

SETTLEMENT AGREEMENT AND RELEASE

I. PARTIES

This Settlement Agreement and Release (“Agreement”) is entered into as of the “Effective Date,” defined in paragraph 26 below, by and among the STATE of TEXAS (“STATE”), Ven-A-Care of the Florida Keys, Inc. (“RELATOR”), and Endo Pharmaceuticals Inc. (referred to as “ENDO”). The STATE, RELATOR, and ENDO are each individually referred to as a “Party” and collectively referred to as the “Parties” in this Agreement.

II. PREAMBLE

As a preamble to this Agreement, the Parties agree to the following:

A. ENDO is a pharmaceutical company organized under the laws of the State of Delaware and headquartered in Chadds Ford, PA. ENDO develops, manufactures, markets and sells generic and brand pharmaceuticals in the United States. Generics International (U.S.) Inc. d/b/a “Qualitest Pharmaceuticals” is a Delaware corporation. This entity was incorporated in 2007 by Apax Partners LLP for the purpose of entering into a Purchase Agreement with several privately held, affiliated companies to purchase the assets and interests of several companies, including the assets of Qualitest Pharmaceuticals, Inc (“QPI”). QPI is an Alabama corporation that, at the time of the transaction, operated a generic drug manufacturing and distribution business in Huntsville, AL. The sale was completed on October 31, 2007, and Generics International (U.S.), Inc., and several of its wholly owned subsidiaries began doing business as “Qualitest Pharmaceuticals.” QPI continues to exist under a different name, and does so as a separate entity from “Qualitest Pharmaceuticals.” This agreement solely covers the liability of “Qualitest Pharmaceuticals” from November 1, 2007 to the date of this agreement. Unless

otherwise noted, ENDO and all of its subsidiaries, including but not limited to “Qualitest Pharmaceuticals” are collectively referred to herein as “ENDO.”

B. The pharmaceutical products manufactured, marketed, distributed and/or sold by ENDO using the labeler codes **63481** and **60951** for the time period September 1, 1995 to the date of this agreement and labeler code **00603** from November 1, 2007 to the date of this agreement are referred to as the “Covered Drugs”;

C. The STATE and RELATOR contend that between September 1, 1995 and the Effective Date, ENDO knowingly set, reported and/or maintained, or caused to be set, reported and/or maintained false, fraudulent, and/or inflated pricing information for certain of the Covered Drugs, including the pricing information reported directly to the Texas Vendor Drug Program (“VDP”). The RELATOR and the STATE further contend that ENDO submitted or caused to be submitted, false claims to the VDP for certain of the Covered Drugs based on those false and/or inflated reported pricing information. The STATE and the RELATOR contend that ENDO committed unlawful acts, as defined by Tex. Hum. Res. Code Ann. § 36.002 in connection with the submission of pricing information to the VDP, including for the purpose of including certain of ENDO’s Covered Drugs on the Texas Drug Code Index (“TDCI”). These alleged acts and omissions, which are subject to the release language in this Agreement, are further described and set forth in [REDACTED]

[REDACTED] (the “Lawsuit”), and are alleged in [REDACTED] the Lawsuit [REDACTED]. The conduct described in this paragraph and the Lawsuit are hereinafter referred to as the “Covered Conduct”;

D. This Agreement is the result of a compromise of disputed issues of law and fact and is neither an admission of facts or liability by ENDO, nor a concession by the STATE that the STATE's claims in the Lawsuit are not well-founded.

E. ENDO has a number of defenses to the STATE's and RELATOR'S claims and to the Lawsuit, and has denied and continues to deny the STATE's and RELATOR's allegations or any wrongdoing as may be alleged by the STATE or by the RELATOR or as alleged in the Lawsuit.

F. As a result of a mutual desire to settle their disputes, and to avoid the delay, expense, inconvenience and uncertainty of protracted litigation of the STATE's claims, the Parties have reached a full and final settlement, including a settlement and dismissal of the Lawsuit as against ENDO, as set forth in this Agreement; and

G. The STATE has concluded that this settlement is in the public interest, and is fair, adequate, and reasonable under all the circumstances.

H. The RELATOR agrees that this Agreement is fair, adequate, and reasonable under all the circumstances.

III. AGREEMENT

NOW, THEREFORE, in reliance on the representations contained herein and in consideration of the mutual promises, covenants, and obligations set forth below in this Agreement, and for good and valuable consideration as stated herein, the Parties agree as follows:

1. The foregoing Preamble is incorporated herein.

2. By the Effective Date, ENDO agrees to pay the STATE, the RELATOR, and the United States of America the aggregate sum of **TWENTY-FIVE MILLION UNITED STATES DOLLARS (\$25,000,000)** (the “Final Settlement Payment”) in the amounts set forth in the Settlement Allocation Schedule, attached as Exhibit 1, and in accordance with the wire instructions set forth in Exhibit 2. The Parties further agree that all amounts payable to the RELATOR, to any of the RELATOR’s attorneys or other of the RELATOR’s representatives or advisors, or to the United States, shall be paid out of the Final Settlement Payment, and that ENDO will have no liability or obligation to make any such payment. The payment of the Final Settlement Payment shall satisfy ENDO’s obligation to make payments under this Agreement.

3. In no way does entering into this Agreement entitle ENDO or its Counsel to direct or influence the allocation of the money paid to settle Plaintiffs’ allegations against ENDO. ENDO expressly acknowledges that it is not entitled to direct or influence the manner in which the settlement amounts are allocated by Texas. The State will allocate and distribute the RELATOR’s share, attorneys’ fees, and costs, as well as the United States’ pro rata share of the net recovery, in accordance with state and federal law. The RELATOR will expressly indemnify and hold ENDO harmless from and against any claims by any persons or entities who have represented the RELATOR in connection with the Covered Conduct for (1) attorneys’ fees, costs, and expenses or (2) any portion of the Settlement Amount.

4. Within five (5) business days following its receipt of the Final Settlement Payment, the STATE shall file with the Travis County District Court the agreed joint motion to dismiss, attached as Exhibit 3 to this Agreement.

5. Subject to the exceptions in Paragraph 8 below, in consideration of the obligations of ENDO set forth in this Agreement, and conditioned upon ENDO’s payment in full of the Final

Settlement Payment, the STATE (on behalf of (i) itself, its past and present officers, agents, entities, divisions, agencies and departments and (ii) any insurers and reinsurers of those identified in subclause (i) (collectively the "STATE")), and the RELATOR (on behalf of (i) itself, its past and present subsidiaries, parents, holding companies, successors, predecessors, affiliates, partnerships, entities and divisions; (ii) all past and present officers, directors, members, partners and/or limited partners, principals, agents, assigns, representatives, employees, servants, and its attorneys of RELATOR and those identified in subclause (i); (iii) all heirs, executors, administrators, spouses, agents and assigns of those identified in subclauses (i) and (ii); and (iv) any insurers and reinsurers of RELATOR and those identified in subclauses (i) and (ii) (collectively "RELATOR")), fully and finally, and to the greatest extent allowed by law, release ENDO and (i) its past and present holding companies, predecessors, successors, parents, subsidiaries, entities and divisions; (ii) all past and present officers, directors, members, partners and/or limited partners, principals, assigns, representatives, employees, agents, servants, shareholders and attorneys of ENDO and those identified in subclause (i); (iii) all heirs, executors, administrators, spouses, agents and assigns of those identified in subclauses (i) and (ii); and (iv) any insurers and reinsurers of ENDO and those identified in subclauses (i) and (ii) (collectively, the "ENDO Released Parties") from any civil or administrative claim, action, suit or proceeding (including attorneys' fees, penalties, costs, and expenses of every kind and however denominated) the STATE or RELATOR has asserted, could assert, or may assert in the future under any source of law against the ENDO Released Parties related to the Covered Conduct. In addition, the Parties agree that the payment of the Final Settlement Payment fully discharges the ENDO Released Parties from any civil or administrative obligation to the STATE to pay restitution, damages, penalties or fines to the STATE for the Covered Conduct. In

addition, the STATE, including the Office of the Attorney General of Texas, agrees that it shall not initiate or prosecute litigation or any other civil or administrative action, including by way of example and not limitation, civil investigative demands, against the ENDO Released Parties, related to the Covered Conduct, on behalf of itself or the United States.

6. In consideration of the obligations of ENDO set forth in this Agreement, conditioned upon ENDO's payment in full of the Final Settlement Payment, the STATE agrees to release and refrain from instituting, directing or maintaining any action seeking exclusion, suspension, or disbarment from the VDP or any other Texas Medicaid program against the ENDO Released Parties for the Covered Conduct.

7. ENDO fully and finally releases the STATE, its agencies, employees, servants, attorneys and agents from any claims based on events occurring prior to the date of this Agreement (including attorney's fees, costs, and expenses of every kind and however denominated) which ENDO has asserted, could have asserted, or may assert in the future against the STATE, its agencies, employees, servants, attorneys and agents, related to the Covered Conduct and the STATE and RELATOR's investigation and prosecution thereof. This provision is not intended to release claims or causes of action unrelated to the Covered Conduct.

8. ENDO fully and finally releases the RELATOR, its employees, officers, servants, attorneys and agents from any claims based on events occurring prior to the date of this Agreement (including attorney's fees, costs, and expenses of every kind and however denominated) which ENDO has asserted, could have asserted, or may assert in the future against the RELATOR, its employees, officers, servants, attorneys and agents, related to the Covered Conduct and the STATE and RELATOR's investigation and prosecution thereof. This provision is not intended to release claims or causes of action unrelated to the Covered Conduct.

9. Notwithstanding any other terms of this Agreement, including the release provisions in Paragraphs 5, 6, 7 and 8 above, specifically reserved and excluded from the definition of Covered Conduct, and thus the scope and terms of this Agreement, and from the scope and terms of the releases, as to any entity or person (including ENDO, the STATE and RELATOR), are the following, for the time period September 1, 1995 through and including the Effective Date:

- (a) Any claims based upon such obligations created by this Agreement;
- (b) Any express or implied product or service warranty claims or other claims for defective or deficient products or services, including quality of goods and services, provided by ENDO;
- (c) Any civil or administrative liability that any person or entity has or may have to individual consumers involving unfair and/or deceptive acts and practices and/or violations of consumer protection laws, except that this provision does not exclude from the Agreement causes of action relating to the Covered Conduct that might be brought by the State on behalf of individual consumers;
- (d) Any civil or administrative liability that any person or entity, including the ENDO Released Parties, has or may have to the State for state or federal antitrust violations;
- (e) Any civil or administrative liability that any person or entity has or may have related to marketing or promotion of any of the covered drugs, including but not limited to off-label marketing, product misbranding, or misrepresentations or concealment of information about the safety, efficacy, or appropriate use of Lidoderm. This limitation does not apply to any claim of liability which is based on marketing or highlighting the difference between the sale or

acquisition price of the drug and the reimbursement paid for a drug, commonly known as “marketing the spread”;

(f) Any civil or administrative liability that any person or entity has or may have regarding inducement of healthcare providers to prescribe any of the covered drugs, including but not limited to Lidoderm;

(g) The subrogation rights to claims for personal injury or property damage arising from usage of Endo products by a participant in the Medicaid Program;

(h) Any claims based on a failure to deliver products or services due;

(i) Any claims arising from ENDO’s obligation to report and/or to pay rebates to the State under any law or contract, including, but not limited to, under the provisions of the Omnibus Budget Reconciliation Act of 1990 (“OBRA 90”);

(j) Any claims that the Relator may have under the *qui tam* provisions of the laws of any state other than Texas;

(k) Any civil, criminal, or administrative liability arising under Title 26, U.S. Code (Internal Revenue Code) or any state tax or revenue law; or

(l) Any criminal liability.

10. Should Defendant enter into a Corporate Integrity Agreement with the Office of the Inspector General of the United States Department of Health and Human Services (“OIG”) relating to the Covered Conduct, Defendant acknowledges that the OIG may share information provided under the Corporate Integrity Agreement with the State. Information obtained by the State pursuant to the provisions of this paragraph shall not be produced or disclosed except:

(1) By court order for good cause shown;

(2) With the consent of Defendant;

- (3) To an employee of the Attorney General;
- (4) To an agency of this state, of the United States, or another state;
- (5) To any attorney representing the state under Section 36.055 of the Texas Human Resources Code or in a civil action brought under Subchapter C of Chapter 36 of the Texas Human Resources Code;
- (6) To a political subdivision of this state; or
- (7) To a person authorized by the attorney general to receive the information.

11. The STATE and RELATOR hereby agree that this Agreement, and any and all negotiations, documents and discussions associated with this Agreement shall be without prejudice to the rights of any Party, shall not be deemed or construed to be an admission or evidence of any violation of any statute or law, of any liability or wrongdoing by the ENDO Released Parties or of the truth or the infirmity of any of the claims or allegations of the STATE or the RELATOR, and evidence thereof shall not be discoverable or used directly or indirectly by the STATE or the RELATOR in any way (except that the provisions of this Agreement may be used by the Parties to enforce its terms), whether in Texas or in any other forum. The STATE agrees it will not urge or seek to admit this Agreement as evidence of any fault or liability of the ENDO Released Parties in any investigation, administrative claim, action, suit or proceeding, or federal or state court or arbitration proceeding unless ordered to do so by a state court, federal court, or arbitration panel.

12. The STATE and RELATOR represent to ENDO, subject only to the RELATOR's rights as a *qui tam* plaintiff under applicable state and federal law to participate in this Agreement and to receive a percentage of the Final Settlement Payment, and to the rights possessed by the United States, that no interest in any claim herein released has been assigned by them to any third party.

13. Nothing in this Agreement shall be construed to create a waiver of the STATE's Sovereign Immunity.

14. Any Party shall be entitled to enforce the terms of this Agreement in the District Courts of Travis County, Texas, which shall have exclusive jurisdiction and venue over any such action.

15. This Agreement, including all exhibits, constitutes the complete agreement between the Parties with regard to the settlement and dismissal of the Lawsuit and Covered Conduct as defined herein. This Agreement may not be amended except by a writing signed by all Parties.

16. Each Party will bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

17. This Agreement shall be governed by the laws of the State of Texas.

18. This Agreement shall be construed and interpreted to effectuate the Parties' intent, which is to resolve completely the Lawsuit and the STATE's and RELATOR's claims and allegations in connection with the Covered Drugs and the Covered Conduct with respect to ENDO.

19. None of the Parties to this Agreement shall be considered the drafter of this Agreement or of any included provision for the purpose of any statute, case law or rule of construction that would or might cause any provision to be construed against the drafter.

20. The Parties each represent that this Agreement is freely and voluntarily entered into without any degree of duress whatsoever.

21. Unless otherwise stated in writing subsequent to the Effective Date of this Agreement, all notifications and communications made pursuant to this Agreement shall be submitted to the entities listed below:

(a) STATE for all purposes:

OFFICE OF THE ATTORNEY GENERAL
Civil Medicaid Fraud Division
P O Box 12548
Austin, Texas 78711-2548

(b) RELATOR for all purposes:

James J. Breen, Esq.
The Breen Law Firm, P.A.
5755 North Point Parkway, Suite 260
Alpharetta, GA 30022

(c) ENDO, for all purposes:

Jonathan L. Stern
Arnold & Porter LLP
555 Twelfth Street, NW
Washington, D.C. 20004-1206

Endo Pharmaceuticals Inc.
Legal Department
100 Endo Boulevard
Chadds Ford, PA 19317

22. The Parties have read the foregoing Agreement and accept and agree to the provisions contained herein and hereby have caused this Agreement to be signed as of the day and date adjacent to their respective signatures. The individual signing this Agreement on behalf of ENDO represents and warrants that he is authorized by ENDO to execute this Agreement. The undersigned STATE signatories represent that they are signing this Agreement in their

official capacities and that they are authorized to execute this Agreement and to compromise the claims of the STATE. The Texas Health and Human Services Commission (“HHSC”) Executive Commissioner concurs with the aspects of the agreement that are within his authority and that the HHSC General Counsel is authorized to sign this Agreement on behalf of the HHSC Executive Commissioner. The RELATOR's attorney, James J. Breen, and its president, T. Mark Jones, each represent that they are duly authorized to sign this Agreement on behalf of the RELATOR.

23. The Parties represent and acknowledge that in entering into this Agreement they are not relying on any promises or representations other than those expressly set forth in this Agreement and its exhibits.

24. The waiver of any rights conferred by this Agreement shall be effective only if made in writing by the waiving Party. The waiver of any Party of any breach of this Agreement shall not be deemed or construed as a waiver of any other breach, whether prior to, subsequent to, or contemporaneously with this Agreement.

25. This Agreement may be executed in counterparts, each of which shall constitute an original and all of which shall constitute one and the same Agreement.

26. Each Party agrees to perform such further acts and to execute and to deliver such further documents as may reasonably be necessary to carry out this Agreement.

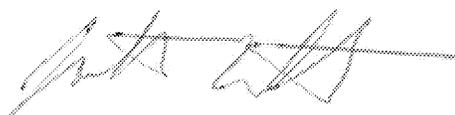
27. The Effective Date of this Agreement shall be January 4, 2013.

EXECUTION OF RELEASE

**STATE of TEXAS
Office of the Attorney General**

ENDO PHARMACEUTICALS, INC.

By:

By: 

Date:

Date: 12/30/12

Raymond C. Winter
Chief, Civil Medicaid Fraud Division
Assistant Attorney General
Office of the Attorney General of Texas
P.O. Box 12548
Austin, Texas 78711-2548

Jonathan Stern
Counsel for
Endo Pharmaceuticals Inc.
555 Twelfth Street, NW
Washington, D.C. 20004-1206

Texas Health & Human Services Commission

By:

Date:

Kyle Janek, M.D.
Executive Commissioner
Texas Health & Human Services Commission
Brown-Heatley Building
4900 N.Lamar Blvd.
Austin, Texas 78751-2316

RELATOR AND ITS ATTORNEY

RELATOR, Ven-A-Care of the Florida Keys, Inc.

By:

Date:

T. Mark Jones
President

The Breen Law Firm, P.A.

By:

Date:

James J. Breen
The Breen Law Firm, P.A.
Counsel to Ven-A-Care of the Florida Keys, Inc.
5755 North Point Parkway
Alpharetta, Georgia 30022