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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

GOVERNMENT EMPLOYEES HEALTH
ASSOCIATION, on behalf of itself and on
all others similarly situated;

Plaintiff,

v.

ENDO PHARMACEUTICALS, INC.,
TEIKOKU PHARMA USA, INC.,
TEIKOKU SEIYAKU CO., LTD.,
ACTAVIS, INC., WATSON
PHARMACEUTICALS, INC., WATSON
LABORATORIES, INC., ANDA, INC.,
ANDA PHARMACEUTICALS, INC., and
VALMED PHARMACEUTICALS, INC.;

Defendants.

No.

CLASS ACTION COMPLAINT

CLASS ACTION

DEMAND FOR JURY TRIAL

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1 Plaintiff Government Employees Health Association (“GEHA” or “Plaintiff”), on behalf
 2 of itself and all others similarly situated, for its Class Action Complaint (“Complaint”) against
 3 Defendants Endo Pharmaceuticals, Inc., Teikoku Pharma USA, Inc., and Teikoku Seiyaku Co.,
 4 Ltd. (collectively “Endo”), and Actavis, Inc., Watson Pharmaceuticals, Inc., Watson
 5 Laboratories, Inc., Anda, Inc., Anda Pharmaceuticals, Inc., and Valmed Pharmaceuticals, Inc.
 6 (collectively “Actavis”) (all collectively “Defendants”), alleges as follows based on: (a) first-
 7 hand knowledge; (b) the investigation of GEHA’s undersigned counsel; and (c) information and
 8 belief:

9 I. NATURE OF THE ACTION

10 1. Endo sells Lidoderm, a brand name prescription drug. Lidoderm contains an
 11 amide-type local anesthetic agent. Lidoderm stabilizes neuronal membranes by inhibiting the
 12 ionic fluxes required for the initiation and conduction of impulses. Endo sells Lidoderm for use
 13 as a local anesthetic adhesive patch to relieve the pain associated with post-herpetic neuralgia,
 14 more commonly referred to as after-shingles pain.

15 2. GEHA¹ brings this antitrust action for itself and on behalf of a Rule 23(b)(3)
 16 class of persons or entities (the “State Law End Payer Class” or the “Class”), who or which have
 17 paid and/or co-paid pharmacies to dispense Lidoderm and/or its AB-rated generic bioequivalents
 18 in United States and its territories during the period beginning August 23, 2012 and continuing
 19 until the anticompetitive effects of Defendants’ unlawful conduct described *infra* cease (the
 20 “Class Period”).

21 3. Defendants have unlawfully entered into an agreement that prevents less
 22 expensive, competitively-priced generic versions of Lidoderm from becoming available in the
 23 United States; the agreement has caused and continues to cause Plaintiff and the Class to pay
 24 inflated prices for this medicine during the Class Period.

25
 26
 27
 28 ¹ GEHA, and other similarly situated indirect payers, are referred to herein as “end payers” or
 “Third Party Payers (TPPs).”

1 4. GEHA seeks damages for itself, and the State Law End Payer Class, based upon
2 the amounts Defendants' unlawful actions have caused it to overpay for Lidoderm and will
3 continue to cause it to overpay for Lidoderm, and for generic versions of Lidoderm.

4 5. Since the United States Food and Drug Administration ("FDA") approved
5 Lidoderm for manufacture and sale in the U.S. in 1999, Endo charged monopoly prices for, and
6 earned monopoly profits from, Lidoderm. Endo had U.S. Lidoderm sales of approximately
7 \$1.185 billion in 2011, \$1.282 billion in 2012, and \$1.4 billion through the third-quarter of
8 2013.

9 6. Generic drugs are much less expensive than their brand-name counterparts.
10 GEHA and most other end payers would switch almost all of their purchases of monopoly-
11 priced Lidoderm to the lower-priced generic version once the first generic entered the U.S.
12 market, and again with even lower-priced generic versions after multiple generics become
13 available.

14 7. Endo's patent relating to Lidoderm is U.S. Patent No. 5,827,529 (the "529
15 Patent"). The '529 Patent will expire on October 27, 2015. In December 2006, Endo, to protect
16 its monopoly profits and prevent generic Lidoderm competition, filed a Citizen Petition with th
17 FDA raising questions about whether the FDA's proposed approval requirements for generic
18 Lidoderm were sufficient to determine bioequivalence. The Citizen Petition raised a number of
19 factors, including the appropriate safety and efficacy metrics, in establishing bioequivalence for
20 a locally-acting topical drug that produces a unique partial sensory block in patients suffering
21 from Post Herpetic Neuralgia (PHN). In March 2012, Endo filed a Citizen Petition highlighting
22 the scientific and regulatory support for requiring generic manufacturers to conduct comparative
23 clinical endpoint studies to demonstrate bioequivalence to locally acting topical products like
24 Lidoderm. On August 23, 2012, Endo announced that the FDA had denied Endo's Citizen
25 Petitions concerning Lidoderm. *See* Endo Health Solutions Form 8-K (August 24, 2012).

26 8. On or about November 13, 2009, Actavis sought FDA approval to sell a generic
27 version of Lidoderm, and certified to the FDA that its generic did not infringe any valid patent
28 held by Endo that covered Lidoderm. Shortly thereafter, Endo sued Actavis, alleging Actavis

1 infringed Endo's '529 Patent. By so doing, Endo triggered an automatic stay of the FDA's
2 ability to approve Actavis' generic version of Lidoderm for up to 30 months.

3 9. To avoid (i) adjudication of the invalidity or non-infringement of the '529 Patent,
4 or (ii) sale of generic Lidoderm upon FDA approval after the 30-month stay ended, either of
5 which would have ended Endo's Lidoderm monopoly, in May 2012, Endo agreed to provide a
6 wholly-owned and controlled Actavis wholesaler subsidiary with at least \$96 million in free
7 product that could increase to \$240 million to (a) discontinue its challenge to the '529 Patent;
8 and (b) delay selling a generic version of Lidoderm until September 15, 2013. Actavis agreed
9 not to resell the branded Lidoderm for less than Endo's monopoly prices.

10 10. Specifically, Endo would provide \$12 million, based on wholesale acquisition
11 cost, in branded Lidoderm product, to Actavis each month from January through August of
12 2013. If FDA did not approve Actavis' ANDA by December 31, 2013, Endo would provide
13 \$6.67 million in branded Lidoderm product, based on wholesale acquisition cost, to Actavis
14 each month in 2014 that Actavis' ANDA had not received FDA approval. If the FDA did not
15 approve Actavis' ANDA by December 31, 2014, Endo would provide \$7.11 million in branded
16 Lidoderm product, based on wholesale acquisition

17 11. The purpose and effect of this agreement was for the parties to allocate 100% of
18 the market for Lidoderm to Endo through September 2013, in consideration of Endo's reverse
19 payments to its alleged patent infringer Actavis. This agreement is sometimes referred to herein
20 as the "Reverse Payment Agreement" or the "Agreement."

21 12. Endo also agreed in the Reverse Payment Agreement not to launch an authorized
22 generic to compete with Actavis' generic Lidoderm for seven and one-half months after Actavis
23 belatedly launched its generic. However, during any exclusivity period enjoyed by Actavis,
24 Actavis agreed to pay a 25% royalty on gross profit to Endo until another generic entered the
25 market (including any authorized generic).

26 13. Zacks Investment Research, a website dedicated to providing professional
27 investors with financial data and analysis, noted in a May 7, 2013 "Brokerage Research Digest"
28 the significant importance to Endo of the Reverse Payment Agreement:

1 The settlement of the Lidoderm litigation with Actavis is a major positive for Endo.
2 Actavis will launch its generic version in 2013 despite the FDA approval of its ANDA.
3 The company [Endo] has too few new products to help it to bridge the gap after
4 Lidoderm generics are launched in 2013. Lidoderm accounted for 31% of Endo's total
5 revenue in 2012.

6 14. The Reverse Payment Agreement caused Actavis to delay marketing its generic
7 version of Lidoderm until September 16, 2013, when Actavis announced it had "launched a
8 generic version of Lidoderm (lidocaine topical patch 5%), as part of an exclusive settlement
9 agreement with [Defendants] Endo Pharmaceuticals Inc. and Teikoku Seiyaku Co., Ltd." The
10 division of monopoly profits between Endo and Actavis was mutually beneficial as free and
11 unrestrained competition resulting in lower prices to consumers was foreclosed for a significant
12 period of time.

13 15. Since January 2013, Endo has delivered to Actavis tens of millions of dollars in
14 free product under the Reverse Payment Agreement, and in turn, Actavis continued to delay the
15 availability of generic Lidoderm until September 2013.

16 16. For Endo, the deal with Actavis made sense, because the payments were virtually
17 pure profit, and Actavis was happy to receive millions in free product without having to incur
18 the costs of actual competition. If Actavis had turned down the deal and instead prosecuted its
19 challenge to the '529 Patent successfully, it would likely have faced stiff competition: (a) from
20 an authorized generic version of Lidoderm that Endo could have sold in competition with
21 Actavis; and (b) after Actavis' 180 days of statutory exclusivity (preventing competing versions
22 of generic Lidoderm made by *other generic companies* from entering the market, but not an
23 authorized generic made by Endo) ended, from other generic entrants whose presence in the
24 market would have driven prices of generic Lidoderm to commodity price levels. Such
25 competition would have significantly benefitted GEHA and other end payers which would have
26 paid lower prices for generic Lidoderm, at the expense of Actavis and Endo, which reaped the
27 benefits and profits from the continuation of Endo's brand Lidoderm monopoly.

28 17. As a direct and proximate result of Defendants' unlawful conduct alleged herein,
Plaintiff and members of the Class have been injured in their business or property. Their injury
consists of paying higher prices for Lidoderm than they would have paid in the absence of such
violations. This injury is of the type the antitrust and consumer protection laws of the states, the

1 District of Columbia, and Puerto Rico were designed to prevent and flows from that which
2 makes Defendant's conduct unlawful.

3 **II. JURISDICTION AND VENUE**

4 18. This Court has jurisdiction over this action under 28 U.S.C. § 1332(d) because
5 this is a class action in which the aggregate amount in controversy exceeds \$5,000,000, there are
6 over one hundred members of the proposed class, and at least one member of the proposed class
7 is a citizen of a state different from that of one of the Defendants.

8 19. This Court has personal jurisdiction over Defendants because they are present in
9 the United States, do business in the United States, have registered agents in the United States,
10 may be found in the United States, and are otherwise subject to the service of process provisions
11 of 15 U.S.C. § 22.

12 20. Venue is appropriate within this district because Defendants transact business
13 within this District, and their interstate trade and commerce regarding Lidoderm is carried out in
14 this District. Venue, therefore, is appropriate within this District under 15 U.S.C. § 22, and
15 28 U.S.C. § 1391(b) and (c).

16 **III. PARTIES**

17 21. GEHA is a self-insured, not-for-profit association providing health and dental
18 plans to federal employees and retirees and their families through the Federal Employees Health
19 Benefits Plan and the Federal Employees Dental and Vision Insurance Program. GEHA
20 provides benefits to nearly 1.5 million covered lives. GEHA's principal place of business
21 located at 310 NE Mulberry Street, Lees Summit, MO 64086-5861.

22 22. GEHA purchased a significant amount of branded Lidoderm at monopoly prices
23 during the Class Period. After generic entry belatedly occurred in September 2013, GEHA's
24 purchases of generic versions of Lidoderm also included, and will continue to include,
25 overpayments resulting from the Defendants' illegal scheme until the market for generic
26 Lidoderm stabilizes to a "steady state."

27 23. Defendant Endo Pharmaceuticals, Inc. is a corporation organized and existing
28 under the laws of the State of Delaware, with its principal place of business at 100 Endo

1 Boulevard, Chadds Ford, Pennsylvania 19317. On May 23, 2012, Endo Pharmaceutical, Inc.’s
2 shareholders approved a resolution to change the company’s name to Endo Health Solutions,
3 Inc. Endo Pharmaceuticals, Inc. is a pharmaceutical company engaged in the research,
4 development, sale and marketing of prescription pharmaceuticals used primarily to treat and
5 manage pain.

6 24. Defendant Teikoku Seiyaku Co., Ltd. is a Japanese corporation, with its principal
7 place of business at 567 Sanbonmatsu Higashikagawa, Kagawa 769-2695, Japan. Teikoku
8 Seiyaku is in the development, manufacture, and sale of medicated and medically related
9 supplies, offering a range of hot sensation, and analgesic and anti-inflammatory plasters.
10 Teikoku Seiyaku, through its subsidiaries, also engages in the research, development, and
11 manufacture of pharmaceutical transdermal products, and the production and sale of medical
12 adhesive products and external aqueous gel preparations, including Lidoderm.

13 25. Defendant Teikoku Pharma USA, Inc. is a corporation organized and existing
14 under the laws of the State of California, with its principal place of business at 1718 Ringwood
15 Avenue, San Jose, California. Teikoku Pharma USA is a wholly-owned subsidiary of Teikoku
16 Seiyaku Co., Ltd.

17 26. Defendant Actavis, Inc. is a corporation organized and existing under the laws of
18 the State of Nevada, with its principal place of business at 400 Interplace Parkway, Parsippany,
19 New Jersey 07054. Actavis, Inc. is a wholly-owned subsidiary of Actavis plc., incorporated in
20 Ireland on May 16, 2013 as a private limited company, and re-registered effective September 18,
21 2013 as a public limited company.

22 27. Defendant Watson Pharmaceuticals, Inc. is a corporation organized under the
23 laws of the State of Nevada, with its principal place of business at 400 Interplace Parkway,
24 Parsippany, New Jersey 07054. On October 31, 2012, Watson Pharmaceuticals, Inc. completed
25 its acquisition of the Actavis Group. Watson Pharmaceutical, Inc.’s common stock was traded
26 on the NYSE under the symbol “WPI” until close of trading on January 23, 2013, at which time
27 Watson Pharmaceuticals, Inc. changed its corporate name to “Actavis, Inc.” and changed its
28 ticker symbol to “ACT.”

28. Defendant Watson Laboratories, Inc. is a corporation organized under the laws of the State of Nevada, with its principal place of business at 311 Bonnie Circle, Corona, California 92880. Watson Laboratories, Inc. is a wholly-owned subsidiary of Watson Pharmaceuticals, Inc. (now Actavis, Inc.).

29. Defendant Anda, Inc. is a corporation organized under the laws of the State of Florida, with its principal place of business at 2915 Weston Road, Weston, FL 33331. Anda, Inc. is a wholly-owned subsidiary of Watson Pharmaceuticals, Inc. (now Actavis, Inc.).

30. Defendant Anda Pharmaceuticals, Inc. is a corporation organized under the laws of the State of Florida, with its principal place of business at 6500 Adelaide Court, Groveport, OH 43125. Anda Pharmaceuticals, Inc. is a wholly-owned subsidiary of Watson Pharmaceuticals, Inc. (now Actavis, Inc.).

31. Defendant Valmed Pharmaceuticals, Inc. is a corporation organized under the laws of the State of New York, with its principal place of business at 300 Alt Blvd., Grand Island, New York 14072. Valmed Pharmaceuticals, Inc. is a wholly-owned subsidiary of Watson Pharmaceuticals, Inc. (now Actavis, Inc.).

32. The actions taken by Defendants as described are part of, and were taken in furtherance of, the unlawful scheme alleged. These actions were authorized, ordered, and/or done by the Defendants' officers, agents, employees, or other representatives while engaged in the management of the Defendants' affairs (or the affairs of Defendants' predecessors-in-interest) within the course and scope of their duties and employment, and/or with the actual, apparent, and/or ostensible authority of the Defendants.

IV. REGULATORY AND ECONOMIC BACKGROUND

A. The Hatch-Waxman Act and FDA Approval Process

33. Under the Federal Food, Drug, and Cosmetics Act (21 U.S.C. §§ 301-392), a manufacturer who creates a new drug must obtain the approval of FDA to sell it by filing a New Drug Application ("NDA"). An NDA must include submission of specific data concerning the safety and efficacy of the drug, as well as any information on applicable patents.

34. In 1984, Congress amended the Food, Drug and Cosmetics Act with the enactment of the Hatch-Waxman Act (“Hatch-Waxman”). Hatch-Waxman simplified the regulatory hurdles for prospective generic manufacturers by eliminating the need for them to file a lengthy and costly NDA to obtain FDA approval. Instead, FDA provides an expedited review process whereby generic manufacturers may file an Abbreviated New Drug Application (“ANDA”). The ANDA applicant may rely on the safety and efficacy findings of the brand-name drug manufacturer in its NDA if the ANDA demonstrates its proposed generic drug is “bioequivalent” to the corresponding brand-name drug. Bioequivalence requires delivery of the same active ingredient into the body at the same rate as the brand.

35. As a counter-balance, Hatch-Waxman streamlined the process for a brand-name manufacturer to enforce its patents against infringement by generic manufacturers, and provided the brand-name manufacturer with the ability to easily obtain what is essentially a preliminary injunction, in the form of a stay of up to 30 months of FDA approval of generic manufacturer’s ANDAs.

36. When the FDA approves a brand-name manufacturer’s NDA, it lists in a publication entitled the “Approved Drug Products with Therapeutic Equivalence Evaluations” (known as the “Orange Book”) any patents which, according to information supplied to FDA by the brand-name manufacturer: (a) claim the approved drug or its approved uses; and (b) for which “a claim of patent infringement could reasonably be asserted if a person not licensed by the owner engaged in the manufacture, use, or sale of the drug.” 21 U.S.C. § 355(b)(1); 21 U.S.C. § 355(g)(7)(A)(iii).

37. To obtain FDA approval of an ANDA (and thus the right to sell a generic version of a brand-name drug), a generic manufacturer must certify that the generic drug addressed in its ANDA will infringe no patent listed in the Orange Book claiming the brand-name drug. Under Hatch-Waxman, a generic manufacturer’s ANDA must contain one of four certifications:

- a. that no patent for the brand-name drug has been filed with FDA (a “Paragraph I Certification”);
- b. that the patent for the brand-name drug has expired (a “Paragraph II Certification”);

- 1 c. that the patent for the brand-name drug will expire on a particular date and the
2 generic company does not seek to market its generic product before that date (a
3 “Paragraph III Certification”); or
4 d. that the patent for the brand-name drug is invalid or will not be infringed by the
5 generic manufacturer’s proposed product (a “Paragraph IV Certification”).

6 21 U.S.C. § 355(g)(2)(A)(vii).

7 38. Alternatively, with a method-of-use patent, an ANDA may assert that the patent
8 is inapplicable to the use (commonly referred to as the “indication”) for which the drug product
9 will be marketed (commonly called a “Section VIII Statement”).

10 39. When a generic manufacturer files a Paragraph IV Certification asserting that a
11 patent listed in the Orange Book is invalid or will not be infringed, it must promptly give notice
12 of its certification to both the brand manufacturer and the owner of the patent. If either files a
13 patent infringement lawsuit against the ANDA filer within 45 days of receiving the Paragraph
14 IV certification, the FDA may not grant final approval to the ANDA until the earlier of (a) 30
15 months or (b) a court ruling that the patent is invalid or not infringed by the generic
16 manufacturer’s ANDA. 21 U.S.C. § 355(j)(5)(B)(iii).

17 40. During the 30-month stay, FDA may grant “tentative approval” to an ANDA
18 applicant if FDA determines that the ANDA would otherwise qualify for final approval, but
19 cannot authorize the generic manufacturer to market its drug before the 30-month stay expires or
20 a court rules on invalidity and infringement.

21 41. Congress also created incentives for drug manufacturers to seek approval of
22 generic alternatives to branded drugs and challenge weak patents. The Hatch-Waxman
23 Amendments grant a 180-day period of market exclusivity to the first Paragraph IV ANDA
24 applicant to file a substantially complete ANDA. During the 180-day exclusivity period
25 (measured from the first commercial marketing of the generic), the first filer enjoys temporary
26 freedom from competition from other generic versions of the drug, and can sell the generic for a
27 higher price than when multiple generics enter the market. The brand name manufacturer may,
28 however, market its own generic equivalent of the brand name drug (known as an “authorized
generic”) during the 180-day period giving endpayers three competing choices ((i) the brand-

1 name drug; (ii) the Paragraph IV ANDA generic; and (iii) the authorized generic), resulting in
2 even more competitive pricing.

3 42. The first-filed generic manufacturer can forfeit its right to the 180-day period of
4 exclusivity. This can occur, for example, when the first-filer fails to receive tentative approval of
5 its ANDA from FDA within 30 months of filing the ANDA.

6 43. Once a generic version of a branded drug is approved by the FDA, it receives an
7 “AB” rating from FDA. Typically, AB-rated generic versions of brand-name drugs are priced
8 significantly below the brand-name counterparts. Because of the price differentials, and other
9 institutional features of the pharmaceutical market, AB-rated generic versions are rapidly and
10 substantially substituted for their brand-name counterparts. When multiple generic
11 manufacturers enter the market, prices for generic versions of a brand-name drug predictably
12 decrease much more significantly because of price competition among the generic
13 manufacturers, and because the shift of sales volume from the brand-name drug to the
14 corresponding generics is so dramatic. The FTC estimates that the price for a generic version of
15 a drug will drop more than 90 percent below the price of the branded product when multiple
16 generics are on the market. *See, e.g.,*

17 [http://www.ftc.gov/sites/default/files/documents/public_statements/pay-delay-settlements-](http://www.ftc.gov/sites/default/files/documents/public_statements/pay-delay-settlements-pharmaceutical-industry-how-congress-can-stop-anticompetitive-conduct-protect/090623payfordelayspeech.pdf)
18 [pharmaceutical-industry-how-congress-can-stop-anticompetitive-conduct-](http://www.ftc.gov/sites/default/files/documents/public_statements/pay-delay-settlements-pharmaceutical-industry-how-congress-can-stop-anticompetitive-conduct-protect/090623payfordelayspeech.pdf)
19 [protect/090623payfordelayspeech.pdf](http://www.ftc.gov/sites/default/files/documents/public_statements/pay-delay-settlements-pharmaceutical-industry-how-congress-can-stop-anticompetitive-conduct-protect/090623payfordelayspeech.pdf).

20 44. An AB rating is critical to a generic manufacturer because, under the statutory
21 regime enacted by both Congress (*i.e.*, Hatch-Waxman) and most state legislatures (*i.e.*, Drug
22 Product Selection laws, or “DPS laws”), pharmacists may (and, in most states, must) substitute
23 only an AB-rated generic for the brand-name drug, without seeking or obtaining permission
24 from the prescribing doctor. Both Congress and the state legislatures have actively encouraged
25 generic substitution because of their recognition that the economics of the pharmaceutical
26 industry prevent generic manufacturers from simultaneously: (a) engaging in the type of heavy
27 promotion or “detailing” typically done by brand-name manufacturers; and (b) providing the
28 enormous cost savings to purchasers and consumers generated by generic drugs.

45. Generic competition enables purchasers to purchase generic versions of brand-name drugs at substantially lower prices. However, until generic manufacturers enter the market with an AB-rated generic, there is no bioequivalent generic drug which competes effectively with the brand-name drug, and therefore, the brand-name manufacturer can continue to charge and even increase at supra-competitive prices profitably without losing a substantial portion of its sales. Consequently, brand-name drug manufacturers have a strong incentive to use various tactics, including the tactics alleged, to delay the introduction of AB-rated generic competition into the market.

B. The Economic Model of Prescription Drug Purchases and Sales

46. A prescription drug is typically sold in capsule, tablet or, in this case, transdermal patch form through a distribution chain of manufacturers to wholesalers to retail pharmacies, which deliver the product to patients with prescriptions. The drug passes in unaltered form through the chain from manufacturer to patient. This is the case with Lidoderm.

47. Although a minority of patients do not have TPP pharmacy benefits, in the overwhelming majority of the cases, the end payer for a prescription drug is a dual payer comprising a patient and his TPP.

48. The retail price end payers pay for a prescription drug is directly and inextricably intertwined with the wholesale prices charged by drug manufacturers, as the end payers are the source of drug manufacturers' revenues and the targets of drug manufacturers' marketing actions, including illegal and inequitable actions such as those described herein. This is the case with Lidoderm.

49. Manufacturers of brand name prescription drugs sell the drug in final form, ready for consumption, to wholesalers and large pharmacies at a discount to the manufacturer's published price. Wholesalers in turn typically sell the branded drug to retail pharmacies at a slightly smaller discount from the published price, thereby achieving a small percentage markup.

50. Virtually all United States pharmacies have dispensing contracts with TPPs. Under these contracts, for drugs dispensed to members of TPP plans, pharmacies typically

charge the dual end payers (the TPP and its plan member, *i.e.*, the patient using the drug) a retail price based on a percentage of the published price, plus a dispensing fee of \$1.00–\$5.00 per prescription. The pharmacies collect a co-payment from the member, which typically ranges from \$10–\$50 (with a lower co-payment for generic drugs), and the balance from the TPP.

51. After AB-rated generic bioequivalents of a branded drug become readily available, TPPs reduce the amount they will pay to the pharmacy to a price based upon the lower price of the available generic.

52. Thereafter, the TPP's members either accept the lower-priced generic (which generally also reduces the amount of his or her co-payment) or else pay the difference between what the TPP would pay for the generic versus the branded drug.

53. Some health benefit plan members have a dual-payment relation which, instead of a flat co-payment by the consumer, comprises the member paying a percentage of the prescription cost and the TPP paying the balance.

54. For the minority of consumers without a TPP co-payer, the entire price of prescription drug is paid by such consumers.

V. FACTUAL ALLEGATIONS

A. Actavis' ANDA and Endo's Patent Infringement Suit

55. On October 27, 1998, the U.S. Patent and Trademark Office ("PTO") issued the '529 Patent, Teikoku currently holds the '529 patent, and Endo is the exclusive licensee of the '529 patent.

56. On March 19, 1999, the FDA approved NDA No. 20-612 for Lidoderm. The '529 patent is listed in the Orange Book for Lidoderm.

57. On June 1, 1999, Teikoku assumed full ownership of and responsibility for the Lidoderm NDA. It continues to hold the Lidoderm NDA, and Endo has the exclusive right to market and distribute Lidoderm in the United States and sells the product under the authority of Teikoku's NDA.

58. In or about November 2009, Endo also obtained an exclusive license for three additional patents, Patent No. 5,741,510 (the "510 Patent," entitled "Adhesive patch for

1 applying analgesic medication to the skin”), Patent No. 6,096,333 (the “333 Patent,” entitled
2 “Method of forming adhesive patch for applying medication to the skin”), and Patent 6,096,334
3 (the “334 Patent,” entitled “Adhesive patch for applying medication to the skin and method”).
4 These patents (collectively, the “Rolf Patents”), are part of the same family and expired on
5 March 30, 2014. Sometime between November 2009 and June 2011, Endo acquired full title to
6 each of the Rolf Patents.

7 59. Slightly less than a year later, in or about October 2010, Endo granted Teikoku a
8 sublicense under the ‘510 Patent to make and sell topical patches that deliver prescription pain
9 medications and treatments containing 5% lidocaine, including Lidoderm.

10 60. In late 2010, Teikoku submitted information regarding the ‘510 Patent to the
11 FDA for listing in the Orange Book for Lidoderm. The ‘510 Patent is currently listed in the
12 Orange Book with respect to Lidoderm. The remaining Rolf Patents were not submitted to the
13 FDA for inclusion in the Orange Book, and are not listed in the Orange Book with respect to
14 Lidoderm.

15 61. On November 13, 2009, around the time Endo acquired an exclusive license for
16 the Rolf Patents, Actavis filed ANDA No. 20-675 with FDA, seeking approval to market a
17 generic equivalent of Lidoderm. Actavis’ ANDA included a Paragraph IV certification that the
18 commercial manufacture, use and/or sale of its generic Lidoderm product would not infringe
19 any valid claim of the ‘529 patent. Because it was filed prior to the addition of the ‘510 patent
20 to the Orange Book in 2010, its ANDA did not contain a certification as to the ‘510 patent.
21 Actavis did not—and, under 21 C.F.R. § 314.94(a)(12)(vi), was not required to—file an
22 amended Paragraph IV certification as to the ‘510 Patent.

23 62. As the first-filer of an ANDA for generic Lidoderm, Actavis was entitled to
24 market its generic Lidoderm for 180 days free of competition from other ANDA-based, non-
25 authorized generic equivalents of Lidoderm. Endo or its licensee, however, was permitted to
26 sell an authorized generic version of Lidoderm during that 180-day period.

27 63. On or about January 14, 2010, Actavis notified Teikoku that it had filed ANDA
28 No. 20-675. On February 19, 2010, Endo sued Actavis in the United States District Court for

the District of Delaware, alleging that Actavis' filing of its ANDA infringed the '529 patent. *Endo Pharms. Inc. v. Watson Labs Inc.*, No. 1:10-cv-00138-GMS (D. Del. 2010). Under 21 U.S.C. § 355(j), Endo's infringement suit triggered an automatic stay that prohibited FDA from granting final approval to Actavis to launch a generic equivalent of Lidoderm until the earlier of: (a) a final judgment that the '529 patent was invalid, unenforceable, and/or not infringed; or (b) 30 months after the filing of Actavis' ANDA.

64. On March 4, 2010, Actavis counterclaimed, seeking a declaratory judgment that: (a) the '529 patent was invalid; (b) Actavis' proposed generic product did not infringe the '529 patent; and (c) the '529 patent was unenforceable for inequitable conduct.

65. On June 27, 2011, the Delaware District Court issued a favorable claim construction ruling on the '529 patent, essentially ruling in Actavis' favor, and positioning it well for later victory in the litigation. Case No. 1:10-cv-00138-GMS (D. Del.), ECF No. 92.

66. Two days later, on June 29, 2011, Endo Pharmaceuticals, Inc. filed a patent infringement lawsuit against Actavis in the United States District Court for the District of Delaware, alleging that Actavis had infringed the Rolf Patents. *Endo Pharms. Inc. v. Watson Labs Inc.*, No. 1:11-cv-00575-GMS (D. Del. 2011). Actavis counterclaimed, seeking declaratory judgments that the Rolf Patents were invalid and that Actavis' proposed generic product did not infringe the Rolf Patents.

67. From February 6–14, 2012, a bench trial was held in the litigation over the '529 patent (Case No. 1:10-cv-00138-GMS (D. Del)). The trial did not go well for Endo. By the end, it had become apparent that Endo's likelihood of success was slim, due in large part to the District Court's June 27 claim construction ruling.

B. Actavis and Endo's Illegal Scheme to Delay Generic Competition

68. There are approximately 1,000,000 cases of shingles in the country annually. PHN, treatable with Lidoderm, is the most common complication of shingles, affecting roughly 13% of people over age 60 that have shingles. PHN typically lasts for several weeks or months, but may last for years. <http://www.cdc.gov/shingles/CitizenPetition/clinical-overview.html>.

69. In 2012, Endo sold over \$1.3 billion worth of Lidoderm, accounting for almost 31% of Endo Pharmaceuticals, Inc.'s sales revenue that year. During this period, Endo possessed the market power to charge high prices on Lidoderm without losing customers, and it used its market power repeatedly, raising prices even in the face of flat costs, while simultaneously increasing its sales volume.

70. Had Actavis succeeded in the '529 Patent litigation, it would have been able to sell its lower-priced generic version of Lidoderm. It would also have enabled competition from other generic manufacturers (including, but not limited to, a potential authorized generic sold by Endo). Because generic versions of brand-name drugs tend to be much less expensive than their brand-name counterparts, and because purchasers usually switch quickly from a brand to a generic once the generic becomes available, Endo's monopoly profits would have quickly declined once Actavis or other lower-priced generic versions of the product entered the market.

71. To preserve and protect its precious Lidoderm product from competition and maintain its monopoly profits derived therefrom, Endo entered into the agreement with Actavis settling the two patent cases while a decision from the court in the '529 litigation was still pending. In exchange for substantial consideration and Endo's agreement not to launch an authorized generic for seven and half months after Actavis entered the market (or to grant a license to anyone else to sell an authorized generic), Actavis agreed to: (a) drop its challenge to Endo's Lidoderm patents and (b) to refrain from selling a lower-priced generic equivalent of Lidoderm until September 15, 2013.

72. Specifically regarding Actavis' agreement not to launch a lower-priced generic Lidoderm until a much later date, Sections 2(e) and 1(v) of the Agreement provide:

Subject to Section 2(d) [Preparation For Generic Launch], Watson agrees, on behalf of itself and its Affiliates, that, prior to the Start Date, it and its Affiliates shall not directly or indirectly market, offer to sell, sell, have sold, import, manufacture or have manufactured in the Territory any of Watson's Generic Product. Watson acknowledges and agrees that each of Endo and Teikoku would be irreparably harmed should Watson breach this Section 2(e). Nothing in this Agreement shall prohibit or preclude Watson from exercising its rights under 35 U.S.C. § 271(e)(1). Section 2(e).

"Start Date" means the earliest of: (i) September 15, 2013; (ii) the date of Launch of any Generic Product other than Watson's Generic Product; or (iii) the last day

1 before Watson would forfeit its 180-day generic drug exclusivity with respect to
 2 Watson's Generic Product due to the operation of 21 U.S.C. 355(G)(5)(D)(ii) as a
 result of a forfeiture event under 21 U.S.C. 355(j)(5)(D)(i)(I). Section 1(v).

3 73. Endo agreed to compensate Actavis handsomely for refraining from selling a
 4 generic equivalent of Lidoderm for an agreed-upon period of time, and for dropping its
 5 challenge—which it was likely to win—to Endo's patents. The Agreement included a "Brand
 6 Product Supply" provision, in which Endo agreed to share with Actavis the monopoly profits
 7 that Endo would reap from Lidoderm's extended market exclusivity. Specifically, Endo agreed
 8 to provide at least \$96 million worth of brand-name Lidoderm and possibly up to \$240,000,000
 9 worth of branded Lidoderm *at no cost* to Actavis for Actavis to sell. Actavis was required to
 10 honor all Endo-price-related contracts, which effectively prevented it from selling the product at
 11 anything below the monopoly prices set by Endo. In fact, Actavis and its Wholesaler Affiliates
 12 maintained the supra-competitive prices for branded Lidoderm throughout the term of the
 13 Agreement.

14 74. The "Brand Product Supply" provision reads in relevant part:

15 Endo/Teikoku shall provide, at no cost, to Watson's Wholesaler Affiliate Brand
 16 Product of value totaling twelve million dollars (\$12,000,000) per month ... on the
 17 first business day of each month beginning January 1, 2013 and ending August 1,
 2013 (for a total of eight (8) months)...Notwithstanding the foregoing,
 18 Endo/Teikoku's obligations under this Section 3(b) shall terminate immediately
 upon the Launch of any Third Party Generic Product in the Territory...Section
 3(b)

19 ***

20 In the event that Watson does not receive final FDA approval for Watson's
 21 Generic product by January 1, 2014, Endo/Teikoku shall provide at no cost, to
 22 Watson's Wholesaler Affiliate Brand Product of value totaling six million six
 hundred sixty-six thousand six hundred and sixty-seven dollars (\$6,666,667), per
 23 month ... on the first business day of each month beginning January 1, 2014 and
 ending on the earlier of (i) the first to occur of (x) the final approval by the FDA
 of Watson's Generic Product or (y) the Launch of any Generic Product by a Third
 24 Party in the Territory, or (ii) December 1, 2014 (for a total of up to twelve (12)
 months)...Section 3(c)

25 ***

26 In the event that Watson does not receive final FDA approval for Watson's
 27 Generic Product by January 1, 2015, Endo/Teikoku shall provide, at no cost, to
 Watson's Wholesaler Affiliate Brand Product of value totaling seven million one
 28 hundred eleven thousand one hundred and eleven dollars (\$7,111,111) per month
 ... on the first business day of each month beginning January 1, 2015 and ending

on the earlier of (i) the first to occur of (x) the final approval by the FDA of Watson's Generic Product or (y) the Launch of any Generic Product by a Third Party in the Territory, or (ii) September 1, 2015 (for a total of up to nine (9) months)...Section 3(d).

The Brand Product supplied by Endo/Teikoku to Watson's Wholesaler Affiliate under Sections 3(b) through (d) may be resold solely by Watson's Wholesaler Affiliate to Third Parties for use solely in the Territory on pricing and other terms determined by Watson's Wholesaler Affiliate in its sole discretion, provided that neither Watson nor any of its Affiliates (including its Wholesaler Affiliate) shall sell, distribute or dispose of Branded Product in any manner that would constitute a Bundled Sale. Watson agrees that its Wholesaler Affiliate will honor all Endo price-related contracts as communicated to all Endo wholesalers from time to time in the ordinary course of business, provided that the price related contracts do not impose any requirements on Watson's Wholesaler Affiliate that would be inconsistent with requirements imposed upon other Lidoderm® wholesalers, and further provided that such price-related contracts shall not conflict with the terms of this Agreement. Watson shall comply with all Applicable Laws in connection with its resale of the Brand Product. Section 3(e).

75. In addition to the significant quantities of free product that Endo agreed to give to Actavis, Endo also agreed not to launch an authorized generic version of Lidoderm (or to grant a license to anyone else to sell an authorized generic) for a period of seven and one-half months after Actavis entered the market. The practical effect of this Agreement has been to protect for a period of time Actavis' profits resulting from its so-called "first mover advantage." Actavis has taken advantage of this exclusivity period by charging higher prices than it could have if an authorized generic had been on the market. The Agreement, while quite profitable for Actavis, operated to consumers' detriment by suppressing competition that would have driven down prices. The relevant sections of the Agreement read:

License. Subject to the terms and conditions of this Agreement, Endo/Teikoku hereby grant to Watson a non-exclusive (other than pursuant to Section 2(b)), royalty-bearing, non-transferable (other than pursuant to Section 21) and non- sub licensable (other than pursuant to Section 2(c)) license to the Licensed Patents to make, have made, import, use, sell, and offer for sale Watson's Generic product in the Territory solely during the License Term. Section 2(a).

AG Product. The license granted pursuant to Section 2(a) shall be partially exclusive for a period of time in that Endo/Teikoku and their respective Affiliates shall not market or sell a Generic Product, or authorize or license a Third Party to market or sell and AG Product at any time before the earlier of (i) seven and a half (7.5) months from the Start Date, and (ii) the Launch of any Third Party Generic Product in the Territory. Section 2(b).

1 76. Under the terms of the Agreement, Actavis agreed to share with Endo a portion
2 of the increased profits that would result from Endo's agreement not to launch an authorized
3 generic during Actavis's exclusivity period. Actavis agreed to pay Endo a 25% royalty on
4 Actavis's sales of its generic during the seven and one-half-month exclusivity period, provided
5 no third-party or authorized generic was on the market. Specifically, the Agreement provided
6 the following:

7 Beginning with the First Commercial Sale of Watson's Generic Product and until
8 the date of the occurrence of the First Commercial Sale by a Third Party or
9 Endo/Teikoku or their Affiliates of a Generic Product or AG Product in the
Territory, Watson shall pay to Endo royalty payments equal to twenty-five
percent (25%) of all Gross Profit of Watson's Generic Product...Section 3(a).

10 77. Endo's unexplained agreement to pay \$96 to \$240 million, combined with its
11 unexplained agreement to forego its right to launch a competing authorized generic product
12 during the generic exclusivity period suggest that Endo had serious doubts about the patents'
13 validity and/or enforceability against Actavis, and that its primary goal in entering the
14 Agreement with Actavis was to prevent competition, thereby increasing its own profits.

15 78. Actavis received final approval to launch its generic Lidoderm product on
16 August 23, 2012. Consistent with the Agreement, Actavis did not launch its generic product at
17 that time, enabling Endo to continue earning monopoly profits derived from its market
18 exclusivity. On January 1, 2013, Endo began to deliver no-cost branded product to Actavis,
19 which Actavis could and did resell at the branded Lidoderm supra-competitive price. When
20 Actavis finally did launch its AB-rated generic product in September 2013, Endo complied with
21 the Agreement and did not launch a competing authorized generic, which would have driven
22 prices down. As of the date of filing of this Complaint, the Actavis product remains the only
23 AB-rated generic equivalent to Lidoderm available. But for Defendants' illegal Agreement and
24 ongoing, illegal, anticompetitive conduct, a less expensive generic equivalent of Lidoderm, and
25 a less expensive authorized generic version of Lidoderm would have been available long before
26 September 2013. By eliminating competition, Defendants have injured Plaintiff and other
27 members of the Class causing them to pay millions of dollars in overcharges on their purchases
28 of Lidoderm.

1 **VI. ANTICOMPETITIVE EFFECT**

2 79. The Reverse Payment Agreement has enabled the Defendants to: (a) delay the
3 entry of less expensive generic versions of Lidoderm in the United States; (b) fix, raise,
4 maintain, or stabilize the price of Lidoderm and its AB rated bioequivalents; and (c) allocate
5 among them, and share the profits from, the U.S. market for Lidoderm and its AB rated
6 bioequivalents during the Class Period.

7 80. But for the continuing illegal agreements between Actavis and Endo (which
8 included financial inducements to delay the launch of less expensive generic versions of
9 Lidoderm), Actavis would have sold a less expensive AB-rated generic version of Lidoderm on
10 or after August 23, 2012, but prior to September 16, 2013. Other ANDA-based generic versions
11 of Lidoderm would have followed into the market 180 days later and/or Endo would have
12 launched an authorized generic product contemporaneously with the first generic launch.

13 81. Defendants' unlawful concerted action delayed the sale of generic Lidoderm in
14 the United States, causing GEHA and the Class to overpay for Lidoderm at Endo's artificially
15 inflated, supra-competitive prices.

16 **VII. MARKET POWER AND RELEVANT MARKET**

17 82. At all relevant times, Endo had substantial market power (*i.e.*, monopoly power)
18 with respect to Lidoderm because it had the power to maintain the price of the drug it sold as
19 Lidoderm at supra-competitive levels without losing so many sales as to make the supra-
20 competitive price unprofitable.

21 83. A small, but significant, non-transitory price increase above the competitive level
22 for Lidoderm by Endo would not have caused a loss of sales sufficient to make the price
23 increase unprofitable.

24 84. At competitive price levels, Lidoderm does not exhibit significant, positive cross-
25 elasticity of demand with respect to price with any product other than AB-rated generic versions
26 of Lidoderm.

27 85. The differing efficacy, safety, and side effect profiles of different treatments play
28 a critical role in doctors' selection of the most appropriate treatment for a particular patient.

1 There are no interchangeable drug products that are available to prescribing physicians for the
2 indications for Lidoderm. The FDA does not consider such products to be bioequivalent or
3 substitutes.

4 86. Endo needed to control only Lidoderm and its AB-rated generic equivalents, and
5 no other products, in order to maintain the price of Lidoderm profitably at supra-competitive
6 prices. Only the market entry of a competing, AB-rated generic version of Lidoderm would
7 render Endo unable to profitably maintain supra-competitive prices for Lidoderm. Defendants
8 had, and exercised, the power to exclude and restrict competition for Lidoderm and AB-rated
9 bioequivalents.

10 87. Endo, at all relevant times, enjoyed high barriers to entry with respect to
11 competition in the relevant product market as a result of patent and other regulatory protections
12 and high cost of entry and expansion.

13 88. To the extent that Plaintiff is legally required to prove monopoly power through
14 circumstantial evidence by first defining a relevant product market, Plaintiff alleges that the
15 relevant market is the market for Lidoderm (*i.e.*, Lidoderm and its AB-rated generic
16 equivalents). During the period relevant to this case, Endo has been able to profitably maintain
17 the price of Lidoderm well above competitive levels.

18 89. The relevant geographic market is the United States and its territories. At all
19 relevant times prior to generic entry, Endo's market share in the relevant market was 100%,
20 demonstrating market power.

21 **VIII. ANTITRUST INJURY**

22 90. GEHA and the Class have spent a significant amount on purchases of Lidoderm
23 therapy. Because of the Defendants' illegal conduct, these purchasers were compelled to pay
24 artificially inflated prices for Lidoderm. Those prices were substantially higher than the prices
25 that GEHA and the Class would have paid absent the illegal conduct alleged.

26 91. As a consequence, purchasers of Lidoderm have sustained substantial losses and
27 damage to their business and property in the form of overcharges. The full amount, forms, and
28 components of such damages will be determined after discovery and upon proof at trial.

92. Defendants' efforts to restrain competition in the market for Lidoderm have substantially affected interstate and intrastate commerce.

93. Delaying generic competitors in the market place prevented price competition for Lidoderm.

94. Prices for Lidoderm therapy were inflated as a direct and foreseeable result of Defendants' anticompetitive conduct. The inflated prices that GEHA and the Class have paid are traceable to, and the foreseeable result of, the overcharges by Endo.

IX. CLASS ACTION ALLEGATIONS

95. GEHA brings its Claims for Relief for violations of states' laws and unjust enrichment for itself, and, under Federal Rules of Civil Procedure 23(a) and 23(b)(3), as a representative of the State Law End Payer Class, defined as:

All persons and entities in the United States and its territories who have paid and/or co-paid pharmacies for Lidoderm prescriptions, and/or its AB-rated generic equivalent, at any time during the period beginning August 23, 2012, through the present and continuing until the anticompetitive effects of Defendants' unlawful conduct cease.

96. The following persons or entities are excluded from the proposed Class:

- a. Defendants and their counsel, officers, directors, management, employees, subsidiaries, or affiliates;
- b. All governmental entities, except for government funded employee benefit plans;
- c. All persons or entities who purchased Lidoderm for resale purposes; and
- d. Insured individuals covered by plans imposing a flat dollar co-pay that was the same dollar amount for generic as for brand drug purchases.

97. The class members are so numerous that joinder is impracticable. Each class comprises thousands of members.

98. GEHA's claims are typical of the claims of the members of the Class. GEHA and members of the Class were damaged by the same wrongful conduct by the Defendants in that they paid artificially inflated prices for Lidoderm and were deprived of the benefits of earlier and more robust competition from cheaper generic equivalents of Lidoderm as a result of the Defendants' wrongful conduct.

1 99. GEHA will fairly and adequately protect and represent the interests of the Class.
2 GEHA's interests are coincident with, and not antagonistic to, those of both the Class.

3 100. GEHA's counsel, Berman DeValerio, Lowey Dannenberg Cohen & Hart, P.C.
4 and Rawlings and Associates, PLLC have more than a decade of experience in the prosecution
5 of class action antitrust litigation involving prescription drugs for end payer clients. Over the
6 years, these counsel have developed the expert knowledge and skills necessary to navigate and
7 manage this form of complex class litigation.

8 101. Pursuant to Federal Rule of Civil Procedure 23(b)(3), questions of law and fact
9 common to the class members predominate over questions that may affect only individual class
10 members because Defendants have acted on grounds generally applicable to the entire Class,
11 making overcharge damages with respect to the class as a whole appropriate.

12 102. Questions of law and fact common to members of the State Law End Payer Class
13 include:

- 14 a. Whether Endo entered into a contract, combination, or conspiracy with
15 Actavis to restrain trade and, if so, whether it should be evaluated under
16 the rule of per se illegality, the "rule of reason," or any other rule or
 standard;
- 17 b. Whether Defendants unlawfully excluded competitors and potential
 competitors from the market for Lidoderm;
- 18 c. Whether Defendants unlawfully delayed or prevented generic
19 manufacturers from coming to market in the United States;
- 20 d. Whether Defendants' conduct substantially affected interstate commerce;
- 21 e. Whether Defendants maintained market power by delaying generic entry;
- 22 f. Whether the law requires definition of relevant market when direct proof
 of market power is available, and if so, the definition of the relevant
23 market;
- 24 g. Whether and to what extent, Defendants' conduct caused injury (*i.e.*,
 overcharges) to GEHA and the members of the State Law End Payer
25 Class; and
- 26 h. The aggregate overcharge damages to be awarded to the State Law End
 Payer Class.

27 103. Class action treatment is a superior method for the fair and efficient adjudication
28 of this case. Such treatment will permit many similarly situated persons to prosecute their

common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of evidence, effort, or expense that numerous individual actions would engender. The benefits of proceeding through the class action mechanism, including providing injured persons or entities a method for obtaining redress on claims that could not practicably be pursued individually, substantially outweighs potential difficulties in management of this class action.

104. GEHA knows of no special difficulty to be encountered in the maintenance of this litigation that would preclude its maintenance as a class action.

X. CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

For Conspiracy and Combination in Restraint of Trade Under State Laws (On Behalf of GEHA and the State Law End Payer Class Against All Defendants)

105. GEHA incorporates the preceding paragraphs by reference.

106. In 2012, Endo and Actavis entered into the Reverse Payment Agreement to suppress generic competition with Lidoderm and/or its AB generic equivalent. The Reverse Payment Agreement is a contract, combination, and/or conspiracy that substantially, unreasonably, and unduly restrained trade in the relevant market, the purpose and effect of which was to:

- a. Allocate all sales of Lidoderm in the United States to Endo until at least September, 15, 2013;
- b. Prevent Actavis from marketing its generic version of Lidoderm in the United States before September 15, 2013;
- c. Prevent Endo from launching an authorized generic to compete with Actavis' generic Lidoderm for seven and one-half months after Actavis belatedly launched its generic;
- d. Fix at supra-competitive levels the price that GEHA and the members of the State Law End Payer Class paid for Lidoderm; and
- e. Fix at supra-competitive levels the price that GEHA and members of the State Law End Payer Class pay for generic Lidoderm.

107. The Reverse Payment Agreement has harmed GEHA and the State Law End Payer Class members.

108. The Reverse Payment Agreement has covered a sufficiently substantial percentage of the relevant market to harm competition.

109. The Reverse Payment Agreement is a horizontal market allocation and price fixing agreement between actual and potential competitors and is illegal per se under state antitrust laws. Alternatively, GEHA alleges the Reverse Payment Agreement is an unreasonable restraint of trade, in violation of state antitrust law, under a “quick look” or “rule of reason” analysis.

110. There is and was no legitimate, non-pre-textual, pro-competitive business justification for the Reverse Payment Agreement that outweighs its harmful effect. Even if there were such a justification, the Reverse Payment Agreement is and was broader than necessary to achieve any pro-competitive purpose.

111. The Defendants’ conduct violated the following state antitrust or competition practices laws:

- a. Arizona Rev. Stat §§ 44-1402, *et seq.*, with respect to purchases in Arizona by members of the Class;
- b. Cal. Bus. Code §§ 16700, *et seq.*, and Cal. Bus. Code §§ 17200, *et seq.*, with respect to purchases in California members of the Class;
- c. D.C. Code Ann. §§ 28-4502, *et seq.*, with respect to purchases in the District of Columbia by members of the Class;
- d. Fla. Stat. §§ 501.201, *et seq.*, with respect to purchases in Florida by members of the Class;
- e. Haw. Rev. Stat. § 480-1, *et seq.*, with respect to purchases in Hawaii by members of the Class;
- f. 740 Ill. Comp. Stat. 10/3, *et seq.*, with respect to purchases in Illinois by members of the Class;
- g. Iowa Code § 553.2 *et seq.*, with respect to purchases in Iowa by members of the Class;
- h. Kan. Stat. Ann. §§ 50-101, *et seq.*, with respect to purchases in Kansas by members of the Class;
- i. Mass. Gen. L. Ch 93A, *et seq.*, with respect to purchases in Massachusetts by members of the Class;
- j. Me. Rev. Stat. Ann. 10, § 1101, *et seq.*, with respect to purchases in Maine by members of the Class;

- 1 k. Mich. Comp. Laws Ann. §§ 445.772, *et seq.*, with respect to purchases
in Michigan by members of the Class.
- 2 l. Minn. Stat. §§ 325D.51, *et seq.*, with respect to purchases in Minnesota
3 by members of the Class;
- 4 m. Miss. Code Ann. §§ 75-21-3, *et seq.*, with respect to purchases in
Mississippi by members of the Class;
- 5 n. Neb. Code Ann. §§ 59-801, *et seq.*, with respect to purchases in
6 Nebraska by members of the Class;
- 7 o. Nev. Rev. Stat. Ann. § 598A.060, *et seq.*, with respect to purchases
in Nevada by members of the Class;
- 8 p. N.M. Stat. Ann. §§ 57-1-1, *et seq.*, with respect to purchases in
9 New Mexico by members of the Class;
- 10 q. New York General Business Law § 340, *et seq.*, with respect to
purchases in New York by members of the Class;
- 11 r. N.C. Gen. Stat. §§ 75-1, *et seq.*, with respect to purchases in North
12 Carolina by members of the Class;
- 13 s. N.D. Cent. Code § 51-08.1-02, *et seq.*, with respect to purchases in
North Dakota by members of the Class;
- 14 t. Or. Rev. Stat. §§ 646.705, *et seq.*, with respect to purchases in Oregon
15 by members of the Class;
- 16 u. 10 L.P.R.A. § 251, *et seq.*, with respect to purchases in Puerto Rico
by members of the Class;
- 17 v. R.I. Gen. Laws §§ 6-36-4 *et seq.*, with respect to purchases in
18 Rhode Island by members of the Class;
- 19 w. S.D. Codified Laws Ann. § 37-1-3.2, *et seq.*, with respect to purchases
in South Dakota by members of the Class;
- 20 x. Utah Code Ann. §§ 76-10-911, *et seq.*, with respect to purchases in
21 Utah by members of the Class;
- 22 y. Tenn. Code Ann. §§ 47-25-101, *et seq.*, with respect to purchases in
Tennessee by members of the Class;
- 23 z. Vt. Stat. Ann. 9, § 2453, *et seq.*, with respect to purchases in Vermont
24 by members of the Class;
- 25 aa. W.Va. Code §§ 47-18-3, *et seq.*, with respect to purchases in West
Virginia by members of the Class; and
- 26 bb. Wis. Stat. § 133.03, *et seq.*, with respect to purchases in Wisconsin by
27 members of the Class.
- 28

112. GEHA purchased Lidoderm and/or its AB-rated generic equivalent from retail pharmacies during the Class Period.

113. GEHA and the members of the Class have been injured in their business or property by Defendants' antitrust violations. Their injuries comprise (a) being denied the opportunity to purchase lower-priced generic Lidoderm before September 16, 2013, and (b) paying higher prices for Lidoderm and its AB bioequivalents than they would have paid in the absence of Defendants' wrongful conduct. These injuries are of the type the above antitrust laws were designed to prevent, and flow from that which makes Defendants' conduct unlawful.

114. GEHA and the members of the State Law End Payer Class seek damages and multiple damages as permitted by law for the injuries they suffered because of the Defendants' anticompetitive conduct.

115. Defendants are jointly and severally liable for all damages suffered by GEHA and the State Law End Payer class members.

SECOND CLAIM FOR RELIEF

Unfair and Deceptive Practices Under State Laws (On Behalf of GEHA and the State Law End Payer Class Against All Defendants)

116. GEHA re-alleges the preceding paragraphs as though set forth herein.

117. Defendants engaged in unfair competition or unfair, unconscionable, deceptive or fraudulent acts or practices in violation of the state consumer protection statutes listed by, among other things, (a) wrongfully conducting baseless litigation to trigger the automatic 30-month stay prohibiting FDA from granting final approval permitting Actavis to market its less-expensive authorized generic version of Lidoderm; (b) entering into the Reverse Payment Agreement whereby Endo agreed to pay Actavis in exchange for Actavis' commitment to postpone marketing its generic version of Lidoderm; (c) compensating Actavis at least \$96 million in free product under the Reverse Payment Agreement; and (b) agreeing not to compete against Actavis with Endo's own authorized generic Lidoderm. As a result of the Reverse Payment Agreement, Actavis did, in fact, delay marketing its less expensive Lidoderm, despite having FDA approval to do so.

1 118. As a direct and proximate result of Defendants' anticompetitive, deceptive,
2 unfair, unconscionable, and fraudulent conduct, GEHA and the State Law End Payer Class
3 members were deprived of the opportunity to purchase a generic version of Lidoderm before
4 September 16, 2013, and were forced to pay higher prices for brand name Lidoderm.

5 119. Defendants have engaged in unfair competition or unfair or deceptive acts or
6 practices in violation of Alaska Stat. § 45.50.471, *et seq.*

7 120. Defendants have engaged in unfair competition or unfair or deceptive acts or
8 practices in violation of Ariz. Rev. Stat. § 44-1522, *et seq.*

9 121. Defendants have engaged in unfair competition or unfair or deceptive acts or
10 practices in violation of Ark. Code § 4-88-101, *et seq.*

11 122. Defendants have engaged in unfair competition or unfair or deceptive acts or
12 practices in violation of Cal. Bus. & Prof. Code §17200, *et seq.*

13 123. Defendants have engaged in unfair competition or unfair or deceptive acts or
14 practices or has made false representations in violation of Colo. Rev. Stat § 6-1-105, *et seq.*

15 124. Defendants have engaged in unfair competition or unfair or deceptive acts or
16 practices in violation of Conn. Gen. Stat. § 42-110b, *et seq.*

17 125. Defendants have engaged in unfair competition or unfair or deceptive acts or
18 practices in violation of 6 Del. Code 2511, *et seq.*

19 126. Defendants have engaged in unfair competition or unfair or deceptive acts or
20 practices or made false representations in violation of D.C. Code § 28-3901, *et seq.*

21 127. Defendants have engaged in unfair competition or unfair or deceptive acts or
22 practices in violation of Fla. Stat. § 501.201, *et seq.*

23 128. Defendants have engaged in unfair competition or unfair or deceptive acts or
24 practices in violation of Haw. Rev. Stat. § 480, *et seq.*

25 129. Defendants have engaged in unfair competition or unfair or deceptive acts or
26 practices in violation of Idaho Code § 48-601, *et seq.*

27 130. Defendants have engaged in unfair competition or unfair or deceptive acts or
28 practices in violation of 815 ILCS § 505/1, *et seq.*

1 131. Defendants have engaged in unfair competition or unfair or deceptive acts or
2 practices in violation of Kan. Stat. § 50-623, *et seq.*

3 132. Defendants have engaged in unfair competition or unfair or deceptive acts or
4 practices in violation of Md. Com. Law Code § 13-101, *et seq.*

5 133. Defendants have engaged in unfair competition or unfair or deceptive acts or
6 practices in violation of Mass. Gen. L. Ch. 93A, *et seq.*

7 134. Defendants have engaged in unfair competition or unfair or deceptive acts or
8 practices in violation of 5 Me. Rev. Stat. § 207, *et seq.*

9 135. Defendants have engaged in unfair competition or unfair or deceptive acts or
10 practices in violation of Mich. Stat. § 445.901, *et seq.*

11 136. Defendants have engaged in unfair competition or unfair or deceptive acts or
12 practices in violation of Minn. Stat. § 8.31, *et seq.*

13 137. Defendants have engaged in unfair competition or unfair or deceptive acts or
14 practices in violation of Vernon's Missouri Stat. § 407.010, *et seq.*

15 138. Defendants have engaged in unfair competition or unfair or deceptive acts or
16 practices in violation of Neb. Rev. Stat. § 59-1601, *et seq.*

17 139. Defendants have engaged in unfair competition or unfair or deceptive acts or
18 practices in violation of Nev. Rev. Stat. § 598.0903, *et seq.*

19 140. Defendants have engaged in unfair competition or unfair or deceptive acts or
20 practices in violation of N.H. Rev. Stat. § 358-A:1, *et seq.*

21 141. Defendants have engaged in unfair competition or unfair or deceptive acts or
22 practices in violation of N.M. Stat. § 57-12-1, *et seq.*

23 142. Defendants have engaged in unfair competition or unfair or deceptive acts or
24 practices in violation of N.Y. Gen. Bus. Law § 349, *et seq.*

25 143. Defendants have engaged in unfair competition or unfair or deceptive acts or
26 practices in violation of N.C. Gen. Stat. § 75-1.1, *et seq.*

27 144. Defendants have engaged in unfair competition or unfair or deceptive acts or
28 practices in violation of N.D. Cent. Code § 51-15-01, *et seq.*

1 145. Defendants have engaged in unfair competition or unfair or deceptive acts or
2 practices in violation of Ohio Rev. Code Ann. § 4165.01, *et seq.*

3 146. Defendants have engaged in unfair competition or unfair or deceptive acts or
4 practices in violation of Or. Rev. Stat. § 646.605, *et seq.*

5 147. Defendants have engaged in unfair competition or unfair or deceptive acts or
6 practices in violation of 73 Pa. Stat. § 201-1, *et seq.*

7 148. Defendants have engaged in unfair competition or unfair or deceptive acts or
8 practices in violation of R.I. Gen. Laws § 6-13.1-1, *et seq.*

9 149. Defendants have engaged in unfair competition or unfair or deceptive acts or
10 practices in violation of S.D. Code Laws § 37-24-1, *et seq.*

11 150. Defendants have engaged in unfair competition or unfair or deceptive acts or
12 practices in violation of Utah Code § 13-11-1, *et seq.*

13 151. Defendants have engaged in unfair competition or unfair or deceptive acts or
14 practices in violation of 9 Vt. § 2451, *et seq.*

15 152. Defendants have engaged in unfair competition or unfair or deceptive acts or
16 practices in violation of Wash. Rev. Code § 19.86.010, *et seq.*

17 153. Defendants have engaged in unfair competition or unfair, deceptive or fraudulent
18 acts or practices in violation of W.Va. Code § 46A-6-101, *et seq.*

19 154. GEHA purchased Lidoderm and/or its generic equivalent from retail pharmacies
20 during the Class Period.

21 155. GEHA and members of the State Law End Payer Class have been injured in their
22 business and property by reason of Defendants' anticompetitive, unfair, or deceptive acts
23 alleged in this Count. Their injury consists of paying higher prices for Lidoderm prescription
24 drugs than they would have paid in the absence of these violations. This injury is of the type the
25 state consumer protection statutes were designed to prevent and proximately results from
26 Defendants' unlawful conduct.

THIRD CLAIM FOR RELIEF

**Restitution for Unjust Enrichment
(On Behalf of GEHA and the State Law End Payer Class Against All Defendants)**

156. GEHA incorporates the preceding paragraphs by reference.

157. To the extent required, this claim is pled in the alternative to the other claims under FED. R. CIV. P. 8(d).

158. Defendants have benefited from the revenue they have generated from Lidoderm made, resulting from the acts alleged in this Complaint.

159. Defendant Actavis has benefitted from the acts alleged in this Complaint to the extent of the payments (at least \$96 million in free product in total) that it has received under the Reverse Payment Agreement. The funds for such payments by the Endo Defendants derived from GEHA's and the State Law End Payer Class' overpayments for Lidoderm.

160. GEHA and the State Law End Payer Class members have conferred an economic benefit upon the Defendants in the nature of revenue resulting from payments made during the pendency of the antitrust conspiracy, to GEHA's and the State Law End Payer Class' detriment.

161. The economic benefit of payments made by the State Law End Payer Class members during the conspiracy is a direct and proximate result of Defendants' anticompetitive behavior restricting competition as set forth above.

162. The benefit held by the Defendants rightfully belongs to GEHA and the State Law End Payer Class, as GEHA and the absent members of the Class paid these inequitable sums to Defendants during the Class Period, when Defendants used illicit and inequitable measures to delay generic entry into the market.

163. It would be inequitable for Defendant Actavis to retain any of the proceeds of the Reverse Payment Agreement.

164. It would be inequitable for the Endo Defendants to be permitted to retain any of the revenue generated from GEHA's and the State Law End Payer Class' payments from Lidoderm derived from their unfair and unconscionable methods, acts, and trade practices,

1 including, but not limited to, the Reverse Payment Agreement and the acts alleged herein,
2 designed to delay introduction by Actavis and others of generic bioequivalents to Lidoderm.

3 165. It would be futile for GEHA and the State Law End Payer Class to seek a remedy
4 from any party with whom they had or have privity of contract. Defendants have paid no
5 consideration to anyone for any of the illicit and inequitable benefits they received from GEHA
6 and class members.

7 166. Defendants are aware of and appreciate the benefits they obtained inequitably
8 that came from GEHA and the members of the State Law End Payer Class.

9 167. Defendants should be compelled to disgorge all incremental proceeds they
10 obtained inequitably as a result of the unjust conduct alleged herein in a common fund for the
11 benefit of GEHA and State Law End Payer Class members.

12 168. A constructive trust should be imposed upon all sums the Defendants obtained
13 inequitably that are traceable to GEHA and State Law End Payer Class members.

14 169. GEHA and the State Law End Payer Class members have no adequate remedy at
15 law.

16 **XI. DEMAND FOR JUDGMENT**

17 WHEREFORE, GEHA, on behalf of itself and the State Law End Payer Class,
18 respectfully prays that the Court:

19 A. Determine that this action may be maintained as a class action pursuant to FED.
20 R. Civ. P. 23(a) and (b)(3), and direct that reasonable notice of this action, as provided by FED.
21 R. Civ. P. 23(c)(2) be given to the Class and appoint GEHA the representative of the Class and
22 its counsel Lowey Dannenberg Cohen & Hart, P.C. as Class Counsel;

23 B. Enter Judgment against Defendants jointly and severally in favor of GEHA and
24 the Class;

25 C. Award the State Law End Payer Class actual damages and multiple damages or
26 punitive damages where available by law in an amount to be determined at trial;

27 D. Disgorge from Defendants all illicit and inequitable sums they received due to
28 their improper conduct and establish a constructive trust over these monies;

1 E. Award GEHA and the Class their costs of suit, including reasonable attorneys'
2 fees as provided by law;

3 F. Grant any such other further relief to which GEHA may be entitled and/or is
4 necessary to correct the anticompetitive effects caused by the unlawful conduct of Defendants
5 and as the Court deems just and/or equitable.

6 **XII. JURY DEMAND**

7 Pursuant to Rule 38 of the Federal Rules of Civil Procedure, GEHA, on behalf of itself
8 and the proposed Class, demands a trial by jury on all issues so triable.

9 DATED: May 12, 2014

BERMAN DEVALERIO

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