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8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**
10 **SAN FRANCISCO DIVISION**
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13 In re LIDODERM ANTITRUST
14 LITIGATION

MDL Docket No. 14-md-02521-WHO

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16 THIS DOCUMENT RELATES TO:
17 DIRECT PURCHASER CLASS ACTIONS
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21 **~~PROPOSED~~ AMENDED ORDER GRANTING DIRECT PURCHASER CLASS**
22 **PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENTS,**
23 **APPROVAL OF FORM AND MANNER OF NOTICE, AND**
24 **SETTING SCHEDULE FOR FINAL APPROVAL HEARING**
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28 **~~AMENDED PROPOSED~~ ORDER GRANTING PRELIMINARY APPROVAL**
TO PROPOSED DIRECT PURCHASER CLASS SETTLEMENTS
MDL DOCKET NO. 14-md-02521-WHO

1 the period August 23, 2012 through May 1, 2014 (the “Class”). Excluded
2 from the Class are Endo Pharmaceuticals Inc., Teikoku Pharma USA, Inc.
3 and Teikoku Seiyaku Co., Ltd., Actavis, Inc., Actavis plc, Watson
Laboratories, Inc., and their officers, directors, management, employees,
subsidiaries, or affiliates, and all federal governmental entities.

4 Also excluded from the Class are the following Retailer Plaintiffs that
5 pursued claims separately from the Class: Walgreen Co., The Kroger Co.,
6 Safeway Inc., HEB Grocery Company LP, Albertson’s LLC, Rite Aid
Corporation, Rite Aid Hdqtrs. Corp., and CVS Pharmacy, Inc.

7 3. The Court also previously appointed the Plaintiffs as Class Representatives and
8 following law firms as Class Counsel pursuant to Fed. R. Civ. P. 23(g): Faruqi & Faruqi LLP,
9 Garwin Gerstein & Fisher LLP, and Hagens Berman Sobol Shapiro LLP.

10 Preliminary Approval of the Proposed Settlements

11 4. Fed. R. Civ. P. 23(e) provides that a proposed settlement in a class action must be
12 approved by the Court. As a first step, plaintiffs generally seek preliminary approval of the
13 proposed settlement. Manual for Complex Litigation (Fourth) § 21.632 (2015). “A preliminary
14 approval of a settlement and notice to the proposed class is appropriate if the proposed settlement
15 appears to be the product of serious, informed, non-collusive negotiations, has no obvious
16 deficiencies, does not improperly grant preferential treatment to class representatives or
17 segments of the class, and falls within the range of possible approval.” *State of California v.*
18 *eBay, Inc.*, No. 5:12–CV–05874–EJD, 2014 WL 4273888, at *5 (N.D. Cal. Aug. 29, 2014)
19 (internal quotations omitted). Preliminary approval is not a dispositive assessment of the fairness
20 of the proposed settlement, but rather determines whether it falls within the “range of
21 reasonableness.” *In re High-Tech Employee Litig.*, No. 11-cv-2509, 2013 WL 6328811, at *1
22 (N.D. Cal. Oct. 30, 2013) (citation omitted). Preliminary approval, however, establishes an
23 “initial presumption” of fairness, such that notice may be given to the class and the class may
24 have a “full and fair opportunity to consider the proposed [settlement] and develop a
25 response.” *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1079 (N.D. Cal. 2007); *see*
26 Manual for Complex Litigation (Fourth) § 21.631 (2015).

1 period pursuant to Fed. R. Civ. P. 23(e)(4). See *Officers for Justice v. Civil Serv. Comm'n*, 688
 2 F.2d 615, 635 (9th Cir. 1982) (“to hold that due process requires a second opportunity to opt out
 3 after the terms of the settlement have been disclosed to the class would impede the settlement
 4 process so favored in the law”); *Low v. Trump University*, 246 F. Supp. 3d 1295, 1306 (S.D. Cal.
 5 2017) (objector who chose not to opt-out after having received notice of class certification
 6 “cannot now belatedly argue that due process compels a further opt-out opportunity”); *Meijer,*
 7 *Inc. v. Abbott Labs.*, Case No. C 07-5985 CW (N.D. Cal. Apr. 8, 2011) [ECF No. 504], at 3
 8 (because the previously served class certification notice satisfied the requirements of Rule 23(e)
 9 and due process and provided for an opt-out period that had closed, “there is no need for an
 10 additional opt-out period pursuant to Fed. R. Civ. P. 23(e)(4)”).

11 9. Class Counsel shall cause the Amended Settlement Notice and the form of Letter
 12 to Class Members Concerning Their Purchases substantially in the form submitted to the Court
 13 with Direct Purchaser Plaintiffs’ Notice of Amended Direct Purchaser Settlement Notice
 14 Documents to be disseminated by May 21, 2018 (15 days after preliminary approval) via first-
 15 class mail to the last known address of each member of the Class.

16 10. Pursuant to the Class Action Fairness Act of 2005 (“CAFA”), Defendants served
 17 notice as required under CAFA of the Settlements within 10 days after the date Plaintiffs filed
 18 the proposed Settlements with the Court and contemporaneously provided Class Counsel with
 19 copies of any such notice.

Final Fairness Hearing

21 11. A hearing on final approval (the “Fairness Hearing”) shall be held before this
 22 Court on September 12, 2018 in the courtroom assigned to the Honorable William H. Orrick,
 23 U.S.D.J., at the United States District Court for the Northern District of California, United States
 24 Courthouse, 450 Golden Gate Avenue, San Francisco, CA 94102. At the Fairness Hearing, the
 25 Court will consider, *inter alia*: (a) the fairness, reasonableness and adequacy of each of the
 26 Settlements; (b) the proposed plan of allocation of the Settlement Fund among Class Members;

1 (c) the proposed claim form and process to be used for the allocation of the Settlement Fund; (d)
2 whether the Court should approve awards of attorneys' fees and reimbursement of expenses to
3 Class Counsel; (e) whether service awards should be awarded to the Class Representatives, and
4 in what amount; and (f) whether entry of a final judgment terminating this litigation should be
5 entered.

6 12. The Fairness Hearing may be rescheduled or continued; in this event, the Court
7 will furnish all counsel with appropriate notice. Class Counsel shall be responsible for
8 communicating any such notice promptly to the Class by posting conspicuous notice on the
9 website identified in the notice.

10 13. Class Members who wish to (a) object with respect to any of the proposed
11 Settlements; and/or (b) wish to appear in person at the Fairness Hearing, should first send an
12 objection and, if intending to appear, a notice of intention to appear, along with a summary
13 statement outlining the position to be asserted and the grounds therefore together with copies of
14 any supporting papers or briefs to the Clerk of the United States District Court for the Northern
15 District of California, 450 Golden Gate Avenue, San Francisco, CA 94102. Any such objection
16 and/or notice of intention to appear and summary statement should be postmarked no later than
17 July 5, 2018 (45 days after the date that the notice is mailed to each member of the Class).

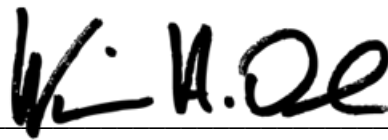
18 Except as herein provided, no person or entity shall be entitled to contest the terms of any of the
19 proposed Settlements. All persons and entities who fail to file an objection as provided above
20 shall be deemed to have waived any such objections by appeal, collateral attack or otherwise.

21 Persons or entities who have filed an objection and wish to be heard at the Fairness Hearing may
22 appear either in person or through your own attorney. Such persons or entities may file a notice
23 with the Court of intent to appear, and may also submit a statement of the reasons for the
24 objection. Persons or entities who file an objection do not need to appear in order to have their
25 objections considered.

1 17. Neither this Order nor any of the Settlement Agreements nor any other
2 Settlement-related document nor anything contained herein or therein or contemplated hereby or
3 thereby nor any proceedings undertaken in accordance with the terms set forth in any of the
4 Settlement Agreements or herein or in any other Settlement-related document, shall constitute,
5 be construed as or be deemed to be evidence of or an admission or concession by any Defendant
6 as to the validity of any claim that has been or could have been asserted against any Defendant or
7 as to any liability by any Defendant as to any matter set forth in this Order.

8 **IT IS SO ORDERED.**

9 Dated: May 3, 2018

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12 WILLIAM H. ORRICK
13 United States District Judge