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Government Employees Health Association*

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

In re LIDODERM ANTITRUST
LITIGATION

MDL Docket No. 14-md-02521-WHO

THIS DOCUMENT RELATES TO:
END-PAYOR PLAINTIFF ACTIONS

**DECLARATION OF PETER D.
ST. PHILLIP, JR. IN SUPPORT OF
SEPARATELY REPRESENTED
END-PAYORS' SUPPLEMENTAL
MOTION FOR REIMBURSEMENT
OF OUT OF POCKET LITIGATION
EXPENSES**

Date: September 12, 2018
Time: 2:00 p.m.
Courtroom 2, 17th Floor
The Honorable William H. Orrick

1 I, Peter D. St. Phillip, Jr., declare the following:

2 1. I am an attorney licensed to practice law in the states of New York and New
3 Jersey and the Commonwealth of Pennsylvania and a shareholder of the law firm, Lowey
4 Dannenberg, P.C. (“Lowey”). Along with Berman Tabacco and Rawlings & Associates PLLC,
5 Lowey and represented Government Employees Health Association Inc. (“GEHA”) in this
6 litigation, and currently represents the 18 “Separately Represented End-Payers” or “SREPs,” as
7 these terms are defined in the Court’s February 23, 2018 Stipulation and Order, ECF No. 997.

8 2. In accordance with the Court’s May 1, 2018 Preliminary Approval Order, ECF
9 No. 1016, End Payor Plaintiffs shall submit a motion for reimbursement of out-of-pocket
10 expenses by July 31, 2018. SREPs, including GEHA, are members of the End Payor Class and
11 litigated the case alongside the End Payor Class. ECF No. 997, at 1. Accordingly, End Payor
12 Plaintiffs are seeking reimbursement for certain expenses incurred by the SREPs in their
13 July 31, 2018 submission. An accounting of SREP’s out-of-pocket litigation expenses included
14 in the End Payor Plaintiffs’ request for reimbursement is attached hereto as Exhibit A.

15 3. However, the expenses End Payor Plaintiffs have agreed to submit do not
16 constitute the entirety of the reasonable out-of-pocket expenses SREPs necessarily incurred in
17 connection with the prosecution of this action. Attached hereto as Exhibit B is an accounting of
18 an additional \$297,434.13 in out-of-pocket expenses for which SREPs seek reimbursement.
19 SREPs and End Payor Plaintiffs were unable to reach agreement as to the treatment of these
20 expenses prior to the Court’s July 31, 2018 deadline.

21 4. The expenses outlined in Exhibit B are separate and non-duplicative of those set
22 forth in Exhibit A and submitted by the End Payor Plaintiffs, and comprise out-of-pocket
23 expenses incurred in connection with document hosting and production in the amount of
24 \$184,934.13, and expert reports and deposition testimony of GEHA’s economic expert in the
25 amount of \$112,500.

26 5. The document hosting and production expenses include the costs associated with
27 managing approximately 700 GB of documents received from the Endo, Teikoku and Watson

1 Defendants, third-parties and GEHA. These productions included over 499,000 documents,
2 totaling over 4 million pages.

3 6. Initially, all documents were hosted on the CaseLogistix platform, a product of
4 Thomson Reuters-West. The necessary costs associated with CaseLogistix included the
5 monthly software licensing fees, storage fees, and professional service charges for loading and
6 processing the documents and managing the case environment. The expenses also include the
7 costs of generating GEHA's initial document productions for Defendants. The total cost for
8 Thomson Reuter's services was \$109,472.23.

9 7. As the litigation progressed, Lowey leveraged its in-house technological
10 expertise to locally deploy Relativity, and transition from Thomson-Reuters externally hosting
11 the Lidoderm documents. The switch to Lowey's Relativity platform eliminated the monthly
12 storage fees associated with the hosted review platform. The costs associated with Lowey's in-
13 house Relativity license and server (licensed through kCura LLC and later through Relativity
14 ODA LLC) are \$67,136.90. Lowey also enlisted Alloy Group LLC (later known as JND
15 eDiscovery) to manage its internal document review system, and assume responsibilities for
16 loading and processing all documents and generating all client productions. The total cost
17 associated with Alloy Group/JND's services is \$8,325.00.

18 8. It was necessary and important to utilize the CaseLogistix platform and later
19 Relativity to have full access to Defendants' productions, and the powerful analytics and coding
20 features associated with CaseLogistix and Relativity. This afforded Lowey the ability to review
21 and cull key documents and meaningfully participate in the litigation and depositions.
22 CaseLogistix and Relativity also provided an efficient means to process and produce GEHA's
23 documents to the other parties under the Court's discovery deadlines. Having a strong grasp of
24 the documents and theories of the case was required to strengthen the Class' and SREPs'
25 positions in the litigation, and ultimately bolstered the Settlement negotiations to the benefit of
26 the Class.


27 9. The cost to host these documents in a manner that allowed them to be efficiently
28 reviewed and analyzed also directly benefited the Class Counsel and the Class. The Class and

1 Class Counsel specifically relied on GEHA's expert, Dr. Glen Melnick, and his analysis of
2 GEHA's and Defendants' documents. Specifically, in End Payor Class Plaintiffs' Motion for
3 Partial Summary Judgment on relevant market, the Class Plaintiffs repeatedly and extensively
4 cited and relied on Dr. Melnick's work, and the Class also submitted Dr. Melnick's expert
5 report to the Court for consideration in its deliberation. *See* Plaintiffs' Motion for Partial
6 Summary Judgment, ECF No. 775, at 7, n.6, n.15 and n.32; Ex. F to the June 30, 2017
7 Declaration of Peter Kohn, ECF No. 776.

8 10. Dr. Melnick's work and his report provided a direct benefit to the Class,
9 particularly to support Class Plaintiffs' Motion for Partial Summary Judgment on relevant
10 market. GEHA incurred \$112,500 in expenses for the services of Dr. Melnick. Because the
11 Class cited, filed and relied on Dr. Melnick's report, Dr. Melnick's work unquestionably
12 benefited the Class. Accordingly, Lowey seeks reimbursement for the \$112,500 expense
13 associated with the preparation of Dr. Melnick's reports and deposition testimony.

14 11. Pursuant to 28 U.S.C. § 1746(2), I declare under penalty of perjury under the
15 laws of the United States of America that the foregoing is true and correct.

16 Executed on: July 31, 2018

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19 PETER D. ST. PHILLIP, JR.

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EXHIBIT A

CATEGORY	EXPENSE
Expert and Litigation Costs	\$343,891.16
Lexis/Westlaw/Bloomberg	\$1,137.54
Travel	\$11,763.92
TOTAL AMOUNT PAID	<u>\$356,792.62</u>

Check Date	Check#	Description	Category	Total Amount Paid
LEGAL RESEARCH FEES - Lexis/Westlaw/Bloomberg				
11/17/15	CB4716	LexisNexis Power Invoice	DATARES	\$486.20
11/17/15	CB4716	LexisNexis Power Invoice	DATARES	\$454.98
12/22/15	CB4822	LexisNexis Power Invoice	DATARES	\$163.32
01/25/16	CB4897	LexisNexis Power Invoice	DATARES	\$33.04
SHARED EXPERT AND LITIGATION COSTS				
12/16/15	1002	Girard Gibbs LLP Lidoderm Lit Fund	EXPERT	\$3,996.63
09/02/16	wire	Garwin Gerstein & Fisher	EXPERT	\$16,685.41
08/22/17	1006	Garwin Gerstein & Fisher	EXPERT	\$149,065.83
03/16/18	wire	Garwin Gerstein & Fisher	EXPERT	\$149,088.85
05/17/18	1008	Garwin Gerstein & Fisher	EXPERT	\$15,412.77
12/15/16	CB5703	Garwin Gerstein & Fisher	LITFUNDS	\$9,641.67
TRAVEL EXPENSES				
11/30/15	CB4743	PETER D. ST.PHILLIP	TRAVEL	\$64.19
12/18/15	CB4795	PETER D. ST.PHILLIP	TRAVEL	\$891.83
11/22/17	CB6784	URIEL RABINOVITZ	TRAVEL	\$1,361.64
12/13/17	CB6854	PETER D. ST.PHILLIP	TRAVEL	\$2,703.36
12/28/17	CB6901	Gerald Lawrence	TRAVEL	\$1,111.56
12/28/17	CB6902	Gerald Lawrence	TRAVEL	\$701.70
01/12/18	CB6963	PETER D. ST.PHILLIP	TRAVEL	\$980.47
03/02/18	CB7135	Gerald Lawrence	TRAVEL	\$1,396.60
03/06/18	CB7144	Gerald Lawrence	TRAVEL	\$573.59
07/10/18	CB0	Gerald Lawrence	TRAVEL	\$1,978.98
			Grand Total:	<u>\$356,792.62</u>

EXHIBIT B

CATEGORY	EXPENSE
Document Hosting/Production	\$184,934.13
Expert and Litigation Costs	\$112,500.00
TOTAL AMOUNT PAID	<u>\$297,434.13</u>

Check Date	Check#	Description	Category	Total Amount Paid
DOCUMENT HOSTING AND PRODUCTION				
05/14/18	CB7371	Relativity ODA LLC	DOCPRO	\$919.02
03/11/15	CB4132	Thomson Reuters -West	DOCPRO	\$411.37
04/14/15	CB4202	Thomson Reuters -West	DOCPRO	\$5,835.39
04/28/15	CB4219	Thomson Reuters -West	DOCPRO	\$4,665.83
05/21/15	CB4280	Thomson Reuters -West	DOCPRO	\$4,747.32
06/01/15	CB4296	Thomson Reuters-West	DOCPRO	\$960.00
06/24/15	CB4371	Thomson Reuters -West	DOCPRO	\$6,424.45
07/23/15	CB4465	Thomson Reuters -West	DOCPRO	\$7,099.17
09/01/15	CB4547	Thomson Reuters-West	DOCPRO	\$6,069.13
09/04/15	CB4549	Thomson Reuters-West	DOCPRO	\$1,413.78
09/23/15	CB4588	Thomson Reuters -West	DOCPRO	\$6,896.63
10/15/15	CB4650	Thomson Reuters -West	DOCPRO	\$7,179.85
11/23/15	CB4738	Thomson Reuters-West	DOCPRO	\$1,440.00
11/23/15	CB4737	Thomson Reuters-West	DOCPRO	\$8,092.18
12/18/15	CB4811	Thomson Reuters-West	DOCPRO	\$7,655.28
04/19/16	CB5107	Alloy Group LLC	DOCPRO	\$75.00
04/19/16	CB5125	Thomson Reuters -West	DOCPRO	\$7,745.39
05/02/16	CB5156	kCura LLC	DOCPRO	\$147.75
05/17/16	CB5205	kCura LLC	DOCPRO	\$171.39
05/27/16	CB5236	kCura LLC	DOCPRO	\$5,439.37
06/16/16	CB5279	Alloy Group LLC	DOCPRO	\$2,325.00
06/16/16	CB5284	Thomson Reuters -West	DOCPRO	\$7,921.90
06/28/16	CB5325	kCura LLC	DOCPRO	\$189.12
07/01/16	CB5338	Thomson Reuters-West	DOCPRO	\$926.69
07/25/16	CB5376	kCura LLC	DOCPRO	\$200.94
08/01/16	CB5404	Thomson Reuters -West	DOCPRO	\$621.60
08/16/16	CB5426	kCura LLC	DOCPRO	\$5,439.39
08/16/16	CB5427	kCura LLC	DOCPRO	\$271.86
08/31/16	CB5459	Thomson Reuters -West	DOCPRO	\$382.91
10/26/16	CB5569	JND eDiscovery	DOCPRO	\$112.50
02/16/17	CB5905	kCura LLC	DOCPRO	\$1,602.72
05/22/17	CB6147	kCura LLC	DOCPRO	\$1,420.12
06/02/17	CB6190	kCura LLC	DOCPRO	\$4,766.95
06/13/17	CB6216	kCura LLC	DOCPRO	\$1,310.08
07/12/17	CB6318	kCura LLC	DOCPRO	\$1,095.01
08/29/17	CB6547	kCura LLC	DOCPRO	\$1,258.17
09/01/17	CB6557	kCura LLC	DOCPRO	\$4,013.60
10/11/17	CB6671	Relativity ODA LLC	DOCPRO	\$1,268.82
10/20/17	CB6684	Relativity ODA LLC	DOCPRO	\$1,218.59
12/01/17	CB6812	Relativity ODA LLC	DOCPRO	\$3,555.59
12/05/17	CB6823	Relativity ODA LLC	DOCPRO	\$1,337.85
12/15/17	CB6886	Relativity ODA LLC	DOCPRO	\$1,511.56
01/22/18	CB6990	Relativity ODA LLC	DOCPRO	\$1,370.66
03/01/18	CB7125	Relativity ODA LLC	DOCPRO	\$3,180.98
03/01/18	CB7126	Relativity ODA LLC	DOCPRO	\$860.56
03/20/18	CB7186	Relativity ODA LLC	DOCPRO	\$888.42
04/11/18	CB7271	Relativity ODA LLC	DOCPRO	\$974.98
11/15/16	CB5623	kCura LLC	DOCPRO	\$1,359.00
05/22/17	CB6146	kCura LLC	DOCPRO	\$3,922.24
12/18/15	CB4810	kCura LLC	DOCPRO	\$375.00

03/15/16	CB5042	kCura LLC	DOCPRO	\$112.29
02/27/17	CB5921	kCura LLC	DOCPRO	\$5,183.79
03/15/16	CB5049	Thomson Reuters -West	DOCPRO	\$7,701.87
11/15/16	CB5622	JND eDiscovery	DOCPRO	\$75.00
12/20/16	CB5736	kCura LLC	DOCPRO	\$1,426.95
10/15/15	CB4638	Alloy Group LLC	DOCPRO	\$450.00
01/25/16	CB4892	Alloy Group LLC	DOCPRO	\$1,050.00
01/26/16	CB4911	Thomson Reuters-West	DOCPRO	\$7,647.63
10/17/16	CB5544	kCura LLC	DOCPRO	\$354.60
01/19/17	CB5823	kCura LLC	DOCPRO	\$1,409.70
12/22/15	CB4821	Alloy Group LLC	DOCPRO	\$150.00
02/16/16	CB4966	Alloy Group LLC	DOCPRO	\$1,275.00
02/26/16	CB4994	Thomson Reuters-West	DOCPRO	\$7,633.86
03/28/17	CB5996	kCura LLC	DOCPRO	\$1,028.86
09/17/15	CB4568	Alloy Group LLC	DOCPRO	\$1,050.00
11/17/15	CB4711	Alloy Group LLC	DOCPRO	\$787.50
01/26/16	CB4915	kCura LLC	DOCPRO	\$375.00
02/16/16	CB4957	kCura LLC	DOCPRO	\$212.76
03/15/16	CB5050	Alloy Group LLC	DOCPRO	\$975.00
09/19/16	CB5488	kCura LLC	DOCPRO	\$336.87
12/01/16	CB5667	kCura LLC	DOCPRO	\$5,243.10
05/11/17	CB6103	kCura LLC	DOCPRO	\$1,383.24
EXPERT FEES				
05/01/18	CB7346	Integrated Healthdata Systems	EXPERT	\$112,500.00
			Grand Total:	\$297,434.13