payor Class, the deadline to opt out of the
2 Class, and the other elements set forth in Rule 23(c)(2)(B). The End-Payor Plaintiffs' proposed Long-
3 Form Notice is substantially similar to the notice this Court has already approved for the Direct
4 Purchaser Class and which has been approved in other cases involving similar allegations and a
5 certified end-payor class. The proposed manner of notice—a combination of direct mail notice to
6 more than 47,000 third-party payors (“TPPs”), publication notice in major magazines selected to reach
7 the millions of consumers in the End-Payor Class, and 170 million internet impressions to be
8 distributed over leading advertising networks and websites—is expected to reach over 80% of the End-
9 Payor Class and satisfies Rule 23(c). Similar notice programs have been endorsed by the Ninth Circuit
10 and are routinely approved in comparable class actions in this District and around the country.

11 End-Payor Plaintiffs also propose that Kurtzman Carson Consultants (“KCC”) serve as the
12 notice administrator for the End-Payor Class. KCC has been appointed as the class notice and/or
13 claims administrator in numerous cases, including several pharmaceutical antitrust class actions
14 brought on behalf of end-payors, and is well-qualified to serve as notice administrator in this action.

15 **II. THE NOTICE PLAN SHOULD BE APPROVED**

16 **A. The Proposed Form of Notice Complies with Rule 23**

17 Pursuant to Federal Rule of Civil Procedure 23(c)(2)(B), “[t]he notice must clearly and
18 concisely state in plain, easily understood language:

- 19 (i) the nature of the action;
- 20 (ii) the definition of the class certified;
- 21 (iii) the class claims, issues, or defenses;
- 22 (iv) that a class member may enter an appearance through an attorney if the member so
23 desires;
- 24 (v) that the court will exclude from the class any member who requests exclusion;
- 25 (vi) the time and manner for requesting exclusion; and
- 26 (vii) the binding effect of a class judgment on members under Rule 23(c)(3).”

27 End-Payor Plaintiffs' proposed forms of notice satisfy each of the Rule 23(c)(2)(B) requirements.
28

1 The proposed Long-Form Notice, attached as Exhibit 1 to the Sharp Declaration, is modeled
2 after the Federal Judicial Center’s template notice and is substantially similar to the notice this Court
3 recently approved for the Direct Purchaser Class. The first page of the Long-Form Notice succinctly
4 describes the litigation, the parties’ primary claims and defenses, and the End-Payor Class in concise,
5 easily understood language. The second page includes a chart that clearly sets forth End-Payor Class
6 members’ two options—remain in the End-Payor Class or opt out—and the deadline for submitting an
7 opt out request (which is more than 45 days from the date of dissemination of notice, in accordance
8 with this Court’s order concerning the Direct Purchasers’ notice). End-Payor Plaintiffs’ proposed
9 Long-Form Notice also explains that End-Payor Class members who do not opt out will be bound by
10 the Court’s orders and judgments, as well as any settlement reached in the litigation. The Long-Form
11 Notice displays contact information for KCC and for Co-Lead Counsel, and advises End-Payor Class
12 members that they may appear in the litigation through their own attorney.

13 The Summary Notices (one each for TPPs and consumers), attached as Exhibits 2 and 3 to the
14 Sharp Declaration, likewise provide the information required by Rule 23(c)(2)(B). They use large,
15 bold font to advise readers that they may be a part of the End-Payor Class and provide all necessary
16 information: the basic claims in the litigation, the definition of the End-Payor Class (and relevant
17 exclusions), and the deadline to opt out. Both the Long-Form and TPP Summary Notices explain that
18 TPPs will not have another opportunity to exclude themselves from the End-Payor Class. In addition,
19 the Summary Notices provide the contact information for KCC and the notice website where End-
20 Payor Class members can obtain the Long-Form Notice and additional information concerning the
21 litigation and the End-Payor Class.

22 **B. The Proposed Manner of Notice Complies with Rule 23**

23 Rule 23(c)(2)(B) requires that notice of a class action certified under Rule 23(b)(3) be the “best
24 notice that is practicable under the circumstances, including individual notice to all members who can
25 be identified through reasonable effort.” FED. R. CIV. P. 23(c)(2)(B); *see also Eisen v. Carlisle &*
26 *Jacquelin*, 417 U.S. 156, 177 (1974). “[N]either Rule 23 nor the Due Process Clause
27 requires actual notice to each individual class member.” *Briseno v. ConAgra Foods, Inc.*, 844 F.3d
28 1121, 1128 (9th Cir. 2017). Plaintiffs’ proposed Notice Plan will notify End-Payor Class members of

1 the class certification order by two methods. First, individual notice will be mailed to TPP members
2 of the End-Payor Class. Second, notice will be published and posted for consumer End-Payor Class
3 members. Both methods satisfy the requirements of Rule 23.

4 Plaintiffs propose a direct mailing of the comprehensive, nine-page Long-Form Notice to
5 TPPs. KCC maintains a database containing address information for approximately 47,000 TPPs.
6 Sharp Decl., Ex. 4 (Declaration of Carla Peak, Vice President of Legal Notification Services at KCC
7 (“KCC Decl.”)), ¶ 9. The database is frequently updated and has been refined through KCC’s
8 experience administering notice programs in other cases involving end-payors of prescription drugs.
9 *Id.* at ¶¶ 5, 9. Plaintiffs’ proposal to mail TPPs the full Long-Form Notice satisfies the requirements of
10 Rule 23. *See Bui v. Sprint Corp.*, No. 2:14-CV-02461-TLN-AC, 2016 WL 727163, at *9 (E.D. Cal.
11 Feb. 24, 2016) (approving a method of notice “via first class U.S. mail or its equivalent”). For any
12 mailing returned as undeliverable, KCC will conduct searches to obtain updated mailing information
13 and resend the Long-Form Notice. To extend the reach of the Notice Plan for TPPs, a Summary
14 Notice will be published in the trade journal HR Magazine (circulation to over 275,000 persons and
15 entities), websites SHRM.org (over 7.8 million views per month) and LifeHealthPro.com (955,000
16 views per month), and electronic newsletters for LifeHealth Pro (40,000 subscribers) and HR Daily
17 (275,000 subscribers). KCC Decl., ¶¶ 12-14.

18 The estimated 4.4 million consumers who are members of the End-Payor Class will receive
19 publication notice by way of a Summary Notice, which also explains how End-Payor Class members
20 can obtain additional information. The Summary Notice will be published in three magazines selected
21 to increase the likelihood that the Summary Notice will be read by consumers who are part of the End-
22 Payor Class: Arthritis Today, Good Housekeeping, and People. These magazines are widely
23 circulated, especially among the population of consumers likely to have purchased brand or generic
24 Lidoderm. *Id.*, ¶¶ 23-25. Additionally, the Notice Plan includes targeted internet banner ads designed
25 to reach both TPP and consumer members of the End-Payor Class. KCC will distribute 170 million
26 internet impressions over leading networks, including on the Google Display Network, the Yahoo! ad
27 network, and Facebook. These banner ads will include a link to a dedicated case website, which will
28 provide the key information regarding the End-Payor Class and the litigation; include links to the

1 operative complaint, the Court’s class certification order, and other important documents; and advise
2 End-Payor Class members of their ability to opt out and the deadlines and instructions for doing so.
3 KCC will also maintain call center services that End-Payor Class members can use to obtain
4 information about the case and their options.

5 “Courts have routinely held that notice by publication in a periodical, on a website, or even at
6 an appropriate physical location is sufficient to satisfy due process.” *Briseno*, 844 F.3d at 1129.
7 Similar notice plans—where TPPs receive direct mail notice and both TPPs and consumers receive
8 publication notice—are consistently approved in class actions involving end-payors of pharmaceutical
9 products. *See In re Solodyn (Minocycline Hydrochloride) Antitrust Litig.*, 1:14-md-02503-DJC (D.
10 Mass.), ECF 532 at 20-21 (motion) and ECF 555 (ordering approving notice plan); *In re Nexium*
11 *(Esomeprazole) Antitrust Litig.*, No. 1:12-md-2409 (D. Mass.), ECF 466 at 4-5 (motion) and ECF 573
12 (order approving notice plan); *In re Lupron Mktg. & Sales Practices Litig.*, 228 F.R.D. 75, 84-85 (D.
13 Mass. 2005) (approving notice plan that distributed direct mail to third-party payors and publication
14 notice to the entirety of the class). Outside the prescription drug context, courts likewise frequently
15 authorize the use of publication notice in cases involving products purchased indirectly through retail
16 stores. *See, e.g., Beck-Ellman v. Kaz USA, Inc.*, No. 3:10-CV-02134-H-DHB, 2013 WL 1748729, at
17 *8 (S.D. Cal. Jan. 7, 2013) (“The proposed Class Notice, Publication Notice, and Settlement Website
18 are reasonably calculated to inform potential Class members of the Settlement, and are the best
19 practicable methods under the circumstances. This case primarily involves retail purchases from third
20 party stores to consumers; as a result, Defendants do not have contact information for the majority of
21 Class members.”).

22 Under Plaintiffs’ proposed plan, notice is expected to reach approximately 80% of the End-
23 Payor Class an average of 2.8 times. KCC Decl., ¶ 32. Courts have repeatedly held that notice plans
24 with similar (or less extensive) reach satisfy Rule 23(c)(2)(B). *See, e.g., Nexium*, ECF 466 at 5 (notice
25 program designed to reach 80% of end-payor purchasers); *Spann v. J.C. Penney Corp.*, 314 F.R.D. 312,
26 330 (C.D. Cal. 2016) (approving notice plan designed to reach 75% of class members an average of 2.3
27 times); *Beck-Ellman*, 2013 WL 1748729, at *3 (approving notice plan designed to reach at least 70% of
28 class members).

1 **C. KCC Is Well-Qualified to Serve as Notice Administrator**

2 Shortly after the Court certified the End-Payor Class, counsel for the End-Payor Plaintiffs sent
3 Requests for Proposals to eight well-qualified and experienced notice administration firms seeking
4 estimates on pricing and timing for dissemination of notice, as well as input concerning the most
5 appropriate method for providing notice in this matter. Sharp Decl., ¶ 5. Counsel for End-Payor
6 plaintiffs reviewed the firms' respective submissions and engaged in follow-up inquiries. *Id.* Based
7 on that rigorous process and subject to this Court's approval, End-Payor Plaintiffs have selected KCC
8 to serve as the notice administrator.

9 KCC is a leading notice administration firm that specializes in the distribution of notice in
10 large, nationwide class action litigations. KCC Decl., ¶¶ 3-5. The company has served as notice
11 administrator in numerous antitrust class actions, including cases involving pharmaceutical products,
12 such as *In re Nexium (Esomeprazole) Antitrust Litigation*, No. 1:12-md-2409 (D. Mass.), *In re*
13 *Skelaxin (Metaxalone) Antitrust Litigation*, No. 12-cv-2343 (E.D. Tenn.), as well as *In re NCAA*
14 *Athletic Grant-In-Aid Cap Antitrust Litigation*, No. 14-md-2541 (N.D. Cal.); *In re Korean Ramen*
15 *Indirect Antitrust Litigation*, No. 3:13-cv-4115 (N.D. Cal.); and *In re Lithium Ion Batteries Antitrust*
16 *Litigation*, No. 13-md-02420 (N.D. Cal.). *Id.* at ¶ 5. In *Beck-Ellman*, KCC implemented a publication
17 notice program designed to reach pain relief users—the same demographic as the members of the End-
18 Payor Class in this litigation. 2013 WL 1748729, at *3.

19 By successfully administering notice programs in similar cases, KCC has developed expertise
20 in implementing notice programs involving end-payor classes similar to the certified class here. The
21 End-Payor Class will be well-served by having KCC serve as notice administrator in this matter.

22 **III. CONCLUSION**

23 For the reasons set forth above, End-Payor Plaintiffs respectfully request that the Court
24 approve the Notice Plan, authorize the distribution of notice to the End-Payor Class, and appoint KCC
25 as notice administrator.

1 DATED: May 30, 2017

Respectfully submitted,

2
3 /s/ Dena C. Sharp
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Dena C. Sharp (SBN 245869)
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*Interim Liaison Counsel for Plaintiffs and the
Proposed End-Payor Class*

ATTESTATION

I, Dena C. Sharp, am the ECF User whose identification and password are being used to file this Motion to Authorize Distribution of Notice to the End-Payor Class Pursuant to Civil L.R. 5-1(i)(3), I attest under penalty of perjury that concurrence in this filing has been obtained from all counsel.

DATED: May 30, 2017

/s/ Dena C. Sharp
Dena C. Sharp

CERTIFICATE OF SERVICE

I hereby certify that on May 30, 2017, I electronically filed the foregoing document using the CM/ECF system, which will send notification of such filing to all counsel of record registered in the CM/ECF system.

/s/ Dena C. Sharp
Dena C. Sharp

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

13 In re LIDODERM ANTITRUST LITIGATION

MDL Docket No. 14-md-02521 WHO

14
15 THIS DOCUMENT RELATES TO:
16 END-PAYOR PLAINTIFF ACTIONS
17

**DECLARATION OF DENA C. SHARP IN
SUPPORT OF END-PAYOR PLAINTIFFS'
MOTION TO AUTHORIZE DISTRIBUTION
OF NOTICE TO THE END-PAYOR CLASS**

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28 **DECLARATION OF DENA C. SHARP IN SUPPORT OF END-PAYOR PLAINTIFFS' MOTION TO AUTHORIZE
DISTRIBUTION OF NOTICE TO THE END-PAYOR CLASS
CASE No. 14-MD-02521-WHO**

1 I, Dena C. Sharp, hereby declare as follows:

2 1. I am a partner at Girard Gibbs LLP and am admitted to practice in the Northern District
3 of California. I serve as court-appointed Interim Co-Lead Counsel for End-Payor Plaintiffs and submit
4 this declaration in support of End-Payor Plaintiffs' Motion to Authorize Distribution of Notice to the
5 End-Payor Class.

6 2. Attached as **Exhibit 1** is a true and correct copy of End-Payor Plaintiffs' proposed
7 Long-Form Notice.

8 3. Attached as **Exhibit 2** is a true and correct copy of End-Payor Plaintiffs' proposed
9 Summary Notice for third-party payors.

10 4. Attached as **Exhibit 3** is a true and correct copy of End-Payor Plaintiffs' proposed
11 Summary Notice for consumers.

12 5. Shortly after the Court certified the End-Payor Class, counsel for the End-Payor
13 Plaintiffs sent Requests for Proposals to eight well-qualified and experienced notice administration
14 firms seeking estimates on pricing and timing for dissemination of notice, as well as input concerning
15 the most appropriate method for providing notice in this matter. Counsel for End-Payor plaintiffs
16 reviewed the firms' respective submissions and engaged in follow-up inquiries. Based on that rigorous
17 process, End-Payor Plaintiffs have selected Kurtzman Carson Consultants ("KCC") to serve as the
18 notice administrator, subject to this Court's approval.

19 6. Attached as **Exhibit 4** is a true and correct copy of the declaration of Carla A. Peak,
20 Vice President of Legal Notification Services of KCC.

21
22 I declare under penalty of perjury under the laws of the United States of America that the
23 foregoing is true and correct. Executed this 30th day of May, 2017 at San Francisco, California.

24
25 /s/ Dena C. Sharp
Dena C. Sharp

CERTIFICATE OF SERVICE

I hereby certify that on May 30, 2017, I electronically filed the foregoing document using the CM/ECF system, which will send notification of such filing to all counsel of record registered in the CM/ECF system. I also caused a copy of the foregoing document to be served via email on counsel of record for all parties.

/s/ Dena C. Sharp
Dena C. Sharp

EXHIBIT 1

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

If you purchased brand name or generic Lidoderm (lidocaine patch 5%), a class action lawsuit could affect your rights.

A federal court authorized this notice. It is not a solicitation from a lawyer.

A class action lawsuit (the “Lawsuit”) is pending in the United States District Court for the Northern District of California (“the Court”) against Endo Pharmaceuticals Inc. (“Endo”), Teikoku Pharma USA, Inc., Teikoku Seiyaku Co., Ltd. (together “Teikoku”), Actavis, Inc., Watson Laboratories, Inc., and Allergan, plc (together “Watson” and collectively “Defendants”). The Lawsuit was brought by consumers and third-party payors of branded and generic Lidoderm (“End-Payor Plaintiffs”) who allege that, as part of a settlement of patent infringement litigation, Endo and Teikoku unlawfully paid Watson to delay the launch of a generic Lidoderm product. End-Payor Plaintiffs seek reimbursement of the amounts allegedly overcharged.

Defendants deny any wrongdoing and assert that their settlement and license agreement constituted a procompetitive and lawful compromise of patent infringement litigation. The Court has not found that Defendants violated any law nor has the Court issued any ruling on the merits of End-Payor Plaintiffs’ claims. The Court has set a trial to begin on December 4, 2017.

A Class That May Include You Has Been Certified

The Court has decided that the Lawsuit can proceed as a class action on behalf of an “End-Payor Class,” or a group of people and entities that could include you. Subject to the exclusions listed below, members of the End-Payor Class include all persons and entities in the United States and its territories who:

1. Paid and/or provided reimbursements for some or all of the purchase price of:
 - a. Branded Lidoderm for the time period August 23, 2012 through September 14, 2013; and/or
 - b. AB-rated generic Lidoderm for the time period September 15, 2013 through August 1, 2014;
2. Purchased in Arizona, California, Florida, Kansas, Maine, Massachusetts, Minnesota, Nevada, New Hampshire, New Mexico, New York, North Carolina, North Dakota, South Dakota, Tennessee, West Virginia, or Wisconsin (“Class States”); AND
3. For consumption by themselves or their family member, or by their insureds, plan participants or beneficiaries.

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) “single flat co-pay” consumers who purchased Lidoderm or generic Lidoderm only via 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); (f) “flat generic co-pay” consumers who, after September 15, 2013, purchased generic Lidoderm via a fixed dollar copayment (*e.g.*, \$10 for generic drugs) regardless of the co-payment applicable to branded drugs; (g) consumers who purchased or received Lidoderm or its AB-rated generic equivalent through a Medicaid program only; (h) Pharmacy benefit managers; and (i) the judges in this case and members of their immediate families.

Defendants are petitioning the United States Court of Appeals for the Ninth Circuit for appellate review of the Court’s order certifying the End-Payor Class.

YOUR LEGAL RIGHTS AND OPTIONS	
DO NOTHING AND STAY IN THE END-PAYOR CLASS	If you do nothing and stay in the End-Payor Class, you 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	<p>If you exclude yourself from the End-Payor Class (<i>i.e.</i> opt out), you will not be entitled to any recovery that may occur in this case through continued litigation or settlement. You will not be bound by any past or future rulings against Defendants. Once you opt out, you are no longer a member of the End-Payor Class affected by this case and you may pursue your own claims against Defendants.</p> <p>The deadline to exclude yourself from the End-Payor Class is: September XX, 2017.</p> <p>If you are a third-party payor, this will be the only opportunity you will have to exclude yourself from the End-Payor Class.</p>

These rights and options—and the deadlines to exercise them—are explained in this notice.

Your legal rights are affected whether you act or not. Please read this entire notice carefully.

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BASIC INFORMATION

1. Why did I get this notice?

You received this notice because you may have purchased or paid for branded or generic Lidoderm (lidocaine patch 5%) between August 23, 2012 and August 1, 2014 and be a member of the End-Payor Class that was certified by the Court in this Lawsuit against Defendants.

This notice explains the Lawsuit, the End-Payor Class, and your legal rights and options. **You should read this entire notice carefully.**

2. What is this Lawsuit about?

This lawsuit is about the prescription drug Lidoderm and whether Defendants entered into an anticompetitive agreement to delay the availability of allegedly less expensive generic versions of Lidoderm. End-Payor Plaintiffs allege that, as part of settlement of a patent lawsuit that Endo and Teikoku brought against Watson, Endo and Teikoku agreed to pay Watson with brand Lidoderm patches valued at \$96 million and by agreeing not to start selling an authorized generic version of Lidoderm until 7.5 months after Watson launched its generic Lidoderm in exchange for Watson's agreement to drop its patent challenge and to refrain from selling generic Lidoderm from August 2012 until September 2013. End-Payor Plaintiffs contend that Defendants' agreement was anticompetitive and violated state laws in the Class States.

End-Payor Plaintiffs allege that, as a result of Defendants' agreement, for over a year they were forced to continue paying significantly more for branded Lidoderm than they would have paid for generic Lidoderm had it been available. End-Payor Plaintiffs also allege had Endo and Teikoku launched an authorized generic to compete with Watson's generic product, the price of generic Lidoderm paid by end payors would have been lower. End-Payor Plaintiffs seek reimbursement of the amounts allegedly overcharged. A copy of the operative End-Payor Plaintiffs' Corrected Third Consolidated Amended Complaint is available at [WEBSITE](#).

Defendants deny End-Payor Plaintiffs' allegations, and they deny that any member of the End-Payor Class is entitled to damages or other relief. Defendants also deny that their conduct violated any applicable law or regulation. Specifically, Defendants assert that no provision in the settlement agreement is properly characterized as a "payment" in exchange for a delayed generic launch. They also assert that the settlement agreement, which permitted licensed generic entry more than two years prior to the expiration of patent protection for Lidoderm, constituted a lawful resolution of patent litigation, that the licensed entry date for when Watson could begin selling generic Lidoderm was a reasonable and lawful procompetitive compromise, and that the settlement and license agreement accelerated and enhanced competition. Defendants deny that End-Payor Plaintiffs have sustained any injury or damages as a result of Defendants' conduct.

THE COURT HAS NOT DECIDED WHETHER ANY DEFENDANT VIOLATED ANY LAWS. THIS NOTICE IS NOT AN EXPRESSION OF ANY OPINION BY THE COURT AS TO THE MERITS OF END-PAYOR PLAINTIFFS' CLAIMS AGAINST ANY DEFENDANT, OR THE DEFENSES ASSERTED BY ANY DEFENDANT.

The Lawsuit is known as *In re Lidoderm Antitrust Litigation*, No. 14-md-2521-WHO (N.D. Cal.). Judge William H. Orrick of the United States District Court for the Northern District of California is overseeing the Lawsuit.

3. Why is this Lawsuit a class action?

In a class action, the plaintiffs in the lawsuit—in this case, the End-Payor Plaintiffs—are called “Class Representatives” and sue on behalf of other people who have similar claims. In this case, the Class Representatives are Allied Services Division Welfare Fund, City of Providence, International Union of Operating Engineers Local 49 Health and Welfare Fund, International Union of Operating Engineers Local 132 Health and Welfare Fund, Iron Workers District Council of New England Welfare Fund, NECA-IBEW Welfare Trust Fund, United Food and Commercial Workers Local 1776 & Participating Employers Health and Welfare Fund, Welfare Plan of the International Union of Operating Engineers Locals 137, 137A, 137B, 137C, 137R, and Letizia Gallotto.

The Class Representatives and the entities on whose behalf they have sued constitute the End-Payor Class and are considered End-Payor Class members. Their attorneys are called “End-Payor Plaintiffs’ Counsel” or “Co-Lead Counsel.”

In a class action lawsuit, one court resolves the issues for everyone in the class, except for those class members who exclude themselves (*i.e.* opt out) from the class. The Court has determined that the Lawsuit by the End-Payor Plaintiffs against Defendants can proceed as a class action. A copy of the Court’s order can be found at [WEBSITE](#).

Defendants are petitioning the United States Court of Appeals for the Ninth Circuit for appellate review of the Court’s order certifying the End-Payor Class.

4. What is the status of the Lawsuit?

No trial has been held in the Lawsuit. A trial is currently scheduled to begin on December 4, 2017. There is no guarantee that End-Payor Plaintiffs will win or obtain any money for the End-Payor Class. Any judgment will be binding on all End-Payor Class members who have not opted out, regardless of who wins.

You do not need to attend the trial. Co-Lead Counsel will present the case for End-Payor Plaintiffs and the End-Payor Class, and counsel for Defendants will present Defendants’ defenses. You and/or your own lawyer are welcome to attend the trial at your own expense. If End-Payor Plaintiffs obtain money or benefits as a result of the trial or a settlement, you will be notified about how to participate or share in any recovery. We do not know how long this will take.

DETERMINING IF YOU ARE A MEMBER OF THE END-PAYOR CLASS

5. I am an individual who purchased or paid for Lidoderm. How do I know if I am a member of the End-Payor Class?

As a **Consumer**, you may be a member of the End-Payor Class if:

- You are a person in the United States and its territories who, in Arizona, California, Florida, Kansas, Maine, Massachusetts, Minnesota, Nevada, New Hampshire, New Mexico, New York, North Carolina, North Dakota, South Dakota, Tennessee, West Virginia, or Wisconsin and for consumption by yourself or your family member, paid for some or all of the purchase price of:
 - Branded Lidoderm for the time period August 23, 2012 through September 14, 2013; and/or
 - AB-rated generic Lidoderm for the time period September 15, 2013 through August 1, 2014.
- As a Consumer, you are **NOT** a member of the End-Payor Class if:
 - You are one of the Defendants and their officers, directors, management, employees, subsidiaries, and affiliates;
 - After September 15, 2013, you paid and/or provided reimbursements for branded Lidoderm and did not purchase or reimburse for generic Lidoderm;
 - You 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);
 - You 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;
 - You purchased or received Lidoderm or its AB-rated generic equivalent through a Medicaid program only; or
 - You are one of the judges in this case or a member of their immediate families.

6. I am a third-party payor who purchased or paid for Lidoderm. How do I know if I am a member of the End-Payor Class?

Third-party payors are also in the End-Payor Class. Third-party payors are entities—such as a health and welfare plan or insurance company—that provide payment or reimbursement from its own funds for some or all of the cost of prescription drug purchases made by its members, employees, insureds, participants, or beneficiaries.

As a **Third-Party Payor**, you may be a member of the End-Payor Class if:

- You are an entity in the United States and its territories who, in Arizona, California, Florida, Kansas, Maine, Massachusetts, Minnesota, Nevada, New Hampshire, New Mexico, New York, North Carolina, North Dakota, South Dakota, Tennessee, West

Virginia, or Wisconsin and for consumption by your insureds, plan participants or beneficiaries, paid and/or provided reimbursements for some or all of the purchase price of:

- Branded Lidoderm for the time period August 23, 2012 through September 14, 2013; and/or
- 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.
- As a Third-Party Payor, you are **NOT** a member of the End-Payor Class if:
 - You are one of the Defendants and their officers, directors, management, employees, subsidiaries, and affiliates;
 - After September 15, 2013, you 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;
 - You are a government entity, other than a government-funded employee benefit plan;
 - You are a fully insured health plan (*i.e.*, a plan that purchased insurance that covered 100 percent of the plan's reimbursement obligations to all of its members);
 - You are a pharmacy benefit manager; or
 - You are one of the judges in this case or a member of their immediate families.

YOUR OPTIONS AS A MEMBER OF THE END-PAYOR CLASS

7. What are my options as a member of the End-Payor Class?

If you are a member of the End-Payor Class you can either:

- Do nothing and remain in the End-Payor Class, or
- Exclude yourself (*i.e.* opt out) from the End-Payor Class.

These options and your rights are explained in the following sections, along with the steps you must take if you wish to opt out of the End-Payor Class.

8. What happens if I do nothing?

If you do nothing and remain in the End-Payor Class, you will keep the right to a share of any recovery that may come from a trial or settlement of this Lawsuit against Defendants. You will not be able to start another lawsuit, continue another lawsuit, or be part of any other lawsuit against Defendants about the legal issues in this case, including claims brought in the case between End-Payor Plaintiffs and Defendants. All of the Court's orders in the case relating to the End-Payor Plaintiffs' claims will apply to you and legally bind you. You will also be bound by any judgment in the Lawsuit.

9. What happens if I opt out of the End-Payor Class?

If you exclude yourself from the End-Payor Class—also known as “opting-out” of the End-Payor Class—you won't get any money or benefits from this lawsuit even if End-Payor Plaintiffs obtain them as a result of trial or from any settlement between Defendants and End-Payor Plaintiffs. If you exclude yourself, you will not be legally bound by any of the Court's orders in this class action or any judgment or release entered in this class action, and you may be able to file a lawsuit against (or continue to sue) Defendants in the future about the legal issues in this case. If you exclude yourself from the End-Payor Class so that you can start, or continue, your own lawsuit against Defendants, you should talk to your own lawyer soon, because your claims will be subject to a statute of limitations defense, which means your claims may be subject to expiration without timely action.

If you are a third-party payor, this will be the only opportunity you will have to exclude yourself from the End-Payor Class.

10. How do I opt out of the End-Payor Class?

You can exclude yourself from the End-Payor Class (*i.e.*, “opt out” of the class) by sending a letter via first class U.S. mail saying that you want to exclude yourself from the End-Payor Class Action in *In re Lidoderm Antitrust Litigation*, No. 14-md-2521-WHO (N.D. Cal.) to the Notice Administrator at the below address on or before [45 DAYS FROM DATE OF MAILING OF NOTICE AND INITIATING OF PUBLICATION (WHICHEVER IS LATER)].

Lidoderm End-Payor Notice Administrator
P.O. BOX XXXX
CITY, ST XXXXX-XXXX

Be sure to include your name, address, telephone number, and your signature. **Your letter requesting exclusion must be postmarked no later than [45 DAYS FROM DATE OF MAILING OF NOTICE AND INITIATING OF PUBLICATION (WHICHEVER IS LATER)].** If you are a third-party payor, this will be the only opportunity you will have to exclude yourself from the End-Payor Class.

THE LAWYERS REPRESENTING YOU

11. Do I have a lawyer in the case?

The Court has appointed the below law firms to serve as Co-Lead Counsel for the End-Payor Class and to represent the members of the End-Payor Class. Co-Lead Counsel are experienced in handling similar cases against other companies.

The contact information for Co-Lead Counsel is:

Dena C. Sharp
GIRARD GIBBS LLP
601 California Street, 14th Fl.
San Francisco, CA 94108
Telephone: (415) 981-4800
Facsimile: (415) 981-4846

Renae D. Steiner
**HEINS MILLS & OLSON,
P.L.C.**
310 Clifton Avenue
Minneapolis, MN 55403
Telephone: (612) 338-4605
Facsimile: (612) 338-4692

Sharon K. Robertson
**COHEN MILSTEIN
SELLERS & TOLL PLLC**
88 Pine Street, 14th Fl.
New York, New York 10005
Telephone: (212) 838-7797
Facsimile: (212) 838-7745

12. Should I get my own lawyer?

You do not need to hire your own lawyer because Co-Lead Counsel are working on your behalf. However, if you wish to do so, you may retain your own lawyer at your own expense.

13. How will the lawyers be paid?

If Co-Lead Counsel achieves a recovery for the End-Payor Plaintiffs and the End-Payor Class, for example by way of settlement or after winning at trial, the Court will be asked to approve reasonable attorneys' fees, as well as reimbursement of expenses Co-Lead Counsel have advanced on behalf of the End-Payor Class. If the Court grants Co-Lead Counsel's requests, fees and expenses would either be deducted from any money obtained for the Class, or the Court may order the Defendants to pay attorneys' fees and costs in addition to any damage award to the End-Payor Class. Members of the End-Payor Class will not otherwise have to pay any attorneys' fees or expenses in connection with the Lawsuit.

GETTING MORE INFORMATION

14. How do I get more information?

This notice contains a summary of the lawsuit. For more detailed information about this lawsuit, copies of End-Payor Plaintiffs' complaint, the Court's order certifying the End-Payor Class, and other filings are available at [WEBSITE](#). Complete copies of public pleadings, Court rulings, and other filings are available for review and copying at the Office of the Clerk of Court, United States District Court for the Northern District of California, 450 Golden Gate Avenue, 17th floor, San Francisco, CA 94012 during normal business hours.

Additional information about the Lawsuit is available at [WEBSITE](#) or you can call the Notice Administrator toll-free at [1-855-298-0603](tel:1-855-298-0603) or by email at [EMAIL](#).

You can also contact Co-Lead Counsel at the addresses listed in response to Question [11](#).

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-Payers") who allege that Defendants violated state laws by entering into an agreement to delay the availability of generic versions of Lidoderm. End-Payer 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-Payer 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-Payer 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-Payer 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-PAYER CLASS: If you do nothing you will stay in the End-Payer 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-PAYER CLASS: If you exclude yourself from the End-Payer 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-Payer Class is: September XX, 2017. This will be the only opportunity for third-party payors to exclude themselves from the End-Payer Class.

WANT MORE INFORMATION?

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

The Court will hold a trial in this case, *In re Lidoderm Antitrust Litigation*, No. 3:14-md-02521, which 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 3

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-Payers") 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.

The Court will hold a trial in this case, *In re Lidoderm Antitrust Litigation*, No. 3:14-md-02521, which 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 4

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN RE LIDODERM ANTITRUST
LITIGATION

MDL: 2521

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

**DECLARATION OF CARLA A. PEAK IN SUPPORT OF END-PAYOR CLASS
CERTIFICATION NOTICE PLAN**

I, Carla A. Peak, declare and state as follows:

1. I have personal knowledge of the matters set forth herein, and I believe them to be true and correct. I am a Vice President of Legal Notification Services at KCC, LLC (“KCC”). KCC is an experienced national class action notice provider and class administrator with experience in administering class action settlements. KCC’s services include pre-settlement consulting, settlement fund escrow, disbursement and tax reporting, class member data management, legal notification, call center support, and claims administration.

2. This declaration will describe KCC’s experience, as well as the notice program (the “Notice Plan”) proposed for this case, including how the Notice Plan was developed.

EXPERIENCE

3. KCC is a class action administrator that specializes in providing comprehensive class action services including, but not limited to, pre-settlement consulting, email and mailing campaign implementation, website design, claims administration, check and voucher disbursements, tax reporting, settlement fund escrow and reporting, class member data management, legal notification, call center support, claims administration, and other related services critical to the effective administration of class actions. KCC has developed efficient, secure and cost-effective methods to properly handle the voluminous data and mailings associated with the noticing, claims processing and disbursement requirements of settlements to ensure the orderly and fair treatment of class members and all parties in interest.

4. An industry leader, KCC has implemented more than 6,000 successful class action notice and settlement administration matters and handled thousands of distributions in other contexts. Our experience includes many of the largest and most complex settlement administrations of both private litigation and of actions brought by state and federal government regulators.

5. More specifically, KCC has been appointed as the notice or claims administrator in many direct and indirect purchaser antitrust class actions. For example, KCC was appointed as the administrator in *In re: Nexium (Esomeprazole) Antitrust Litig.*, No. 1:12-md-2409 (D. Mass.); *In re: Skelaxin (Metaxalone) Antitrust Litigation*, No. 1:12-md-2343 (E.D. Tenn.); *In re: NCAA Athletic Grant-In-Aid Antitrust Litigation*, No. 14-md-2541 (N.D. Cal.); *In Re Korean Ramen Antitrust Litigation*, No. 13-cv-4115 (N.D. Cal.); *In re Lithium Ion Batteries Indirect Antitrust Litigation*, No. 13-md-02420 (N.D. Cal.); *Fond Du Lac Bumper Exchange, Inc. v. Jui Li Enterprise Company, Ltd.*, No. 2:09-cv-00852 (E.D. Wis.); *The Dial Corporation, et al. v. News Corporation, et al.*, No. 1:13-cv-06802-WH (S.D. NY); *In re Hypodermic Products Antitrust Litigation*, No. 05-cv-1602 (D. N.J.); *In re Domestic Drywall Antitrust Litigation*, No. 2:13-md-02437 (E.D. Pa.); *In re Potash Antitrust Litigation (II)*, No. 1:08-cv-06910 (N.D. Ill.); *In re Aftermarket Filters Antitrust Litigation*, No. 1:08-cv-04883 (N.D. Ill.); *Grand Strand Water & Sewer Authority v. Oltrin Solutions, LLC*, No. 4:14-cv-2800 (D. S.C.); *In re: Fresh and Process Potatoes Antitrust Litigation*, 4:10-md-02186 (D. Idaho); *In re Blood Reagents Antitrust Litigation*, No. 09-md-2081 (E.D. Pa.); *In re Titanium Dioxide Antitrust Litigation*, No. 10-CV-00318 (D. Md.). More information on KCC's experience can be found at www.kccllc.com.

OVERVIEW

6. The proposed Notice Plan uses a combination of individual mailed notice and paid notice placements in industry-related trade media to reach the third-party payor ("TPP") portion of the End-Payor Class and a combination of notice placements in well-read consumer publications and banner ads placed on a variety of websites to reach the consumer portion of the End-Payor Class. The Notice Plan is expected to reach virtually all TPP End-Payor Class

Members and approximately 80% of likely consumer End-Payor Class Members.

7. The reach of the Notice Plan is consistent with other effective court-approved notice programs. Additionally, the Federal Judicial Center's ("FJC") Judges' Class Action Notice and Claims Process Checklist and Plain Language Guide (the "FJC Checklist") considers 70-95% reach among class members reasonable

NOTICE PLAN SUMMARY

Case Analysis

8. KCC crafted this Notice Plan with Co-Lead Counsel for the End-Payor Plaintiffs counsel to ensure the best practicable notice of this class action is provided to the Rule 23(b)(3) End-Payor Class, defined as follows:

(a) All persons and entities in the United States and its territories who, in Arizona, California, Florida, Kansas, Maine, Massachusetts, Minnesota, Nevada, New Hampshire, New Mexico, New York, North Carolina, North Dakota, South Dakota, Tennessee, West Virginia, or Wisconsin ("Class States") for consumption by themselves or their family member, or by their insureds, plan participants, or beneficiaries, 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; and

(b) TPPs 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 2014.

The following groups are excluded from the End-Payor Class:

- 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. "Single flat co-pay" consumers who purchased Lidoderm or generic Lidoderm

- only via 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);
- f. "Flat generic co-pay" consumers who, after September 15, 2013, purchased generic Lidoderm via a fixed dollar co-payment (e.g., \$10 for generic drugs) regardless of the co-payment applicable to branded drugs;
 - g. Consumers who purchased or received Lidoderm or its AB-rated generic equivalent through a Medicaid program only;
 - h. Pharmacy benefit managers; and
 - i. The judges in this case and members of their immediate families.

TPP Mailing

9. A single page Summary Notice and multi-page Long Form Notice will be mailed via United States Postal Service (USPS) mail to all TPP entities contained in KCC's proprietary database (approximately 47,000 contacts). This database generally includes pharmacies and script services, life and health insurance companies, fully insured health and welfare groups, and fully and partially self-funded health and welfare groups (such as several of the named plaintiffs in this litigation), as well as third party administration companies.

10. Prior to mailing, the addresses will be checked against the National Change of Address (NCOA)¹ database maintained by the USPS; certified via the Coding Accuracy Support System (CASS);² and verified through Delivery Point Validation (DPV).³

11. Notices returned by USPS as undeliverable will be re-mailed to any address available through postal service information. For example, such notices would be mailed to the address provided by the USPS on returned pieces for which the automatic forwarding order has expired, but is still within the period that the USPS returns the piece with a new address provided on the forwarding order expiration sticker. Any returned mailing that does not contain an expired forwarding order with a new address indicated will be researched through standard skip tracing

¹ The NCOA database contains records of all permanent change of address submissions received by the USPS for the last four years. The USPS makes this data available to mailing firms and lists submitted to it are automatically updated with any reported move based on a comparison with the person's name and last known address.

² Coding Accurate Support System is a certification system used by the USPS to ensure the quality of ZIP+4 coding systems.

³ Records that are ZIP+4 coded are then sent through Delivery Point Validation to verify the address and identify Commercial Mail Receiving Agencies. DPV verifies the accuracy of addresses and reports exactly what is wrong with incorrect addresses.

and re-mailed if a new address is obtained. The mailing database will be updated with new address information from re-mails and successful address searches.

TPP Paid Media

12. To further extend exposure among the TPP portion of the End-Payor Class, a Summary Notice will appear once in *HR Magazine*. *HR Magazine* is issued monthly and has an average monthly circulation of 279,026. It is the Official publication of the Society for Human Resource Management and offers the largest total qualified circulation of all HR-related publications.

13. Coverage will be further extended through the use of advertising on trade websites and in trade digital e-newsletters. Specifically, Internet Banner Notices will appear on *LifeHealthPro.com* and *SHRM.org*. *LifeHealthPro.com* is the official website of *National Underwriter's Life & Health* magazine.⁴ Its audience includes 270,000 monthly unique visitors and over 955,000 monthly page views. Internet Banner Notices will appear on *LifeHealthPro.com* for approximately two weeks. *SHRM.org* is the official website of the Society for Human Resource Management. Its audience includes over 1.6 million monthly unique visitors and over 7.8 million page views per month. Internet Banner Notices will appear on *SHRM.org* for approximately one month.

14. Banner Notices will also appear in *National Underwriter's LifeHealthPro Daily* e-newsletter and the Society for Human Resource Management's *HR Daily* e-newsletter. *LifeHealthPro Daily* has 40,000 opt-in subscribers and provides up-to-the-minute news coverage, analysis, and trends. A 468x60 pixel Banner Notice will appear in *LifeHealthPro Daily* for approximately one week. *HR Daily* has 275,000 opt-in subscribers. A 120x600 pixel Banner Notice will appear in *HR Daily* for approximately one week.

Analysis of Consumer Portion of the End-Payor Class

15. KCC will use paid media to reach consumers in the End-Payor Class.

⁴ *National Underwriter* ceased publishing its print magazine with the March 2017 issue.

16. According to the Centers for Disease Control and Prevention (CDC), shingles, also known as zoster or herpes zoster, affects almost 1 in 3 persons in the United States in their lifetime, with about half of all cases occurring in men and women 60 years of age or older.⁵ The CDC also indicates that post-herpetic neuralgia (PHN), the most common complication of shingles, rarely occurs among people under 40 years of age, but can occur in up to a third of untreated people who are 60 years of age and older.⁶

17. Lidoderm is the brand name for lidocaine 5% patches, which are used to relieve the pain of PHN. PHN is also known as “after-shingles” pain and is characterized by severe pain in areas where affected persons had the shingles rash, even after the rash clears up. The pain may resolve in a few weeks or months in most patients, but may last for many years for others. Older persons are more likely to develop PHN, and the pain is more likely to be intense.⁷

18. Based on this and other information from the CDC, GfK MediaMark Research & Intelligence, LLC (MRI)⁸ data was studied among adults 45 years of age or older who have used a branded or generic prescription remedy personally in the last twelve months for chronic/severe pain (“A45+ Prescription Pain Remedy Consumers”), because this broad, over inclusive target group best represents the consumers in the End-Payor Class. MRI data was also studied among adults 65 years of age or older who have used a branded or generic prescription remedy personally in the last twelve months for chronic/severe pain (“A65+ Prescription Pain Remedy Consumers”).

⁵ Centers for Disease Control and Prevention. (2016). Shingles (Herpes Zoster) Overview. Retrieved from <https://www.cdc.gov/shingles/about/overview.html>.

⁶ Centers for Disease Control and Prevention. (2016). Shingles (Herpes Zoster) About. <https://www.cdc.gov/shingles/about/complications.html>

⁷ Id.

⁸ GfK MRI is a nationally accredited research firm that provides consumer demographics, product and brand usage, and audience/exposure in all forms of advertising media. Established in 1979, MRI measures the usage of nearly 6,000 product and service brands across 550 categories, along with readership of hundreds of magazines and newspapers, internet usage, television viewership, national and local radio listening, yellow page usage, and out-of-home exposure. Based on a yearly face-to-face interview of 26,000 consumers in their homes, MRI’s Survey of the American Consumer™ is the primary source of audience data for the U.S. consumer magazine industry and the most comprehensive and reliable source of multi-media audience data available.

19. Demographic highlights of A45+ Prescription Pain Remedy Consumers include the following: 97.9% speak English most often; 92.2% live in a household consisting of one to four people and 67.9% live in a household consisting of two to four people; 84.9% have graduated from high school and 51.9% have attended college or beyond; 84.0% are white; 78.2% live in a Metropolitan CBSA;⁹ 73.8% are not employed; 69.7% have lived at their current address for five years or more; 66.7% are women; 65.1% live in County Size A or B, with 33.0% living in County Size A;¹⁰ 65.1% own a home; 62.6% have a household income of \$30,000 or more, 57.4% have a household income of \$35,000 or more, and 50.8% have a household income of \$40,000 or more; 60.6% own a home valued less than \$500,000; and 51.9% are married.

20. On average, A45+ Prescription Pain Remedy Consumers: are 60 years of age; have a household income of \$58,261; and own a home valued at \$212,034.¹¹

21. Also important is the fact that, compared to the adult population 45 years of age or older, A45+ Prescription Pain Remedy Consumers are: 2.03 times more likely to have a

⁹ Core Based Statistical Areas (CBSAs) consist of the county or counties or equivalent entities associated with at least one core (urbanized area or urban cluster) of at least 10,000 population, plus adjacent counties having a high degree of social and economic integration with the core as measured through commuting ties with the counties associated with the core. The general concept of a CBSA is that of a core area containing a substantial population nucleus, together with adjacent communities having a high degree of economic and social integration with that core. CBSAs are defined by the U.S. Office of Management and Budget to provide a nationally consistent set of geographic entities for the United States and Puerto Rico for use in tabulating and presenting statistical data. Metropolitan Statistical Areas are CBSAs associated with at least one urbanized area that has a population of at least 50,000. The metropolitan statistical area comprises the central county or counties or equivalent entities containing the core, plus adjacent outlying counties having a high degree of social and economic integration with the central county or counties as measured through commuting. Micropolitan Statistical Areas are CBSAs associated with at least one urban cluster that has a population of at least 10,000 but less than 50,000. The micropolitan statistical area comprises the central county or counties or equivalent entities containing the core, plus adjacent outlying counties having a high degree of social and economic integration with the central county or counties as measured through commuting.

¹⁰ Nielsen County Size classifications are based on Census household counts and metropolitan proximity. There are four county size classes, "A," "B," "C," and "D." "A" counties are highly urbanized areas and belong to the 21 largest Metropolitan Statistical Areas. The combined counties contain 40% of United States households. "B" counties are counties not defined as A counties that have more than 85,000 households. The combined counties contain 30% of United States households. "C" counties are counties not defined as A or B counties that have more than 20,000 households or are in Consolidated Metropolitan Areas or Metropolitan Statistical Areas with more than 20,000 households. The combined counties contain 15% of United States households. "D" counties are all counties not classified as A, B, or C counties. They are considered very rural. The combined counties contain 15% of United States households.

¹¹ The average age for U.S. adults is 47, the average household income is \$78,940, and the average home value is \$259,873.

household income between \$10,000-\$19,999, 47.5% more likely to have a household income under \$10,000, and 27.8% more likely to have a household income between \$30,000-\$39,999; 51.5% more likely to rent their home; 48.2% more likely to live in a Micropolitan CBSA; 44.6% more likely to not be employed; 35.4% more likely to live in County Size D and 11.2% more likely to live in County Size B; 25.7% more likely to be women; 25.4% more likely to have lived at their current address for less than one year and 16.0% more likely to have lived at their current address for one to four years; 23.5% more likely to live in the Midwest Census Region and 12.3% more likely to live in the South Census Region; 18.0% more likely to have attended college, 12.5% more likely to have not graduated from high school, and 2.5% more likely to have graduated from high school as the highest form of education; 16.2% more likely to live alone; 13.1% more likely own a home valued less than \$100,000 and 6.4% more likely to own a home valued between \$100,000-\$199,999; 7.8% more likely to have never married; and 6.2% more likely to be Black/African American and 4.6% more likely to be white.

Consumer Media

22. To reach the consumer portion of the End-Payor Class, a Summary Notice will be placed in leading consumer publications among A45+ Prescription Pain Remedy Consumers. Specifically, a Summary Notice will appear once in *Arthritis Today*, *Good Housekeeping*, and *People* magazines, for a total of three insertions.

23. *Arthritis Today* is a bi-monthly magazine issued by the Arthritis Foundation. It targets the health-conscious adult market, extending reach among those actively seeking to improve arthritis health. *Arthritis Today* reaches 7.9% of A45+ Prescription Pain Remedy Consumers and its readers are 3.03 times more likely to be A45+ Prescription Pain Remedy Consumers, as compared to the adult population 45 years of age or older.

24. *Good Housekeeping* is a monthly women's magazine featuring articles on women's interest, product testing, recipes, health and more. It reaches 16.0% of A45+ Prescription Pain Remedy Consumers and its readers are 49.3% more likely to be A45+

Prescription Pain Remedy Consumers, as compared to the adult population 45 years of age or older.

25. *People* is a weekly entertainment magazine featuring celebrity news, biographies and gossip. It reaches 20.0% of A45+ Prescription Pain Remedy Consumers and its readers are 17.5% more likely to be A45+ Prescription Pain Remedy Consumers, as compared to the adult population 45 years of age or older.

26. In addition, according to MRI data, 79.3% of A45+ Prescription Pain Remedy Consumers have access to the internet at home using a computer and 75.2% have looked at or used the internet in the last 30 days.

27. ComScore¹² research among adults who have purchased an over-the-counter remedy or prescription for shingles, who have searched for information or treatment from a branded drug site or online, or who have shingles as a condition themselves (Shingles Internet Users) suggests that paid internet notice will likely extend reach among A45+ Prescription Pain Remedy Consumers. The data suggests Shingles Internet Users likely fall within our target of A45+ Prescription Pain Remedy Consumers, as 50.4% of Shingles Internet Users are 45 years of age or older.

28. Therefore, comScore was used to determine the number of internet impressions necessary to effectively extend reach among likely consumer members of the End-Payor Class. Based on our analysis, more than 100 million internet impressions will be distributed over leading networks such as Google Display and Yahoo! ad networks, as well as the social media site Facebook. The impressions will appear on both mobile and desktop devices. The online ads will be targeted to adults 45 years of age or older (Adults 45+) and will include an embedded link to the case website.

¹² comScore is a leading cross-platform measurement and analytics company that precisely measures audiences, brands and consumer behavior everywhere, capturing 1.9 trillion global interactions monthly. comScore's proprietary digital audience measurement methodology allows marketers to calculate audience reach in a manner not affected by variables such as cookie deletion and cookie blocking/rejection, allowing these audiences to be reached more effectively. comScore operates in more than 75 countries, serving over 3,200 clients worldwide.

Response Mechanisms

29. An informational website will be established that will allow members of the End-Payor Class the ability to obtain additional information and documents about the litigation. The website address (www.lidodermantitrustlitigation.com) will be provided in all printed notice materials and accessible through an embedded link in the Banner Notices.

30. A toll-free number will also be established, allowing members of the End-Payor Class to learn more about the litigation in the form of frequently asked questions and answers and to request to have more information mailed directly to them. The toll-free number will be provided in all printed materials.

Notice Documents

31. The Notices provide substantial information to End-Payor Class members in a clear and concise manner, and in plain, easily understood language. They satisfy the requirements of Rule 23 and adhere to the guidelines set forth in the *Manual for Complex Litigation, Fourth* and by the FJC. Many courts, and as previously cited, the FJC itself, have approved notices that have been written and designed in a similar fashion.

CONCLUSION

32. The Notice Plan will effectively reach the TPP portion of the End-Payor Class and approximately 80% of the consumer portion of the End-Payor Class on average 2.8 times each via the notification methods described above. All End-Payor Class Members will be provided with information necessary to understand their rights and options.

33. The Notice Plan and Notices will provide the best notice practicable under the circumstances of this case, conforms to all aspects of Federal Rule of Civil Procedure 23, and comports with the guidance for effective notice articulated in the *Manual for Complex Litigation 4th Ed.*

I declare under penalty of perjury that the foregoing is true and correct. Executed this 30th day of May 2017, at Sellersville, Pennsylvania.

A handwritten signature in black ink that reads "Carla Peak". The signature is written in a cursive, flowing style.

Carla A. Peak

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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, including all of the arguments and briefing presented and any opposition thereto.
3 The Court finds that the proposed notice program and forms of notice satisfy the requirements of Fed.
4 R. Civ. P. 23(c)(2).

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

- 6 1. The Court appoints Kurtzman Carson Consultants (“KCC”) as Notice Administrator.
- 7 2. The Court approves the Long-Form Notice and Summary Notices attached as Exhibits
8 1-3 to the Declaration of Dena Sharp filed concurrently with End-Payor Plaintiffs’ Motion.
- 9 3. End-Payor Plaintiffs and KCC shall adhere to the following schedule:
 - 10 a. Within 14 days of this Order: activation of website and toll-free number
 - 11 b. Within 21 days of this Order: complete mailing of Long-Form Notice to third-
12 party payors
 - 13 c. Within 30 days of this Order: initiate publication notice
 - 14 d. Within 70 days of this Order (or by August 15, 2017, whichever is sooner):
15 complete publication notice.
- 16 4. Members of the End-Payor Class may request to be excluded from the Class.
17 Exclusion requests must be postmarked no later than September 14, 2017. KCC shall monitor and
18 record any and all opt-out requests that are received.
- 19 5. By September 14, 2017, KCC shall file a declaration confirming that it has distributed
20 Notice in accordance with the Notice Plan and this Order.

21
22 **IT IS SO ORDERED.**

23
24 DATED: _____

25 THE HONORABLE WILLIAM H. ORRICK
26 United States District Court Judge