

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

**If you bought brand or generic Lidoderm directly from Endo Pharmaceuticals Inc. or Watson Pharmaceuticals, Inc., a class action lawsuit could affect your rights.**

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

- The purpose of this notice is to alert you about a Class Action Lawsuit (the “Lawsuit”) brought by direct purchasers of the prescription pharmaceutical Lidoderm or generic Lidoderm (lidocaine patch 5%) (“Direct Purchaser Class Plaintiffs”). The Lawsuit asserts that Defendants Endo Pharmaceuticals Inc. (“Endo”), Teikoku Seiyaku Co., Teikoku Pharma USA (collectively “Teikoku”), Actavis plc, Watson Pharmaceuticals, Inc., and Watson Laboratories, Inc. (collectively, “Watson”) (all together, “Defendants”) violated antitrust laws by unlawfully agreeing to delay and impair generic competition to Lidoderm through a 2012 settlement and license agreement resolving patent infringement litigation.
- All Defendants have denied any wrongdoing and assert that their settlement and license agreement constituted a procompetitive and bona fide 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 Direct Purchaser Class Plaintiffs’ claims. The Court has set a trial to begin on December 4, 2017.
- Your legal rights are affected whether you act or do not act, so please read this notice carefully.
- The Court has determined that the Lawsuit between Direct Purchaser Class Plaintiffs and Defendants can proceed as a class action. The class (the “Direct Purchaser Class” or the “Class”) includes the following:

All persons or entities in the United States, including its territories, possessions, and the Commonwealth of Puerto Rico, who purchased brand or generic Lidoderm directly from any of the Defendants at any time during the period August 23, 2012 through May 1, 2014.

Excluded from the Class are all Defendants and their officers, directors, management, employees, subsidiaries and affiliates, as well as all federal government entities.

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

<b>YOUR LEGAL RIGHTS AND OPTIONS</b>	
<b>DO NOTHING</b>	If you do nothing, you will remain in the Class and may be entitled to share in any recovery that may come from a trial or settlement with Defendants. All of the Court's orders will apply to you and legally bind you.
<b>EXCLUDE YOURSELF FROM THE CLASS</b>	You may choose to exclude yourself (i.e., "opt out") from the Class. If you decide to exclude yourself, you will not be bound by any decision in this Lawsuit relating to Defendants, nor will you be entitled to participate in and benefit from any recovery in this case.
<b>GET MORE INFORMATION</b>	If you would like to obtain more information about the Lawsuit, you can send questions to the lawyers identified in this notice.

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

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## BASIC INFORMATION

### 1. Why did I get this notice?

You received this notice because, according to Defendants' sales records, you may have purchased brand or generic Lidoderm directly from one or more of the Defendants at some point between August 23, 2012 and May 1, 2014, and therefore you may be a member of the Class that was certified by the Court for this Lawsuit against Defendants.

### 2. What is this lawsuit about?

The Direct Purchaser Class Plaintiffs allege that Defendants violated federal antitrust laws by entering into an anticompetitive agreement that delayed or blocked the market entry of less expensive, generic versions of Lidoderm. Specifically, the Direct Purchaser Class Plaintiffs allege that Endo and Teikoku agreed to pay Watson with brand Lidoderm patches and by agreeing not to start selling an authorized generic version of Lidoderm until 7.5 months after Watson launched its generic Lidoderm. Direct Purchaser Class Plaintiffs further allege that, in exchange for these payments, Watson agreed to delay selling its generic version of Lidoderm, thereby reducing competition from less expensive generic versions of Lidoderm. Direct Purchaser Class Plaintiffs allege that they were injured because they were overcharged for their purchases of brand and/or generic Lidoderm because of the delay in the availability of less expensive, generic versions of Lidoderm, including an authorized generic Lidoderm. A copy of the operative Direct Purchaser Class Plaintiffs' Second Consolidated Amended Class Action Complaint dated December 19, 2014 (the "Complaint") is available at [www.faruqilaw.com](http://www.faruqilaw.com) or [www.garwingerstein.com](http://www.garwingerstein.com) or [www.hbsslaw.com](http://www.hbsslaw.com).

Defendants deny Direct Purchaser Class Plaintiffs' allegations, and they deny that any Class member 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 Direct Purchaser Class Plaintiffs have sustained any injury or damages as a result of Defendants' conduct.

No trial has been held in the Class Action Lawsuit. Trial is currently scheduled to begin on December 4, 2017.

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 DIRECT PURCHASER CLASS PLAINTIFFS' CLAIMS AGAINST ANY DEFENDANT, OR THE DEFENSES ASSERTED BY ANY DEFENDANT.

The Class Action 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, one or more entities called “Class Representatives” sue on behalf of other entities with similar claims. In this case, the Class Representatives are Droguería Betances, Rochester Drug Co-Operative, Inc., and American Sales Company, LLC.

The Class Representatives together with the entities on whose behalf they have sued constitute the “Class” or “Class Members.” They are also called the “Direct Purchaser Class Plaintiffs” or “Plaintiffs.” Their attorneys are called “Plaintiffs’ Counsel” or “Class 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 Direct Purchaser Class Plaintiffs against Defendants can proceed as a class action. A copy of the Court’s order may be found at [www.faruqilaw.com](http://www.faruqilaw.com) or [www.garwingerstein.com](http://www.garwingerstein.com) or [www.hbsslaw.com](http://www.hbsslaw.com).

Specifically, the Court held that:

- The number of Class members is so numerous that joining them all into one suit is impractical.
- Members of the Class share common legal or factual issues relating to the claims in this case.
- The claims of the Class Representatives are typical of the claims of the rest of the Class.
- The Class Representatives and the lawyers representing the Class will fairly and adequately protect the Class’s interests.

- The common legal and factual questions predominate over any questions affecting only individual members of the Class, and this Class Action will be more efficient than individual lawsuits.

Defendants are petitioning the United States Court of Appeals for the Ninth Circuit for appellate review of the Court's order certifying the Class.

#### 4. Has the Court identified Class issues?

The Court has identified the following Class-wide issues:

- (a) Whether Defendants' agreement violates the antitrust rule of reason;
- (b) Whether, by and through the agreement, Defendants conspired to suppress generic competition to Lidoderm; and
- (c) The amount of overcharges paid by the Class in the aggregate.

### WHO IS IN THE CLASS

#### 5. Am I part of the Class in the Lawsuit against Defendants?

You are in the Class if you are an entity in the United States, its territories, possessions, or the Commonwealth of Puerto Rico that purchased branded Lidoderm or generic Lidoderm directly from any of the Defendants at any time between August 23, 2012 and May 1, 2014 (the "Class") and do not meet one of the exclusions.

Excluded from the Class are Defendants, and their officers, directors, management, employees, subsidiaries, or affiliates, and all federal governmental entities.

If you are not sure whether you are included, you may call or write to Co-Lead Class Counsel in the Lawsuit at the telephone numbers or addresses listed in Question 9 below. If you wish to exclude yourself from the Class, please refer to Question 8.

### IF YOU DO NOTHING

#### 6. What happens if I do nothing at all?

If you are in the Class and you do nothing, 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 Direct Purchaser Class Plaintiffs and Defendants. All of the Court's orders in the case by the Direct Purchaser Class Plaintiffs against Defendants will apply to you and legally bind you. You will also be bound by any judgment in the Lawsuit.

## EXCLUDING YOURSELF FROM THE CLASS

### 7. Why would I ask to be excluded?

If you exclude yourself from the Class—also known as “opting-out” of the Class—you won't get any money or benefits from this lawsuit even if Plaintiffs obtain them as a result of trial or from any settlement between Defendants and 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 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.

### 8. How do I ask the Court to exclude me from the Class?

You can exclude yourself from the 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 Direct Purchaser Class Action in *In re Lidoderm Antitrust Litigation*, No. 14-md-2521-WHO (N.D. Cal.) to one of the lawyers listed in Question 9 below on or before June 22, 2017. Be sure to include your name, address, telephone number, and your signature. Your letter requesting exclusion **must** be postmarked no later than June 22, 2017.

## THE LAWYERS REPRESENTING YOU

### 9. Do I have a lawyer in this case?

The attorneys and law firms listed below are serving as Co-Lead Counsel for the Class by appointment of the Court, and are representing the Class in this Lawsuit with other Class Counsel. Co-Lead Class Counsel are experienced in handling similar cases against other companies. Co-Lead Class Counsel are:

FARUQI & FARUQI, LLP Peter R. Kohn Joseph T. Lukens 101 Greenwood Avenue, Suite 600 Jenkintown, PA 19046 Tel: (215) 277-5770	GARWIN GERSTEIN & FISHER LLP Bruce E. Gerstein Noah Silverman Wall Street Plaza 88 Pine Street, 10th Floor New York, NY 10005 Tel: (212) 398-0055	HAGENS BERMAN SOBOL SHAPIRO LLP Thomas Sobol David S. Nalven 55 Cambridge Parkway, Suite 301 Cambridge, MA 02142 Tel: (617) 482-3700
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### 10. Should I get my own lawyer?

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

### 11. How will the lawyers be paid?

If Class Counsel achieves a recovery for the 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 Class Counsel have advanced on behalf of the Class. If the Court grants Class 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 Class. Members of the Class will not otherwise have to pay any attorneys' fees or expenses in connection with the Lawsuit.

## THE TRIAL

### 12. How and when will the Court decide who is right?

If the Class's claims against Defendants are not resolved by a settlement or otherwise, there will be a trial. Trial is currently scheduled to begin on December 4, 2017. There is no guarantee that Plaintiffs will win or obtain any money for



the Class. Any judgment will be binding on all Class members who have not opted out, regardless of who wins.

**13. Do I have to come to the trial?**

You do not need to attend the trial. Class Counsel will present the case for Plaintiffs and the 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 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.

**GETTING MORE INFORMATION**

**14. How do I get more information?**

For more detailed information about this Lawsuit, please refer to the papers on file in this Lawsuit, which may be inspected at the Office of the Clerk of Court, United States District Court for the Northern District of California, 450 Golden Gate Avenue, 17<sup>th</sup> floor, San Francisco, CA 94012 during normal business hours. You may also get additional information by calling or writing to Co-Lead Class Counsel listed in Question 9 above.

**PLEASE DO NOT WRITE OR CALL THE COURT OR THE CLERK'S OFFICE FOR INFORMATION.**

DATE: May 8, 2017

BY THE COURT

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Honorable William H. Orrick  
United States District Judge