

SUPREME COURT OF THE STATE OF NEW YORK COUNTY OF SUFFOLK

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IN RE OPIOID LITIGATION

Index No. 400000/2017
Hon. Jerry Garguilo

.....X

This document relates to:

Suffolk County Case: 400001/2017
Nassau County Case: 400008/2017
State of New York Case: 400016/2018

FINAL CONSENT ORDER AND JUDGMENT The Plaintiffs, the State of New York, the County of Nassau, and the County of Suffolk (“Plaintiffs”) brought the above-captioned actions against Defendants, Endo Health Solutions Inc., Endo Pharmaceuticals Inc., Endo International plc, Par Pharmaceutical, Inc., and Par Pharmaceutical Companies, Inc. (collectively, “Endo/Par” or “Defendants”), among others, alleging that Defendants falsely marketed prescription opioids, failed to effectively monitor and report suspicious orders of prescription opioids and/or implement measures to prevent diversion of prescription opioids, which contributed to an increase in opioid overdose and addiction and contributed to a public health crisis in the State of New York and Suffolk and Nassau Counties (collectively, the “Actions”). Endo/Par deny these allegations and claim to have no liability whatsoever to Plaintiffs. The Plaintiffs and Defendants (collectively, the “Parties”), by their counsel, have agreed to this resolution (“Agreement”) and its entry as this Final Consent Order and Judgment (“Judgment”) by the Court without trial or adjudication of any issue of fact or law, and without finding or admission of wrongdoing or liability of any kind.

IT IS HEREBY ORDERED THAT:

I. RECITALS

A. Plaintiff, People of the State of New York, filed a Complaint for damages, penalties and other monetary relief pursuant to GBL §§ 349, 350, PHL §3300; SFL § 189 and SSL § 145-b and the common law related to public nuisance.

B. The County of Nassau and the County of Suffolk have also filed complaints for damages and other relief. Plaintiffs also alleged violations of discovery obligations have moved for a default judgment and penalties pursuant to Judiciary Law § 753 (Docket Nos. 8440 and 8444).

C. Endo/Par denies the allegations against it and that it has any liability whatsoever to the Plaintiffs.

D. Plaintiffs have determined that this Agreement is in the public interest.

E. The Parties recognize that the outcome of the Actions is uncertain and a final resolution through the litigation process likely will require protracted litigation.

F. Therefore, without any admission of liability or wrongdoing by Endo/Par or any other Released Entities (as defined below), the Parties now mutually desire to enter into this Agreement to avoid the delay, expense, inconvenience, and uncertainty of protracted litigation.

II. AGREEMENT

In consideration of the mutual promises, terms, and conditions hereinafter expressed, the adequacy of which is hereby acknowledged by all Parties, it is agreed by and between Endo/Par and Plaintiffs, as follows:

1. The foregoing Recitals are incorporated herein and constitute an express term of this Agreement.

2. Terms of Payment. Endo/Par shall pay or cause to be paid a total amount of \$50,000,000 (Fifty Million Dollars) (the “Settlement Amount”) to Plaintiffs on or before September 10, 2021 in accordance with the following terms. The obligation to make this payment is joint and several among Endo/Par and Endo International plc. The payment must be made as follows:

- (a) Endo/Par shall pay or cause to be paid by wire transfer \$22,300,000 (Twenty-two Million Three Hundred Thousand Dollars) to the Office of the New York State Attorney General, pursuant to wire instructions to be provided;
- (b) Endo/Par shall pay or cause to be paid by wire transfer \$13,850,000 (Thirteen Million Eight Hundred Fifty Thousand Dollars) to Nassau County’s counsel, Napoli Shkolnik PLLC, pursuant to wire instructions to be provided; and
- (c) Endo/Par shall pay or cause to be paid by wire transfer \$13,850,000 (Thirteen Million Eight Hundred Fifty Thousand Dollars) to Suffolk County’s counsel, Simmons Hanly Conroy LLC, pursuant to wire instructions to be provided.

If for any reason, Plaintiff must remit any portion of the above settlement amount (\$50,000,000) to a bankruptcy court or other party as a result of the commencement of a case with respect to Defendants under Title 11 of the United States Code (the “Bankruptcy Code”) then Endo International plc shall make such payment to Plaintiffs as soon as reasonably practicable.

3. Referee Invoices. Endo/Par and its counsel agree to be responsible for all costs and expenses associated with invoices from Referee Joseph J. Maltese related to the conduct alleged in NYSCEF Docket Numbers 8239, 8247, 8510, and 8515. Plaintiffs will not be responsible for any costs and expenses associated with such Referee invoices.

4. Scope. This Agreement will resolve all of the claims that the Plaintiffs have asserted or could have asserted in the Actions seeking damages, costs, and any other remedies relating to and arising from the alleged historic and continuing opioid-related injuries that Plaintiffs

contend were caused by or arise from Endo/Par's alleged failure to properly market and distribute prescription opioids, including, without limitation, any claims under New York General Business Law §§ 349, 350, New York Public Health Law § 3300; New York State Finance Law GBL §§ 349, 350, PHL §3300; SFL § 189 and SSL § 145-b and the common law related to public nuisance as well as that Plaintiff's motion for penalties pursuant to Judiciary Law § 753.

5. Bankruptcy. Nothing in this agreement shall preclude the Plaintiffs from receiving a distribution from a potential bankruptcy of Endo/Par to the extent that the Plaintiffs have a right to receive a payment or distribution in accordance with Paragraph 20 of this Agreement. Furthermore, this Agreement shall not bar the Plaintiffs from participating in any future settlement agreement related to Endo/Par's conduct in the marketing and distribution of opioids; provided, that the State of New York shall not be entitled to receive a payment or distribution pursuant to any such future settlement agreement except to the extent that the State of New York otherwise has a right to receive a payment or distribution in accordance with Paragraph 20 of this Agreement. Subject to the terms of this Agreement (including all releases, covenants and payment terms contained herein), all of Plaintiffs' rights with respect to any bankruptcy case of Endo/Par are specifically reserved by the Plaintiffs.

6. Release and Covenant Not to Sue. The Parties acknowledge that the following Release and Covenant Not to Sue provisions are integral parts of this Agreement.

- a. In consideration for the payment provided in Paragraph 2 above, and subject to Plaintiffs' right to participate in a collective resolution as set forth in Paragraph 20, Plaintiffs State of New York and Nassau and Suffolk Counties hereby agree to release, remise, acquit, and forever discharge, to the fullest extent permitted by law, Endo/Par and other Released Entities (as defined below) from any and all

claims, demands, damages, debts, liabilities, penalties, restitution, disgorgement, reimbursement, fines, expenses, actions and causes of action whatsoever known and unknown, foreseen, unforeseen or unforeseeable, which the State of New York and Nassau and Suffolk Counties have asserted or could have asserted in the Actions against Endo/Par in any way related to or concerning the Covered Conduct (collectively, the “Released Claims”).

- b. “Covered Conduct” includes any and all alleged acts, failures to act, conduct, statements, errors, omissions, events, transactions, services, work, or other activity of any kind whatsoever, arising from or relating in any way to: (i) the discovery, development, manufacture, marketing, promotion, advertising, recall, withdrawal, distribution, monitoring, supply, sale, prescribing, use or abuse of any Opioid Product (as defined), or (ii) the characteristics, properties, risks, or benefits of any Opioid Product. “Opioid Product” shall mean any chemical substance, whether natural, synthetic, or semi-synthetic, that binds or otherwise interacts with opioid receptors in the body or brain, as well as any product containing any such substance; this definition shall include but is not limited to any substance consisting of or containing buprenorphine, codeine, fentanyl, hydrocodone, hydromorphone, meperidine, methadone, morphine, naloxone, naltrexone, oxycodone, oxymorphone, tapentadol, tramadol, opium, heroin, carfentanil, or any similar substance, whether used for medicinal or non-medicinal purposes.
- c. Subject to Plaintiffs’ right to participate in a collective resolution as set forth in Paragraph 20, this is a full, final, and complete release of Plaintiffs’ claims against

Endo/Par and other Released Entities and totally and completely bars any further future claims or demands of any kind or character whatsoever as a result of or relating to the Covered Conduct. Released Entities means (i) Endo/Par, (ii) all of their respective past and present direct or indirect parents, subsidiaries, divisions, affiliates, joint ventures, predecessors, successors, assigns, and insurers (in their capacity as such), including but not limited to Endo International plc, and (iii) all of the foregoing respective past and present officers, directors, members, shareholders (solely in their capacity as shareholders of the foregoing entities), partners, trustees, and employees for actions that occurred during and related to their work for, or employment with, any of the foregoing entities with respect to the Released Claims.

- d. Upon the payment of the Settlement Amount by Endo/Par, no default by any Party in the performance of any covenant or obligation under this Agreement or any order entered in connection therewith shall affect the dismissal of Endo/Par from the Actions, the res judicata effect of the dismissal of Endo/Par from the Actions, or the foregoing releases; provided, however, that all legal and equitable remedies for violation of a court order or breach of this Agreement shall remain available to the Parties.
- e. For the avoidance of doubt, in this Agreement Plaintiffs are not releasing the following claims:
 - 1. Any claims asserted by the New York State Department of Financial Services under New York Insurance Law § 403 and the NY Financial Services Law § 408(a)(1)(A);
 - 2. Any and all claims Plaintiffs may have against Arnold & Porter Kaye Scholer LLP in addition to the relief they seek pursuant to NYSCEF Docket Numbers 8239, 8247, 8510, and 8515. However, such claims are

released against the Released Entities and any motions or requested relief at NYSCEF Docket Numbers 8239, 8247, 8510, and 8515 shall be withdrawn as to any Released Entities;

3. Any and all claims asserted by the Plaintiffs in the following actions: (1) *County of Nassau, et al. v. Actavis Holdco US, Inc., et al.* (616029/2019; 20-00065); (2) *County of Suffolk v. Actavis Holdco US, Inc., et al.* (20-04009); (3) *The State of New York, et al. v. Actavis Holdco US, Inc., et al.* (17cv3768); (4) *The State of New York, et al. v. Teva Pharmaceuticals USA, Inc., et al.* (19cv2407); and (5) *The State of New York, et al. v. Sandoz, Inc., et al.* (20cv3539); and
4. Any and all claims brought by New York municipalities and subdivisions with the exception of the claims brought by the three trial Plaintiffs: *The People of the State of New York, By Letitia James, Attorney General of the State of New York, v. Purdue Pharma L.P., et al.*, Index No. 400016/2018, *County of Suffolk v. Purdue Pharma L.P., et al.*, Index No. 400001/2017 and *County of Nassau v. Purdue Pharma L.P., et al.*, Index No. 400008/2017. Accordingly, this Agreement is not a “statewide opioid settlement” as that term is used and defined in S.7194/A.6395. Notwithstanding any releases and covenants in this Agreement, nothing herein prevents the State of New York’s Department of Law from entering into a “statewide opioid agreement” as that term is defined in S.7194/A.6395 in the future.

7. General Release. In connection with the release provided for in the Agreement, the Plaintiffs expressly waive, release, and forever discharge any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States or other jurisdiction, or principle of common law, which is similar, comparable, or equivalent to § 1542 of the California Civil Code, which reads:

General Release; extent. A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

A Plaintiff may hereafter discover facts other than or different from those which it knows, believes, or assumes to be true with respect to the Released Claims, but the Plaintiffs expressly waive and fully, finally, and forever settle, release and discharge, upon the execution of this

Settlement Agreement, any and all Released Claims that may exist as of such date but which Plaintiffs do not know or suspect to exist, whether through ignorance, oversight, error, negligence or through no fault whatsoever, and which, if known, would materially affect any Plaintiff's decision to enter into the Agreement.

8. Severance. Upon execution of this Agreement, Plaintiffs will immediately move to sever Endo/Par from the Actions and all litigation activities against Endo/Par will immediately cease.

9. Distribution of Funds. The proceeds to the State of New York shall be distributed consistent with the Statewide Opioid Abatement Fund.

10. Dismissals with Prejudice. The Plaintiffs and Endo/Par will, concurrently with the full execution of this Agreement, execute a Stipulation of Discontinuance with Prejudice (except as to the claims by the People of the State of New York that have been expressly carved out of the release provisions in this Agreement, as to which claims the dismissal shall be without prejudice), with all Parties to bear their own costs and attorneys' fees, in the form annexed hereto as Exhibit A. Plaintiffs will hold the executed and so ordered Stipulation of Discontinuance in escrow until the Legislatures of Nassau and Suffolk Counties approve the Agreement, if necessary, or a resolution is passed obviating the need for legislative approval and the amount paid in Paragraph 2 is paid in full to the Plaintiffs and the funds clear the County Plaintiffs' financial institutions. If the Agreement is not approved by the Legislatures of Nassau and Suffolk Counties, if required, and no resolutions are passed to obviate the need for legislative approval, or the aforementioned funds are not paid by Endo/Par or are paid and do not clear the Plaintiffs' financial institutions, Plaintiffs will destroy the Stipulation of Discontinuance. If Endo/Par makes the Settlement Payment pursuant to Paragraph 2 of this Agreement, and this Agreement is then revoked,

rescinded, reversed, overruled, interpreted in a manner to limit the scope of the release or otherwise deprived of force or effect in any material respect (“a revocation event”), the Plaintiffs shall pay to Endo/Par forthwith a full refund of the amount paid pursuant to Paragraph 2, above. Further, if the Agreement is not approved by the Legislatures of Nassau County and Suffolk County, if required, or no resolutions are passed to obviate the need for legislative approval by those counties within ninety-one (91) days of the execution date of this Agreement, Endo/Par, in its sole discretion, may declare that the lack of approval by either Legislature of Nassau or Suffolk County constitutes a revocation event under the terms of the Agreement and will be entitled to a full refund of the amount paid pursuant to Paragraph 2.

11. No Admission of Liability. Endo/Par is entering into this Agreement solely for the purpose of settlement, and nothing contained herein may be taken as or construed to be an admission or concession of any violation of law, rule, or regulation, or of any other matter of fact or law, or of any liability or wrongdoing, all of which Endo/Par expressly denies. None of Endo/Par or any other Released Entity admits that it caused or contributed to any public nuisance, and none of Endo/Par or any other Released Entity admits any wrongdoing that was or could have been alleged by Plaintiffs. No part of this Agreement, including its statements and commitments, shall constitute evidence of any liability, fault, or wrongdoing by Endo/Par or any other Released Entity.

12. No Waiver. This Agreement is made without trial or adjudication of any issue of fact or law or finding of liability of any kind. This Agreement shall not be construed or used as a waiver of any jurisdictional defense Endo/Par or any other Released Entity may raise in any other proceeding, or as a waiver or limitation of any defense otherwise available to Endo/Par in the Actions or any other action. This Agreement shall not be construed or used as a waiver of

Endo/Par's right, or any other Released Entity's right, to defend itself from, or make any arguments in, any other regulatory, governmental, private individual, or class claims or suits relating to the subject matter or terms of this Agreement.

13. No Private Right of Action. No part of this Agreement shall create a private right of action for any third party or confer any right to any third party for violation of any federal or state statute, nor shall it be used as an admission of liability or wrongdoing in any subsequent proceeding, including administrative proceedings involving the New York State Department of Financial Services. This Agreement is not enforceable by any persons or entities besides the Plaintiffs, Endo/Par, other Released Entities, and this Court.

14. Entire Agreement. This Agreement represents the full and complete terms of the settlement entered into by the Parties hereto. In any action undertaken by the Parties, no prior versions of this Agreement and no prior versions of any of its terms that were not entered by the Court in this Agreement, may be introduced for any purpose whatsoever.

15. Modification. This Agreement may be modified only in writing signed by all parties.

16. Mutual Interpretation. The Parties agree and stipulate that this Agreement was negotiated on an arm's-length basis between parties of equal bargaining power. The Agreement has been drafted jointly by counsel for each Party. Accordingly, this Agreement shall be mutually interpreted and not construed in favor of or against either Party.

17. Counterparts. This Agreement may be executed in counterparts, and a facsimile or .pdf signature shall be deemed to be, and shall have the same force and effect as, an original signature.

18. Governing Law. The terms of this Agreement shall be governed by the laws of the State of New York.

19. County Legislature Approval. This Agreement is subject to acceptance by the Legislatures of the County of Nassau and the County of Suffolk for final approval, if necessary, or the passage of a resolution obviating the need for legislative approval.

20. Most Favored Nations. If, after execution of this Agreement, there is a collective resolution—through settlement, bankruptcy or other mechanism—of substantially all claims against Endo/Par brought by states, counties, or municipalities (a “Global Resolution”) under which any of the Plaintiffs would have received a greater monetary amount than the amounts specified in Paragraph 2 above on a net present value basis (after accounting for attorneys’ fees or costs), Endo/Par shall promptly remit to each affected Plaintiff the difference between the amounts specified in Paragraph 2 and the amount that that Plaintiff would have received if that Plaintiff had been a participant in the Global Resolution pursuant to their allocations as agreed among the state attorneys general. The obligation to make this payment is joint and several among Endo/Par and Endo International plc.

21. Indemnification. No Released Entities shall seek to recover for amounts paid under this Agreement based on indemnification, contribution, or any other theory from a manufacturer, pharmacy, hospital, pharmacy benefit manager, health insurer, third-party vendor, trade association, distributor, or health care practitioner. For the avoidance of doubt, nothing herein shall prohibit a Released Entity from recovering amounts owed pursuant to insurance contracts.

22. Further Assurances. Each Party agrees to take all reasonable steps necessary to effectuate the terms of this Agreement.

23. Venue. Any suits, actions or proceedings arising out of this Agreement shall be brought in the appropriate state or federal court sitting in and for the County or judicial district in

the County of Suffolk, New York, and the parties submit to the jurisdiction thereof in such suits, actions or proceedings.

24. Notice. All Notices under this Agreement shall be provided to the following via email and Overnight Mail:

If to Endo/Par:

Henninger S. Bullock
Mayer Brown LLP
1221 Avenue of the Americas
New York, NY 10020
hbullock@mayerbrown.com

Geoffrey M. Wyatt
Skadden, Arps, Slate, Meagher & Flom LLP
1440 New York Avenue
Washington, DC 20005
geoffrey.wyatt@skadden.com

With a copy to:

Matthew J. Maletta
Executive Vice President and Chief Legal Officer
Endo
1400 Atwater Drive
Malvern, PA 19355
maletta.matthew@endo.com

For The People of the State of New York, By Letitia James, Attorney General of the State of New York:

Jennifer Levy, First Deputy Attorney General
Office of the New York State Attorney General
28 Liberty Street, 23rd Floor
New York, NY 10005
Tel: 212-416-8450
Jennifer.Levy@ag.ny.gov

Muhammad Umair Khan, Senior Advisor and
Special Counsel
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Tel: 212-416-8450
Umair.Khan@ag.ny.gov

For Nassau County:

Office of the Nassau County Attorney
One West St.
Mineola, NY 11501

With a copy to:

Salvatore C. Badala
Napoli Shkolnik PLLC
400 Broadhollow Road
Melville, New York 11747
sbadala@napolilaw.com

Paul J. Napoli
270 Munoz Rivera Avenue, Suite 201
Hato Rey, Puerto Rico 00918
pnapoli@nsprlaw.com

For Suffolk County:

Office of the Suffolk County Attorney
100 Veterans Memorial Highway
Hauppauge, NY 11788

With a copy to:

Jayne Conroy
Simmons Hanly Conroy LLC
112 Madison Ave 7th Floor
New York, NY 10016
jconroy@simmonsfirm.com

APPROVAL BY COURT


APPROVED FOR FILING and SO ORDERED this _____ day of _____, 2021

Judge

Approved:

Date: September 9, 2021

THE PEOPLE OF THE STATE OF NEW YORK, BY LETITIA JAMES, ATTORNEY GENERAL OF THE STATE OF NEW YORK

By: 

Name: Muhammad Umair Khan

Title: Senior Advisor & Special Counsel

COUNTY OF NASSAU, NEW YORK

Date: _____

By: _____

Name: _____

Title: _____

COUNTY OF SUFFOLK, NEW YORK

Date: _____

By: _____

Name: _____

Title: _____

NAPOLI SHKOLNIK PLLC

Date: September 9, 2021

By: 

Name: Salvatore Baddele

Title: Partner

SIMMONS HANLY CONROY LLC

Date: Sept. 9, 2021

By: 

Name: Jayne Conroy

Title: Partner

ENDO HEALTH SOLUTIONS INC.,

By: _____

Date: _____

Name: _____

Title: _____

ENDO PHARMACEUTICALS INC.,

By: _____

Date: _____

Name: _____

Title: _____

ENDO INTERNATIONAL PLC

Date:

By:

Name:

Title:

PAR PHARMACEUTICAL, INC.

By:

Date:

Name:

Title:

**PAR PHARMACEUTICAL COMPANIES,
INC.**

By:

Date:

Name:

Title:
