Court File No. CV-22-00685631-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF AND IN THE MATTER OF PALADIN LABS CANADIAN HOLDING INC. AND PALADIN LABS INC.

MOTION RECORD
(Motion for a CCAA Representation Order)
(Returnable at a date and time to be determined by Chief Justice G.B. Morawetz)

Fishman Flanz Meland Paquin LLP
4100-1250 René-Lévesque Blvd. West
Montréal, Québec H3B 4W8
Tel: 514 932-4100

Avram Fishman
Mark E. Meland
Margo Siminovitch
Tina Silverstein

Trudel Johnston & Lespérance
90-750 Côte de la Place d'Armes
Montréal, Québec, H2Y 2X8
Tel: 514 871-8385

André Lespérance

Co-counsel for Jean-François Bourassa,
the Quebec Class Action Plaintiff
(the "**Quebec Plaintiff**")

Court File No. CV-22-00685631-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF AND IN THE MATTER OF PALADIN LABS CANADIAN HOLDING INC. AND PALADIN LABS INC.

INDEX

Court File No.: CV-22-00685631-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF AND IN THE MATTER OF PALADIN LABS CANADIAN HOLDING INC. AND PALADIN LABS INC.

NOTICE OF MOTION
(Motion for a CCAA Representation Order)
(s. 11 of the *Companies' Creditors Arrangement Act*, RSC 1985 c. C-36)
(Returnable at a date and time to be determined by Chief Justice G.B. Morawetz)

Counsel for the plaintiff in Quebec Superior Court file #500-06-001004-197 (the "**Quebec Opioid Class Action**"), Jean-François Bourassa (the "**Quebec Plaintiff**"), will make a Motion before Chief Justice G.B. Morawetz at a date and time to be determined by him.

PROPOSED METHOD OF HEARING: By videoconference.

THIS MOTION IS FOR:

1. A CCAA Representation Order substantially in the form of the draft Order attached hereto as Tab 3 to the Motion Record (the "**CCAA Representation Order**"), among other things:

   (a) appointing the Quebec Plaintiff (the "**CCAA Representative**") to represent the interests of all Canadian Personal Injury Claimants (as defined in the Siminovitch Affidavit) in the Foreign Recognition Proceedings initiated by Paladin Labs Inc. ("**Paladin Labs**"), as foreign representative, in the present Court file and, as necessary, in the related Chapter 11 Proceedings (as defined herein);

   (b) appointing the law firms of Fishman Flanz Meland Paquin LLP and Trudel Johnston Lespérance ("**CCAA Representative Counsel**") as co-counsel to the

Canadian Personal Injury Claimants in these proceedings, and, as necessary, in the Chapter 11 Proceedings;

(c) ordering that the reasonable fees and disbursements of the CCAA Representative Counsel shall be borne by the Canadian Debtors (as defined herein); and

(d) any such further and other relief as counsel may request and this Honourable Court may deem just.

2. Capitalized terms used and not defined herein have the meanings ascribed to them in the affidavit of Margo Siminovitch dated October 16, 2023 (the "**Siminovitch Affidavit**").

THE GROUNDS OF THE MOTION ARE:

3. The proposed sale of the Endo Group prejudices the Canadian Personal Injury Claimants and the appointment of CCAA Representative Counsel is required to ensure that the interests of these vulnerable Canadians are protected.

4. As explained more fully in the Siminovitch Affidavit, the Endo Parent (as defined herein), delayed filing for bankruptcy protection for years while it shifted its debt onto subsidiaries, including Paladin. This debt was shifted and security granted while the members of the Endo Group faced mounting exposure to opioid-related litigation. If the proposed sale is accepted and sanctioned, including recognition of same by this Honourable Court, the Endo Group, including Paladin, will be able to continue its operations liberated from substantial debt owed to claimants who were harmed by its opioid products, and the assets of its subsidiaries, including Paladin, will not be available to satisfy the claims of Canadian victims.

5. The alleged guarantees and security given by Paladin are the principal purported bases for implicating these Canadian entities in the Chapter 11 Proceedings instituted in the US Bankruptcy Court. Similar transfers of inter-company debt involving other subsidiaries of the Endo Parent were investigated in the context of

the Chapter 11 Proceedings and characterized by the investigating parties as fraudulent transfers.

6. It is inconsistent with Canadian insolvency law for the Endo Group to achieve its objective to emerge as a strong and rehabilitated company by relying, *inter alia*, on highly questionable transactions that were entered into for the specific purpose of defeating the Canadian Personal Injury Claimants' ability to obtain recovery for the harm caused to them by Paladin Lab's opioid products sold in Canada.

The Quebec Opioid Class Action

7. On May 23, 2019, the Quebec Opioid Class Action was instituted in the Quebec Superior Court (the "**Quebec Court**") against more than thirty pharmaceutical entities (the "**Quebec Defendants**"), including Paladin Labs, seeking compensatory and punitive damages.

8. The Quebec Plaintiff was substituted as representative plaintiff in the Quebec Opioid Class Action by judgment rendered on January 17, 2022.

9. The authorization (certification) hearing held in November 2022 did not proceed against Paladin Labs in view of the stay of proceedings issued by this Honourable Court (the "**CCAA Court**") on August 17, 2022.

The Chapter 11 and Foreign Recognition Proceedings

10. As appears from the Court record herein, on August 16, 2022, Endo International plc (the "**Endo Parent**") and certain of its affiliates (including Paladin Labs) (collectively, the "**Endo Group**") filed voluntary petitions for relief under Chapter 11 of the United States Bankruptcy Code (the "**Chapter 11 Proceedings**") before the United States Bankruptcy Court for the Southern District of New York (the "**US Bankruptcy Court**").

11. By way of an application returnable on August 17, 2022 (the "**CCAA Initial Application**"), Paladin Labs, in its capacity as foreign representative of the Chapter 11 Proceedings, sought the recognition of the Chapter 11 Proceedings as the Foreign Main Proceeding pursuant to Section 45 of the *Companies' Creditors Arrangement*

Act (the "**CCAA**") in respect of itself and Paladin Labs Canadian Holding Inc. (collectively, the "**Canadian Debtors**" or "**Paladin**"). The Canadian Debtors are part of the Endo Group, a global specialty pharmaceutical group.

12. The CCAA Initial Application and the Vas Affidavit allege that the Canadian Debtors are guarantors of the US$8.15 billion of funded indebtedness of certain members of the Endo Group and assert that such indebtedness "*will be a primary focus of the Company's* [i.e., the Endo Group's] *restructuring efforts in the Chapter 11 Cases*."

13. When the CCAA Initial Application was granted, the CCAA Court rendered an order, *inter alia,* staying proceedings against the Canadian Debtors, as well as their directors and officers, and prohibiting the sale of any property in Canada outside of the ordinary course of business.

The Bidding Procedure Order and the Bar Date Order

14. On April 2, 2023, the US Bankruptcy Court granted the Bidding Procedure Order and the Bar Date Order sought by the Debtors

15. The Bar Date Order, *inter alia*, authorized the procedures for filing proofs of claim, the forms and the notice plan. These Orders were subsequently recognized in Canada.

The Status of the Chapter 11 Proceedings

16. On June 20, 2023, the Debtors announced that they had terminated the sale process, and that they would be seeking an accelerated sale hearing in order to sell the Endo Group's assets to the Stalking Horse Bidder.

17. A contested hearing in respect of the sale approval request and the objections thereto was adjourned on several occasions. The sale approval hearing has now been rescheduled to October 19, 2023.

18. In the event that the sale is approved, Paladin Labs, as foreign representative, will seek recognition of the sale approval order in Canada.

The Projected Recovery for Canadian Personal Injury Claimants and the Potential Invalidity of the Proposed Sale of Paladin's Assets

19. Presuming that their claims are even accepted in the Chapter 11 Proceedings, the projected recovery for Canadian Personal Injury Claimants pursuant to claims process set out in the claims materials provided by the Endo Parent will be negligible if not non-existent.

20. A proceeding filed by, *inter alia*, the Official Committee of Opioid Claimants (the "**OCC Proceeding**"), Exhibit B to Siminovitch Affidavit, describes their on-going investigation in the Chapter 11 Proceedings. Such investigation revealed a corporate restructuring strategy whereby the Endo Parent acquired a number of pharmaceutical companies which were used to guarantee the Endo Parent's existing debt and provide liens in support of the debt, even though these entities did not receive reasonably equivalent value for the guarantees and liens provided. These inter-company transfers, which are characterized in the OCC Proceeding as "fraudulent transfers", were effected to insulate the Endo Group from opioid-related claims.

21. The OCC Proceeding reveals that the Endo Parent delayed filing for bankruptcy protection for many years in order to significantly alter its debt structure, for the specific purpose of minimizing potential recoveries for opioid claimants and to set up the eventual credit-bid sale of its assets.

22. By 2014, when Paladin was acquired, the Endo Group was already exposed to a number of lawsuits related to its opioid products. The inter-company transactions with Paladin described in the CCAA Initial Application (and supporting affidavit) appear to be part of the strategy to "uptier" Endo Parent's debts and reduce opioid claimants' potential recoveries.

23. No information was found in the CCAA Court materials that are publicly available that explains, *inter alia*, the validity and enforceability of the guarantees and security given by Paladin in light of the timing of such transactions or the consideration, if any, provided to Paladin, in connection with such guarantees and security.

The Need for Representation

24. The opioid drugs sold by Paladin Labs contributed to Canada's opioid crisis.

25. The Canadian Personal Injury Claimants are vulnerable individuals located across the country, most of whom, without the proposed Representative Counsel, would not have the resources or ability to effectively participate or advance their claims within these complex proceedings.

26. Although the OCC has been appointed in the Chapter 11 Proceedings to represent the interests of all opioid victims, it does not appear that any particular attention has been paid to the Canadian Personal Injury Claimants. The OCC Proceeding describes a deliberate scheme to employ inter-company transfers of debt for the specific purpose of avoiding providing compensation to the people who were harmed by the Endo Group's opioid products but does not include any investigation of the inter-company transfers of debt to Paladin. Without such work, the proposed sale and claims process are not fair or equitable and are highly prejudicial to the Canadian Personal Injury Claimants.

27. For these and other reasons described in the Siminovitch Affidavit, the Quebec Plaintiff is seeking that this Honourable Court appoint him as the CCAA Representative for the Canadian Personal Injury Claimants, and that his counsel be appointed as the CCAA Representative Counsel for the purpose of:

    a. Engaging with the various stakeholders, including the Canadian Debtors and the Information Officer, in order to ascertain the true nature of debt restricting transactions related to Paladin and the exposure, if any, of the Canadian Debtors for the debts of the Endo Parent and affiliates;

    b. In the event that Paladin is not responsible for the debts of the Endo Parent and its affiliates, as appears from the preliminary investigation, petitioning this Court to revoke the recognition of the Chapter 11 Proceedings as the foreign main proceeding and to place Paladin under CCAA protection in Canada, so that the assets of Paladin can be sold for the benefit of Paladin's unsecured creditors, including the Canadian Personal Injury Claimants; and

c. Engaging with the OCC to negotiate a process that ensures the fair treatment of the Canadian Personal Injury Claimants within the PPOC Trust, including, and without limitation, by providing separate allocation for Canadian Personal Injury Claimants and by assuring that claims will be accepted on a class-wide basis.

28. As putative class representative in the Quebec Opioid Class Action, the Quebec Plaintiff has experience seeking to represent victims of the prescription opioid crisis in Quebec including, up until the stay of proceedings, those whom were prescribed and used opioid products sold by Paladin.

29. Fishman Flanz Meland Paquin LLP and Trudel Johnston Lespérance are experienced counsel in CCAA and class action matters in Canada, and will be able to effectively represent this diverse group of Canadian creditors.

30. The reasonable fees and expenses incurred by the CCAA Representative and the CCAA Representative Counsel should be borne exclusively by the Canadian Debtors, including the reasonable fees incurred in connection with the hiring of United States counsel if intervention into the Chapter 11 Proceedings appears necessary.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of this Motion:

1. The affidavit of Margo Siminovitch, sworn October 16, 2023 (with Exhibits).
2. Such further evidence as counsel may advise and this Honourable Court may permit.

October 16, 2023

Fishman Flanz Meland Paquin LLP
4100-1250 René-Lévesque Blvd. West
Montréal, Québec H3B 4W8
Tel: (514) 932-4100

Avram Fishman
Email: afishman@ffmp.ca

Mark E. Meland
Email:mmeland@ffmp.ca

Margo Siminovitch
Email:msiminovitch@ffmp.ca

Tina Silverstein
Email:tsilverstein@ffmp.ca

Trudel Johnston & Lespérance
90-750, Côte de la Place d'Armes
Montréal, Quebec H2Y 2X8
Tel: 514 871-8385

André Lespérance
Email:andre@tjl.quebec

Co-Counsel for the Quebec Plaintiff, Jean-François Bourassa, on behalf of the proposed Quebec Class

TO: SERVICE LIST

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED
AND
IN THE MATTER OF PALADIN LABS CANADIAN HOLDING INC. AND PALADIN LABS INC.

APPLICATION OF PALADIN LABS INC. UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

Applicant

Court File No. CV-22-00685631-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE – COMMERCIAL LIST

Proceeding commenced at Toronto

NOTICE OF MOTION

(Returnable at a date and time to be determined by Chief Justice G.B. Morawetz)

Fishman Flanz Meland Paquin LLP
4100-1250 René-Lévesque Blvd. West
Montreal, Quebec H3B 4W8
Tel: (514) 932-4100

Mark E. Meland
mmeland@ffmp.ca

Avram Fishman
afishman@ffmp.ca

Tina Silverstein
tsilverstein@ffmp.ca

Margo R. Siminovitch
msiminovitch@ffmp.ca

Trudel Johnston & Lespérance
90-750, Côte de la Place d'Armes
Montreal, Quebec H2Y 2X8
Tel: 514 871-8385

André Lespérance
andre@tjl.quebec

Co-counsel for Jean-François Bourassa, the Quebec Class Action Plaintiff (the "**Quebec Plaintiff**")

Court File No. CV-22-00685631-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF AND IN THE MATTER OF PALADIN LABS CANADIAN HOLDING INC. AND PALADIN LABS INC.

AFFIDAVIT OF MARGO SIMINOVITCH
(sworn October 16, 2023)

I, Margo Siminovitch, of the City of Montreal, in the Province of Quebec, MAKE OATH AND SAY:

1. I am a partner at the law firm Fishman Flanz Meland Paquin LLP practicing in Montreal and am one of the attorneys representing the plaintiff (the "**Quebec Plaintiff**") in the proposed class action proceedings instituted before the Superior Court of Quebec in Court file number 500-06-001004-197 (as amended on September 30, 2022) (the "**Quebec Opioid Class Action**") against, *inter alia*, Paladin Labs Inc. ("**Paladin Labs**"). As such, I have personal knowledge of the matters to which I depose in this affidavit. Where I do not possess personal knowledge, I have stated the source of my knowledge and believe it to be true.

2. This Affidavit is sworn to support the Quebec Plaintiff's Motion to:

a. appoint the Quebec Plaintiff (the "**CCAA Representative**") to represent the interests of all Canadian Personal Injury Claimants (as defined herein) in the Foreign Recognition Proceedings initiated by Paladin Labs in the present Court file and, as necessary, in the related Chapter 11 Proceedings (as defined herein);

b. appoint the law firms of Fishman Flanz Meland Paquin LLP and Trudel Johnston Lespérance ("**CCAA Representative Counsel**") as co-counsel to the Canadian Personal Injury Claimants in these proceedings, and, as necessary, in the Chapter 11 Proceedings;

c. order that the reasonable fees and disbursements of the CCAA Representative Counsel shall be borne by the Canadian Debtors (as defined herein); and

d. any such further and other relief as counsel may request and this Honourable Court may deem just.

A. The Quebec Opioid Class Action

3. On May 23, 2019, the Quebec Opioid Class Action was instituted in the Quebec Superior Court (the "**Quebec Court**") against more than thirty pharmaceutical entities (the "**Quebec Defendants**"), including Paladin Labs, seeking compensatory damages of $30,000 (with interest and additional indemnity) to be paid to each class member as well as the amount of $25 million in punitive damages to be paid by each of the Quebec Defendants which manufactured, marketed, distributed and/or sold opioids.

4. The Quebec Plaintiff was substituted as representative plaintiff in the Quebec Opioid Class Action by judgment rendered on January 17, 2022. A copy of the latest authorization application, namely, the *Re-Amended Application dated September 30, 2022*

for authorization to institute a class action (without exhibits), is communicated herewith as **Exhibit "A"**.

5. The authorization (certification) hearing was held over seven days in November 2022 before the supervising judge for the Quebec Opioid Class Action, the Honourable Justice Gary D.D. Morrison (the "**Quebec Supervising Judge**"). The decision on authorization of the proposed class action is expected to be issued shortly.

6. While Paladin Labs had participated in all of the previous management conferences and hearings, the authorization hearing did not proceed against Paladin Labs in view of the stay of proceedings issued by this Honourable Court (the "**CCAA Court**") on August 17, 2022.

B. The Chapter 11 and Foreign Recognition Proceedings

7. As appears from the Court record herein, on August 16, 2022, Endo International plc (the "**Endo Parent**") and certain of its affiliates (including Paladin Labs) (collectively, the "**Endo Group**") filed voluntary petitions for relief under Chapter 11 of the United States Bankruptcy Code (the "**Chapter 11 Proceedings**") before the United States Bankruptcy Court for the Southern District of New York (the "**US Bankruptcy Court**").

8. By way of an application returnable on August 17, 2022 (the "**CCAA Initial Application**"), Paladin Labs, in its capacity as foreign representative of the Chapter 11 Proceedings, sought the recognition of the Chapter 11 Proceedings as the Foreign Main Proceeding pursuant to Section 45 of the *Companies' Creditors Arrangement Act* (the "**CCAA**") in respect of itself and Paladin Labs Canadian Holding Inc. (collectively, the "**Canadian Debtors**" or "**Paladin**").

9. As described in the CCAA Initial Application, the Canadian Debtors are part of the Endo Group, a global specialty pharmaceutical group which has been involved in the manufacture, marketing and/or selling of prescription opioids. The affidavit of Daniel Vas sworn on August 17, 2022 (the "**Vas Affidavit**"), filed in support of the CCAA Initial Application, asserts that in addition to a number of operational challenges, the filing of Chapter 11 Proceedings was triggered by the potential exposure of the Endo Group from the thousands of lawsuits related to its marketing and sale of prescription opioids, including those actions taken against Paladin Labs in Canada, which includes the Quebec Opioid Class Action.

10. The CCAA Initial Application and the Vas Affidavit also allege that the Canadian Debtors are guarantors of the US$8.15 billion of funded indebtedness of certain members of the Endo Group of which approximately US$6.8 billion is secured and assert that such indebtedness "*will be a primary focus of the Company's* [i.e., the Endo Group's] *restructuring efforts in the Chapter 11 Cases*." Notably, almost none of the allegedly secured debt matures before April 2027.

11. When the CCAA Initial Application was granted, the CCAA Court rendered an order, *inter alia,* staying proceedings against the Canadian Debtors, as well as their directors and officers, and prohibiting the sale of any property in Canada outside of the ordinary course of business.

C. The Bidding Procedure Order and the Bar Date Order

12. By way of a Motion returnable on April 25, 2023, Paladin Labs, in its capacity as foreign representative, made a request for a Fourth Supplemental Order, pursuant to which

it requested approval of the therein defined Bidding Procedure Order and Bar Date Order (the "**Fourth Motion**").

13. As appears from the Fourth Motion, as well as the affidavit of Daniel Vas sworn on April 18, 2023 (the "**Second Vas Affidavit**"), filed in support thereof, in the Chapter 11 Proceedings:

a. The Debtors[1] filed an initial bidding procedure motion and a bar date motion in November 2022;

b. Numerous objections were filed in connection therewith, including by the Official Committee of Opioid Claimants (the "**OCC**") in January 2023;

c. On January 27, 2023, the US Bankruptcy Court initiated a mediation process and, on March 3, 2023, the Court was informed that agreements in principle were reached between the Debtors and various stakeholders that would resolve certain of these parties' objections to the sale process;

d. On March 24, 2023, key documents were filed with the US Bankruptcy Court in respect of such agreements, which disclosed, *inter alia*, that, pursuant to the Stalking Horse Agreement, a credit bid would be made by the holders of the pre-petition first lien indebtedness in the amount of US$5.9 billion for all of the secured assets of the Debtors (including the assets of Paladin Labs in Canada), and US$5 million for the unencumbered assets of the Debtors. In order to settle the objections raised by the OCC, a term sheet was entered into with the OCC, which provides that a trust will be established in the maximum amount of US$119.2 million (in accordance with an instalment schedule) for the benefit of

[1] Due to the large number of Debtors in the Chapter 11 Proceedings, a complete list of the Debtors is not provided herein but can be obtained on the website of the Debtors' claims and noticing agent at https://restructuring.ra.kroll.com/Endo.

individual personal injury claimants of the Endo Group who elect to participate in such trust;

e. On April 2, 2023, the US Bankruptcy Court granted the orders sought by the Debtors.

14. The Bidding Procedure Order, *inter alia*, authorized a bidding procedure whereby substantially all of the Debtors' assets (including the assets of Paladin Labs in Canada) would be sold pursuant to the bid made in accordance with the Stalking Horse Bid or another successful bidder if a better bid was obtained.

15. The Bar Date Order, *inter alia*, authorized the procedures for filing proofs of claim, the forms and the notice plan.

16. The orders granted in relation to the Fourth Motion were subsequently recognized in Canada.

D. The Status of the Chapter 11 Proceedings

17. On June 20, 2023, the Debtors announced that there was no other interest in their assets, that they had terminated the sale process, and that they would be seeking an accelerated sale hearing in order to sell the Endo Group's assets to the Stalking Horse Bidder.

18. Numerous objections have been filed in response to the request for approval of the sale of the assets of the Endo Group, including by the US Trustee, the US Government and the Canadian Governments.

19. A contested hearing in respect of the sale approval request and the objections thereto has been adjourned on several occasions, including most recently on September 21, 2023. The sale approval hearing has now been rescheduled to October 19, 2023, and certain objections (but not all) previously raised, including by the Canadian Governments, appear to have been resolved.

20. In the event that the sale is approved, Paladin Labs, as foreign representative, will seek recognition of the sale approval in Canada.

E. The Quebec Plaintiff's Motion

21. The appointment of CCAA Representative Counsel is required to ensure that the interests of vulnerable Canadians are protected.

22. As explained more fully below, the Endo Parent delayed filing for bankruptcy protection for years while it shifted its debt onto subsidiaries, including Paladin, in an effort to erase, or at least diminish, the claims of victims harmed by use of its opioid products. This debt was shifted and security granted while the various members of the Endo Group, including Paladin, faced mounting exposure to opioid-related litigation. The hedge funds and other speculators who later acquired this allegedly "secured debt" at a discount stand to benefit from the proposed sale of the Endo Group at the expense of the creditors, including the Canadian Personal Injury Claimants that the proposed CCAA Representative Counsel seek to represent. If the proposed transaction is accepted and sanctioned, including recognition of same by this Honourable Court, the Endo Group, including Paladin, will be able to continue its operations liberated from substantial debt owed to claimants who were

harmed by the Endo Group's opioid products, and the assets of the Endo Group, including Paladin, will no longer be available to satisfy the claims of Canadian victims.

23. Certain alleged guarantees and security given by Paladin are the principal purported basis for implicating this Canadian entity in the Chapter 11 Proceedings instituted in the US Bankruptcy Court. Similar transfers of inter-company debt involving other subsidiaries of the Endo Parent were investigated in the context of the Chapter 11 Proceedings and characterized by the investigating parties as fraudulent transfers. Regardless of any approvals in respect of the proposed sale of the Endo Group's assets obtained by the US Bankruptcy Court, such transaction should not be approved by this Honourable Court in respect of Paladin in the absence of clear evidence that demonstrates that the transactions, whereby significant inter-company debt was assumed by Paladin, are valid and enforceable, as well as opposable to Paladin's Canadian creditors.

24. The objective of the Debtors in the Chapter 11 Proceedings is to "*ensure that Endo's business emerges as a strong and viable company*." It is inconsistent with Canadian insolvency law for such goal to be achieved by relying on transactions that were entered into for the purpose of defeating the Canadian claimants' ability to obtain recovery for the harm caused to them by Paladin Lab's opioid products marketed, manufactured and/or sold in Canada, and this, without reasonable compensation.

F. The Projected Insufficiency of any Recovery for Canadian Personal Injury Claimants and the Potential Invalidity of the Proposed Sale of Paladin's Assets

25. The Endo Parent provided a copy of the claims materials to the former putative representative of the Quebec Class.

26. In order to preserve the rights of the Quebec Class, the Quebec Plaintiff filed a without prejudice proof of claim prior to the Bar Date, even though such process did not provide for the filing of a proof of claim on a class basis.

27. Although it has not yet been formally refused, our firm has been advised by the OCC that the claim filed by the Quebec Plaintiff will not be accepted, as the claims process required the details and supporting documents in respect of each class member that took Paladin products, which information is simply not available at this early stage in the class action proceedings.

28. In reviewing the claims process materials, our firm analyzed the projected recovery pursuant to this process for Canadian Personal Injury Claimants, presuming that their claims are accepted.

29. As it currently stands, such potential recovery is negligible. Of the maximum amount of US$119.2 million available to fund the trust being established for personal injury claimants, counsel to the OCC has advised our firm that only half will be distributed among direct personal injury victims.

30. We have further been advised that more than 90,000 Personal Injury Proofs of Claim have been filed. The projected recovery per victim is therefore estimated at less than US$700 each.

31. From the perspective of the Canadian Personal Injury Claimants, there is an evident inadequacy in the proposed claims process, as we have been advised that only approximately 200 of the Personal Injury Proofs of Claim filed are claims made by

Canadians. This constitutes 0.22% of such claims whereas, according to the CCAA Initial Application materials, in 2021 Paladin Labs accounted for 3% of the Endo Group's business.

32. In addition, in order to participate in the trust and achieve any recovery from the sale of the assets of Paladin, opioid victims must opt in and provide contractual releases of their claims in favour of, *inter alia*, the Stalking Horse Bidder, the Endo Group and its directors and officers, some of whom were involved in the problematic debt restructuring transactions referenced below.

33. The meager projected recovery for Canadian Personal Injury Claimants is a direct result of these questionable transactions and is particularly troubling because Paladin has historically been an extremely successful and profitable enterprise, having produced a 4,600% increase in value for its shareholders over the 19 years of its operation prior to its ultimate acquisition by Endo Group in 2014, in a deal estimated to be worth approximately $3.1 billion.

34. Given that the basis for the proposed sale of Paladin's assets is the alleged secured guarantees given by Paladin, our firm sought confirmation of the validity of the same.

35. No information was found in the CCAA Court materials that are publically available that explains:

a. the circumstances surrounding the provision of the guarantees and security by Paladin to the creditors of the Endo Parent and its affiliates;

b. the validity and enforceability of the guarantees and security given by Paladin in light of the timing of such transactions;

c. the consideration, if any, provided to Paladin, in connection with the guarantees and security; or

d. the impact of the provision of the guarantees and security on Paladin's solvency.

36. This information is critical. If these guarantees and security are not valid, or otherwise unopposable to the Canadian Personal Injury Claimants, then the assets of Paladin cannot be included in the proposed credit-bid transaction and a substantially greater recovery will be available to these victims through the assets of Paladin.

37. The steps taken by the Endo Parent to restructure its debt and create significant liabilities for its subsidiaries prior to filing for relief in the US Bankruptcy Court warrants examination. As explained below, the net effect of the inter-company activity described in the Vas Affidavit was to significantly devalue Paladin Labs, an otherwise profitable Canadian subsidiary, and thereby reduce or avoid compensation that should be available to Canadian victims who were harmed as a result of using Paladin Labs' opioid drugs sold in Canada (the "**Canadian Personal Injury Claimants**").

38. Our preliminary investigation, which included reviewing certain credit documentation provided to us by Paladin as well as an application filed by*, inter alia*, the OCC in the Chapter 11 Proceedings, reveals that the Endo Parent delayed filing for bankruptcy protection for many years in order to significantly alter its debt structure, apparently for the specific purpose of minimizing potential recoveries for opioid claimants and to set up the eventual credit-bid sale of its assets, as is currently taking place in the Chapter 11 Proceedings. A copy of the *Motion of the Official Committee of Unsecured Creditors and the OCC for (i) Entry of an Order Granting Leave, Standing, and Authority to*

Commence and Prosecute Certain Claims on behalf of the Debtors and (ii) Settlement Authority in Respect of such Claims, with exhibits, (the "**OCC Proceeding**") filed on January 23, 2023 in the US Bankruptcy Court is communicated herewith as **Exhibit "B"**.

39. The OCC Proceeding explains that, since their appointment on September 2, 2022, the Official Committees have been investigating the Debtors' prepetition conduct, secured obligations and asset base. At the time the OCC Proceeding was filed, such investigation was on-going.

40. As described in the OCC Proceeding, in and around 2014-2015, after opioid litigation against Endo had commenced, the Endo Parent acquired other pharmaceutical companies, such as Par Pharmaceuticals Holdings Ltd., which were used to guarantee the Endo Parent's existing secured loan debt and provide liens in support of such debt, even though these entities did not receive reasonably equivalent value for the guarantees and liens provided. Later refinancings between the Endo Parent and these companies are described in detail in the OCC Proceeding and characterized as fraudulent transfers.

41. Significantly, the OCC Proceeding asserts that the purpose of these inter-company transfers was to insulate the Endo Group from opioid-related claims. Indeed, as early as April 2018, the Endo Parent's board meeting minutes reveal a program code-named "Project Zed", which was intended to mitigate the Endo Group's financial exposure to opioid litigation through "*structural optimization*" of its debts and "*to drive down opioid claimants' potential recoveries in a bankruptcy*".

42. As part of the Project Zed program, in March 2019 and June 2020, Endo converted a total of US$2.96 billion of pre-existing unsecured debt (which did not mature for several

years) into secured debt, which was then both guaranteed and secured by Endo's subsidiaries, including Paladin. According to the OCC Proceedings, these transactions represented an overpayment of US$550 million in market value to noteholders, and increased Endo's interest obligations by US$53 million per year.

43. Notably, Paladin Labs was also acquired by the Endo Parent in 2014 and the transactions described in the Vas Affidavit with respect to this Canadian company appear to be part of the Project Zed strategy to "uptier" the Endo Parent's debts and reduce opioid claimants' potential recoveries.

44. As for the alleged initial refinancing transaction in April 2017, whereby Paladin as well as other subsidiaries gave secured guarantees for the debts of the Endo Parent and certain affiliates, this transaction refinanced US$3.415 billion in **existing** term loans. No information has been identified or provided that indicates whether Paladin received any consideration or benefit for its provision of a secured guarantee. In view of its own exposure to opioid-related claims, it is likely that the provision of this single guarantee rendered Paladin insolvent.

45. By 2014, the Endo Group was already exposed to a number of lawsuits related to its opioid products, the start of a tsunami of opioid-related litigation. The delay until August 2022 in filing for bankruptcy protection enabled the Endo Parent to intentionally reduce the funds available to opioid claimants so that it could proceed with a sale that would allow its operation to continue with no or minimal compensation being paid to these claimants.

46. This egregious strategy was clearly prejudicial to the Canadian creditors of Paladin and to allow this sale and restructuring process to proceed without oversight by this

Honourable Court to ensure that the interests of Canadians are protected would result in a serious misuse of CCAA recognition proceedings. Paladin Labs' opioid products caused significant harm to Canadians, and its assets must remain available to satisfy the claims of Canadian victims.

G. The Need for Representation

47. Canada is experiencing a severe opioid crisis and the number of Canadians currently suffering from opioid use disorder is staggering. Prescription opioids, including the drugs marketed, manufactured and/or sold by Paladin Labs, contributed to this epidemic. Recent reports indicate that at least 10% of the Canadian population has been prescribed opioids, and 5.5% of users of prescription opioids develop a problematic dependence thereon. This results in an estimate of approximately 213,766 people in Canada **currently** suffering as a result of using prescription opioids.

48. The Canadian Personal Injury Claimants are vulnerable individuals located across the country, most of whom, without the proposed Representative Counsel, would not have the resources or ability to effectively participate or advance their claims within these complex proceedings.

49. Paladin Labs has a long history as a successful pharmaceutical business in Canada. While the specific number of Canadian Personal Injury Claimants of Paladin Labs is not known at this time, and Paladin Labs has refused to provide information concerning its market share vis-à-vis its opioid products to clarify this point, it is clear that without effective intervention in these proceedings, thousands of Canadians will see their claims

against Paladin Labs extinguished for almost no value, or without any possibility of recovery.

50. The OCC Resolution Term Sheet, as defined in the Second Vas Affidavit, (which is problematic in any event due to the required releases) foresees that all the victims of the Endo Group be compensated from the same fund, regardless of which member of the Endo Group caused them harm, and without considering the value of the entity vis-à-vis their liabilities in determining appropriate recoveries.

51. Moreover, certain terms of the OCC Resolution Term Sheet, which discourage any other group of affected creditors from participating, call into question whether the OCC could adequately represent the interests of creditors whose interests diverge from the Endo Parent, i.e., the Canadian creditors. In particular, the OCC Resolution Term Sheet provides that if any *ad hoc* group of personal injury creditors files and prosecutes an objection at the sale hearing, then the Stalking Horse Bidder will not have to pay the amount that would have been otherwise allocated to that subgroup in the present private opioid claimants (the "**PPOC Trust**"), effectively eliminating any possibility of recovery for such sub-group from the PPOC Trust.

52. Most significantly, although the OCC has been appointed in the Chapter 11 Proceedings to represent the interests of all opioid victims, it does not appear that any particular attention has been paid to Canadian creditors, or the specific legal issues of Canadian creditors. Indeed, the intercompany transactions with Paladin are not described in the OCC Proceedings.

53. The investigations that were conducted by the OCC reveal a complex scheme to employ inter-company transfers of debt for the specific purpose of avoiding providing compensation to the people who were harmed by the Endo Group's opioid products. However, no work has been done to assess the actions and conduct of Paladin or the different legal position of the Canadian creditors of Paladin vis-à-vis the creditors of other members of the Endo Group. Without such work, the proposed process is not fair or equitable and is highly prejudicial to the Canadian Personal Injury Claimants.

54. For these reasons, the Quebec Plaintiff is seeking that this Honourable Court appoint him as the CCAA Representative for the Canadian Personal Injury Claimants, and that his counsel be appointed as the CCAA Representative Counsel for the purpose of:

a. Engaging with the various stakeholders, including the Canadian Debtors and the Information Officer, in order to ascertain the true nature of debt restructuring transactions related to Paladin and the exposure, if any, of the Canadian Debtors for the debts of the Endo Parent and affiliates;

b. In the event that Paladin is not responsible for the debts of Endo Parent and its affiliates, as appears from the preliminary investigation, petitioning this Court to revoke the recognition of the Chapter 11 Proceedings as the foreign main proceeding and to place Paladin under CCAA protection in Canada, so that the assets of Paladin can be sold for the benefit of Paladin's unsecured creditors, including the Canadian Personal Injury Claimants; and

c. Engaging with the OCC to negotiate a process that ensures the fair treatment of the Canadian Personal Injury Claimants within the PPOC Trust, including, and without limitation, by providing separate allocation for Canadian Personal Injury Claimants and by assuring that claims will be accepted on a class-wide basis.

55. As putative class representative in the Quebec Opioid Class Action, the Quebec Plaintiff has experience seeking to represent victims of the prescription opioid crisis in Quebec including, up until the stay of proceedings, those whom were prescribed and used opioid products marketed, manufactured/or and sold by Paladin. The issues facing all of the Canadian Personal Injury Claimants are the same as those facing the class members of the Quebec Opioid Class Action, and accordingly, the Quebec Plaintiff is well-suited to represent the broader category of victims of Paladin across the country.

56. Fishman Flanz Meland Paquin LLP and Trudel Johnston Lespérance are experienced counsel in CCAA and class action matters in Canada, and will be able to effectively represent this diverse group of Canadian creditors.

57. The reasonable fees and expenses incurred by the CCAA Representative and the CCAA Representative Counsel should be borne exclusively by the Canadian Debtors, including the reasonable fees incurred in connection with the hiring of United States counsel if intervention into the Chapter 11 Proceedings appears necessary.

58. All of the facts alleged herein are true.

AND I HAVE SIGNED

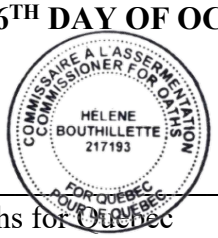
Margo Siminovitch

Solemnly declared before me at Montreal,
Province of Quebec, this 16th day of October 2023

COMMISSAIRE À L'ASSERMENTATION POUR LE QUÉBEC
COMMISSIONER OF OATHS FOR QUEBEC
HÉLÈNE BOUTHILLETTE
217193

Commissioner of Oaths for Quebec

THIS IS EXHIBIT "A"
TO THE AFFIDVIT OF MARGO SIMINOVITCH
SWORN BEFORE ME ON THIS 16TH DAY OF OCTOBER 2023



Commission of Oaths for Quebec

Re-Amended Application dated (…) September 30, 2022 for authorization to institute a class action

Canada

Province of Quebec

District of Montreal

No. 500-06-001004-197 (Class Action)

Superior Court

JEAN-FRANÇOIS BOURASSA, with an elected domicile for the purpose hereof at 1250 René-Lévesque Blvd. West, suite 4100, Montreal, Quebec H3B 4W8

Plaintiff

v.

ABBOTT LABORATORIES, LIMITED, a legal person, having its principal place of business at 75 boul. Pierre-Roux Est, CP 307, Victoriaville, Quebec G6P 6S9

and

APOTEX INC., a legal person, having a place of business at 2970 André Avenue, Dorval, Quebec H9P 2P2

and

ARALEZ PHARMACEUTICALS CANADA INC., a legal person having a place of business at 7100 West Credit Avenue, Suite 101, Mississauga, Ontario L5N 0E4

and

(…)

and

(…)

and

BRISTOL-MYERS SQUIBB CANADA CO., a legal person, having its principal place of business at 2344 Alfred-Nobel Boulevard, Montreal, Quebec H4S 0A4

and

CHURCH & DWIGHT CANADA CORP., a legal person, having its principal place of business at 5485 Ferrier Street, Mont-Royal, Quebec H4P 1M6

and

ETHYPHARM INC., a legal person, having a place of business at 1000 De La Gauchetière, Suite 2400, Montreal, Quebec H3B 4W5

and

GLAXOSMITHKLINE INC., a legal person, having its principal place of business at 245 Armand-Frappier Boulevard, Laval, Quebec H7V 4A7

and

(…)

and

JANSSEN INC., a legal person, having a place of business at 14 Place du Commerce, Suite 620, Montreal, Quebec H3E 1T5

and

JODDES LIMITED, a legal person, having a place of business at 6111 Royalmount Avenue, Suite 100, Montreal, Quebec H4P 2T4

and

LABORATOIRE ATLAS INC., a legal person, having a place of business at 9600 des Sciences Boulevard, Montreal, Quebec H1J 3B6

and

LABORATOIRE RIVA INC., a legal person, having a place of business at 660 Industriel Boulevard, Blainville, Quebec J7C 3V4

and

LABORATOIRES TRIANON INC., a legal person, having a place of business at 660 Industriel Boulevard, Blainville, Quebec J7C 3V4

and

(…)

and

(…)

and

NOVARTIS PHARMACEUTICALS CANADA INC., a legal person, having a place of business at 385 Bouchard Boulevard, Suite 518, Dorval, Quebec H9S 1A9

and

PALADIN LABS INC., a legal person, having a place of business at 100 boul. Alexis-Nihon, Suite 600, Montreal, Quebec H4M 2P2

and

PFIZER CANADA ULC, a legal person, having a place of business at 17300 Trans-Canada Highway, Kirkland, Quebec H9J 2M5

and

PHARMASCIENCE INC., a legal person, having a place of business at 6111 Royalmount Avenue, Suite 100, Montreal, Quebec H4P 2T4

and

PRO DOC LTÉE, a legal person, having a place of business at 2925 Industriel Boulevard, Laval, Quebec H7L 3W9

and

PURDUE FREDERICK INC., a legal person, having a registered office address at 1000, De La Gauchetière West, Suite 900, Montreal, Quebec H3B 5H4

and

PURDUE PHARMA, a limited partnership, having a place of business at 575 Court Granite, Pickering, Ontario L1W 3W8

and

(…)

and

SANDOZ CANADA INC., a legal person, having a place of business at 110 De Lauzon Street, Boucherville, Quebec J4B 1E6

and

(…)

and

SANOFI-AVENTIS CANADA INC., a legal person, having a place of business at 2905 Place Louis-R. Renaud, Laval, Quebec H7V 0A3

and

SUN PHARMA CANADA INC., legal person having a place of business at 126 East Drive, Brampton, Ontario L6T 1C1

and

TEVA CANADA LIMITED, a legal person, having a place of business at 17800 Lapointe Street, Mirabel, Quebec J7J 1P3

and

VALEANT CANADA LIMITED, a legal person, having a place of business at 2150 Saint-Elzéar Boulevard West, Laval, Quebec H7L 4A8

and

VALEANT CANADA LP, a limited partnership, having a place of business 2150 Saint-Elzéar Boulevard West, Laval, Quebec H7L 4A8

and

4490142 CANADA INC., F.K.A. AS MEDA VALEANT PHARMA CANADA INC., a legal person, having a place of business at 2150 Saint-Elzéar Boulevard West, Laval, Quebec H7L 4A8

Defendants

Re-Amended Application dated (…) September 30, 2022 for authorization to institute a class action, and to obtain the status of representative

---

PLAINTIFF ALLEGES RESPECTFULLY:

Along with the rest of Canada, Quebec is facing a serious opioid crisis.

Opioids are a class of drugs which resemble naturally occurring opiates that are prescribed to treat pain. However, these drugs are dangerously addictive, and the growing number of addictions, overdoses and deaths in Quebec and Canada caused by opioids has been declared by the Government of Canada to be a public health emergency.

1. **The Plaintiff wishes to institute a class action on behalf of the natural persons forming part of the class hereinafter described and of which the Plaintiff is a class member, namely:**

> All persons in Quebec who have been prescribed and consumed any one or more of the opioids manufactured, marketed, distributed and/or sold by the Defendants between 1996 and the present day ("**Class Period**") and who suffer or have suffered from Opioid Use Disorder, according to the diagnostic criteria herein described.

The Class includes the direct heirs of any deceased persons who met the above-mentioned description.

The Class excludes any person's claim, or any portion thereof, specifically in respect of the drugs OxyContin or OxyNeo, subject to the settlement agreement entered into in the court file no 200-06-000080-070 (…).

2. The facts on which the Plaintiff's personal claim against the Defendants are based, are as follows:

2.1. As more fully described herein, each of the Defendants manufactured, marketed, distributed and/or sold prescription opioids with a safety defect. In an effort to increase sales of their dangerous products, and in wanton disregard for the health and safety of the members of the class (the "**Class**" or "**Class Members**"), the Defendants failed to provide sufficient information of the defect, and deliberately misrepresented that opioids were less addictive than they knew them to be, more effective than they actually are and had a wider range of applications than those approved by health authorities.

2.2. The Defendants were also negligent in connection with the research, development, manufacture, testing, regulatory licensing, distribution, sale, marketing, and after-market surveillance of opioids in Quebec, and failed to adequately warn users of the serious and potentially fatal harms associated with opioid use.

2.3. As a result of these actions, which contravene the provisions of the *Civil Code of Quebec*, CQLR c CCQ-1991 ("**CCQ**"), the *Competition Act* (R.S.C., 1985, c. C-34) (the "**Competition Act**"), (…) and the Quebec *Charter of Human Rights and Freedoms*, CQLR c C-12 (the "**Charter**"), the Plaintiff requests that the Defendants compensate him and the other Class Members, as follows:

2.3.1. Compensatory damages for each Class Member in the amount of $30,000 plus interest and additional indemnity from the date of institution of the proceedings (…);

2.3.2. Punitive damages in the amount of $25,000,000 from each Defendant plus interest and additional indemnity from the date of institution of the proceedings; and

2.3.3. Pecuniary damages for each Class Member's personal losses, recoverable on an individual basis.

The Defendants

2.4. The Defendants are all manufacturers, marketers and/or distributors of opioid drugs, including but not limited to those containing the active ingredients fentanyl, hydrocodone, hydromorphone, methadone, morphine, oxycodone, oxymorphone, and codeine in Quebec.

2.4.1. All of the Defendants manufactured, marketed, distributed and/or sold prescription opioids that were prescribed for pain relief and which can cause dependence or addiction. Indeed, in 2018, Health Canada mandated that all prescription opioids (regardless of the formulation of the drug prescribed and regardless of whether they are brand-name or generic) must carry a warning sticker that the medication can cause dependence, addiction and overdose (Exhibits P-34 and P-35).

2.4.2. For completeness, the Plaintiff has described below in paragraphs 2.5 to 2.38 (excluding paragraphs 2.38.1 and 2.38.2) the opioid drugs he has been able to identify that are, or have been, manufactured, marketed, distributed and/or sold by each of the Defendants in the Province of Quebec during the Class Period (the "**Subject Opioids**"). However, to the extent that any of the Subject Opioids (…) were solely and exclusively available for use in a hospital setting (e.g., not available at any time during the Class Period to be prescribed for use in the home), such opioids are not the subject of the present Class Action.

2.4.3. Each and every one of the Subject Opioids contains one of the active opioid ingredients listed on Exhibit P-35, has a safety defect within the meaning of articles 1468 and 1469 CCQ, and can cause its users to suffer from the disease of addiction and resultant Opioid Use Disorder, for which the manufacturers and/or distributors thereof are bound to make reparation for injury.

2.5. Defendant Abbott Laboratories, Limited ("**Abbott**") is a Canadian corporation which, during the Class Period, manufactured, marketed and/or sold opioids in Quebec, including Codeine Phosphate Injection USP, (…), Dilaudid, Dilaudid-HP, Dilaudid-HP-Plus, Dilaudid-XP, Dilaudid Sterile Powder, Kadian, (…) Morphine Forte, and Morphine Extra-Forte (…).

2.5.1. Knoll Pharma Inc. ("**Knoll**") was a Canadian corporation that amalgamated with Abbott in 2001 which, during the Class Period,

manufactured, marketed and/or sold opioids in Quebec, including Dilaudid, Dilaudid-HP, Dilaudid-HP-Plus, Dilaudid-XP, Dilaudid Sterile Powder and Kadian.

2.6. Defendant Apotex Inc. ("**Apotex**") is an Ontario corporation which, during the Class Period, manufactured, marketed and/or sold opioids in Quebec, including APO-Fentanyl Matrix, APO-Hydromorphone, APO-Hydromorphone CR, APO-Oxycodone CR, APO-Oxycodone/Acet and APO-Tramadol/Acet.

2.7. Defendant Aralez Pharmaceuticals Canada Inc. ("**Aralez**"), formerly Tribute Pharmaceuticals Canada Inc., is an Ontario corporation which, during the Class Period, manufactured, marketed and/or sold opioids in Quebec, including Fiorinal C1/2 and Fiorinal C1/4.

2.8. (…)

2.9. (…)

2.10. Defendant Bristol-Myers Squibb Canada Co. ("**Bristol-Myers**") is a Nova Scotia corporation which, during the Class Period, manufactured, marketed and/or sold opioids in Quebec, including Endocet, Endodan, Numorphan, Percocet, Percocet-Demi, Percodan and Percodan-Demi.

2.10.1. Du Pont Merck Pharma Inc. was a Quebec limited partnership, which, in 1998, became DuPont Pharma Inc., a Canadian corporation, which amalgamated with Bristol-Myers in 2002, and which, during the Class Period, manufactured, marketed and/or sold opioids in Quebec, including Endocet, Endodan, Numorphan, Percocet, Percocet-Demi, Percodan and Percodan-Demi.

2.11. Defendant Church & Dwight Canada Corp. ("**Church & Dwight**") is a Nova Scotia corporation which, during the Class Period, manufactured, marketed, and/or sold opioids in Quebec, including Atasol-15 and Atasol-30.

2.11.1. Frank W. Horner Inc. was a Canadian corporation, which amalgamated into Carter-Horner Inc. in 1996, which then amalgamated into Carter-Horner Corp. in 2002, who in turn amalgamated into Church & Dwight in 2004, and which, during the Class Period, manufactured, marketed, and/or sold opioids in Quebec, including Atasol-15 and Atasol-30

2.12. (…)

2.13. Defendant Ethypharm Inc. ("**Ethypharm**") is a Quebec corporation which, during the Class Period, manufactured, marketed and/or sold opioids in Quebec, including M-Ediat and M-Eslon.

2.14. Defendant GlaxoSmithKline Inc. ("**GSK**") is a Canadian corporation which, during the Class Period, manufactured, marketed and/or sold opioids in Quebec, including Empracet-30 and Empracet-60.

2.14.1. Glaxo Wellcome Inc. was an Ontario corporation which amalgamated into GSK in 2001, and which, during the Class Period, manufactured, marketed and/or sold opioids in Quebec, including Empracet-30 and Empracet-60.

2.14.2. Smithkline Beecham Inc., also known as Smithkline Beecham Pharma, was a Canadian corporation that amalgamated into GSK in 2001, and which, during the Class Period, manufactured, marketed and/or sold opioids in Quebec, including Opium & Belladonna Suppositories.

2.15. Defendant Janssen Inc. ("**Janssen**"), also known as Janssen-Ortho and/or Patriot, is an Ontario corporation which, during the Class Period, manufactured, marketed and/or sold opioids in Quebec, including Duragesic, Jurnista, Nucynta CR, Nucynta Extended-Release, Nucynta IR, PAT-Tramadol/Acet, Tramacet, Tylenol with Codeine No. 2, Tylenol with Codeine No. 3, Tylenol with Codeine No. 4, Tylenol with Codeine Elixir and Ultram.

2.16. Sorres Pharma Inc. ("**Sorres Pharma**") was a Canadian corporation and a wholly-owned subsidiary of Defendant Joddes Limited ("**Defendant Joddes**"). During the Class Period, Sorres Pharma, which voluntarily dissolved on November 24, 2014, manufactured, marketed and/or sold opioids in Quebec, including Hydromorphone tablets.

2.17. Defendant Laboratoire Atlas Inc. ("**Laboratoire Atlas**") is a Canadian corporation which, during the Class Period, manufactured, marketed and/or sold opioids in Quebec, including Codeine Phosphate Syrup, Doloral and Linctus Codeine Blanc.

2.18. Defendant Laboratoire Riva Inc. ("**Laboratoire Riva**") is a Quebec corporation which, during the Class Period, manufactured, marketed and/or sold opioids in Quebec, including Codeine 15, Codeine 30, Rivacocet, RIVA-Tramadol/Acet and Triatec-30.

2.19. Defendant Laboratoires Trianon Inc. ("**Laboratoires Trianon**") is a Quebec corporation which, during the Class Period, manufactured, marketed and/or sold opioids in Quebec, including Codeine 15, Codeine 30 and Triatec-30.

2.20. (…)

2.21. (…)

2.22. Defendant Novartis Pharmaceuticals Canada Inc. ("**Novartis**") is a Canadian corporation, which, during the Class Period, manufactured, marketed and/or sold opioids in Quebec, including Fiorinal C1/2 and Fiorinal C1/4.

2.23. Defendant Paladin Labs Inc. ("**Paladin**") is a Canadian corporation which, during the Class Period, manufactured, marketed and/or sold opioids in Quebec, including Abstral, Fiorinal C1/2, Fiorinal C1/4, Metadol, Nucynta Extended-Release, Nucynta IR, Statex and Tridural.

2.23.1. Labopharm Inc. was a Canadian corporation that amalgamated with Paladin in January 2013, and which, during the Class Period, manufactured, marketed and/or sold opioids in Quebec, including Tridural.

2.24. Defendant Pfizer Canada ULC ("**Pfizer Canada**") is a British Columbia corporation which has acquired various Canadian corporations that manufactured, marketed and/or sold opioids in Quebec during the Class Period.

2.24.1. Pfizer Canada Inc. was a Canadian corporation that amalgamated with Pfizer Canada in October 2010, and which, during the Class Period, manufactured, marketed and/or sold opioids in Quebec, including HYDROmorphone Hydrochloride Injection, Morphine Forte, Morphine Extra-Forte, Morphine Sulfate Injection, USP, Robaxisal C1/2 and Robaxisal C1/4.

2.24.2. Hospira Healthcare Corporation ("**Hospira**") was a Canadian corporation that amalgamated with Pfizer Canada in 2015 and was dissolved in 2018, and which, during the Class Period, manufactured, marketed and/or sold opioids in Quebec, including Codeine Phosphate injections, (…), Morphine Forte, Morphine Extra-Forte, (…), and Morphine Sulfate Injection, USP (…).

2.24.3. Mayne Pharma (Canada) Inc. ("**Mayne**"), also known as Faulding (Canada) Inc., was a Canadian corporation that amalgamated

with Hospira in 2007, which then amalgamated with Pfizer Canada in 2015 and was dissolved in 2018, and which, during the Class Period, manufactured, marketed and/or sold opioids in Quebec, including Morphine Sulfate Injection BP (…).

2.24.4. Wyeth Consumer Healthcare ULC (formerly Wyeth Consumer Healthcare Inc., and formerly Whitehall-Robins Inc.) was an Ontario corporation that amalgamated with Pfizer Canada in August 2010, and which, during the Class Period, manufactured, marketed and/or sold opioids in Quebec, including Robaxisal C1/2 and Robaxisal C1/4.

2.25. Defendant Pharmascience Inc. ("**Pharmascience**"), also known as Pendopharm, a Division of Pharmascience Inc., is a Canadian corporation which, during the Class Period, manufactured, marketed and/or sold opioids in Quebec, including 282 Tablets, 292 Tablets, Acet-2, Acet-3, Acet Codeine 30, Acet Codeine 60, Exdol-15, Exdol-30, Metadol, pms-Acetaminophen with Codeine Elixir, pms-Butorphanol, pms-Codeine, pms-Fentanyl MTX, pms-Hydromorphone, pms-Morphine Sulfate SR, pms-Opium and Belladonna, pms-Oxycodone, pms-Oxycodone CR, pms-Oxycodone-Acetaminophen and pms-Tramadol-Acet.

2.26. Defendant Pro Doc Limitée ("**Pro Doc**") is a Quebec corporation which, during the Class Period, manufactured, marketed and/or sold opioids in Quebec, including Fentanyl Patch, Oxycodone (tablets), Oxycodone-Acet, Procet-30, Pronal C1/2, Pronal C1/4, and Tramadol-Acet.

2.27. Defendants Purdue Pharma and Purdue Frederick Inc. (collectively "**Purdue**") are respectively a partnership pursuant to the laws of Ontario and a Canadian corporation which, during the Class Period, manufactured, marketed and/or sold opioids in Quebec, including Belbuca, BuTrans 5, BuTrans 10, BuTrans 15, BuTrans 20, Codeine Contin, Dilaudid, Dilaudid-HP, Dilaudid-HP-Plus, Dilaudid-XP, Dilaudid Sterile Powder, Hydromorph Contin, Hydromorph.IR, MS Contin, MS.IR, Oxy.IR, Palladone XL, Targin and Zytram XL.

2.28. Defendant Purdue also produces OxyContin, which it stopped selling in 2012, and OxyNeo. (…) Claims related to the use of these specific products between January 1, 1996 and February 28, 2017 are part of the settlement (the "**National Settlement Agreement**") entered into, *inter alia*, in connection with the court file no 200-06-000080-070 (…).

2.28.1. As appears from the April 4, 2017 judgment of the Honourable Justice Claude Bouchard, J.S.C ("**Justice Bouchard**"), which authorized the class action for the sole purpose of the settlement agreement, the provisions of such judgment are without effect if the required approvals in other jurisdictions are not issued:

> *[24] **DÉCLARE** que le présent jugement est rendu sous réserve que des ordonnances similaires soient également rendues par les tribunaux de l'Ontario, de la Nouvelle-Écosse, et de la Saskatchewan, et **que les dispositions du présent jugement seront sans effet tant que ces ordonnances ne seront pas rendues;***

2.28.2. Similarly, the August 21, 2017 judgment of Justice Bouchard approving the National Settlement Agreement was also conditional, *inter alia*, upon a similar order being rendered by the court in Saskatchewan:

> *[22] **DECLARE** que l'approbation de l'Entente est conditionnelle à ce qu'une ordonnance d'approbation soit également émise par le tribunal de la Saskatchewan. **Si une telle ordonnance n'est pas rendue, le présent jugement sera nul et sans effet** ;*

Copies of the April 4, 2017 and August 21, 2017 judgments of Justice Bouchard are communicated herewith, *en liasse*, as **EXHIBIT P-38**.

2.28.3. On March 15, 2018, the court in Saskatchewan (the "**Saskatchewan Court**") did not approve the National Settlement Agreement, which is attempting to settle the claims relating to the use of OxyContin and OxyNeo in Canada for the total amount of $20,000,000, as the judge was "*not satisfied that the Settlement Agreement is fair, reasonable and in the best interests of the class*," the whole as appears from a copy of the judgment of Justice Barrington-Foote (SKQB), communicated herewith as **EXHIBIT P-39** (…).

2.28.4. (…) Many Class Members may have been prescribed such drugs, along with a multitude of other drugs produced by Purdue and/or by other Defendants herein, which are covered by the present proceeding.

2.28.5. In response to an application before the Saskatchewan Court, once again requesting approval of the National Settlement Agreement, the Plaintiff filed a Notice of Application dated April 22, 2022 seeking leave to intervene in the Saskatchewan proceedings (the "**Leave Application**") with a view to ensuring that the National Settlement Agreement could not be interpreted to prejudice the rights of Class Members who suffered damages as a result of the consumption of OxyContin or OxyNeo together with any other opioid drugs, the whole as appears from a copy of the Leave Application communicated herewith as **EXHIBIT P-54.**

2.28.6. As a condition to Plaintiff agreeing to withdraw his Leave Application, the parties to the National Settlement Agreement entered into an *Agreement re Interpretation of Settlement Agreement* dated July 13-14, 2022 (the "**Interpretation Agreement**"), which clarified that the National Settlement Agreement was exclusively limited to claims or portions of claims related to OxyContin and OxyNeo, the whole as appears from a copy of the Interpretation Agreement communicated herewith as **EXHIBIT P-55**.

2.28.7. In fact, the binding Interpretation Agreement irrevocably stipulates that claims asserted in these proceedings against (i) opioid manufacturers, distributors or suppliers other than Purdue for harms, losses or damages caused by opioids in Canada, and (ii) against Purdue for harms, losses or damages caused by opioids other than OxyContin or OxyNeo, are **not released** by the National Settlement Agreement.

2.28.8. On September 23, 2022, Chief Justice Popescul of the Saskatchewan Court approved the National Settlement Agreement, such that it is now effective, the whole as appears from a copy of the approval judgment communicated herewith as **EXHIBIT P-56**.

2.28.9. In addition to the foregoing, on June 29, 2022, it was announced that Purdue had reached a $150 Million settlement of a proposed class action brought by the Province of British Columbia on behalf of all Canadian governments seeking recovery of health care costs related to opioid-related wrongs, the whole as appears from the Amended Statement of Claim of Her Majesty in Right of the Province of British Columbia communicated herewith as **EXHIBIT P-57** and the press release issued by the Ministry of the

Attorney General of British Columbia communicated herewith as **EXHIBIT P-58**. As explained at paragraphs 68 and 69 of Exhibit P-56, the payment of $150 million was subject to final approval by the Saskatchewan Court of the National Settlement Agreement.

2.29. (…)

2.30. Defendant Sandoz Canada Inc. ("**Sandoz Canada**") is a Canadian corporation which, during the Class Period, manufactured, marketed and/or sold opioids in Quebec, including Codeine Phosphate injections, (…) Hydromorphone HP 10, Hydromorphone HP 20, Hydromorphone HP 50, Hydromorphone HP Forte, HYDROmorphone Hydrochloride Injection USP, (…) Morphine HP 25 (injection), Morphine HP 50 (injection), (…) Morphine Sulfate Injection USP, Sandoz Fentanyl Patch, Sandoz Morphine SR, Sandoz Opium & Belladonna, Sandoz Oxycodone/ Acetaminophen and Supeudol.

2.30.1. Sabex Inc. (formerly Sabex 2002 Inc.) was a Canadian corporation that amalgamated with Sandoz Canada in 2004, which, during the Class Period, manufactured, marketed and/or sold opioids in Quebec, including Hydromorphone HP 10, Hydromorphone HP 20, Hydromorphone HP 50, Hydromorphone HP Forte, HYDROmorphone Hydrochloride Injection USP and Suppositories, Morphine HP injections, (…) Morphine Sulfate Injection, Sab-Opium & Belladonna and Supeudol.

2.31. Defendant Sanofi-Aventis Canada Inc. ("**Sanofi**") (formerly, Sanofi-Synthelabo Canada Inc.) is a Canadian corporation, which, during the Class Period, manufactured, marketed and/or sold opioids in Quebec, including Demerol (tablets (…)) and Talwin (tablets (…)).

2.31.1. Rhône-Poulenc Rorer Canada Inc. ("**Rhône-Poulenc**") was a Canadian corporation which, in 2000, amalgamated with Hoechst Marion Roussel Canada Inc., a Canadian corporation, to create Aventis Pharma Inc., which in turn amalgamated into Sanofi in 2004, and which, during the Class Period, Rhône-Poulenc manufactured, marketed and/or sold opioids in Quebec, including M-Eslon.

2.32. (…)

2.33. (…)

2.34. Defendant Sun Pharma Canada Inc. ("**Sun Pharma Canada**"), formerly known as Ranbaxy Pharmaceuticals Canada Inc. ("**Ranbaxy**"), is an Ontario corporation which, during the Class Period, manufactured, marketed and/or sold opioids in Quebec, including RAN-Fentanyl Matrix Patch, RAN-Fentanyl Transdermal System and RAN-Tramadol/Acet.

2.35. Defendant Teva Canada Limited ("**Teva Canada**"), formerly Novopharm Limited, is a Canadian corporation which, during the Class Period, manufactured, marketed and/or sold opioids in Quebec, including, Fentora, Methoxisal-C ½, Methoxisal-C ¼, Novo-gesic C15, Novo-gesic C30, Teva-Codeine, Teva-Emtec-30, Teva-Fentanyl, Teva-HYDROmorphone, Teva-Lenoltec No. 2, Teva-Lenoltec No. 3, Teva-Lenoltec No. 4, Teva-Morphine SR, Teva-Oxycocet, Teva-Oxycodan, and Teva-Tramadol/Acetaminophen.

2.35.1. Novopharm Limited was an Ontario corporation which amalgamated with Teva Canada in 2001, and which, during the Class Period, manufactured, marketed and/or sold opioids in Quebec, including Novo-gesic C15 and Novo-gesic C30.

2.35.2. Rougier Pharma Inc. was a Canadian corporation, which amalgamated into Ratiopharm Inc. in January 2001, and which, during the Class Period, manufactured, marketed and/or sold opioids in Quebec, including Codeine Tab 15MG, Coryphen Codeine, Methoxisal-C ½, Methoxisal-C ¼ and Paveral.

2.35.3. Ratiopharm Inc. was a Canadian corporation, which amalgamated into Teva Canada in August 2010, and which, during the Class Period, manufactured, marketed and/or sold opioids in Quebec, including ratio-Codeine, ratio-Emtec-30, ratio-Fentanyl, ratio-Lenoltec No. 2, ratio-Lenoltec No. 3, ratio-Lenoltec No. 4, ratio-Morphine SR, ratio-Oxycocet and ratio-Oxycodan.

2.35.4. Technilab Pharma Inc. was a Canadian corporation which amalgamated into Teva Canada in August 2010, and which, during the Class Period, manufactured, marketed and/or sold opioids in Quebec, including Emtec-30, Lenoltec with Codeine No. 2, Lenoltec with Codeine No. 3, Lenoltec with Codeine No. 4, Methoxisal-C ½, Methoxisal-C ¼, Oxycocet and Oxycodan.

2.35.4.1. Cobalt Pharmaceuticals Inc. ("**Cobalt**") was an Ontario corporation which, during the Class Period, manufactured, marketed, and/or sold opioids in Quebec, including CO Fentanyl.

In 2009, Cobalt continued in Nova Scotia and changed its name to Cobalt Pharmaceuticals Company. In 2013, the latter changed its name to Actavis Pharma Company, and in 2014, amalgamated with Actavis Pharma OTC Company and Actavis Pharma Inc. and continued as Actavis Pharma Company ("**Actavis Pharma**"). In 2015, Actavis Pharma amalgamated with 3242038 Nova Scotia Company and Actavis Canada Company and continued as Actavis Pharma Inc. ("**Actavis**").

2.35.5. Actavis was a Nova Scotia corporation that amalgamated with Teva Canada in 2017, and which, during the Class Period, manufactured, marketed and/or sold opioids in Quebec, including ACT Oxycodone CR and ACT Tramadol/Acet.

2.36. Defendant Valeant Canada LP ("**Valeant LP**") is a Quebec limited partnership which, during the Class Period, manufactured, marketed and/or sold opioids in Quebec, including M.O.S., M.O.S.-SR, M.O.S.-Sulfate, Onsolis and Ralivia.

2.36.1. Biovail Pharmaceuticals Canada, which was a division of Biovail Corporation, was a Canadian corporation that amalgamated with Valeant LP in September 2010, and which, during the Class Period, manufactured, marketed and/or sold opioids in Quebec, including Ralivia.

2.37. Defendant Valeant Canada Limited ("**Valeant Limited**"), formerly known ICN Canada Limited, is a Canadian corporation which, during the Class Period, manufactured, marketed and/or sold opioids in Quebec, including M.O.S., M.O.S.-SR, M.O.S.-Sulfate, and Painex.

2.38. Defendant Meda Valeant Pharma Canada Inc., now 4490142 Canada Inc. ("**4490142**"), is a Canadian corporation which, during the Class Period, manufactured, marketed and/or sold opioids in Quebec, namely Onsolis.

Settlements entered into after the institution of the Class Action

2.38.1. On August 9, 2022, Justice Morrison of the Superior Court of Quebec approved four settlement agreements (collectively, the "**Settlement Agreements**") between the Plaintiff and seven manufacturers of opioids (the "**Settled Defendants**"), having declared that the Settlement Agreements are fair, reasonable and in the best interests of the Class Members.

2.38.2. The Settlement Agreements and related judgment form part of this court record and are also posted on Class Counsel's website. As set out therein, the Settled Defendants and their respective opioid drugs are listed below:

Settled Defendants	***Respective Opioid Drugs***
Roxane Laboratories, Inc. / Hikma Labs Inc.	Hydromorphone HCL (tablets); Oramorph SR; and Roxicet
Boehringer Ingelheim (Canada) Ltd.	
BGP Pharma ULC	Kadian
Mylan Pharmaceuticals ULC	Mylan-Fentanyl Matrix Patch; and Mylan-Tramadol/Acet
Merck Frosst Canada & Co.	282 Mep Tab; 282 Tab; 292 Tab; Exdol-15; Exdol-30; 642 Tab; 692 Tab Leritin (tablets); and Leritin (injection)
Sanis Health Inc.	Morphine Sulf SR; Oxycodone/Acet; and Tramadol/Acet

The Defendants' Faults

2.39. Prior to the mid-1990s, opioids were primarily used to treat palliative care patients and for short-term treatment of acute pain, as appears from a 2011 article by Irfan A. Dhalla, Navindra Persaud and David N. Jurrlink entitled "Facing up to the prescription opioid crisis" (the "**Dhalla Article**"), communicated herewith as **EXHIBIT P-1**.

2.40. Opioids effectively treat pain by attaching to receptors in the brain, which block the feeling of pain, slow down breathing and result in a general calming effect; however, they carry great potential for misuse and abuse.

2.41. Indeed, opioids were initially thought to be too addictive to treat conditions requiring longer-term pain management, as appears from a 2016 article by

Asim Alam and David N. Jurrlink entitled “The prescription opioid epidemic: an overview for anesthesiologists” (the “**Alam Article**”), communicated herewith as **EXHIBIT P-2**.

2.42. The prescribed uses of opioids changed in the mid-1990s; in particular, in 1996, when Defendant Purdue introduced a time-release formulation of oxycodone branded as OxyContin. Defendant Purdue claimed that the drug was safer because it could be taken less often, and it aggressively encouraged its widespread use for chronic conditions, such as back pain, migraines and arthritis.

2.43. While the Defendants may have competed with each other to increase their respective market shares, they generally acted in concert to promote the false and misleading narrative described more fully herein concerning the safety and efficacy of opioids in an effort to increase the acceptance of such drugs for treatment in a much larger patient population than that which was previously considered acceptable.

2.44. In their efforts to obtain market share and increase the prescription rate and sale of their drugs, the Defendants also failed to disclose the risks of using opioids.

2.45. The new narrative concerning the use of opioids, which was promoted by the Defendants, misrepresented that:

2.45.1. the risk of opioid addiction was low, and that doctors could use screening tools to exclude patients who might become addicted;

2.45.2. use of opioids resulted in improved function;

2.45.3. withdrawal from opioids could easily be managed;

2.45.4. opioids were appropriate for long-term use;

2.45.5. opioids had less adverse effects than other pain management drugs;

2.45.6. use of certain opioids provided patients with long-lasting pain relief;

2.45.7. increased dosages of opioids could be prescribed, without disclosing the increased risks; and

2.45.8. that “abuse deterrent” formulations of opioids were effective.

(collectively the “**Misrepresentations**”).

Misrepresentations of the addictive nature and likelihood of abuse

2.46. In their marketing efforts, the Defendants persuaded health care professionals that the risk of addiction to opioids was largely unfounded.

2.47. (…)

2.48. (…)

2.49. The message that was widely communicated was that addiction was not an issue when opioids were used by patients genuinely experiencing pain, as opposed to addicts seeking drugs to get high, that there was no risk to the general patient population, and that doctors could easily screen and rule out opioid therapies for patients prone to addiction.

2.50. The Misrepresentations in respect of addiction falsely induced health care professionals to believe that opioids could be safely prescribed to appropriate patients, without the fear that such patients would become addicted.

2.51. This marketing strategy was particularly effective because it was able to “*exploit gaps in physician knowledge and training relating to addiction medicine*” and “*led to unsafe prescribing practices and the failure to employ evidence-based treatments for addiction*,” as appears from the December 2016 Standing Committee on Health’s report entitled “Report and Recommendations on the Opioid Crisis in Canada” (the “**2016 Standing Committee Report**”), communicated herewith as **EXHIBIT P-4**.

2.52. In furtherance of this message, the Defendants funded and/or improperly relied on studies that downplayed the risk of addiction by promoting the concept of “*pseudoaddiction*”. Pseudoaddiction has been described in studies funded by pharmaceutical companies as “*an iatrogenic disease resulting from withholding opioids for pain that can be diagnosed, prevented, and treated with more aggressive opioid treatment*.” Conversely, in studies without pharmaceutical funding, pseudoaddiction is described as nothing more than a clinical construct, **which is no different from addiction**, as appears from a 2015 article by Marion S. Greene and R. Andrew Chambers entitled “Pseudoaddiction: Fact or Fiction? An Investigation of the Medical Literature”, communicated herewith as **EXHIBIT P-5**.

2.53. The myth of pseudoaddiction encouraged healthcare professionals to increase the prescription of more opioids, in order to "cure" their patients from their pseudoaddictions.

Misrepresentations as to the improved function and efficacy of opioids over other pain relief treatment

2.54. Without proper clinical evidence, the Defendants purported in their marketing materials that long term use of opioids would improve patients' function and quality of life.

2.55. Opioids were misleadingly marketed by the Defendants as an appropriate choice for the treatment of chronic pain, and as both safe and effective for long-term use in connection with routine pain conditions.

2.56. As part of their marketing strategy, the Defendants exaggerated the risks of competing non-opioid products, in an effort to make treatment with opioids more popular than treatment with other therapies such as acetaminophen and nonsteroidal anti-inflammatory drugs ("**NSAIDs**"), like ibuprofen.

2.57. As indicated in the 2016 Standing Committee Report (EXHIBIT P-4), the marketing efforts employed by the Defendants were targeted in particular at family doctors, who commonly see patients with chronic pain conditions and who did not have the level of training to verify whether the Defendants' claims concerning the safe and effective nature of the drugs were correct.

2.58. In fact, a 2011 study reported that many physicians were unaware that there is no evidence from randomized controlled trials to support the assertion of the pharmaceutical companies that the benefits of long-term opioid therapy outweigh the risks, as appears in the Dhalla Article (EXHIBIT P-1).

Misrepresentations with respect to the management of withdrawal

2.59. The Defendants promoted the assertion that withdrawal from opioids was easily managed, in an effort to induce health care professionals to prescribe their drugs more liberally.

2.60. The message was that physical addiction could be easily managed by gradually decreasing the dosage; however, this ignored the fact that the actual symptoms of withdrawal can continue long after a patient stops using the drug. These side-effects, which include nausea, muscle pain, depression, anxiety, restlessness, chills, diarrhea and vomiting, make relapse and continued use more likely.

Misrepresentations regarding the appropriateness of long term use

2.61. The Defendants marketed their drugs as being safe for long-term use, a claim which was not backed up by any scientific evidence.

2.62. (…)

2.63. The Defendants pushed the prescription of their drugs for use in the non-malignant pain markets. (…)

2.64. The Dhalla Article (EXHIBIT P-1) states that there is no evidence from randomized control trials to support the affirmation that the benefits of long term opioid use outweigh the risks. Completed trials have generally been short term, used placebo instead of alternative therapies, and excluded high risk patients.

Misrepresentations relating to the adverse effects of opioids and failure to disclose risks

2.65. The Defendants virtually ignored the risks of opioid use in their promotion of their harmful products, and certainly failed to warn and inform both medical professionals and patients alike of the risks and dangers associated with opioid use.

2.66. For example, the Defendants failed to disclose the risks of overdose, addiction, respiratory depression and death.

2.67. The Defendants also ignored the risk of the development of hyperalgesia, which is an enhanced sensitivity to pain, leading a sufferer to feel pain more intensely, for pain to spread to different locations and to feel increased pain response to external stimuli. Unlike the case of increased tolerance, increased use of opioids by sufferers of hyperalgesia worsens the pain.

2.68. Hyperalgesia can further cause sufferers to experience hormonal dysfunction, a decline in immune function, mental clouding, confusion and dizziness.

2.69. In addition to failing to disclose these serious risks, the Defendants deceptively promoted the risks of alternative pain treatment therapies in an effort to convince health care professionals and patients that opioids were a better choice.

Misrepresentations as to the long-lasting nature of the pain relief provided by certain opioid formulations

2.70. While the Defendants apparently knew that these claims were incorrect, they nevertheless promoted the misconception that certain slow-release opioid formulations provided 12-hour pain relief. This was advertised as making opioids a better option, since patients would not have to take their medication as often in order to treat their pain.

2.71. The Defendants, however, knew that these claims were false and that their drugs would not provide 12-hours of pain relief for most patients.

2.72. Experiencing pain before it is time for the scheduled next dose of opioids, known as “end-of-dose failure”, results in patients experiencing symptoms of withdrawal, intense cravings as well as euphoric highs with their next dose, all of which can promote addiction.

2.73. Patients may then exacerbate this vicious cycle by taking their next dose too early or by taking another short-acting opioid, known as rescue medication to alleviate pain and to tide them over until it is time for their next dose, which increases the overall opioids that they are taking.

2.74. The Defendants informed health care professionals that higher doses, rather than more frequent doses, were the appropriate treatment response to end-of-dose failure, which posed a greater risk to patients, including a greater risk of addiction, overdose and death.

2.75. This Misrepresentation played a key role in the creation of the opioid crisis because it resulted in some patients being prescribed higher doses rather than more frequent doses of opioids.

Misrepresentations relating to risk associated with developing tolerance to opioids

2.76. Continued use of opioids causes users to develop a tolerance for the drug and results in a need for higher doses to obtain the same effects. This in turn increases the risk of withdrawal, addiction, respiratory depression, overdose and death. Opioids may also induce an addictive, euphoric high for their users, as appears from the 2010 Canadian Guideline for Safe and Effective Use of Opioid for Chronic Non-Cancer Pain, communicated herewith as **EXHIBIT P-7**.

2.77. As mentioned above, the Defendants encouraged medical professionals to prescribe higher doses of their drugs to patients, rather than more frequent

doses, and to prescribe additional rescue medication doses to combat the effects of end-of-dose failure.

2.78. The Defendants misled health care professionals and patients alike by failing to warn them that increased use of opioids also increases the risks and dangers associated with such use.

(…)

2.79. (…)

2.80. (…)

2.81. (…)

The Spreading of the Misrepresentations

2.82. The Defendants engaged in aggressive marketing and sales practices which were entirely inappropriate for the distribution of dangerous, addictive drugs.

2.83. The Defendants failed to properly warn both health care professionals and consumers of the risks and dangers associated with opioid use in the Information for Patients and Product Monographs, as found in the Compendium of Pharmaceuticals and Specialties ("**CPS**").

2.84. The Defendants also engaged in aggressive sales' tactics in order to spread their Misrepresentations:

2.84.1. to health care professionals;

2.84.2. to medical students;

2.84.3. by funding patient advocacy groups; and

2.84.4. to the public.

The spreading of Misrepresentations in the Information for Patients and Product Monographs, as found in the CPS

2.85. The Defendants failed to properly warn and inform of the serious risks and dangers associated with opioid use in their Information for Patients and Product Monographs in the CPS.

2.86. As an example, the Information for Patients generated by Defendant Purdue for the years 1996, 1998 and 2000 in respect of Hydromorph Contin contained no warnings about overdose or physical addiction. Copies of the extracts of the 1996, 1998 and 2000 CPS are communicated herewith, *en liasse*, as **EXHIBIT P-8**.

2.87. While in 2002 a warning was added to the Information for Patients, the addictive nature of the medication was downplayed: "*Les patients qui ont pris Hydromorph Contin pendant un certain temps peuvent développer une dépendance physique; cependant, ce n'est pas la même chose que la toxicomanie*", as appears from such extract communicated herewith as **EXHIBIT P-9**.

2.88. While the Product Monographs for Hydromorph Contin for the years 1996, 1998, 2000 and 2002 (EXHIBIT P-8 and EXHIBIT P-9) contained a warning, such warning indicated that "*Le risque d'abus ne constitue pas un problème chez les patients présentant des douleurs intenses et chez qui l'hydromorphone est indiquée.*"

2.89. In the case of Supeudol, even though the CPS for 1996, 1998, 2000, and 2002 included a section for information for Patients, such section did not contain any listing for Supeudol. Extracts of the 1996, 1998, 2000 and 2002 CPS are communicated herewith, *en liasse*, as **EXHIBIT P-10**.

2.90. Like with Hydromorph Contin, the Product Monograph for Supeudol contained warnings, however, these warnings were neither detailed nor forceful. Risks of respiratory depression, for example, were described as being limited to patients predisposed to such conditions. The warning regarding to tolerance, addiction and dependence is a general warning for all "*analgésiques narcotiques*" rather than being product specific: "*La tolérance, la dépendance psychique et physique **peuvent** survenir chez les patients recevant des analgésiques narcotiques*."

2.91. In 2004, the warnings with respect to Supeudol were modified. While they state that risks of secondary effects were less severe than with morphine products, they did acknowledge that the risk of dependence was "*sensiblement le meme que pour la morphine*." Furthermore, after the general warning that the use of narcotics may cause tolerance and dependence, there is a directive to consequently prescribe the drug in reduced doses and frequencies where dependence or risk of dependence is noted. Interestingly, it does not say not to prescribe the drug in such situations. The 2004 CPS is communicated herewith as **EXHIBIT P-11**.

2.92. These warnings were clearly insufficient, as appears from the way that they have evolved over time. Indeed, the recent Product Monographs include bolded sections containing precautions, in the Serious Warnings and Precautions Boxes, advising that treatment using such drugs should be limited to "*patients for whom alternative treatment options (e.g., non-opioid analgesics) are ineffective, not tolerated, or would otherwise be inadequate to provide appropriate management of pain*," as appears from the 2018 Product Monograph for Jurnista, Hydromorph-Contin and Supeudol, copies of which are communicated herewith, *en liasse*, as **EXHIBIT P-12.**

2.93. In addition to the limitations on use, these Serious Warnings and Precautions Boxes refer to, *inter alia*, addiction, abuse and misuse of opioids, life threatening respiratory depression as well as to the risks of accidental death and neonatal opioid withdrawal. These warnings are much more complete than they were in earlier years.

2.94. While Health Canada issued guidance to the industry on October 1, 2003, effective October 1, 2004, wherein it advised that a Serious Warnings and Precautions Box should be included in the Product Monographs of pharmaceutical products in order to highlight "*Clinically significant or life-threatening safety hazards when taking the drug*…", as appears from a copy of such guidelines communicated herewith as **EXHIBIT P-40**, the Product Monographs for many of the drugs produced by the Defendants did not include Serious Warnings and Precautions Boxes until much later. As an example, a Serious Warnings and Precautions Box only appears to have been added to the Dilaudid Prescribing Information in October, 2016, as appears from the 2012 and 2016 Prescribing Information provided to the undersigned attorneys by Health Canada in response to a request for all Dilaudid Product Monographs, communicated herewith as **EXHIBIT P-41**.

The spreading of Misrepresentations to health care professionals

2.95. In an effort to increase the sales of their opioid products, the Defendants employed sales representatives to meet with health care professionals in person to perpetuate the Misrepresentations. According to the Dhalla Article (EXHIBIT P-1), these sales representatives apparently were paid bonuses based on the number of prescriptions issued by health-care providers that they visited.

2.96. The Defendants also promoted the use of opioids by placing ads in medical journals and popular magazines, which deceptively downplayed the risks of addiction by omitting negative side-effects and overstated the benefits of the use of opioids for the treatment of chronic pain.

2.97. (…)

2.98. Many examples of these types of advertisements can be found in publications geared towards Quebec health professionals, including *Le médecin du Québec*, as well as the CPS

2.99. The Defendant Purdue advertised Codeine Contin to medical professionals for light to moderate chronic pain, as appears from a 2005 advertisement in a publication called *Le médecin du Québec* and accompanying Product Monograph, communicated herewith as **EXHIBIT P-42**. The advertisement referred to a general risk of abuse relating to all opioid pain relievers, but did not mention a serious risk of addiction. The Product Monograph stated that "***Le risque d'abus ne constitue pas un probleme*** *chez les patients présentant des douleurs et chez qui la codéine est indiquée*" and that withdrawal symptoms were "***généralement légers*** *si l'emploi médical des analgésiques opioïdes est justifié et si le sevrage est progressif*".

2.100. By way of illustration, in the 2004 CPS, Defendant Purdue advertised Hydromorph Contin, in an ad which encouraged prescribing the drug due to its tagline "*C'est votre patient. Vous pouver l'aider*." The ad gently warned in fine print that prudence was required when prescribing medications that have a "*potentiel d'abus*", but did not highlight the serious risks of addiction, overdose or death. The 2004 Hydromorph Contin ad is communicated herewith as **EXHIBIT P-13.**

2.101. In the 2007 CPS, Defendant Purdue advertised Hydromorph Contin for non-cancer pain relief with an image of an older woman with the caption that stated: "*Il y a plusieurs raisons de prescrire Hydromorph Contin. Elle est la plus importante.*" The tagline under the name of the drug stated that Hydromorph Contin was "*un premier choix efficace pour la douleur intense*." The 2007 Hydromorph Contin ad is communicated herewith as **EXHIBIT P-14**.

2.102. The warnings contained in the fine print of the 2007 Hydromorph Contin ad (EXHIBIT P-14) mentioned again that prudence was required when prescribing medications that had a "*potentiel d'abus.*" Although the ad mentioned the potential risk of fatal respiratory depression, this risk is stated as only being applicable to patients without a pre-established opioid tolerance. The ad did not contain general warnings of the risks to all opioid users. While the ad stated that the "*monographie du produit [sera] fournie sur demande*", health care professionals were required to take positive steps to be fully aware of all of the significant negative side-effects of this drug.

2.103. Lastly, while the 2007 Hydromorph Contin ad (EXHIBIT P-14) stated that Hydromorph Contin should only be prescribed at an initial dose of 3mg every 12 hours, health care professionals were encouraged to increase the dose "*sans dose plafond*" after 48 hours.

2.104. In the 2010 CPS, the ad for Hydromorph Contin depicted a man walking in water with his dog with the caption "*Éprouvé pour maîtriser la douleur…une étape à la fois.*" The information included was mostly the same as in the 2007 Hydromorph Contin ad, except for the additions of "extrême" and "fort" to the warning, which stated that: "*On doit prescrire et utiliser les analgésiques opiaces avec l'**extrême** prudence qu'exige ce type de médicament, car il présente un **fort** potentiel d'abus*." Although this is a stronger caution to physicians regarding prescription practices, the warning was still grossly insufficient. The 2010 Hydromorph Contin ad is communicated herewith as **EXHIBIT P-15**.

2.105. (…)

2.106. (…)

2.107. The Defendant Janssen (known at the time as Janssen-Ortho Inc.) advertised the Duragesic fentanyl patch to medical professionals to replace weaker opioids for chronic pain, as appears from a 2002 advertisement in *Le médecin du Québec* and accompanying Product Monograph, communicated herewith as **EXHIBIT P-43**. The caption reads "*lorsque les opioïdes faibles ne suffisent plus à maîtriser la douleur chronique*", and promised three days of balanced blood levels, less constipation, nausea and vomiting and asserted that patients preferred the patch over oral time-released morphine. The fine print referred to a risk of abuse as well as a contra-indication for use in patients without prior tolerance to weaker opioids, but it did not mention the serious risk for all users of opioid products. In fact, the Duragesic Product Monograph contained at the rear of the same publication actively discouraged medical professionals from being influenced by the risk of addiction, which it characterized as rare:

> *Pharmacodependance et toxicomanie*
>
> *Le fentanyl est une substance opioïde qui peut occasionner une pharmacodépendance semblable à celle causée par la morphine. Il existe donc un potentiel d'abus de DURAGESIC. Cependant, **la tolérance ainsi que la dépendance physique et psychologique** peuvent se développer après des administrations répétées d'opioïdes et **ne sont pas par elles-mêmes une preuve de toxicomanie ou***

***d'abus**. **La toxicomanie iatrogène à la suite d'une administration appropriée d'opioïdes pour le soulagement de la douleur chronique est relativement rare**. **Les médecins ne doivent pas laisser le souci d'une dépendance physique influencer leur décision** de prescrire une posologie appropriée d'opioïdes pour contrôler une douleur intense lorsqu'un tel emploi est indiqué.*

2.108. The Defendant Janssen produced similar ads to those of Defendant Purdue. As an example, in the 2003 CPS, the Defendant Janssen promoted a new use for the drug Duragesic, namely to treat chronic pain with the caption: "*Les Canadiens n'ont plus à avaler la douleur chronique; vers une vie sans interruption*". The fine print referred to a risk of abuse as well as a contra-indication for use in patients without prior tolerance to weaker opioids, but it did not mention the serious risk for all users of opioid products. The ad also mentioned, in larger print, that Duragesic had less risk of adverse secondary side-effects, like constipation, nausea and vomiting. The 2003 Duragesic ad is communicated herewith as **EXHIBIT P-19**.

2.109. Interestingly, in 2004, when Janssen Pharmaceutica Inc. ("**Janssen USA**") made similar statements in its ads, the USA Department of Health and Human Services (the "**USA Department of Health**") issued a warning letter to Janssen USA for making false and misleading claims about the lower potential of abuse compared to other opioid products. The letter also criticized Janssen USA for deceptively advertising Duragesic as "*associated with less constipation, nausea, and vomiting than oral opioids, which are absorbed by the GI tract.*" The USA Department of Health maintained that it was *"not aware of substantial evidence or substantial clinical experience to support this comparative claim*" and requested that Janssen USA immediately cease the dissemination of promotional materials for Duragesic that were the same or similar to those indicated in the letter. The 2004 warning letter from the USA Department of Health is communicated herewith as **EXHIBIT P-20**.

2.110. In addition to meetings with professionals and advertising their drugs, the Defendants also sponsored presentations as part of the continuing medical education courses attended by physicians that purported to show that certain opioids could be used as effective treatments for chronic pain and breakthrough pain, even in circumstance where such uses were not approved or for which there had been no adequate studies that proved that they were appropriate.

2.111. (…)

The spreading of Misrepresentations to medical students

2.112. The aggressive marketing of opioids was not limited to health care professionals, but also targeted medical students.

2.113. For example, certain Defendants supported the pain curriculum for students at several Canadian universities, as appears from a 2014 article by Navindra Persaud entitled "Questionable Content of an Industry-Supported Medical School Lecture Series: A Case Study", communicated herewith as **EXHIBIT P-21**:

> *Medical students received information about opioids in educational sessions that were developed using funding from pharmaceutical companies that sell opioids. The course material contained information that aligned with the interests of these companies by minimizing opioid-related harms relative to those other analgesics, overstating the evidence for their effectiveness and, in at least one instance, provided a potentially dangerous characterization of the potency of a commonly used opioid.*

The spreading of Misrepresentations by funding patient advocacy groups

2.114. The Defendants provided financial support to Canadian patient advocacy groups, such as the Canadian Pain Society, the Canadian Pain Coalition, the Association Québécoise de la Douleur Chronique (the "**AQDC**") and Chronic Pain Association of Canada in order to indirectly promote use of opioids to treat pain and to influence public opinion and policy in ways favorable to their drugs.

2.115. As an example, Defendants Purdue, Janssen and Pfizer provided grants to sponsor the Canadian Pain Society's 2001 "Patient Pain Manifesto", which was announced at a conference at the Delta Hotel in Montreal. A backgrounder included with a press release on the subject stated:

> ***Fiction**: Patients will become addicted to painkillers.*
>
> ***Fact**: Pain killers given in a controlled way to people who are having moderate to severe levels of pain **almost never leads to addiction**. There are a variety of treatments available to help prevent pain, which include a wide range of drugs as well as non-pharmacological techniques such as heat or relaxation.*

The whole as appears from a copy of such press release, backgrounder, fact sheet and bookmarks, dated May 11, 2001, communicated herewith as **EXHIBIT P-44**.

2.116. As appears from such document, the Canadian Pain Society intended on distributing a million of the attached bookmarks, which list the names of the Defendants that funded the initiative, to patients, their families, and health professionals. The bookmark stated:

> *Did you know that*
>
> ***It is extremely rare that people become addicted to the pain killers they are given for pain**.*
>
> *Problems with pain killers (constipation, itching, nausea) can be controlled.*

2.117. The Canadian Pain Society also lists, as one of its goals, to "*work more closely with industry to market educational materials*" and to spread this message by providing "*more continuing education opportunities to health professionals on the assessment and management of pain*", and by distributing "*10,000 posters to healthcare professionals and clinics*."

2.118. In 2002, the Canadian Pain Society published a consensus statement and guidelines on the "*Use of opioid analgesics for the treatment of chronic non-cancer pain*", a copy of which is communicated herewith as **EXHIBIT P-45**, which promoted, *inter alia*, that:

- *"Pain of all types is undertreated in our society";*
- *"Health professionals' fears regarding iatrogenic addiction…create a significant barrier to the optimum prescribing of opioids for pain";*
- *"Tolerance and/or physical dependence on regular opioid use in a patient in pain are not, by themselves, evidence of an addictive disorder";*
- *"A patient with a past history of, or risk factors for, addiction should not necessarily be precluded from a careful trial of opioid therapy…"; and*
- *"Opioid analgesics are generally safe medications when prescribed with appropriate monitoring."*

2.119. As another example, Defendants Purdue, Paladin, Pfizer, and Valeant provided funding to the AQDC, which shared content on its website such as

an article entitled "*La dépendence aux opiacés… mythe ou réalité*" which downplayed the risk of addiction to opioids, stating:

> *À l'opposé, l'apparition d'un problème de dépendance psychologique (addiction) à la suite d'une exposition thérapeutique aux opiacés* ***est considérée comme un phénomène rare*** *qui, s'il survient, affecte généralement un individu préalablement vulnérable sur le plan biologique et (ou) psychosocial.*

the whole as appears from a list of the AQDC's partners from June 7, 2007 communicated herewith as **EXHIBIT P-46**, and a copy of such website's "Lexique de Maladies" with a 2003 article by Dominique Dion entitled "*La dépendence aux opiacés….mythe ou réalité*", communicated herewith *en liasse* as **EXHIBIT P-47**.

2.120. Similarly, in the United States, the Defendants' related and parent companies funded these types of groups, which spread similar content, namely that the under treatment of pain was a serious issue and that more liberal use of opioids was the solution, all of which content was available online in Quebec.

2.121. As an example, Pricara, a division of Ortho-McNeil Janssen Pharmaceuticals Inc. in the United States, gave funding for the website "*Letstalkpain.org*", which promoted the use of opioids and downplayed the risks of addiction. In a section of such website called "Understanding Tolerance, Physical Dependence and Addiction", a copy of which is communicated herewith as **EXHIBIT P-48**, the false notion of "*pseudoaddiction*" was promoted, as well as the false statement that for many patients, opioids were the only effective treatment option:

> *A related term is pseudoaddiction, which refers to patient behaviors that may occur when pain is under-treated. This includes an increased focus on obtaining medications ("drug seeking" or "clock watching") and even illicit drug use or deception.* ***Pseudoaddiction is different from true addiction because such behaviors can be resolved with effective pain management.***
>
> *…*
>
> *For many people experiencing pain,* ***opioid analgesics*** *- when used as recommended by established pain management guidelines -* ***are the most effective way to treat their pain, and often the only treatment option*** *that provides substantial relief.*

2.122. In some instances, the Defendants would cut-off funding if the information being conveyed by the patient advocacy groups did not align with their interests, as appears from a 2019 news article by Itai Bavli and Joel Lexchin entitled “Why Big Pharma must disclose payments to patient groups”, a 2018 news article by Kelly Crowe entitled “Following the money between patient groups and Big Pharma” and a 2019 news article by Christian Noel entitled “Des groupes de patients financés en secret par des pharmaceutiques”, communicated herewith respectively as **EXHIBIT P-22**, **EXHIBIT P-23** and **EXHIBIT P-24**.

The spreading of Misrepresentations to the public

2.123. The Defendants recruited and paid professionals to advocate for the widespread use of opioids by consumers by writing books and articles and giving speeches on the benefits of opioid therapies, in which they downplayed the risks of addiction, while attempting to destigmatize the use of opioids.

2.124. For example, starting in 1997, one such medical professional, Dr. Russell Portenoy, received research support, consulting fees and other payments from several of the Defendants. He, along with a number of other medical professionals solicited and supported by the Defendants, played a critical role in supporting the misleading claims about opioids in the medical literature and at presentations. Most specifically, Dr. Portenoy carried his message about opioids even beyond the medical community to the public, falsely stating in a television interview on *Good Morning America* on August 30, 2010 that less than 1% of patients would become addicted to opioids and “*most doctors can feel very assured that the person is not going to become addicted*” in the absence of a personal or family history of substance abuse, as appears in a 2016 article by Arthur H. Gale entitled “Drug Company Compensated Physicians Role in Causing America’s Deadly Opioid Epidemic: When Will We Learn” (the “**Gale Article**”) and a 2017 news article by Christian Mcphat entitled “Upshur County is First in Texas to File a Lawsuit Holding Drug Makers Responsible for Opioid Epidemic”, which are communicated respectively herewith as **EXHIBIT P-25** and **EXHIBIT P-26**.

Liability in the United States

2.125. Opioid manufacturers in the United States, including many of the Defendants’ parent and/or related corporations, made largely the same Misrepresentations, in ostensibly the same or similar manner to that described above.

2.126. In fact, the aggressive marketing and misinformation strategies employed by the Defendants were largely coordinated with and/or directed by their US parents and/or related corporations.

2.127. On August 26, 2019, a landmark decision was rendered in the state of Oklahoma, wherein Johnson & Johnson and its various pharmaceutical subsidiaries including Janssen Pharmaceuticals, Inc., were condemned to pay in excess of US$460 million to the state, as a result of the role that such companies played in fueling the opioid epidemic experienced in that state, as appears from a copy of such judgment, communicated herewith as **EXHIBIT P-49**.

2.128. In particular, Justice Balkman found:

- *Defendants, acting in concert with others, embarked on a major campaign in which they used branded and unbranded marketing to disseminate the messages that pain was being undertreated and "there was a low risk of abuse and a low danger" of prescribing opioids to treat chronic, non-malignant pain and overstating the efficacy of opioids as a class of drugs. (para. 18)*

- *A key element of Defendants' opioid marketing strategy to overcome barriers to liberal opioid prescribing was its promotion of the concept that pain was undertreated (creating a problem) and increased opioid prescribing was the solution…. Defendants' trained their Oklahoma sales representatives on how to use these campaigns, including through the use of "emotional selling" for opioids by convincing physicians that undertreated pain was harming patients. (para. 20)*

- *Defendants used the phrase "pseudoaddiction" to convince doctors that patients who exhibited signs of addiction […] were not actually suffering from addiction, but from the undertreatment of pain, and the solution, according to Defendants' marketing was to prescribe more opioids. (para. 22)*

- *Defendants trained their sales reps to target high-opioid prescribing physicians, including pain specialists and primary care physicians…. Defendants particularly targeting primary care physicians with their opioid marketing, identifying them*

as "Key Customer[s]" for Defendants' pain franchise. (para. 30)

- *Defendants made substantial payments to a variety of different pain advocacy groups and organizations that influenced prescribing physicians and other health professionals. (para. 36)*

- *Defendants made claims, unsupported by any high quality evidence, that opioids could be safely used for chronic, on-terminal pain. Defendants used the phrase "pain as the 'fifth vital sign' to influence doctors to liberally prescribe opioids. (para. 57)*

2.129. Prior to the trial, Purdue Pharma L.P. and its related companies, as well as Teva Pharmaceuticals USA Inc., and its related companies, settled with the state of Oklahoma for US$270 million and US$85 million respectively.

2.130. Following such settlement, on September 15, 2019, Purdue Pharma L.P. filed for Chapter 11 bankruptcy protection in the United States, in an effort to effect a global settlement of the more than 2600 claims against it and various related parties, for misleading doctors and patients alike by overstating benefits and downplaying the risks of opioids.

2.131. On October 21, 2019, Teva Pharmaceutical Industries Ltd., together with three US distributors, settled another claim with two Ohio counties on the eve of trial, for a combined amount of US$260 million, which includes a contribution by Teva Pharmaceutical Industries Ltd. of $20 million in cash and $25 million at its wholesale acquisition cost of sublingual buprenorphine (a partial opioid agonist) and naloxone (a pure opioid agonist), known by the brand name Suboxone, which is commonly used in the treatment of Opioid Use Disorder.

The Resulting Opioid Crisis in Quebec

2.132. As a result of the widespread use of these dangerous and highly addictive prescription opioid drugs and Defendants' Misrepresentations, failure to inform and failure to warn, an opioid crisis has ensued.

2.133. The 2016 Standing Committee Report (EXHIBIT P-4) issued to the Government of Canada stated that Canadians are the second highest consumers of prescription opioids in the world, with 15% of Canadians over the age of 15 reporting having used opioids in 2013. It was further reported

that approximately 10% of patients who are prescribed opioids for chronic pain become addicted.

2.134. In April 2019, the Public Health Agency of Canada issued a report that found that opioid use is responsible for an estimated 3,017 deaths in 2016, 4,034 deaths in 2017 and 3,286 deaths between January and September of 2018, as appears from the 2019 Report entitled "National Report: Apparent Opioid-related Deaths in Canada" (the "**2019 National Report on Opioid-Related Deaths**"), communicated herewith as **EXHIBIT P-27**.

2.135. In an earlier study conducted by the Canadian Institute for Health Information ("**CIHI**"), it was found that hospitalization rates for opioid-related harms increased by 27% over the past 5 years and between 2016 and 2017, opioid poisoning hospitalization went up by 8%, resulting in an average of 17 hospitalizations per day, as appears from the 2018 Report entitled "Opioid-Related Harms in Canada" (the "**2018 CIHI Report on Opioid-Related Harms**"), communicated herewith as **EXHIBIT P-28**.

2.136. A study conducted in Quebec on opioid-related deaths over a 20-year period from 1990 to 2009 found that the number of unintentional poisonings increased in the period of 1990 to 1994 and again from 2005 to 2009. The study further found that fatal poisonings caused by opioids increased by 40.9% during the 2005 to 2009 period, and that 91.3% of such fatal poisonings were caused by prescription opioids, as appears from the *Institut National de Santé Publique du Québec*'s 2013 report entitled "Opioid-related Poisoning Deaths in Québec: 2000-2009" (the "**2013 Quebec Opioid-Related Death Report**"), communicated herewith as **EXHIBIT P-29**.

2.137. The 2019 National Report on Opioid Related Deaths (EXHIBIT P-27) found that in Quebec, deaths relating to opioid and other illicit drug use resulted in 166 deaths in 2016, 181 deaths in 2017 and 300 deaths between January and September 2018. In 2018, the total number of deaths from opioid and other illicit drug use was 424, and in the first three months of 2019, 119, as appears from the updated figures of such National Report, communicated herewith as **EXHIBIT P-50**.

2.138. The impact of the opioid crisis in Quebec is being felt more urgently with each passing year, as the number of prescriptions for opioids has increased significantly in recent years.

2.139. Statistics provided by the *Régie de l'assurance maladie du Québec* ("**RAMQ**") to Le Devoir indicate that between 2011 and 2015, the number of

new prescriptions for opioid medications has increased by 29% from 1.9 million in 2011 to 2.4 million in 2015, and the number of renewals of prescriptions climbed by 44%, as appears from a 2016 article by Karl Rettino-Parazelli entitled “L’usage d’opioïdes est en forte hausse” (the “**Rettino-Parazelli Article**”) communicated herwith as **EXHIBIT P-30**.

Government Response to the Opioid Crisis

2.140. Despite these disturbing statistics, a 2017 Opioid Awareness Survey revealed that Quebecers have by far the lowest level of knowledge in respect of the opioid crisis of all of the Canadian provinces, and as a consequence, in 2018, the government of Quebec embarked on a thirty-five million dollar action plan over the next 10 years in order to raise public awareness of this epidemic, as appears from a 2019 news article by Megan Martin entitled “*Large portion of Quebec population unaware of the risks with opioids*” and from a 2018 news article by Kalina Laframboise entitled “*Quebec government unveils action plan to fight opioid overdoses, addiction*”, communicated herewith respectively as **EXHIBIT P-31** and **EXHIBIT P-32**.

2.141. In June 2018, the Minister of Health sent a letter to manufacturers and distributors of opioids in Canada calling on them to stop all marketing and advertising of opioids to health care professionals on a voluntary basis, as appears from the Government of Canada’s webpage entitled “Notice of Intent to Restrict the Marketing and Advertising of Opioids”, a copy of which is communicated herewith as **EXHIBIT P-33**.

2.142. On January 31, 2019, Health Canada sent a follow up letter to fifteen companies who market and distribute opioid products in Canada.

2.143. On October 23, 2018, Health Canada added requirements under the Food and Drug Regulations in order to ensure that patients would finally “*receive clear information about the safe use of opioids and the risks associated with their use*”, as appears from the Government of Canada’s webpage entitled “Opioid Warning Sticker and Patient Information Handout, and Risk Management Plans”, communicated herewith as **EXHIBIT P-34**.

2.144. These new regulations require that a warning sticker and a patient information handout be provided with prescriptions for all opioids that appear in Part A of Health Canada’s “List of Opioids” dated May 2, 2018, attached hereto together with the required warning label as **EXHIBIT P-35**.

2.145. The required warning label clearly indicates that opioids can cause dependence, addiction and overdose, as appears from the reproduction of the warning below:

2.146. The information handout provides patients with a serious and explicit warning about opioid use, including that the use of opioids can result in overdose (which can lead to death), addiction, physical dependence, life-threatening breathing problems, worsening rather than improving pain and withdrawal. It further warns of the risks of taking opioids while pregnant, and cautions users to take only as directed, and in particular, not to crush, cut, break, chew or dissolve pills. The provided information advises of the signs of overdose and directs users to the Product Monograph for further complete information about the prescribed drug, as appears in Health Canada's Patient Information Handout dated March 15, 2019, communicated herewith as **EXHIBIT P-36**.

Damages caused by Defendants' Faults

2.147. As a direct result of the widespread distribution and sale of Defendants' opioid drugs to Quebecers, Defendants' failure to adequately warn of the risks and dangers associated with use of their opioid products, and their campaign to misinform the public as to both the effectiveness and risks relating to opioid use, the use of opioids to treat chronic pain became much more common, and this has caused the opioid crisis in Quebec today, as appears from the 2016 Standing Committee Report (EXHIBIT P-4).

2.148. In particular, the (…) use of the Subject Opioids, and the Defendants' failure to sufficiently warn of the safety defects inherent therein, caused the Opioid Use Disorders that the Class Members have suffered from, or continue to suffer from.

2.149. Sufferers of Opioid Use Disorder experience at least two of the following diagnostic symptoms:

2.149.1. Opioids are often taken in larger amounts or over a longer period than was intended;

2.149.2. There is a persistent desire or unsuccessful efforts to cut down or control opioid use;

2.149.3. A great deal of time is spent in activities necessary to obtain the opioid, use the opioid, or recover from its effects;

2.149.4. Craving or a strong desire to use opioids;

2.149.5. Recurrent opioid use resulting in a failure to fulfill major role obligations at work, school, or home;

2.149.6. Continued opioid use despite having persistent or recurrent social or interpersonal problems caused or exacerbated by the effects of opioids;

2.149.7. Important social, occupational, or recreational activities are given up or reduced because of opioid use;

2.149.8. Recurrent opioid use in situations in which it is physically hazardous;

2.149.9. Continued use despite knowledge of having a persistent or recurrent physical or psychological problem that is likely to have been caused or exacerbated by opioids;

2.149.10. Tolerance*, as defined by either of the following:

1. Need for markedly increased amounts of opioids to achieve intoxication or desired effect; and

2. Markedly diminished effect with continued use of the same amount of opioid.

2.149.11. Withdrawal*, as manifested by either of the following:

1. Characteristic opioid withdrawal syndrome; and

2. Same (or a closely related) substance is taken to relieve or avoid withdrawal symptoms.

*Patients who are prescribed opioid medications for analgesia may exhibit these two criteria (withdrawal and tolerance), but would not necessarily be considered to have a substance use disorder.

A copy of the above clinical diagnostic criteria as per the DSM-5 ("**Diagnostic Criteria**") is communicated herewith as **EXHIBIT P-37**.

2.150. Opioid Use Disorder has crippling effects on its victims, including in the form of:

2.150.1. personal injury, including addiction;

2.150.2. severe emotional distress, social stigma, prejudice and discrimination resulting from addiction;

2.150.3. a lack of awareness that they are suffering from Opioid Use Disorder;

2.150.4. overdose, serious injury, and death;

2.150.5. out of pocket expenses relating to their drug dependence, including for treatment and recovery; and

2.150.6. loss of income.

2.151. The Defendants should be held liable for the consequences of their faults to the Class Members, as they had an obligation to both ensure the safety and the safe use of the (…) Subject Opioids, which contain a safety defect, and to properly warn, rather than misinform, of the risks associated with their products.

The Designated Class Member

2.152. to 2.209 (…)

(the French language version of this section is attached hereto as Annex A)

2.210. The Plaintiff, Jean-François Bourassa, is a resident of the Province of Quebec, and has been treated for Opioid Use Disorder ("**OUD**") since 2017, in both in-patient and out-patient programs, run by the Centre hospitalier de l'Université de Montréal, (the "**CHUM**"), after having been prescribed opioids for more than a decade.

2.211. Mr. Bourassa was the owner of a roofing business operating in the Laurentian region of Quebec. Prior to the events described below, Mr. Bourassa was active in his business, enjoyed playing sports, and had a full and rewarding life with his young family.

2.212. On November 27, 2005, at age 34, he was injured due to a fall from a roof. His injuries included multiple fractures to his left fibula and ankle. He was brought by ambulance to the emergency department at the hospital Hôtel-Dieu de Saint-Jérôme.

2.213. While being treated for his injuries at the hospital, Mr. Bourassa was initially given the opioid drug Supeudol (active pharmaceutical ingredient oxycodone) manufactured by Sandoz. Very shortly thereafter, the hospital doctors switched his medicine from Supeudol to the immediate-release drug Dilaudid (active pharmaceutical ingredient hydromorphone), at that time manufactured by Abbott.

2.214. Mr. Bourassa remained on prescription Dilaudid after his discharge from the hospital on November 28, 2005.

2.215. Beginning in January 2006 and until mid-2017, Mr. Bourassa was followed by a physician at a private clinic in Saint-Sauveur, specialized in the treatment of pain.

2.216. From 2006 until he was admitted to the CHUM in May 2017, Mr. Bourassa was dispensed by pharmacies the following prescription opioids for the pain which persisted after his fall:

(i) Dilaudid, manufactured by Abbott and then, starting in or around 2009 by Purdue Pharma, and

(ii) controlled-release Hydromorph Contin (active pharmaceutical ingredient hydromorphone) manufactured by Purdue Pharma.

2.217. In 2010 and 2013, the immediate-release hydromorphone was periodically dispensed to him as a generic version, PMS-Hydromorphone manufactured by Pharmascience.

2.218. Over this eleven (11) year period, the prescribed dosages of Dilaudid and Hydromorph Contin increased as Mr. Bourassa became tolerant to these drugs and required ever greater amounts of the medication to obtain some degree of pain relief.

2.219. Exceptionally, over the years, in addition to the opioids mentioned above, Mr. Bourassa was also prescribed for short periods of time certain other opioids which were dispensed to him by pharmacies, namely:

(i) Early in 2000, Empracet-30, a GSK drug (active pharmaceutical ingredient codeine) for pain related to an accident which caused burns to his face;

(ii) On April 2, 2008, Teva-Emtec-30, a Teva drug (active pharmaceutical ingredient codeine) for pain related to a dental procedure;

(iii) On December 16, 2009, Ratio-Emtec-30, a Ratiopharm drug (now Teva) (active pharmaceutical ingredient codeine) for pain related to a dental procedure; and

(iv) On April 17, 2015, Procet-30, a Pro Doc drug (active pharmaceutical ingredient codeine), also for pain related to a dental procedure.

2.220. In early 2017, Mr. Bourassa acknowledged that despite the large amounts of opioids he was taking, his pain was not being relieved and had become more widespread. He realized he had to do something to try to get some semblance of his life back. After eleven (11) years of taking Dilaudid and Hydromorph Contin, Mr. Bourassa decided that he needed to get treatment to address his dependency on opioids.

2.221. On March 22 and on April 28, 2017, Mr. Bourassa's doctors sent requisitions on his behalf to the Addiction Unit of Hôpital St-Luc (part of the CHUM since 2017) (the "**Addiction Unit**"). Following these requests, Mr. Bourassa was admitted to the hospital and stayed for eight-days from May 25 to June 2, 2017.

2.222. During this hospital stay, Mr. Bourassa was, for the first time, diagnosed as suffering from OUD (described as severe), as appears from his hospital admission records in respect of his May 25 to June 2, 2017 in-patient treatment at the CHUM communicated herewith under seal as **EXHIBIT P-51**.

2.223. During this stay at the hospital in 2017, his doctors began the withdrawal management process by decreasing his daily consumption of prescription opioids. From that time to the present, Mr. Bourassa has been monitored by physicians associated with the CHUM.

2.224. Following his discharge from the Hôpital St-Luc, Mr. Bourassa continued, as part of the treatment process, to be prescribed Dilaudid and Hydromorph Contin, each in lower dosages. On the occasions that he received the generic form of Dilaudid, it was dispensed to him as either Apo-

Hydromorphone manufactured by Apotex, or PMS-Hydromorphone manufactured by Pharmascience.

2.225. Between November 1 and December 4, 2017, Mr. Bourassa's medication was briefly switched by his doctor to a sustained-release morphine, which was dispensed to him as Teva-Morphine SR manufactured by Teva, and Morphine SR manufactured by Sanis. As well, he was prescribed and dispensed Statex manufactured by Paladin.

2.226. However, because he did not tolerate the morphine well, on December 4, 2017 his prescriptions were switched back to the combination of Hydromorph Contin and Dilaudid (including the generic versions of Dilaudid).

2.227. In February 2018, he agreed to be re-admitted to the hospital to embark on a process of Metadol (methadone) induction to treat his OUD.

2.228. On March 13, 2018, Mr. Bourassa was admitted for a four-day stay at the Addiction Unit. Mr. Bourassa's hospital admission records in respect of his March 13 to 17, 2018 in-patient treatment at the CHUM, communicated herewith under seal as **EXHIBIT P-52**, indicate once again his diagnosis of severe OUD.

2.229. During his stay at the hospital, he was given Metadol to treat his OUD and manage the withdrawal process, which he has continued to take in various quantities following his discharge from the hospital.

2.230. On the Metadol substitution treatment, Mr. Bourassa experienced withdrawal symptoms, including cravings, headaches, musculoskeletal pain, chills, episodes of severe sweating, and insomnia.

2.231. In April 2019, Mr. Bourassa began to be treated at the Clinique Antidouleur du CHUM and his dosages of Metadol were slowly decreased. His treating physician introduced him to certain alternative therapies for pain, including ketamine injections.

2.232. In July 2021, Mr. Bourassa was prescribed Dilaudid by an emergency room physician to alleviate pain associated with shingles. He is still being prescribed Dilaudid by his family doctor, but the amounts being prescribed are being gradually reduced.

The Consequences of his Use of Prescription Opioids and his OUD

2.233. Mr. Bourassa has greatly suffered, and continues to do so to this very day, from his OUD and its side effects, including severe muscle and bone pain, debilitating fatigue, chronic insomnia, anxiety, depression, chills, excessive water retention, bloating and sweating.

2.234. Mr. Bourassa states that his OUD prevents him from thinking properly, concentrating, sleeping, relaxing and even from enjoying simple pleasures such as reading or watching television. He further indicates that, on Metadol, he is only somewhat functional for 9 to 10 hours a day and the rest of the time is unbearable.

2.235. He laments that his addiction to opioids has also caused him to miss many of life's important moments with his children and put great strains on his marriage.

2.236. Mr. Bourassa describes his experience with opioids and OUD as "hell on earth", and this even since the withdrawal management process he started in 2017, as appears from his letter dated April 8, 2020 to his doctors at the Clinique Antidouleur, a copy of which is communicated herewith under seal as **EXHIBIT P-53**.

2.237. Although he was able to work intermittently after a lengthy recovery from his accident in November 2005, he ultimately was unable to continue working due to his OUD.

2.238. In November 2020, Mr. Bourassa applied for disability benefits under the Quebec Pension Plan, which application was supported by his family doctor, as he does not believe that Mr. Bourassa will ever be able to work again.

2.239. Mr. Bourassa believes that no one should ever have to experience the suffering that he has endured as a result of his prescription opioid use and the OUD that resulted. He is prepared to act as a designated class member and has accepted that his name be made public since he feels so strongly that Quebecers such as himself should be able to seek redress for the damages that result from the use of these dangerous drugs which have caused their users so much harm.

3. The facts giving rise to personal claims by each of the members of the Class against the Defendants are:

3.1. Each Class Member was prescribed and has consumed opioids, produced, manufactured, sold, marketed and/or distributed by the Defendants.

3.2. Each Class Member became addicted to opioids produced, manufactured, sold, marketed and/or distributed by the Defendants, and consequently suffers from, or has suffered from, Opioid Use Disorder, marked by having experienced symptoms of at least two of the Diagnostic Criteria.

3.3. Each Class Member has suffered substantially as result of their addiction.

3.4. The Defendants' faults in failing to disclose the risks of, and in disseminating the false and misleading information about opioids are the direct cause of the damages suffered by the Class Members.

3.5. The Defendants chose profits over the health of the consumers of their products, profits which are generated by the sale of opioids as well as drugs that treat addiction, overdose and other side-effects of opioids.

3.6. Accordingly, the Class Members are justified in seeking compensation for the damages suffered as a result of their Opioid Use Disorder.

4. The composition of the Class makes it difficult or impracticable to apply the rules for mandates to take part in judicial proceedings on behalf of others or for consolidation of proceedings:

4.1. The Plaintiff is unaware of the precise number of Class Members, who reside all over Quebec.

4.2. The opioids produced, manufactured, sold, marketed and/or distributed by the Defendants have been more widely prescribed since at least 1996 when the Misrepresentations began.

4.3. As previously stated, in Quebec:

4.3.1. Fatal poisoning cause by opioids increased by 40.9% between 2005 and 2009 and 91.3% of these fatal poisonings were caused by prescription opioids, as appears from the 2013 Quebec Opioid-Related Death Report (EXHIBIT P-29).

4.3.2. Deaths relating to opioids and other illicit drug use resulted in 166 deaths in 2016, 181 deaths in 2017, 424 deaths in 2018, and 119 deaths in the first three months of 2019, as appears from the 2019 National Report on Opioid-Related Deaths and its September 2019 update (EXHIBIT P-27 and EXHIBIT P-50).

4.3.3. The number of new prescriptions for opioid medications has increased by 29%, from 1.9 million in 2011 to 2.4 million in 2015,

as appears from the Rettino-Parazelli Article (EXHIBIT P-30), and it is estimated that approximately 10% of individuals prescribed opioids for chronic pain become addicted (EXHIBIT P-4).

4.4. The number of individuals who make up the Class can therefore reasonably be estimated to be several thousand people.

4.5. Due to the confidentiality of medical records, it is impossible for the Plaintiff to know the identity of the people who consumed prescription opioids, and who developed an Opioid Use Disorder.

4.6. It would be difficult, if not impossible, to find and contact the Class Members to obtain a mandate or for the consolidation of the proceedings.

5. The identical, similar or related questions of law or fact between each member of the Class and the Defendants which Plaintiff wishes to have decided by the class action are:

5.1. Do the opioid products manufactured, marketed, distributed and/or sold by the Defendants pose serious health risks to their users due to, *inter alia*, their addictive nature?

5.2. Do the opioid products manufactured, marketed, distributed and/or sold by the Defendants offer the safety that Class Members could normally expect and do they have a safety defect within the meaning of articles 1468-1469 CCQ?

5.3. Did the Defendants provide (…) sufficient information on the risks and dangers of using their opioid products?

5.4. Did the Defendants trivialize or deny the risks and dangers associated with the use of opioids?

5.5. Did the Defendants employ marketing strategies which conveyed false or misleading information, including by omission, about the characteristics of the opioid products they were selling?

5.6. Did the Defendants fail to properly monitor the safety of their opioid products and/or take appropriate corrective action to adequately inform users of such safety risks, as knowledge evolved as to such safety risks and side effects?

5.7. Have the Class Members suffered damages as a result of their Opioid Use Disorders?

5.8. What is the amount of non-pecuniary damages suffered by the Class Members?

5.9. Can the Class Members ask for collective recovery of their non-pecuniary damages?

5.10. Did the Defendants intentionally interfere with the right to life, personal security and inviolability of the Class Members?

5.11. Did the Defendants knowingly put a product on the market that creates addiction and Opioid Use Disorder?

5.12. Are the Defendants liable for punitive damages as a result their egregious conduct, and if so, in what amount?

6. The questions of law or fact which are particular to each of the members, are:

6.1. The nature of their Opioid Use Disorder, in particular, which of the Diagnostic Criteria they experience or have experienced;

6.2. Other than the damages recovered collectively, what other damages have the Class Members suffered?

7. It is expedient that the bringing of a class action for the benefit of the members of the class be authorized.

8. The nature of the recourse which the Plaintiff wishes to exercise on behalf of the members of the Class, is:

8.1. An action for damages based on the extra-contractual responsibility of the manufacturer, the *Competition Act* and the *Charter of Human Rights and Freedoms*.

9. The conclusions sought by the Plaintiff are:

GRANT the Plaintiff's Class Action;

CONDEMN the Defendants solidarily to pay to each of the Class Members the amount of $30,000 in non-pecuniary damages with interest and additional indemnity since the service of the application for leave to institute a class action;

CONDEMN each of the Defendants to pay the sum of $25,000,000, in punitive damages;

CONDEMN the Defendants to pay to each Class Member a sum as pecuniary damages to be determined on an individual basis, increased by interest at the legal rate and the additional indemnity provided for in article 1619 of the *Civil Code of Quebec*, since service of the *application for leave to institutes a class action* and to be recovered individually;

CONDEMN the Defendants to pay the Plaintiff's full costs of investigation in connection with the misrepresentations made by the Defendants;

ORDER the collective recovery of these awards;

DETERMINE the appropriate measures for distributing the amounts recovered collectively and the terms of payment of these amounts to the Class Members;

ORDER the liquidation of the individual claims for any other damage sustained by the Class Members;

DETERMINE the process of liquidating the individual claims and the terms of payment of these claims pursuant to articles 599 to 601 CCP.

10. The Plaintiff requests that he be ascribed the status of representative.

11. The Plaintiff is in a position to represent the members adequately, for the following reasons:

11.1. He was prescribed opioids, as described herein;

11.2. He became addicted to opioids, as described herein, and in fact, has suffered from severe Opioid Use Disorder, having experienced virtually all of the Diagnostic Criteria;

11.3. He has suffered damages as a result of his Opioid Use Disorder, which is a chronic condition that he will likely have to face for the rest of his life;

11.4. The Plaintiff would like to raise awareness about the dangers of opioid use, and feels so strongly about this issue that he is even willing to associate his name with these proceedings, despite any stigma which may still be associated with the issue of addiction;

11.5. As previously mentioned, he believes that no person should ever have to suffer the way that he has as a result of his addiction to prescription opioids, and has decided to act as the designated Class Member in this proceeding to seek compensation for all Quebecers affected by Opioid Use Disorder;

11.6. He understands the nature of the action; and

11.7. He is willing to devote the time necessary to the dispute and has already taken steps in that direction by obtaining his prescription history.

12. The Plaintiff suggests that the class action should be brought before the Superior Court of the district of Montreal for the following reasons:

12.1. Plaintiff received his treatments related to his OUD in the district of Montreal;

12.2. Many of the facts which give rise to these proceedings took place in the district of Montreal and the Defendants all carry on business and manufactured, marketed, distributed and/or sold prescription opioids in the district of Montreal, and caused class members damages in this district;

12.3. The Plaintiff's and almost all Defendants' attorneys practice their professions in Montreal; and

12.4. Many Class Members reside in Montreal.

WHEREFORE THE PLAINTIFF PRAYS:

That the present application be granted;

and

That the bringing of a class action be authorized, as described herein;

That the status of representative be granted to the Plaintiff for the purpose of bringing the said class action for the benefit of the following group of natural persons, namely:

> All persons in Quebec who have been prescribed and consumed any one or more of the opioids manufactured, marketed, distributed and/or sold by the Defendants between 1996 and the present day ("**Class Period**") and who suffer or have suffered from Opioid Use Disorder, according to the diagnostic criteria herein described.
>
> The Class includes the direct heirs of any deceased persons who met the above-mentioned description.
>
> The Class excludes any person's claim, or any portion thereof, specifically in respect of the drugs OxyContin or OxyNeo, subject

to the settlement agreement entered into in the court file no 200-06-000080-070. (…)

That the principal questions of law and fact to be dealt with collectively be identified as follows:

i Do the opioid products manufactured, marketed, distributed and/or sold by the Defendants pose serious health risks to their users due to, *inter alia*, their addictive nature?

ii Do the opioid products, manufactured, marketed, distributed and/or sold by the Defendants offer the safety that Class Members could normally expect, and do they have a safety defect within the meaning of articles 1468-1469 CCQ?

iii Did the Defendants provide (…) sufficient information on the risks and dangers of using their opioid products?

iv Did the Defendants trivialize or deny the risks and dangers associated with the use of opioids?

v Did the Defendants employ marketing strategies which conveyed false or misleading information, including by omission, about the characteristics of the opioid products they were selling?

vi Did the Defendants fail to properly monitor the safety of their opioid products and/or take appropriate corrective action to adequately inform users of such safety risks, as knowledge evolved as to such safety risks and side effects?

vii Have the Class Members suffered damages as a result of their Opioid Use Disorders?

viii What is the amount of non-pecuniary damages suffered by the Class Members?

ix Can the Class Members ask for collective recovery of their non-pecuniary damages?

x Did the Defendants intentionally interfere with the right to life, personal security and inviolability of the Class Members?

xi Did the Defendants knowingly put a product on the market that creates addiction and Opioid Use Disorder?

xii Are the Defendants liable for punitive damages as a result of their egregious conduct, and if so, in what amount?

That the conclusions sought with relation to such questions be identified as follows:

GRANT the Plaintiff's Class Action;

CONDEMN the Defendants solidarily to pay to each of the Class Members the amount of $30,000 in non-pecuniary damages with interest and additional indemnity since the service of the application for leave to institute a class action;

CONDEMN each of the Defendants to pay the sum of $25,000,000 in punitive damages with interest and additional indemnity since the service of the application for leave to institute a class action;

CONDEMN the Defendants to pay to each Class Member a sum as pecuniary damages to be determined on an individual basis, increased by interest at the legal rate and the additional indemnity provided for in article 1619 of the *Civil Code of Quebec*, since service of the *application for leave to institute a class action* and to be recovered individually;

CONDEMN the Defendants to pay the Plaintiff's full costs of investigation in connection with the misrepresentations made by the Defendants;

ORDER the collective recovery of these awards;

DETERMINE the appropriate measures for distributing the amounts recovered collectively and the terms of payment of these amounts to the Class Members;

ORDER the liquidation of the individual claims for any other damage sustained by the Class Members;

DETERMINE the process of liquidating the individual claims and the terms of payment of these claims pursuant to articles 599 to 601 CCP.

THE WHOLE WITH COSTS, including experts' fees and notice costs.

That it be declared that any member who has not requested his exclusion from the Class be bound by any judgment to be rendered on the class action, in accordance with law;

That the delay for exclusion be fixed at sixty (60) days from the date of the notice to members and that at the expiry of such delay the members of the Class who have not requested exclusion be bound by any such judgment;

That it be ordered that a notice to the class members be published according to the terms to be determined by the Court;

That it be ordered that the class action should be brought before the Superior Court of the district of Montreal;

The whole with costs, including the costs of all notices.

MONTREAL, (…) September 30, 2022

(s) Fishman Flanz Meland Paquin

FISHMAN FLANZ MELAND PAQUIN LLP
Co-Counsel for Plaintiff
4100-1250 René-Lévesque Blvd. West
Montreal QC H3B 4W8
Tel. 514-932-4100
Fax 514-932-4170
mmeland@ffmp.ca
msiminovitch@ffmp.ca
tsilverstein@ffmp.ca
bendale@ffmp.ca

MONTREAL, (…) September 30, 2022

(s) Trudel Johnston & Lespérance

TRUDEL JOHNSTON & LESPÉRANCE
Co-Counsel for Plaintiff
750 Côte de la Place d'Armes
Montréal, QC H2Y 2X8
Tel. 514-871-8385
Fax 514-871-8800
andre@tjl.quebec
marianne@tjl.quebec

ANNEX A

French language version of the section entitled “The Designated Class Member” (paras. 2.210 to 2.239):

2.210. Le Demandeur, Jean-François Bourassa, est un résident de la province de Québec. Il est traité depuis 2017 dans des programmes internes et externes, gérés par le Centre hospitalier de l'Université de Montréal (le "CHUM") pour un trouble lié à l'utilisation d'opioïdes ("TLUO"), après s'être fait prescrire des opioïdes pendant plus d'une décennie.

2.211. M. Bourassa était propriétaire d'une entreprise de toiture opérant dans la région des Laurentides au Québec. Avant les événements décrits ci-après, M. Bourassa était actif dans son entreprise, aimait pratiquer des sports et avait une vie bien remplie avec sa jeune famille.

2.212. Le 27 novembre 2005, à l'âge de 34 ans, il s'est blessé en tombant d'un toit. Ses blessures comprenaient des fractures multiples au péroné et à la cheville gauche. Il a été amené en ambulance à l'urgence de l'hôpital Hôtel-Dieu de Saint-Jérôme.

2.213. Pendant qu'il était traité pour ses blessures à l'hôpital, M. Bourassa a d'abord reçu le médicament opioïde Supeudol (ingrédient pharmaceutique actif oxycodone) fabriqué par Sandoz. Puis, peu de temps après, les médecins de l’hôpital ont remplacé le Supeudol par du Dilaudid (ingrédient pharmaceutique actif hydromorphone à libération immédiate), fabriqué à l'époque par Abbott.

2.214. M. Bourassa est resté sous prescription de Dilaudid après sa sortie de l'hôpital le 28 novembre 2005.

2.215. À partir de janvier 2006 et jusqu'à la mi-2017, M. Bourassa a été suivi par un médecin d'une clinique privée de Saint-Sauveur, spécialisé dans le traitement de la douleur.

2.216. De 2006, jusqu'à son admission au CHUM en mai 2017, M. Bourassa s'est vu prescrire et délivrer par des pharmacies des opioïdes pour des douleurs résultant de sa chute, à savoir:

(i) Dilaudid, fabriqué par Abbott, puis à partir de 2009 par Purdue Pharma; et

(ii) Hydromorph Contin (ingrédient pharmaceutique actif hydromorphone à libération contrôlée) fabriqué par Purdue Pharma.

2.217. En 2010 et 2013, l’hydromorphone à libération immédiate lui a été périodiquement délivré par les pharmacies sous la forme d'une version générique, le PMS-Hydromorphone fabriqué par Pharmascience.

2.218. Au cours de cette période de onze (11) ans, les doses prescrites à M. Bourassa de Dilaudid et d'Hydromorph Contin ont augmenté, car il est devenu tolérant à ces médicaments et n'obtenait plus le même degré de soulagement de la douleur.

2.219. Exceptionnellement, au fil des ans, en plus des médicaments susmentionnés, M. Bourassa s'est également vu prescrire et délivrer par des pharmacies pour de courtes périodes certains autres opioïdes, à savoir:

(i) Au début de l'année 2000, Empracet-30, un médicament de GSK (ingrédient pharmaceutique actif codéine) pour une douleur liée à une brûlure au visage;

(ii) Le 2 avril 2008, Teva-Emtec-30, un médicament de Teva (ingrédient pharmaceutique actif codéine) pour une douleur liée à une intervention dentaire;

(iii) Le 16 décembre 2009, Ratio-Emtec-30, un médicament de Ratiopharm (maintenant Teva) (ingrédient pharmaceutique actif codéine) pour une douleur liée à une intervention dentaire; et

(iv) Le 17 avril 2015, Procet-30, un médicament de Pro Doc (ingrédient pharmaceutique actif codéine) pour une douleur liée à une intervention dentaire.

2.220. Au début de 2017, M. Bourassa s'est rendu compte que malgré les quantités importantes d'opioïdes qu'il consommait, sa douleur n'était pas soulagée et s'était généralisée. Il a réalisé qu'il devait faire quelque chose pour essayer de retrouver un semblant de vie. Après onze (11) ans à prendre du Dilaudid et de l'Hydromorph Contin, M. Bourassa a décidé de rentrer en cure de désintoxication.

2.221. Le 22 mars et le 28 avril 2017, des demandes de cure pour sevrage ont été transmises par ses médecins à l'Unité de toxicomanie de l'Hôpital St-Luc (faisant partie du CHUM depuis 2017) ("l'Unité de toxicomanie") au nom de M. Bourassa. Suite à ces demandes, M. Bourassa a été admis et a séjourné huit jours à l'Hôpital St-Luc du 25 mai au 2 juin 2017.

2.222. Lors de cette hospitalisation, M. Bourassa a été diagnostiqué pour la première fois avec un TLUO (décrire comme sévère), tel qu'il appert du dossier d'admission pour son hospitalisation au CHUM du 25 mai au 2 juin 2017 produit aux présentes sous scellé comme **PIÈCE P-51.**

2.223. Lors de son séjour à l'hôpital en 2017, ses médecins ont entamé le processus de sevrage en diminuant sa consommation quotidienne d'opioïdes sur ordonnance. M. Bourassa continue à ce jour à être suivi par des médecins associés au CHUM.

2.224. Ce processus s'est poursuivi après son congé de l'Hôpital St-Luc et M. Bourassa a donc continué à recevoir du Dilaudid et de l'Hydromorph Contin à de plus faible dose. Le Dilaudid lui a été délivré par les pharmacies en forme de marque ou en forme générique, soit Apo-Hydromorphone fabriqué par Apotex ou PMS-Hydromorphone fabriqué par Pharmascience.

2.225. Entre le 1er novembre et le 4 décembre 2017, M. Bourassa s'est fait prescrire brièvement par son médecin de la morphine à libération contrôlée, qui lui a été délivrée sous les noms de Teva-Morphine SR fabriquée par Teva, et Morphine SR fabriquée par Sanis. De même, il s'est vu prescrire et délivrer du Statex fabriqué par Paladin.

2.226. Le 4 décembre 2017, comme il ne tolérait pas bien la morphine, il s'est vu represcrire la combinaison d'Hydromorph Contin et de Dilaudid, pour ce dernier, il a reçu également les versions génériques.

2.227. En février 2018, il a accepté d'être hospitalisé pour entreprendre un traitement de substitution au Metadol (méthadone) pour son TLUO.

2.228. Le 13 mars 2018, M. Bourassa a été admis pour un séjour de quatre jours à l'Unité de toxicomanie où il a de nouveau reçu le diagnostic de TLUO sévère, tel qu'il appert du dossier d'admission pour son hospitalisation au CHUM du 13 mars au 17 mars 2018 produit aux présentes sous scellé comme **PIÈCE P-52**.

2.229. Pendant son séjour à l'hôpital, on lui a administré du Metadol pour traiter son TLUO et entreprendre son sevrage, qu'il a continué à prendre en diverses quantités depuis sa sortie de l'hôpital.

2.230. Le traitement de substitution au Metadol a causé à M. Bourassa des symptômes de sevrage, dont des envies impérieuses (cravings), des maux de tête, des douleurs musculo-squelettiques, des frissons, des crises de sudation et de l'insomnie.

2.231. En avril 2019, M. Bourassa a commencé à être traité à la Clinique Antidouleur du CHUM et ses doses de Métadol ont lentement été diminuées. Son médecin traitant l'a initié à plusieurs thérapies alternatives contre la douleur, dont des perfusions de kétamine.

2.232. En juillet 2021, M. Bourassa s'est fait prescrire par un urgentologue du CHUM du Dilaudid pour soulager la douleur associée au zona. Il reçoit encore ces prescriptions de son médecin de famille, mais diminue graduellement les doses.

Les conséquences de sa consommation d'opioïdes sur ordonnance et de son TLUO.

2.233. M. Bourassa a beaucoup souffert, et continue de souffrir jusqu'à ce jour, du TLUO et de ses effets secondaires, y compris de graves douleurs musculaires et

osseuses, une fatigue invalidante, une insomnie chronique, de l'anxiété, une dépression, des frissons, une rétention d'eau excessive, des ballonnements et des crises de sudation.

2.234. M. Bourassa affirme que son TLUO l'empêche de se concentrer, de dormir, de se détendre et même de profiter de plaisirs simples comme lire ou regarder la télévision. Il indique également que sous Metadol, il n'est que quelque peu fonctionnel pendant 9 à 10 heures par jour et que le reste du temps, sa condition est insupportable.

2.235. Il déplore que sa dépendance aux opioïdes lui ait fait manquer de nombreux moments importants de la vie avec ses enfants et ait mis son mariage à rude épreuve.

2.236. M. Bourassa décrit son expérience avec les opioïdes et son TLUO comme "l'enfer sur terre" et ce, même depuis son processus de sevrage en 2017, tel qu'il appert de sa lettre datée du 8 avril 2020 remis à ses médecins à la Clinique Antidouleur, produite aux présentes sous scellé comme **PIÈCE P-53.**

2.237. Bien qu'il ait pu travailler par intermittence après un long rétablissement à la suite de son accident en novembre 2005, il est présentement incapable de continuer à travailler en raison de son TLUO.

2.238. En novembre 2020, M. Bourassa a fait une demande de prestations d'invalidité en vertu du Régime de rentes du Québec, laquelle demande a été appuyée par son médecin de famille, car il ne croit pas être en mesure de travailler de nouveau un jour.

2.239. M. Bourassa croit que personne ne devrait avoir à subir les souffrances qu'il a endurées en raison de sa consommation d'opioïdes sur ordonnance et du TLUO qui en a résulté. Il est prêt à agir en tant que représentant du groupe et a accepté que son nom soit rendu public. Il croit fermement que les Québécois ayant consommés comme lui des opioïdes sur ordonnance devraient pouvoir demander réparation pour les préjudices qui découlent de la prise de ces médicaments dangereux.

AMENDED LIST OF EXHIBITS

EXHIBIT P-1. Irfan A. Dhalla, Navindra Persaud and David N. Juurlink, "Facing up to the prescription opioid crisis", (2011) *BMJ* 343: d5142

EXHIBIT P-2. Asim Alam and David N. Jurrlink, "The prescription opioid epidemic: an overview for anesthesiologists", (2016) *Can J Anaesth* 63(1):61-68

(…)

EXHIBIT P-4. Canada, House of Commons, "Report and Recommendations on the Opioid Crisis in Canada", Report of the Standing Committee on Health, 1st sess., 42nd parliament, December 2016

EXHIBIT P-5. Marion S. Greene and R. Andrew Chambers, "Pseudoaddiction: Fact or Fiction? An Investigation of the Medical Literature", (2015) *Curr Addict Rep*, 2(4): 310-317

(…)

EXHIBIT P-7. Canada, National Opioid Use Guideline Group, "Canadian Guideline for Safe and Effective Use of Opioid for Chronic Non-Cancer Pain" (2010).

EXHIBIT P-8. Association pharmaceutique canadienne, "Hydromorph Contin" in *Compendium des produits et spécialités pharmaceutiques*, 31st ed (Ottawa: Association pharmaceutique canadienne, 1996); Association des pharmaciens du Canada, "Hydromorph Contin" in *Compendium des produits et spécialités pharmaceutiques*, 33rd ed (Ottawa: Association des pharmaciens du Canada, 1998); Association des pharmaciens du Canada, "Hydromorph Contin" in *Compendium des produits et spécialités pharmaceutiques*, 35th ed (Ottawa: Association des pharmaciens du Canada, 2000)

EXHIBIT P-9. Association des pharmaciens du Canada, "Hydromorph Contin" in *Compendium des produits et spécialités pharmaceutiques* (Ottawa: Association des pharmaciens du Canada, 2002)

EXHIBIT P-10. Association pharmaceutique canadienne, "Supeudol" in *Compendium des produits et spécialités pharmaceutiques*, 31st ed (Ottawa: Association pharmaceutique canadienne, 1996); Association des pharmaciens du Canada, "Supeudol" in *Compendium des produits et spécialités pharmaceutiques*, 33rd ed (Ottawa: Association des pharmaciens du Canada, 1998); Association des pharmaciens du Canada, "Supeudol" in *Compendium des produits et spécialités*

pharmaceutiques, 35th ed (Ottawa: Association des pharmaciens du Canada, 2000); Association des pharmaciens du Canada, “Supeudol” in *Compendium des produits et spécialités pharmaceutiques* (Ottawa: Association des pharmaciens du Canada, 2002).

EXHIBIT P-11. Association des pharmaciens du Canada, “Supeudol” in *Compendium des produits et spécialités pharmaceutiques* (Ottawa: Association des pharmaciens du Canada, 2004).

EXHIBIT P-12. Association des pharmaciens du Canada, “Jurnista” in *Compendium des produits et spécialités pharmaceutiques* (Ottawa: Association des pharmaciens du Canada, 2018); Association des pharmaciens du Canada, “Hydropmorph Contin” in *Compendium des produits et spécialités pharmaceutiques* (Ottawa: Association des pharmaciens du Canada, 2018); Sandoz Canada Inc., “Product Monograph Including Patient Medication Information - Supeudol” (23 March 2018).

EXHIBIT P-13. Hydromorph Contin ad in Association des pharmaciens du Canada, *Compendium des produits et spécialités pharmaceutiques* (Ottawa: Association des pharmaciens du Canada, 2004)

EXHIBIT P-14. Hydromorph Contin ad in Association des pharmaciens du Canada, *Compendium des produits et spécialités pharmaceutiques* (Ottawa: Association des pharmaciens du Canada, 2007)

EXHIBIT P-15. Hydromorph Contin ad in Association des pharmaciens du Canada, *Compendium des produits et spécialités pharmaceutiques* (Ottawa: Association des pharmaciens du Canada, 2010)

(…)

EXHIBIT P-19. Duragesic ad in Association des pharmaciens du Canada, *Compendium des produits et spécialités pharmaceutiques* (Ottawa: Association des pharmaciens du Canada, 2003)

EXHIBIT P-20. Letter from Thomas W. Abrams (US Department of Health and Human Services) to Ajit Shetty (Janssen Pharmaceutica, Inc.) (2 September 2004)

EXHIBIT P-21. Navindra Persaud, “Questionable Content of an Industry-Supported Medical School Lecture Series: A Case Study”, (2014) *J Med Ethics*, 40:414-418

EXHIBIT P-22. Itai Bavli and Joel Lexchin, “Why Big Pharma must disclose payments to patient groups”, The Conversation (13 January 2019).

EXHIBIT P-23. Kelly Crowe, “Following the money between patient groups and Big Pharma”, CBC (17 February 2018).

EXHIBIT P-24. Christian Noel, “Des groupes de patients financés en secret par des pharmaceutiques ”, Radio-Canada (6 May 2019).

EXHIBIT P-25. Arthur H. Gale, “Drug Company Compensated Physicians Role in Causing America’s Deadly Opioid Epidemic: When Will We Learn?”, (July-August 2016) *Mo Med* 113(4):244-246

EXHIBIT P-26. Christian McPhate, “Upshur County Is First in Texas to File a Lawsuit Holding Drug Makers Responsible for Opioid Epidemic”, Dallas Observer (6 October 2017).

EXHIBIT P-27. Government of Canada, Special Advisory Committee on the Epidemic of Opioid Overdoses, “National Report: Apparent opioid-related deaths in Canada” (April 2019).

EXHIBIT P-28. Canadian Institute for Health Information, “Opioid-Related Harms in Canada” (December 2018).

EXHIBIT P-29. Gouvernement du Québec, Institut national de santé publique, “Opioid-related Poisoning Deaths in Québec: 2000-2009” (October 2013).

EXHIBIT P-30. Karl Rettino-Parazelli, “L’usage d’opioïdes est en forte hausse”, *Le Devoir* (25 April 2016)

EXHIBIT P-31. Megan Martin, “Large portion of Quebec population unaware of the risks with opioids”, Montreal Gazette (26 March 2019).

EXHIBIT P-32. Kalina Laframbroise, “Quebec government unveils action plan to fight opioid overdoses, addiction”, Global News (25 July 2018).

EXHIBIT P-33. Government of Canada, Health Canada, “Notice of Intent to Restrict the Marketing and Advertising of Opioids” (19 June 2018)

EXHIBIT P-34. Government of Canada, “Opioid Warning Sticker and Patient Information Handout, and Risk Management Plans” (15 March 2019).

EXHIBIT P-35. Government of Canada, Health Canada, “Opioids List” (2 May 2018).

EXHIBIT P-36. Government of Canada, Health Canada, “Patient Information Handout” (15 March 2019).

EXHIBIT P-37. American Psychiatric Association, “Opioid Use Disorder” in *Diagnostic and statistical manual of mental disorders*, 5th ed (Arlington: American Psychiatric Publishing, Inc., 2013).

EXHIBIT P-38. April 4, 2017 and August 21, 2017 judgments of the Honourable Justice Bouchard J.S.C. in court file number 200-06-000080-070.

EXHIBIT P-39. *Perdikaris* v. *Purdue Pharma Inc.*, 2018 SKQB 86 – Judgment of Justice Barrington-Foote dated March 15, 2018.

EXHIBIT P-40. Government of Canada, Health Canada, “Guidance for Industry: Product Monograph” (1 October 2003).

EXHIBIT P-41. Prescribing Information for Dilaudid for 2012 and 2016, *en liasse*.

EXHIBIT P-42. Codeine Contin ad and accompanying Product Monograph in *Le médecin du Québec*, (March 2005) Vol. 40-3, at p. 70, 118-119.

EXHIBIT P-43. Duragesic ad and accompanying Product Monograph in *Le médecin du Québec*, (January 2002) Vol. 37-1, at p. 68, 126-127.

EXHIBIT P-44. Canadian Pain Society, Press Release, “Canadian Pain Society Launches ‘Patient Pain Manifesto’” (May 11, 2001).

EXHIBIT P-45. Dr. Roman D. Jovey, et al., “Use of opioid analgesics for the treatment of chronic noncancer pain - A consensus statement and guidelines from the Canadian Pain Society, 2002” (Spring 2003) *Pain Manage* Vol 8 Suppl A.

EXHIBIT P-46. List of the AQDC’s Partners (June 7, 2007).

EXHIBIT P-47. AQDC, “Lexique de Médicament” (June 2, 2007) and Dominique Dion, “*La dependence aux opiacés…mythe ou réalité*” (June 2003), *Le médecin du Québec*, Vol 38-6 (online), *en liasse*.

EXHIBIT P-48. Letstalkpain.org, “Understanding Tolerance, Physical Dependence and Addiction” (24 January 2009).

EXHIBIT P-49. Judgment rendered by Justice Thad Balkman in case number CJ-2017-816 (*State of Oklahoma* v. *Purdue Pharma L.P. et al.*).

EXHIBIT P-50. Government of Canada, Special Advisory Committee on the Epidemic of Opioid Overdoses, "National Report: Apparent opioid-related deaths in Canada" (September 2019).

EXHIBIT P-51. Plaintiff's CHUM hospital admission records from May 25 to June 2, 2017 (with bates stamps) **(Under Seal)**.

EXHIBIT P-52. Plaintiff's CHUM hospital admission records from March 13 to 17, 2018 (with bates stamps) **(Under Seal)**.

EXHIBIT P-53. A letter from the Plaintiff to his doctors at the Clinique Antidouleur, dated April 8, 2020 **(Under Seal)**.

EXHIBIT P-54. Leave Application filed by Plaintiff in the Saskatchewan proceedings.

EXHIBIT P-55. Interpretation Agreement entered into on July 13-14, 2022 by the parties to the National Settlement Agreement.

EXHIBIT P-56. Judgment of the Saskatchewan Court dated September 23, 2022 approving the National Settlement Agreement.

EXHIBIT P-57. Amended Statement of Claim of Her Majesty in Right of the Province of British Columbia.

EXHIBIT P-58. Press Release dated June 29, 2022 by the Ministry of the Attorney General of British Columbia in respect of the proposed $150 million settlement with Purdue.

MONTREAL, (…) September 30, 2022

(s) Fishman Flanz Meland Paquin

FISHMAN FLANZ MELAND PAQUIN LLP
Co-Counsel for Plaintiff
4100-1250 René-Lévesque Blvd. West
Montreal QC H3B 4W8
Tel. 514-932-4100
Fax 514-932-4170
mmeland@ffmp.ca
msiminovitch@ffmp.ca
tsilverstein@ffmp.ca
bendale@ffmp.ca

MONTREAL, (…) September 30, 2022

(s) Trudel Johnston & Lespérance

TRUDEL JOHNSTON & LESPÉRANCE
Co-Counsel for Plaintiff
750 Côte de la Place d'Armes
Montréal, QC H2Y 2X8
Tel. 514-871-8385
Fax 514-871-8800
andre@tjl.quebec
marianne@tjl.quebec

RE-AMENDED SUMMONS
(articles 145 and following C.C.P.)

Take notice that the plaintiff has filed this originating application in the office of the court of Montreal in the judicial district of Montreal.

You must answer the application in writing, personally or through a lawyer, at the courthouse of Montreal situated at 1 Notre-Dame St. E. Montréal, H2Y 1B6 within 15 days of service of the application or, if you have no domicile, residence or establishment in Québec, within 30 days. The answer must be notified to the plaintiff's lawyer or, if the plaintiff is not represented, to the plaintiff.

If you fail to answer within the time limit of 15 or 30 days, as applicable, a default judgement may be rendered against you without further notice and you may, according to the circumstances, be required to pay the legal costs.

In your answer, you must state your intention to:

- negotiate a settlement;
- propose mediation to resolve the dispute;
- defend the application and, in the cases required by the Code, cooperate with the plaintiff in preparing the case protocol that is to govern the conduct of the proceeding. The protocol must be filed with the court office in the district specified above within 45 days after service of the summons or, in family matters or if you have no domicile, residence or establishment in Québec, within 3 months after service;
- propose a settlement conference.

The answer to the summons must include your contact information and, if you are represented by a lawyer, the lawyer's name and contact information.

You may ask the court to refer the originating application to the district of your domicile or residence, or of your elected domicile or the district designated by an agreement with the plaintiff.

If the application pertains to an employment contract, consumer contract or insurance contract, or to the exercise of a hypothecary right on an immovable serving as your main residence, and if you are the employee, consumer, insured person, beneficiary of the insurance contract or hypothecary debtor, you may ask for a referral to the district of your domicile or residence or the district where the immovable is situated or the loss occurred. The request must be filed with the special clerk of the district of territorial jurisdiction after

it has been notified to the other parties and to the office of the court already seized of the originating application.

If you qualify to act as a plaintiff under the rules governing the recovery of small claims, you may also contact the clerk of the court to request that the application be processed according to those rules. If you make this request, the plaintiff's legal costs will not exceed those prescribed for the recovery of small claims.

Within 20 days after the case protocol mentioned above is filed, the court may call you to a case management conference to ensure the orderly progress of the proceeding. Failing this, the protocol is presumed to be accepted.

EXHIBIT P-1. Irfan A. Dhalla, Navindra Persaud and David N. Juurlink, “Facing up to the prescription opioid crisis”, (2011) *BMJ* 343: d5142

EXHIBIT P-2. Asim Alam and David N. Jurrlink, “The prescription opioid epidemic: an overview for anesthesiologists”, (2016) *Can J Anaesth* 63(1):61-68

(…)

EXHIBIT P-4. Canada, House of Commons, “Report and Recommendations on the Opioid Crisis in Canada”, Report of the Standing Committee on Health, 1st sess., 42nd parliament, December 2016

EXHIBIT P-5. Marion S. Greene and R. Andrew Chambers, “Pseudoaddiction: Fact or Fiction? An Investigation of the Medical Literature”, (2015) *Curr Addict Rep*, 2(4): 310-317

(…)

EXHIBIT P-7. Canada, National Opioid Use Guideline Group, “Canadian Guideline for Safe and Effective Use of Opioid for Chronic Non-Cancer Pain” (2010).

EXHIBIT P-8. Association pharmaceutique canadienne, “Hydromorph Contin” in *Compendium des produits et spécialités pharmaceutiques*, 31st ed (Ottawa: Association pharmaceutique canadienne, 1996); Association des pharmaciens du Canada, “Hydromorph Contin” in *Compendium des produits et spécialités pharmaceutiques*, 33rd ed (Ottawa: Association des pharmaciens du Canada, 1998); Association des pharmaciens du Canada, “Hydromorph Contin” in *Compendium des produits et spécialités pharmaceutiques*, 35th ed (Ottawa: Association des pharmaciens du Canada, 2000)

EXHIBIT P-9. Association des pharmaciens du Canada, “Hydromorph Contin” in *Compendium des produits et spécialités pharmaceutiques* (Ottawa: Association des pharmaciens du Canada, 2002)

EXHIBIT P-10. Association pharmaceutique canadienne, “Supeudol” in *Compendium des produits et spécialités pharmaceutiques*, 31st ed (Ottawa: Association pharmaceutique canadienne, 1996); Association des pharmaciens du Canada, “Supeudol” in *Compendium des produits et spécialités pharmaceutiques*, 33rd ed (Ottawa: Association des pharmaciens du Canada, 1998); Association des pharmaciens du Canada, “Supeudol” in *Compendium des produits et spécialités pharmaceutiques*, 35th ed (Ottawa: Association des pharmaciens du Canada, 2000); Association des pharmaciens du Canada, “Supeudol” in *Compendium des produits et spécialités pharmaceutiques* (Ottawa: Association des pharmaciens du Canada, 2002).

EXHIBIT P-11. Association des pharmaciens du Canada, “Supeudol” in *Compendium des produits et spécialités pharmaceutiques* (Ottawa: Association des pharmaciens du Canada, 2004).

EXHIBIT P-12. Association des pharmaciens du Canada, “Jurnista” in *Compendium des produits et spécialités pharmaceutiques* (Ottawa: Association des pharmaciens du Canada, 2018); Association des pharmaciens du Canada, “Hydropmorph Contin” in *Compendium des produits et spécialités pharmaceutiques* (Ottawa: Association des pharmaciens du Canada, 2018); Sandoz Canada Inc., “Product Monograph Including Patient Medication Information - Supeudol” (23 March 2018).

EXHIBIT P-13. Hydromorph Contin ad in Association des pharmaciens du Canada, *Compendium des produits et spécialités pharmaceutiques* (Ottawa: Association des pharmaciens du Canada, 2004)

EXHIBIT P-14. Hydromorph Contin ad in Association des pharmaciens du Canada, *Compendium des produits et spécialités pharmaceutiques* (Ottawa: Association des pharmaciens du Canada, 2007)

EXHIBIT P-15. Hydromorph Contin ad in Association des pharmaciens du Canada, *Compendium des produits et spécialités pharmaceutiques* (Ottawa: Association des pharmaciens du Canada, 2010)

(…)

EXHIBIT P-19. Duragesic ad in Association des pharmaciens du Canada, *Compendium des produits et spécialités pharmaceutiques* (Ottawa: Association des pharmaciens du Canada, 2003)

EXHIBIT P-20. Letter from Thomas W. Abrams (US Department of Health and Human Services) to Ajit Shetty (Janssen Pharmaceutica, Inc.) (2 September 2004)

EXHIBIT P-21. Navindra Persaud, "Questionable Content of an Industry-Supported Medical School Lecture Series: A Case Study", (2014) *J Med Ethics*, 40:414-418

EXHIBIT P-22. Itai Bavli and Joel Lexchin, "Why Big Pharma must disclose payments to patient groups", The Conversation (13 January 2019).

EXHIBIT P-23. Kelly Crowe, "Following the money between patient groups and Big Pharma", CBC (17 February 2018).

EXHIBIT P-24. Christian Noel, "Des groupes de patients financés en secret par des pharmaceutiques ", Radio-Canada (6 May 2019).

EXHIBIT P-25. Arthur H. Gale, "Drug Company Compensated Physicians Role in Causing America's Deadly Opioid Epidemic: When Will We Learn?", (July-August 2016) *Mo Med* 113(4):244-246

EXHIBIT P-26. Christian McPhate, "Upshur County Is First in Texas to File a Lawsuit Holding Drug Makers Responsible for Opioid Epidemic", Dallas Observer (6 October 2017).

EXHIBIT P-27. Government of Canada, Special Advisory Committee on the Epidemic of Opioid Overdoses, "National Report: Apparent opioid-related deaths in Canada" (April 2019).

EXHIBIT P-28. Canadian Institute for Health Information, "Opioid-Related Harms in Canada" (December 2018).

EXHIBIT P-29. Gouvernement du Québec, Institut national de santé publique, "Opioid-related Poisoning Deaths in Québec: 2000-2009" (October 2013).

EXHIBIT P-30. Karl Rettino-Parazelli, "L'usage d'opioïdes est en forte hausse", *Le Devoir* (25 April 2016)

EXHIBIT P-31. Megan Martin, "Large portion of Quebec population unaware of the risks with opioids", Montreal Gazette (26 March 2019).

EXHIBIT P-32. Kalina Laframbroise, “Quebec government unveils action plan to fight opioid overdoses, addiction”, Global News (25 July 2018).

EXHIBIT P-33. Government of Canada, Health Canada, “Notice of Intent to Restrict the Marketing and Advertising of Opioids” (19 June 2018)

EXHIBIT P-34. Government of Canada, “Opioid Warning Sticker and Patient Information Handout, and Risk Management Plans” (15 March 2019).

EXHIBIT P-35. Government of Canada, Health Canada, “Opioids List” (2 May 2018).

EXHIBIT P-36. Government of Canada, Health Canada, “Patient Information Handout” (15 March 2019).

EXHIBIT P-37. American Psychiatric Association, “Opioid Use Disorder” in *Diagnostic and statistical manual of mental disorders*, 5th ed (Arlington: American Psychiatric Publishing, Inc., 2013).

EXHIBIT P-38. April 4, 2017 and August 21, 2017 judgments of the Honourable Justice Bouchard J.S.C. in court file number 200-06-000080-070.

EXHIBIT P-39. *Perdikaris* v. *Purdue Pharma Inc.*, 2018 SKQB 86 – Judgment of Justice Barrington-Foote dated March 15, 2018.

EXHIBIT P-40. Government of Canada, Health Canada, “Guidance for Industry: Product Monograph” (1 October 2003).

EXHIBIT P-41. Prescribing Information for Dilaudid for 2012 and 2016, *en liasse*.

EXHIBIT P-42. Codeine Contin ad and accompanying Product Monograph in *Le médecin du Québec*, (March 2005) Vol. 40-3, at p. 70, 118-119.

EXHIBIT P-43. Duragesic ad and accompanying Product Monograph in *Le médecin du Québec*, (January 2002) Vol. 37-1, at p. 68, 126-127.

EXHIBIT P-44. Canadian Pain Society, Press Release, “Canadian Pain Society Launches ‘Patient Pain Manifesto’” (May 11, 2001).

EXHIBIT P-45. Dr. Roman D. Jovey, et al., “Use of opioid analgesics for the treatment of chronic noncancer pain - A consensus statement and guidelines from the Canadian Pain Society, 2002” (Spring 2003) *Pain Manage* Vol 8 Suppl A.

EXHIBIT P-46. List of the AQDC’s Partners (June 7, 2007).

EXHIBIT P-47. AQDC, “Lexique de Médicament” (June 2, 2007) and Dominique Dion, “*La dependence aux opiacés…mythe ou réalité*” (June 2003), *Le médecin du Québec*, Vol 38-6 (online), *en liasse*.

EXHIBIT P-48. Letstalkpain.org, “Understanding Tolerance, Physical Dependence and Addiction” (24 January 2009).

EXHIBIT P-49. Judgment rendered by Justice Thad Balkman in case number CJ-2017-816 (*State of Oklahoma* v. *Purdue Pharma L.P. et al.*).

EXHIBIT P-50. Government of Canada, Special Advisory Committee on the Epidemic of Opioid Overdoses, “National Report: Apparent opioid-related deaths in Canada” (September 2019).

EXHIBIT P-51. Plaintiff’s CHUM hospital admission records from May 25 to June 2, 2017 (with bates stamps) **(Under Seal)**.

EXHIBIT P-52. Plaintiff’s CHUM hospital admission records from March 13 to 17, 2018 (with bates stamps) **(Under Seal)**.

EXHIBIT P-53. A letter from the Plaintiff to his doctors at the Clinique Antidouleur, dated April 8, 2020 **(Under Seal)**.

EXHIBIT P-54. Leave Application filed by Plaintiff in the Saskatchewan proceedings

EXHIBIT P-55. Interpretation Agreement entered into on July 13-14, 2022 by the parties to the National Settlement Agreement

EXHIBIT P-56. Judgment of the Saskatchewan Court dated September 23, 2022 approving the National Settlement Agreement

EXHIBIT P-57. Amended Statement of Claim of Her Majesty in Right of the Province of British Columbia

EXHIBIT P-58. Press Release dated June 29, 2022 issued by the Ministry of the Attorney General of British Columbia in respect of the proposed $150 million settlement with Purdue

These exhibits are available on request.

If the application is an application in the course of a proceeding or an application under Book III, V, excepting an application in family matters mentioned in article 409, or VI of the Code, the establishment of a case protocol is not required; however, the application must be accompanied by a notice stating the date and time it is to be presented.

MONTREAL, (…) September 30, 2022

(s) Fishman Flanz Meland Paquin

FISHMAN FLANZ MELAND PAQUIN LLP
Co-Counsel for Plaintiff
4100-1250 René-Lévesque Blvd. West
Montreal QC H3B 4W8
Tel. 514-932-4100
Fax 514-932-4170
mmeland@ffmp.ca
msiminovitch@ffmp.ca
tsilverstein@ffmp.ca
bendale@ffmp.ca

MONTREAL, (…) September 30, 2022

(s) Trudel Johnston & Lespérance

TRUDEL JOHNSTON & LESPÉRANCE
Co-Counsel for Plaintiff
750 Côte de la Place d'Armes
Montréal, QC H2Y 2X8
Tel. 514-871-8385
Fax 514-871-8800
andre@tjl.quebec
marianne@tjl.quebec

RE-AMENDED NOTICE OF PRESENTATION
(Article 574 C.C.P.)

TO:

MEDA VALEANT PHARMA CANADA INC. (4490142 CANADA INC.)
2150, Saint-Elzéar Boulevard West,
Laval, Québec H7L 4A8

ABBOTT LABORATORIES LIMITED
75, boulevard Pierre-Roux Est
Victoriaville, Québec G6P 6S9

APOTEX INC.,
2970 André Avenu
Dorval, Quebec H9P 2P2

(…)

BRISTOL-MYERS SQUIBB CANADA CO. 2344 Alfred-Nobel Boulevard
Montreal, Quebec H4S 0A4

ETHYPHARM INC.,
2400-1000 De La Gauchetière
Montreal, Quebec H3B 4W5

(…)

JANSSEN INC.,
14 Place du Commerce, Suite 620
Montreal, Quebec H3E 1T5

JODDES LIMITED
6111 Royalmount Avenue, Suite 100
Montreal, Quebec H4P 2T4

LABORATOIRE ATLAS INC.,
9600 des Sciences Boulevard
Montreal, Quebec H1J 3B6

LABORATOIRE RIVA INC.,
660 Industriel Boulevard
Blainville, Quebec J7C 3V4

(…)

PALADIN LABS INC.
100 boul. Alexis-Nihon, Suite 600
Montreal, Quebec H4M 2P2

PFIZER CANADA ULC
17300 Trans-Canada Highway
Kirkland, Quebec H9J 2M5

PHARMASCIENCE INC.
6111 Royalmount Avenue, Suite 100
Montreal, Quebec H4P 2T4

PRO DOC LTÉE,
2925 Industriel Boulevard
Laval, Quebec H7L 3W9

PURDUE FREDERICK INC.
22 Adelaide Street West, Suite 3400,
Toronto, Ontario M5H 4E3

PURDUE PHARMA,
575 Court Granite
Pickering, Ontario L1W 3W8

(…)

SANDOZ CANADA INC.
110 De Lauzon Street
Boucherville, Quebec J4B 1E6

(…)

SUN PHARMA CANADA INC.
170, Steelwell Road, Unit 100
Brampton, Ontario, L6T 5T3

TEVA CANADA LIMITED
17800 Lapointe Street
Mirabel, Quebec J7J 1P3

VALEANT CANADA LP
2150 Saint-Elzéar Boulevard West
Laval, Quebec H7L 4A8

ARALEZ PHARMACEUTICALS CANADA INC.
7100 West Credit Avenue, Suite 101
Mississauga, Ontario L5N 0E4

(…)

CHURCH & DWIGHT CANADA CORP.
5485 Ferrier Street
Mont-Royal, Quebec H4P 1M6

GLAXOSMITHKLINE INC.
245 Armand-Frappier Blvd.
Laval, Quebec H7V 4A7

LABORATOIRES TRIANON INC.
660 Industriel Blvd.
Blainville, Quebec J7C 3V4

(…)

NOVARTIS PHARMACEUTICALS CANADA INC.
385 Bouchard Blvd., Suite 518
Dorval, Quebec H9S 1A9

SANOFI-AVETIS CANADA INC.
2905 Place Louis-R. Renaud
Laval, Quebec H7V 0A3

VALEANT CANADA LIMITED
2150 St-Elzéar Blvd. West
Laval, Quebec H7L 4A8

TAKE NOTICE that the *Re-Amended Application dated September 30, 2022 for Authorization to Institute a Class Action and to Obtain the Status of Representative* will be presented at the Superior Court at the Courthouse of Montréal, located at 1 Notre-Dame Street East, at a date and time to be determined by the Coordinating Judge for the Class Action Division.

PLEASE ACT ACCORDINGLY.

MONTREAL, September 30, 2022

(s) Fishman Flanz Meland Paquin

FISHMAN FLANZ MELAND PAQUIN LLP
Co-Counsel for Plaintiff
4100-1250 René-Lévesque Blvd. West
Montreal QC H3B 4W8
Tel. 514-932-4100
Fax 514-932-4170
mmeland@ffmp.ca
msiminovitch@ffmp.ca
tsilverstein@ffmp.ca
bendale@ffmp.ca

MONTREAL, September 30, 2022

(s) Trudel Johnston & Lespérance

TRUDEL JOHNSTON & LESPÉRANCE
Co-Counsel for Plaintiff
750 Côte de la Place d'Armes
Montréal, QC H2Y 2X8
Tel. 514-871-8385
Fax 514-871-8800
andre@tjl.quebec
marianne@tjl.quebec

RE-ATTESTATION THAT THE APPLICATION WILL BE ENTERED IN THE NATIONAL CLASS ACTION REGISTER

(Article 55 of the *Regulation of the Superior Court of Québec in civil matters)*

The plaintiff, through his attorneys, the undersigned, certifies that the *Re-Amended Application dated September 30, 2022 for authorization to bring a class action and to obtain the status of representative* will be registered in the National Register of Class Actions.

MONTREAL, September 30, 2022

(s) Fishman Flanz Meland Paquin

FISHMAN FLANZ MELAND PAQUIN LLP
Co-Counsel for Plaintiff
4100-1250 René-Lévesque Blvd. West
Montreal QC H3B 4W8
Tel. 514-932-4100
Fax 514-932-4170
mmeland@ffmp.ca
msiminovitch@ffmp.ca
tsilverstein@ffmp.ca
bendale@ffmp.ca

MONTREAL, September 30, 2022

(s) Trudel Johnston & Lespérance

TRUDEL JOHNSTON & LESPÉRANCE
Co-Counsel for Plaintiff
750 Côte de la Place d'Armes
Montréal, QC H2Y 2X8
Tel. 514-871-8385
Fax 514-871-8800
andre@tjl.quebec
marianne@tjl.quebec

FISHMAN FLANZ MELAND PAQUIN

Helene Bouthillette <hbouthillette@ffmp.ca>

NOTIFICATION BY EMAIL - 500-06-001004-197 - Jean-François Bourassa v. Abbott Laboratories, Limited et al.

1 message

Helene Bouthillette <hbouthillette@ffmp.ca> Fri, Sep 30, 2022 at 1:03 PM
To: "Gagne, Michel" <mgagne@mccarthy.ca>, "Poupart, Emmanuelle" <epoupart@mccarthy.ca>, "Labbé, Andrée-Anne" <aalabbe@mccarthy.ca>, "Brabander, Kristian" <kbrabander@mccarthy.ca>, "Baracat, Gabrielle" <gbaracat@mccarthy.ca>, "Gravel, Amanda" <agravel@mccarthy.ca>, Audrey Boctor <aboctor@imk.ca>, Jean-Michel Boudreau <jmboudreau@imk.ca>, "Radomski, Harry" <hradomski@goodmans.ca>, "De Luca, Nando" <ndeluca@goodmans.ca>, "Ouanounou, Melanie" <mouanounou@goodmans.ca>, dmitchell@imk.ca, Samuel Lavoie <slavoie@imk.ca>, "maudren_audrenrolland.com" <maudren@audrenrolland.com>, "mgrou_audrenrolland.com" <mgrou@audrenrolland.com>, Joseane Chretien <joseane.chretien@mcmillan.ca>, "gabrielle.lachance-touchette_mcmillan.ca" <gabrielle.lachance-touchette@mcmillan.ca>, Scott Maidment <scott.maidment@mcmillan.ca>, "Guzman, Pablo" <pablo.guzman@dlapiper.com>, "Da Silva, Tania" <tania.dasilva@dlapiper.com>, Brixi Myriam <mbrixi@lavery.ca>, "Préfontaine, Éric" <eprefontaine@osler.com>, "Harding, Jessica" <jharding@osler.com>, "Fallon, Alexandre" <afallon@osler.com>, "Morissette, Julien" <jmorissette@osler.com>, Deborah Glendinning <dglendinning@osler.com>, "O'Brien, Kevin" <kobrien@osler.com>, "Hirsh, Adam" <ahirsh@osler.com>, "pouellet_woods.qc.ca" <pouellet@woods.qc.ca>, "Jonathan M. Jenkins" <jjenkins@woods.qc.ca>, guy.poitras@gowlingwlg.com, joelle.boisvert@gowlingwlg.com, "vincent.deletoile_langlois.ca" <vincent.deletoile@langlois.ca>, "elisabeth.neelin_langlois.ca" <elisabeth.neelin@langlois.ca>, Robert Torralbo <robert.torralbo@blakes.com>, "Bisaillon, Ariane" <ariane.bisaillon@blakes.com>, Simon Seida <simon.seida@blakes.com>, "Marseille, Claude" <claude.marseille@blakes.com>, "Cataldo, Cristina" <cristina.cataldo@blakes.com>, "Rouleau, Francis" <francis.rouleau@blakes.com>, "Desrochers, Elizabeth" <elizabeth.desrochers@blakes.com>, "Skodyn, Andrew" <andrew.skodyn@blakes.com>, "Baird, Melanie" <melanie.baird@blakes.com>, Paul Fernet <pfernet@fernet.ca>, cdubord@fernet.ca, Noah Boudreau <nboudreau@fasken.com>, mkaddis@fasken.com, "Peter J. Pliszka" <ppliszka@fasken.com>, "McNamara, William" <wmcnamara@torys.com>, "Ms. Sylvie Rodrigue" <srodrigue@torys.com>, "Gingras, Marie-Ève" <mgingras@torys.com>, "Manole, Corina" <cmanole@torys.com>, "Robillard, Yves" <yrobillard@millerthomson.com>, "Amine, Fadi" <famine@millerthomson.com>, "jsaintonge_blg.com" <jsaintonge@blg.com>, "amerminod_blg.com" <amerminod@blg.com>, "Plante, Patrick" <pplante@blg.com>, Gabrielle Gagné <gabrielle@tjl.quebec>, notification@mccarthy.ca, notification@audrenrolland.com, notifications-mtl@lavery.ca, notificationosler@osler.com, notification@woods.qc.ca, notificationmtl@langlois.ca, notifications-mtl@torys.com, notification@blg.com
Cc: "Mark E. Meland" <mmeland@ffmp.ca>, Margo Siminovitch <msiminovitch@ffmp.ca>, Tina Silverstein <tsilverstein@ffmp.ca>, Betlehem Endale <bendale@ffmp.ca>, André Lespérance <andre@tjl.quebec>, Marianne Dagenais-Lespérance <marianne@tjl.quebec>

Fishman Flanz Meland Paquin LLP

BORDEREAU D'ENVOI (ART. 134 C.P.C.)/TRANSMISSION SHEET (ART. 134 C.C.P)
(NOTIFICATION PAR COURRIER ÉLECTRONIQUE)/(NOTIFICATION BY ELECTRONIC MAIL)

DATE, HEURE ET MINUTES DE L'ENVOI /DATE AND TIME OF TRANSMISSION:

Montreal, September 30, 2022
Heure/Time : voir entête du courriel/see email header

EXPÉDITEUR/SENDER:

Nom/Name :	M^e^ Mark E. Meland
Étude/Firm:	Fishman Flanz Meland Paquin s.e.n.c.r.l.
Adresse/Address :	1250, boul. René-Lévesque Ouest, bureau 4100, Montréal (Québec) H3B 4W8
Téléphone/Telephone :	(514) 932-4100
Courriel/Email :	mmeland@ffmp.ca
Notre référence/ Our reference :	OPIOID-1

DESTINATAIRES/RECIPIENTS:

Nom/Name :	**See attached Service List**
Étude/Firm:	
Adresse/Address :	
Téléphone/Telephone :	
Courriel/Email :	
Votre référence/ Your reference :	

IDENTIFICATION DU DOSSIER ET NATURE DU DOCUMENT TRANSMIS/
IDENTIFICATION OF FILE AND NATURE OF DOCUMENT BEING TRANSMITTED:

Numéro de dossier/	500-06-001004-197

File Number:	
Parties:	Jean-François Bourassa v. Abbott Laboratories, Limited et al.
Nature Du Document/ *Nature Of Document:*	Re-Amended Application dated September 30, 2022 for authorization to institute a class action, and to obtain the status of representative

IDENTIFICATION DU FICHIER TRANSMIS/
IDENTIFICATION OF DOCUMENT BEING TRANSMITTED :

Nom du fichier/ Name of document:	2022-09-30 - Re-Amended Application for Authorization
Format du document/ Format of document:	PDF
Nombre de pages/ Number of Pages :	72

Hélène Bouthillette
Assistant to Mark E. Meland
Telephone: (514) 932-4100
E-mail: hbouthillette@ffmp.ca

FFMP AVOCATS LAWYERS Depuis/Since 1923
Fishman Flanz Meland Paquin LLP
1250 René-Lévesque Blvd. West, suite 4100
Montreal, Quebec H3B 4W8
Website: www.ffmp.ca
Fax.: (514) 932-4170

2 attachments

2022-09-30 Re-Amended Application for Authorization.pdf
515K

0-2022-05-20 Service List.pdf
274K

Fishman Flanz Meland Paquin, s e n c r l

Mémo

À:	Salvatore
De:	Hélène Bouthillette (MEM)
CC:	
Date:	17 octobre 2922
Objet:	Opioids Class Action / OPIOID-1
C.S.M.	500-06-001004-197

Salvatore,

SVP déposer au dossier de la cour les procédures suivantes:

- *De bene esse* Motion for Authorization to Amend Plaintiff's Re-Amended Application for Authorization to Institute a Class Action

- Re-Amended Application dated September 30, 2022 for Authorization to Institute a Class Action and Exhibits P-54 to P-58

Merci !

18/10/22

No: 500-06-001004-197

SUPERIOR COURT
District of Montreal
(Class Action Division)

JEAN-FRANÇOIS BOURASSA

Plaintiff

v.

ABBOTT LABORATORIES, LIMITED et als.

Defendants

Re-Amended Application dated September 30, 2022 for authorization to institute a class action, and to obtain the status of representative

ORIGINAL

File: OPIOID-1
Nature: Class Action

Mtre. Mark E. Meland (mmeland@ffmp.ca)
Mtre. Margo R. Siminovitch (msiminovitch@ffmp.ca)
Mtre. Tina Silverstein (tsilverstein@ffmp.ca)
Mtre Betlehem L. Endale (bendale@ffmp.ca)

FISHMAN FLANZ MELAND PAQUIN LLP
1250 René-Lévesque Blvd. West, Suite 4100
Montreal, Quebec H3B 4W8
Phone: 514-932-4100
Fax: 514-932-4170

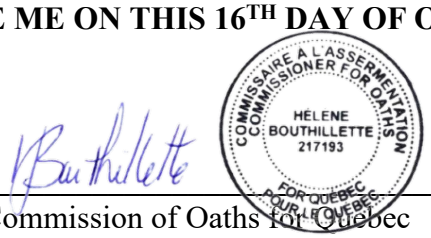
CODE: BM-0309

Mtre André Lespérance (andre@tjl.quebec)
Mtre Marianne Dagenais-Lespérance (marianne@tjl.quebec)

TRUDEL JOHNSTON & LESPÉRANCE
750 Côte de la Place d'Armes
Montreal, Quebec H2Y 2X8
Phone : 514-871-8385
Fax : 514-871-8800

CODE: BT-1415

THIS IS EXHIBIT "B"
TO THE AFFIDVIT OF MARGO SIMINOVITCH
SWORN BEFORE ME ON THIS 16TH DAY OF OCTOBER 2023



Commission of Oaths for Quebec

KRAMER LEVIN NAFTALIS & FRANKEL LLP
Kenneth H. Eckstein
Rachael L. Ringer
Ariel N. Lavinbuk
David E. Blabey, Jr.
Natan Hamerman
Andrew Pollack
1177 Avenue of the Americas
New York, New York 10036
Telephone: (212) 715-9100

Counsel to the Official Committee of Unsecured Creditors

COOLEY LLP
Cullen D. Speckhart
Ian Shapiro
Michael Klein
Reed A. Smith
55 Hudson Yards
New York, NY 10001
Telephone: (212) 479-6000

Lead Counsel to the Official Committee of Opioid Claimants

KLESTADT WINTERS JURELLER SOUTHARD & STEVENS, LLP
Tracy L. Klestadt
Brendan Scott
200 West 41st Street, 17th Floor
New York, New York 10036
Telephone: (212) 972-3000

Proposed Conflicts Counsel to the Official Committee of Opioid Claimants

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	:	Chapter 11
ENDO INTERNATIONAL plc, *et al.*,[1]	:	Case No. 22-22549 (JLG)
Debtors.	:	(Jointly Administered)

MOTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS AND THE OFFICIAL COMMITTEE OF OPIOID CLAIMANTS FOR (I) ENTRY OF AN ORDER GRANTING LEAVE, STANDING, AND AUTHORITY TO COMMENCE AND PROSECUTE CERTAIN CLAIMS ON BEHALF OF THE DEBTORS AND (II) SETTLEMENT AUTHORITY IN RESPECT OF SUCH CLAIMS

[1] The last four digits of Debtor Endo International plc's tax identification number are 3755. Due to the large number of debtors in these chapter 11 cases, a complete list of the debtor entities and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information may be obtained on the website of the Debtors' claims and noticing agent at https://restructuring.ra.kroll.com/Endo. The location of the Debtors' service address for purposes of these chapter 11 cases is: 1400 Atwater Drive, Malvern, PA 19355.

TABLE OF CONTENTS

TABLE OF EXHIBITS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

The Official Committee of Unsecured Creditors (the "Creditors' Committee") of Endo International plc ("Endo") and its affiliated debtors (collectively, the "Debtors" or the "Company") and the Official Committee of Opioid Claimants (the "OCC" and together with the Creditors' Committee, the "Official Committees") hereby move this Court for the entry of an order (i) granting the Official Committees derivative standing to commence and prosecute certain claims on behalf of the Debtors' estates, and (ii) granting the Official Committees exclusive authority to settle such claims on behalf of the Debtors' estates. In support of this motion (the "Motion"), the Official Committees respectfully state as follows:

PRELIMINARY STATEMENT AND RELIEF REQUESTED

1. Strong estate claims exist against both the secured creditors and the officers and directors in this case—claims with significant value for unsecured creditors and opioid claimants. Rather than capture that value by pursuing (or even preserving) these claims, the Debtors have not only agreed to release each of them as part of their proposed sale transaction, but stipulated to vastly overbroad (and factually unsupported) descriptions of the secured creditors' collateral, as well. These releases and stipulations were given in the absence of a robust investigation by the Company, and effectively in exchange for either insufficient consideration (in the case of opioid unsecured creditors) or *no consideration at all* (in the case of non-opioid unsecured creditors).

2. In the face of these day-one capitulations, the Official Committees requested that the Debtors grant them standing to prosecute these claims for the benefit of their respective constituencies. To date, however, the Debtors have refused to consent to such standing, much less offer any meaningful substantive response to the merits of the contemplated claims.

3. Since their appointment, the Official Committees have been investigating the existence and scope of liens on the Debtors' property and avoidable transactions involving the

Debtors, their management, and the Prepetition Secured Parties.[2] Those investigations have uncovered numerous valuable estate claims. But, notwithstanding the dismal (or non-existent) recoveries currently offered to unsecured creditors and the many opioid claimants in this case, the Debtors have affirmatively chosen *not* to pursue these claims because, among other reasons, (i) they already stipulated to an expansive definition of the collateral and liens securing certain prepetition debt as part of the final order approving the Debtors' use of cash collateral (the "Cash Collateral Order") [Dkt. No. 535], and (ii) they intend to sell the proceeds of any chapter 5 avoidance action (and/or the claims themselves) to certain of the Prepetition Secured Parties in a contemplated sale under section 363 (including avoidance actions against the Debtors' current management which the lenders have agreed to immediately release upon closing of the sale). This is, thus, a classic situation in which the Official Committees are the independent fiduciaries best-situated to act for the Debtors' estates. They should clearly be granted standing to do so under *In re STN Enterprises*, 779 F.2d 901 (2d Cir. 1985).

4. The first set of claims the Official Committees seek to bring involve the Debtors' various U.S. deposit accounts (the "Deposit Accounts"), valued at approximately $670 million as of the Petition Date—and which were not subject to perfected liens. Perfection of a lien on a deposit account is typically accomplished through control—most often through execution of deposit account control agreements, or "DACAs"—but it is undisputed that the Prepetition Secured Parties did not have such control here. Though obtaining DACAs would have been exceptionally simple given that the vast majority of the Deposit Accounts reside at the same bank, no one did so, leaving the Deposit Accounts unperfected, with their value therefore available to

[2] The "Prepetition Secured Parties" refer to the Debtors' first- and second-lien creditors and, where appropriate in context, the indenture and/or collateral trustees for such parties.

unsecured creditors. Indeed, far from an oversight or fluke, the secured creditors agreed to a contractual provision *relieving* the Debtors of any obligation to provide DACAs, putting the Prepetition Secured Parties on notice of the obvious risk that these accounts remained unperfected and not subject to their lien.

5. Despite their choice to forego DACAs, the Ad Hoc First Lien Group has asserted that they have perfected liens on the Deposit Accounts because these accounts constitute the "proceeds" of their other collateral, an argument that requires (at a minimum) the Collateral Trustee to trace any such alleged proceeds back to its original collateral (an exercise it has not done in this case). But tracing, even if it could be done, is no antidote to the lenders' failure to obtain DACAs in this case, for two independent reasons: *first*, because the lenders agreed to a contractual release that cuts off their lien on "proceeds" the moment they are deposited in the Debtors' cash management system, and *second*, because that same cash management system operates in such a way as to strip the secured creditors' liens under the Uniform Commercial Code.

6. In particular, the Official Committees' investigations have revealed two key features of the cash management system. First, that nearly all funds flowing into the Debtors enter the system through one of four zero balance collection accounts (which is to say, accounts which hold a zero balance at the end of each day). Second, that nearly all funds are thereafter subjected to inter-Debtor transfers, from a deposit account held at one Debtor to a deposit account held at another. The first of these features effectuates a contractual release under the governing loan documents, which provide for the release of the Prepetition Secured Parties' lien over assets (here, alleged proceeds) that become "Excluded Assets" (here, the zero balance collection accounts). The second feature of the cash management system effectuates a statutory stripping of the lien under section 9-332(b) of the Uniform Commercial Code, which provides that a transferee of funds

from a deposit account takes such funds free of any security interest in the deposit account. Taken together, any alleged lien on proceeds is first released when such proceeds enter the Debtors' cash management system, and then stripped again for good measure upon the inter-debtor transfer of funds. The secured creditors could have avoided either of these eventualities through the simple expedient of DACAs—and could have avoided the contractual release by employing alternative language in the controlling agreements—yet chose not to avail themselves of these protections.

7. In addition to the U.S. Deposit Accounts, numerous other Debtor assets are either unencumbered or are subject to avoidable liens. These assets include the remainder of the Debtors' deposit accounts outside the United States (in excess of $350 million), valuable equity interests, commercial tort claims, and more—all of which should inure to the benefit of general unsecured creditors, including opioid claimants (and/or be paid for as part of any sale the Debtors or their first lien lenders hope to accomplish in these chapter 11 cases). Some of these assets are *undisputedly* unencumbered, having been confirmed as such by the Debtors themselves; other categories of assets are plainly unencumbered under any plausible reading of the relevant documents. Yet, notwithstanding the opportunity to narrow the issues in dispute, the Debtors have refused to stipulate to the unencumbered nature of these assets, forcing the Official Committees to expend the time and resources of seeking declaratory judgments confirming what should be obvious to all.

8. Among the undisputed unencumbered assets are the Debtors' equity interests in certain non-Debtor Indian affiliates (the "Indian Affiliates") that appear to represent a significant (and growing) portion of Endo's operations. The Indian Affiliates employ roughly half of the Debtors' workforce, and they collectively perform a substantial portion of Endo's manufacturing and research. Approximately half of the Debtors' generics revenue today is attributable to products

manufactured by the Indian entities, with the Debtors intending to transition manufacturing of their generics and sterile injectables business to India over the next three years. Suffice it to say that not only declaring such valuable assets to be unencumbered—but also determining their actual value in advance of the sale hearing (so that they can be bid for with cash)—will bear significantly on recoveries for unsecured creditors. The Debtors' confirmed to the Creditors' Committee that their equity interests in the Indian Affiliates was unencumbered (see Exhibit H), but have refused to so stipulate on the record.

9. In addition to the Challenges to the secured lenders' liens and claims in these cases, the Official Committees have identified certain fraudulent and/or preferential transactions involving the Debtors and/or the Prepetition Secured Parties. Among them are a series of transactions in which the Debtors—in full recognition of their financial distress and impending bankruptcy filing—"prepaid" their management roughly $95 million in future compensation. Two-thirds of the amount of these prepaid bonuses was paid in November 2021 and the rest within the month before these bankruptcy cases were filed (the "Prepaid Compensation"); nearly $55 million of these bonus payments were made to *just four employees*. The granting of the Prepaid Compensation was a preference and a fraudulent transfer, and the board members that approved it breached their fiduciary duties in doing so. Perhaps recognizing their management and directors' exposure as a result of these pre-bankruptcy transactions designed to circumvent the contours of the Bankruptcy Code, the Debtors specifically negotiated for a full release of their management and directors in connection with the sale transaction structured with the first lien lenders. Thus, not only are unsecured creditors and opioid claimants clearly entitled to see the claims prosecuted and management's ill-gotten gains returned, but it is entirely appropriate for the Official Committees to be granted standing to pursue such claims.

10. The Official Committees also investigated three significant debt transactions that were undertaken at a time when the relevant Debtors were plainly insolvent. Specifically, in June 2020 and March 2019, certain Debtors "uptiered" billions of dollars of unsecured debt into new, secured debt (the "Uptiers"). In both cases, those Debtors refinanced old unsecured notes with new secured notes. But in both cases, the market value of the new notes was much higher than the market value of the old notes that the transactions retired. The Official Committees' investigation further shows that these Uptiers were not just economically unsound, they were intended to hinder the ability of unsecured creditors and opioid claimants to recover in an increasingly inevitable bankruptcy. In these ways, the Uptiers were both constructive and actual fraudulent transactions, and the secured obligations should be avoided. The Official Committees are also proposing to challenge the 2021 refinancing as a separate constructively fraudulent transaction.

11. By this Motion, the Official Committees thus seek entry of an order, substantially in the form attached hereto as Exhibit A, authorizing them to commence and prosecute actions to recover on these claims, by way of complaints that will be filed in substantially the form attached hereto, subject to any revisions necessary to reflect additional discovery. Specifically, the Official Committees seek standing to commence the following causes of action (collectively, the "Proposed Claims"):

- As set forth in the form of complaint attached as Exhibit B (the "Deposit Account Complaint"), the Official Committees seek a declaration that the secured creditors' alleged liens on the Debtors' U.S. Deposit Accounts were unperfected as of the Petition Date, and for avoidance of such unperfected liens;

- As set forth in the form of complaint attached as Exhibit C (the "Disputed Assets Complaint"), the Official Committees seek (i) declarations that certain assets (excluding the U.S. Deposit Accounts) are unencumbered and (ii) to avoid liens on other non-cash assets, in both cases to make such assets available to satisfy the claims of unsecured creditors;

- As set forth in the form of complaint attached as Exhibit D (the "Prepaid Compensation Complaint"), the Official Committees seek to avoid as preferences and fraudulent transfers the roughly $95 million in Prepaid Compensation paid to executives and other insiders in the days and months before these bankruptcy cases were filed, and to pursue the directors who breached their fiduciary duties in approving such payments;[3] and

- As set forth in the form of complaint attached as Exhibit E (the "Secured Debt Complaint"), the Official Committees seek to challenge as either or both constructively fraudulent and intentionally fraudulent, three debt transactions the Debtors undertook between 2019 and 2021, and thereby avoid the obligations and transfers of security interests of certain Debtors in connection with each transaction, where such avoidances will increase recoveries for unsecured creditors and opioid claimants.

12. As discussed more fully below, all of the requirements for granting the Official Committees derivative standing to pursue these claims pursuant to the governing standard of *In re STN* are satisfied. The claims are colorable—indeed, strong—and not only have the Debtors failed to prosecute them, they have actively sought to foreclose anyone else's ability to do so. And prosecution of these claims is critical, because it will produce a substantial recovery source for unsecured creditors and opioid claimants who will receive far less if the Debtors and certain of the Prepetition Secured Parties have their way.

13. Not only that, but on the path charted by the Debtors' in these cases—a section 363 sale of substantially all of their assets to a group of credit bidding first lien lenders outside of a plan of reorganization—the prompt adjudication of the Proposed Claims is required. In order to properly scope the size of the lenders' credit bid, the extent of the Prepetition Secured Parties' collateral will need to be determined. So too must the value of the Debtors' prominent India operations be established, as the equity interests in the Company's Indian Affiliates are

[3] To be certain, there is no "challenge deadline" for bringing a motion seeking standing to pursue this specific cause of action. However, the Official Committees are cognizant of the fact that the Debtors seek to sell these assets to the Stalking Horse, and therefore have included the request for standing to bring these causes of action at this time in order to give the Debtors adequate time to respond, and for the Court to adjudicate the issue prior to the Debtors' attempt to sell these valuable assets.

unencumbered, and the credit bidding lenders must compensate the selling estate and its unsecured creditors if these valuable unencumbered assets are to be sold. Both resolving the valuation of the Indian Affiliates and adjudicating the Proposed Claims are critical pre-conditions to any sale of the Debtors' assets. Otherwise, a core source of value for unsecured creditors and opioid claimants may be improperly absconded in connection with a hasty and ill-advised sale process.

14. By this Motion, the Official Committees also request exclusive authority to settle these claims brought on behalf of the Debtors' estates. Any decision to pursue litigation or to settle any of the Proposed Claims will have a disproportionate economic impact on the Debtors' unsecured creditors and opioid claimants, whose interests are represented in these cases by the Official Committees. For this reason, it is essential that the Official Committees be granted exclusive authority to discuss settlement options with all parties in interest, and to bring any arrived-at settlement before the Court for approval.[4]

[4] "Sole" authority would be subject to objections from parties other than the Debtors, and approval by the Bankruptcy Court. Assuming the Official Committees are jointly prosecuting claims, sole settlement authority of the Official Committees shall be governed by such terms as agreed between the Official Committees. Sole settlement authority for the Official Committees shall provide, among other things, that unless ordered otherwise by the Bankruptcy Court at the request of an Official Committee (i) neither party would have the authority to bind the other party to settle a particular claim, (ii) to the extent one party determined to settle its prosecution of any such claims with either the Debtors and/or the first lien lenders, the other party shall have the ability to continue prosecuting such claims regardless of such settlement and such settlement would not impact the continued prosecution of the claims by the other party, and (iii) the exercise of any settlement authority would be subject to the ultimate supervision and approval of the Bankruptcy Court.

With the exception of the Prepetition Compensation Claims, which are not subject to the Challenge Deadline, the remainder of the Proposed Claims are solely causes of action subject to the Challenge Deadline established by the Cash Collateral Order. The Official Committees respectfully reserve each of their respective rights to seek standing with respect to other causes of action not subject to the deadline (or, if standing is not needed, to simply commence any such causes of action) and anticipate that the Official Committees may seek such standing at a later time. By agreement with the Debtors and the Ad Hoc First Lien Group, any applicable deadlines for the Official Committee to assert claims challenging any prepayment premium, make-whole or similar amounts to which secured creditors may assert they are entitled under their governing documents have been adjourned *sine die*. In addition, the Debtors, Prepetition Secured Parties, and the Official Committees have agreed that the Official Committees may file any challenges relating to intercompany claims (whether recharacterization, disallowance or otherwise) by February 23, 2023 without violating the Challenge Deadline, to the extent applicable.

JURISDICTION AND VENUE

15. This Court has jurisdiction to consider this Motion under 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b).

16. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

17. The statutory predicates for the relief requested herein are 11 U.S.C. §§ 1103 and 1109.

BACKGROUND

A. The Bankruptcy Cases

i. *The Debtors' Proposed Sale of Substantially All Their Assets to the Ad Hoc First Lien Group*

18. On the first day of these cases, the Debtors announced their "inten[t] to file a motion seeking Court approval to launch their 363 Sale process as embodied in the RSA." *Declaration of Mark Bradley in Support of Chapter 11 Petitions and First Day Papers* ¶ 89 [Dkt. No. 19] (the "FDA"). On November 23, 2022 the Debtors filed a motion to authorize that section 363 sale. *Debtors' Motion for an Order (I) Establishing Bidding, Noticing, and Assumption and Assignment Procedures, (II) Approving Certain Transaction Steps, (III) Approving the Sale of Substantially All of the Debtors' Assets and (IV) Granting Related Relief* ¶1 [Dkt. No. 728] (the "Sale Motion").[5]

19. The Sale Motion sought authorization, among other things, to establish bidding procedures for the sale of substantially all of the Debtors' assets, including unencumbered assets (the "Sale"), to implement certain pre-sale "Reconstruction Steps," and, ultimately, to approve the Sale. An entity formed by and for the benefit of an ad hoc group of Prepetition Secured Parties, the Ad Hoc First Lien Group, is to serve as a stalking horse bidder.

[5] Capitalized terms used herein but not defined are defined in the Sale Motion.

20. The Ad Hoc First Lien Group proposes to acquire the Debtors' encumbered assets through a credit bid "in full satisfaction" of the Prepetition First Lien Indebtedness. Sale Motion ¶19. The Ad Hoc First Lien Group has also proposed to acquire the Debtors' ***un****e*ncumbered assets—on which it has no right to credit bid—for $5 million in cash consideration. These unencumbered assets being transferred to the Ad Hoc First Lien Group include all chapter 5 avoidance actions, including claims identified in the Prepaid Compensation Complaint and the Secured Debt Complaint. Suffice it to say that the Court cannot evaluate whether $5 million in cash is sufficient consideration for all the Debtors' unencumbered assets until the scope of such unencumbered assets is clear—a process that, as described next, the Debtors have attempted to foreclose.

ii. *The Debtors' Overly Broad Stipulations That Substantially All Their Assets Are Encumbered by Perfected Security Interests*

21. Under the Cash Collateral Order, the Debtors entered into numerous stipulations relating to the validity, enforceability and perfection of the claims and liens of the Prepetition Secured Parties. In pertinent part, the Debtors stipulated to the following: (i) the aggregate principal amounts outstanding under the Credit Facilities,[6] the First Lien Notes[7] and the Second

[6] The "Credit Facilities" refers to the revolving credit facility (the "Revolving Credit Facility") and certain term loans (the "Term Loan Facility") arising under that certain credit agreement (the "Credit Agreement") dated April 27, 2017, entered into by the Debtors and their lenders, as amended, restated and otherwise modified.

[7] The "First Lien Notes" consist of: (i) the 6.125% Senior Secured Notes due 2029, issued pursuant to that certain indenture dated as of March 25, 2021, by and among, Endo U.S. Inc. and Endo Luxembourg Finance Company I S.a.r.l as issuers, Computershare Trust Company, National Association (the "First Lien Notes Indenture Trustee"), as successor indenture trustee, and the guarantors party thereto; (ii) the 7.5% Senior Secured Notes due 2027, issued pursuant to that certain indenture dated as of March 28, 2019, by and among Par Pharmaceutical, Inc., as issuer, the First Lien Notes Indenture Trustee, and the guarantors party thereto; and (iii) the 5.875% Senior Secured Notes due 2024, issued pursuant to that certain indenture dated as of April 27, 2017, by and among Endo Designated Activity Company ("Endo DAC"), Endo Finance LLC ("Endo Finance"), and Endo Finco Inc. ("Endo Finco") as issuers, the First Lien Notes Indenture Trustee, and the guarantors party thereto. The holders of First Lien Notes are the "First Lien Noteholders," and the indentures pursuant to which the First Lien Notes were issued are the "First Lien Notes Indentures."

Lien Notes,[8] (ii) the Debtors' obligations under debt secured by first liens is subject to valid, enforceable, first priority non-avoidable liens on *substantially all* of the Debtors' assets, (iii) the Debtors' obligations under debt secured by second liens is subject to valid, enforceable, second priority non-avoidable liens on substantially all of the Debtors' assets and (iv) the collateral securing these obligations consists of substantially all of the Debtors' assets.[9]

22. Having stipulated that essentially all of the various first and second lien obligations are subject to non-avoidable security interests in, and liens on, collateral consisting of substantially all of the Debtors' assets, the Debtors also waived all causes of action in connection with the Prepetition Secured Parties' liens on the collateral. These stipulations and waivers are binding on the Debtors and will become binding on all parties-in-interest, including the Official Committees, unless objected to by the Challenge Deadline (as defined in the Cash Collateral Order).

B. The Status of the Official Committees' Investigations

23. The Cash Collateral Order established procedures pursuant to which the Official Committees may investigate and, as appropriate, seek to challenge the validity, enforceability, extent, priority and perfection of the security interests and liens of the Prepetition Secured Parties, and the validity, enforceability, priority, secured status and amount of the Prepetition Secured Parties' claims and interests. *See* Cash Collateral Order ¶19(a). That is what the Official Committees seek authority to do here. As part of the negotiated Cash Collateral Order, the Official

[8] The "Second Lien Notes" consist of those certain 9.5% senior secured second lien notes due July 31, 2027, issued pursuant to that certain indenture, dated June 16, 2020 by and among Endo DAC, Endo Finance, and Endo Finco as issuers, Wilmington Savings Fund Society, FSB, as successor trustee, and the guarantors party thereto.

[9] *See* Cash Collateral Order at E.1 – E.5 (stipulating that "the Prepetition First Lien Indebtedness is secured by valid, binding, properly perfected, enforceable, and non-avoidable first priority (other than liens permitted under the Credit Agreement and the First Lien Indentures) security interests in and liens … on the "Collateral" … consisting of substantially all of each Prepetition Loan Party's assets"; and "the Prepetition Second Lien Notes Indebtedness is secured by valid, binding, properly perfected, enforceable, and non-avoidable second-priority security interests in and liens (other than liens permitted under the Second Lien Indenture) on the Prepetition Collateral consisting of substantially all of each Prepetition Loan Party's assets in favor of the Second Lien Collateral Trustee pursuant to the Second Lien Collateral Documents").

Committees agreed to cooperate with the Debtors and the Prepetition Secured Parties on a schedule providing for the adjudication of any challenges prior to a sale hearing. The Official Committees' requests for the Debtors to consent to standing were intended to accelerate adjudication of the challenge-related claims promptly—consistent with the requests of the Debtors and the Prepetition Secured Parties.

24. Since their appointment on September 2, 2022, the Official Committees have been diligently investigating the Debtors' prepetition conduct, capital structure, secured debt obligations and asset base to determine whether certain of the Debtors' assets are unencumbered and whether causes of action exist that may serve to return value to the Debtors' estates and provide a recovery to general unsecured creditors. In connection with this investigation, the Official Committees have, among other things:

- Served targeted discovery requests on the Debtors;
- Entered into Rule 2004 stipulations with the Debtors providing the Official Committees with, among other things, certain specified rights to seek discovery from the Debtors [Dkt. Nos. 917, 1003];
- Reviewed well over 10,000 documents; and
- Conducted a number of interviews with the Debtors' professionals on a wide range of topics, including the Debtors' Deposit Accounts and cash management system, and the Debtors' assets located in foreign jurisdictions, among others.

25. In addition, the Creditors' Committee presented much of the results of its investigation to the Debtors and the Ad Hoc First Lien Group, together with a proposal to resolve many of the issues identified by the Official Committees.

26. The Official Committees have not yet concluded their investigation of all potential claims but, to date, have identified at least three categories of claims that the estates possess:

i. *Unperfected and Avoidable Liens*

27. The Official Committees' investigation to date has revealed several asset categories that are either not subject to perfected liens or are subject to avoidable liens. In particular, as of the Petition Date, the Debtors held approximately $670 million across their various U.S. Deposit Accounts, essentially none of which were subject to perfected security interests.[10] The Debtors' U.S. Deposit Accounts are the subject of the Deposit Account Complaint.

28. The Debtor entities incorporated in Ireland also own certain deposit accounts, intellectual property (including intellectual property licenses), receivables, inventory, material contracts, and intercompany loans that are subject to avoidable liens. Similarly, the Debtors incorporated under Luxembourg law also purportedly granted liens over certain receivables and associated intercompany loans that are subject to avoidable liens. (The Luxembourg Debtors did not grant liens on their deposit accounts, as noted below.) Other assets, including certain insurance policies, were not properly perfected and are therefore subject to avoidance. These assets, among others, are the subject of the Disputed Assets Complaint.

ii. *Unencumbered Assets*

29. The Official Committees' investigation has likewise uncovered a number of categories of unencumbered assets where either (i) there was never a grant of a security interest over such assets, or (ii) such assets were expressly carved out of any collateral grant under the definition of "Excluded Assets" in the Credit Agreement. The Official Committees identified these assets through a painstaking review of the Debtors' security documents and exhibits, and the other discovery obtained to date. These unencumbered assets include:

[10] Exhibit 3 to the Deposit Account Complaint details the various U.S. Deposit Account holdings as of the Petition Date on a Debtor-by-Debtor basis.

- Excluded equity interests, including, among others, the Debtors' equity interests in its extremely valuable non-debtor Indian Affiliates;
- Commercial tort claims, including for patent infringement, breach of fiduciary duty, aiding and abetting breach of fiduciary duty, fraudulent conveyance, negligence, and malpractice;
- The Debtors' leasehold interests in certain real property together with certain fixtures affixed to that real property;
- Governmental licenses (to the extent liens are prohibited by applicable state law);
- Deposit accounts held in the name of any Luxembourg Debtor, including Endo Luxembourg Finance Company I S.à.r.l. (which held approximately $49 million on the Petition Date);
- Funds associated with an agreement with Taiwan Liposome Company;
- Funds associated with protective captive cell insurance; and
- Certain material agreements that have not been properly encumbered.

These assets are also the subject of the Disputed Assets Complaint.

iii. *Fraudulent Conveyance and Other Claims*

30. As discussed below, the Official Committees' investigation has likewise identified certain claims and causes of action that will serve to maximize the value of the Debtors' estates. Among them are fraudulent conveyance, preference, unjust enrichment, and breach of fiduciary duty claims associated with the Prepaid Compensation that are the subject of the Prepaid Compensation Complaint. The Committee has likewise identified fraudulent conveyance claims arising out of three debt transactions in 2019, 2020, and 2021, respectively, as discussed below.

C. The Debtors' Refusal to Prosecute the Estate's Claims

31. The Official Committees' work remains ongoing but, despite the expedited timeline for their investigation, it has become increasingly clear that significant claims and causes of action exist that must be pursued for the benefit of general unsecured creditors, opioid claimants, and the

estates at large. As set forth in the Proposed Claims, the Official Committees' investigation has uncovered viable claims that the estates hold, including against insider executives, among others.

32. On December 27, 2022, the Creditors' Committee presented the results to date of its investigation to the Debtors, including with respect to the Committee's position regarding the Debtors' Deposit Accounts, India operations, and other matters. The Creditors' Committee likewise presented its legal positions and the causes of action it had identified to the Ad Hoc First Lien Group. On January 3, 2023, the Creditors' Committee orally requested the Debtors' consent for standing to pursue the Proposed Claims. On January 10, the Creditors' Committee, via letter, formally requested the Debtors' consent for standing to pursue each of the claims and causes of action identified in the Complaints. *See* Exhibit F (January 10, 2023 letter from N. Hamerman (Kramer Levin) to A. Hogan (Skadden) requesting Debtor consent to Creditors' Committee standing to pursue specified claims, and requesting Debtor cooperation on establishing a schedule to adjudicate certain critical case issues). In an effort to narrow the scope of the claims and causes of actions for the Creditors' Committee to bring before the Court, the Creditors' Committee proposed on January 3, 2023 that the Debtors stipulate that certain assets were unencumbered or subject to avoidable liens. The Debtors have not agreed to any such stipulation. The OCC made a similar request on January 18, 2023, formally requesting via letter that the Debtors consent to the OCC's standing to pursue specific claims. *See* Exhibit G (January 18, 2023 letter from I. Shapiro (Cooley) to A. Hogan (Skadden)). The Debtors responded, indicating that they would not agree to pursue the claims or agree to allow the OCC to do so.

ARGUMENT

33. For more than 35 years, the Second Circuit has recognized that sections 1103 and 1109 of the Bankruptcy Code confer an implied, qualified right for creditors' committees to initiate

adversary proceedings on behalf of a debtor's estate, subject to the prior approval of the Bankruptcy Court. *See In re STN Enters.*, 779 F.2d 901, 904-05 (2d Cir. 1985); *In re Great Atlantic & Pacific Tea Co., Inc.*, 615 B.R. 717, 722-723 (Bankr. S.D.N.Y. 2020); *In re Lyondell Chem. Co.*, 541 B.R. 172, 200 n.128 (Bankr. S.D.N.Y. 2015). A committee may obtain derivative standing "when the trustee or debtor in possession unjustifiably failed to bring suit or abused its discretion in not suing[.]" *In re STN Enters.*, 779 F.2d at 904.

34. Courts in the Second Circuit apply a two-part test to determine if the debtor unjustifiably failed to bring suit: (a) whether the "committee presents a colorable claim or claims for relief that on appropriate proof would support a recovery"; and (b) "whether an action asserting such claim[s] is likely to benefit the reorganization estate." *See In re Am.'s Hobby Ctr., Inc.*, 223 B.R. 275, 282 (Bankr. S.D.N.Y. 1998) (quoting *STN Enters.,* 779 F.2d at 905).

35. As explained more fully below, the Proposed Claims and the circumstances of these chapter 11 cases amply justify derivative standing. Each Proposed Claim is meritorious and highly valuable, and actions prosecuting them would unquestionably benefit the Debtors' estates. At the same time, the Debtors have stipulated away or are attempting to sell the Proposed Claims, and have otherwise refused to prosecute such claims themselves out of obvious self-interest.

I. EACH OF THE PROPOSED CLAIMS IS COLORABLE

36. The Proposed Claims clearly satisfy the "colorable" requirement set forth in *In re STN*. Indeed, the "required showing is a relatively easy one to make." *Adelphia Commc'ns. Corp. v. Bank of Am., N.A. (In re Adelphia Commc'n. Corp.)*, 330 B.R. 364, 376 (Bankr. S.D.N.Y. 2005). Authorization to bring claims derivatively "should be denied only if the claims are 'facially defective.'" *Id.*; *see also In re Am.'s Hobby Ctr., Inc.*, 223 B.R. at 288. The required inquiry is "much the same as that undertaken when a defendant moves to dismiss a complaint for failure to state a claim." *In re Adelphia Commc'n. Corp.*, 330 B.R. at 376 (internal citation and quotation

marks omitted). In determining whether a claim is colorable, a court is not required to conduct a mini-trial. Instead, a court should weigh the "probability of success and financial recovery," as well as the anticipated costs of litigation, as part of a cost/benefit analysis to determine whether the prosecution of claims is likely to benefit the debtor's estate. *In re Am.'s Hobby Ctr.*, 223 B.R. at 282. The Official Committees need only demonstrate the existence of a plausible claim and demonstrate that their contentions are not frivolous—a bar clearly met by this Motion and each of the Proposed Claims. *See In re STN*, 779 F.2d at 905.

A. The Deposit Account Claims Are Colorable

37. The Deposit Account Complaint seeks declarations that the Debtors' U.S. Deposit Accounts are not subject to perfected liens, and to avoid any unperfected liens under section 544(a)(1) of the Bankruptcy Code.

38. The Prepetition Secured Parties have asserted that the Debtors' Deposit Accounts are fully encumbered by perfected security interests because the Deposit Accounts constitute identifiable proceeds of their other collateral, such as inventory. The Prepetition Secured Parties, however, have not identified, through a method of tracing, the assets they contend are the proceeds of their collateral. But even apart from this threshold deficiency, the Prepetition Secured Parties cannot establish that any U.S. Deposit Accounts were encumbered by perfected security interests as of the Petition Date for at least two distinct reasons: one contractual, and one statutory.

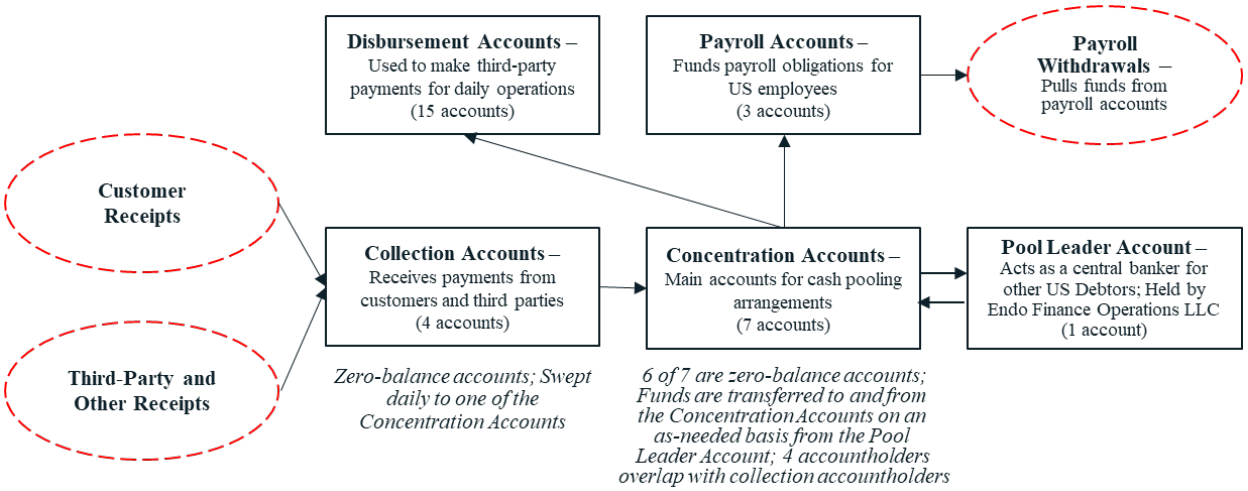
39. *First*, any lien on alleged proceeds was released under the plain terms of the governing secured debt documentation. *Second*, any lien on alleged proceeds was stripped under section 9-332(b) of the Uniform Commercial Code (the "UCC") by virtue of the daily flow of funds through the Debtors' cash management system.

i. *Background*

40. As explained more exhaustively in the Deposit Account Complaint, the Debtors use a centralized cash management system for the collection, management, disbursement and investment of funds used in their daily operations. *Motion of the Debtors for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Continue Using Existing Cash Management Systems, Bank Accounts, and Business Forms et al.* [Dkt. No. 16] at ¶11. Under this system, the Debtors maintain 26 U.S. Deposit Accounts, primarily with Bank of America. *Id.* at ¶ 13. Pursuant to the terms of the documents governing the Credit Facilities, the First Lien Notes and the Second Lien Notes, none of these accounts are subject to deposit account control agreements.

41. Essentially all of the funds received by the Debtors from inventory sales and other third-party receipts enter the Debtors' cash management system through one of four Deposit Accounts, referred to as collection accounts (collectively, the "Collection Accounts"). *Id*. at ¶13; FDA ¶118. The Collection Accounts are zero balance accounts, meaning that at the end of each business day, they have an account balance of zero. Funds are swept out of the Collection Accounts daily to one of seven "Concentration Accounts," six of which are also zero balance accounts. The funds in the Concentration Accounts are ultimately passed on to a master cash-pooling account held at yet another Debtor, Endo Finance Operations LLC (the "Pool Leader"), which acts as a central banker for the Debtors. FDA at ¶11.

42. The following schematic is a simplified depiction of the basic flow of funds through the Debtors' cash management system:



ii. *The "Excluded Accounts" and Automatic Lien Release Provisions of the Secured Debt Documents Provide for the Release of Any Prepetition Secured Party Liens*

43. As just explained, essentially all of the funds received into the Debtors' cash management system are deposited with one of four zero balance Collection Accounts. Under section 4.1 of the Collateral Trust Agreement[11] (and section 9.13 of the Credit Agreement and section 12.06 of the Senior Secured Indentures)[12], any lien on those funds (including any lien that could be established through tracing of proceeds) is released upon such deposit.[13] That is because those debt documents call for the automatic release of liens on any "Excluded Asset"—and

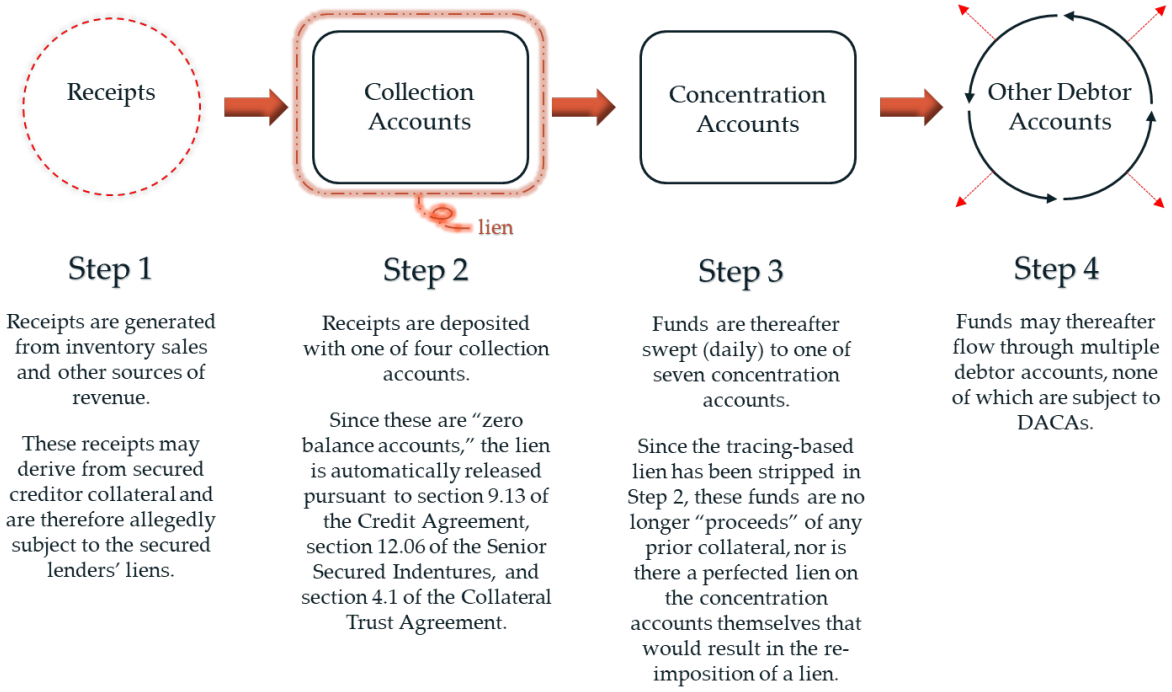
[11] As defined in the Deposit Account Complaint.

[12] The indentures pursuant to which the First Lien Notes and Second Lien Notes were issued are referred to herein as the "Senior Secured Indentures".

[13] *See* Collateral Trust Agreement, § 4.1(a)(4) ("The Collateral Trustee's Liens upon the Collateral will be automatically, and without the need for any consent or approval of any Secured Party or the Collateral Trustee…, released in any of the following circumstances:… as to any property of a Grantor that becomes an Excluded Asset (as defined in the Credit Agreement)"); Credit Agreement, § 9.13(d) ("Upon…any property of a Loan Party becoming an Excluded Asset…the security interests in such Collateral shall be automatically released."); Senior Secured Indenture §12.06 ("The Collateral securing the Obligations will automatically and without the need for any further action by any Person be released in any of the following circumstances: (1) in whole or in part, as applicable, as to all or any portion of property subject to such Liens…that is or becomes an Excluded Asset.").

"Excluded Assets" are defined under the Credit Agreement to include "Excluded Accounts," which in turn include zero balance accounts.[14]

44. Following this lien release, funds are thereafter transferred to different Deposit Accounts, but the lien on such funds that existed by virtue of those funds ostensibly being proceeds of collateral has been released, and the funds are thereafter not subject to a perfected security interest. The following illustration highlights this contractual lien release:



iii. *Any Lien on Debtor Funds Is Released Upon a Transfer to a Different Debtor Entity*

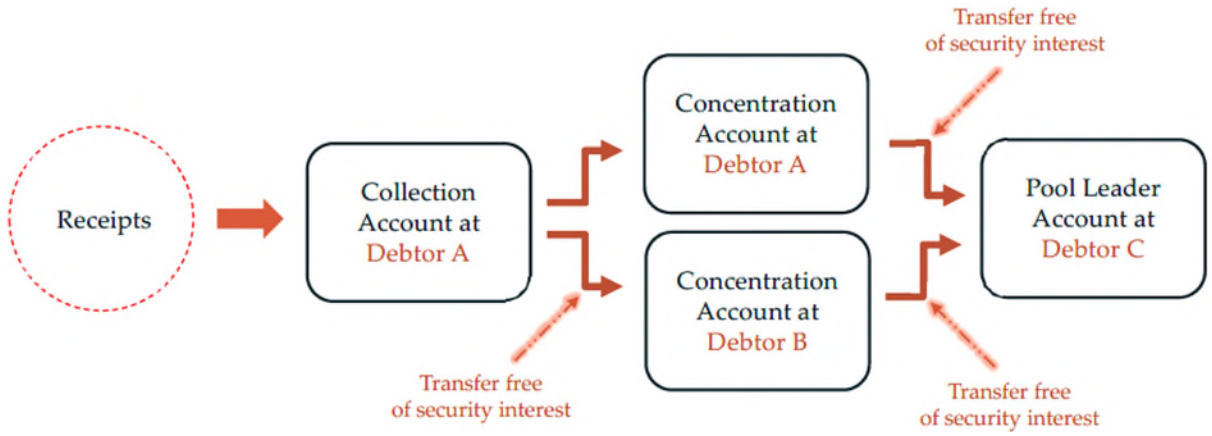
45. The facts underlying the statutory lien release of any Collateral Trustee[15] lien on Deposit Accounts are equally straightforward. As detailed above, essentially all of the funds received by the Debtors enter through their Collection Accounts, then make their way to the Concentration Accounts, and are subsequently transferred to the Pool Leader account which is

[14] "Excluded Accounts" is defined to include "zero balance accounts so long as the balance in such account is zero at the end of each Business Day." Credit Agreement, § 1.01, definition of "Excluded Accounts", subpart (v).

[15] "Collateral Trustee" shall have the meaning ascribed to it in the Deposit Account Complaint.

held at a different Debtor. Section 9-332(b) of the UCC provides that "[the] transferee of funds from a deposit account takes the funds free of a security interest in the deposit account unless the transferee acts in collusion with the debtor in violating the rights of the secured party." UCC § 9-332(b).

46. Accordingly, each Debtor that holds a Deposit Account to which funds are transferred from a separate Debtor takes those funds free of a security interest in the original Deposit Account. These transfers occur with persistent regularity, and implicate essentially every dollar in the Debtors' domestic cash management system. As of the Petition Date, therefore, nearly every U.S. Deposit Account balance was no longer subject to the Collateral Trustee's tracing-based liens since essentially every dollar had been transferred from one Debtor's deposit account to another Debtor's deposit account free of any security interest pursuant to section 9-332(b) of the UCC. The following illustration highlights this statutory lien release:



47. These contractual and statutory hurdles prevent the Collateral Trustee from establishing that it holds perfected liens on the Debtors' U.S. Deposit Accounts. The Official Committees should be granted standing to pursue these meritorious claims for the benefit of unsecured creditors and opioid claimants.

B. The Disputed Asset Claims Are Colorable

48. The Official Committees also seek standing to (i) pursue declarations that various Debtor assets are unencumbered and (ii) avoid certain unperfected or otherwise avoidable liens over Debtor assets. As explained in further detail in the Disputed Assets Complaint, no security interests were ever granted over certain Debtor assets, while certain other assets fall into categories that were expressly carved out of the Prepetition Secured Parties' collateral package through the Credit Agreement's definition of "Excluded Assets." There should, thus, be no doubt as to the unencumbered nature of these assets. This complaint also seeks to avoid, under section 544(a) of the Bankruptcy Code, liens on certain assets held by various (primarily foreign) Debtors—among them assets that are subject to mere "floating" charges under Irish law. For the reasons explained below, these claims are plainly colorable.

i. *Assets Not Subject to Any Security Interest*

49. The Disputed Assets Complaint seeks a declaration that certain Debtor assets are not subject to any security interest, and are therefore unencumbered. These assets include (i) the deposit accounts owned by Debtors incorporated under Luxembourg law, (ii) various intercompany loans and receivables held by the Luxembourg-based Debtors, and (iii) commercial tort claims, among others.

50. None of the prepetition security documents grant security interests in bank accounts owned by any of the Luxembourg Debtors, including the account held in the name of Endo Luxembourg Finance Company I S.a.r.L. which contained approximately $49 million on the Petition Date. Accordingly, there should be no legitimate grounds from which the Prepetition Secured Parties can argue that these funds constitute lender collateral. The Proposed Claims related to these accounts are plainly colorable.

51. The conclusion should be the same for the various intercompany loans and receivables held by the Luxembourg-based Debtors. The pledge agreements which purportedly granted liens in intercompany loans and receivables did not sufficiently identify in the appropriate schedules – as they must have for any lien to have attached – the subject intercompany loans or receivables and obligors. To date, despite repeated requests, the Official Committees have not received evidence that the Prepetition Secured Parties had sufficiently identified prior to the Petition Date such intercompany loans and receivables. The Proposed Claims for these intercompany loans and claims are likewise plainly colorable.

52. Finally, no Prepetition Secured Party has taken any of the required steps to grant a security interest in commercial tort claims owned by U.S. Debtors. Under the UCC, any commercial tort claims must be identified with some specificity after the claims comes into existence. No commercial tort claims were ever so identified on any security document. Therefore, any commercial tort claims are unencumbered sources of value for general unsecured creditors and opioid claimants.

ii. *"Excluded Assets" Carved Out of the Lenders' Collateral Package*

53. As is customary in leveraged finance transactions, the secured transaction documents here purport to grant to the Prepetition Secured Parties security interests in broad categories of assets of the Debtors *other than Excluded Assets*. These Excluded Assets include (i) certain equity interests of certain Endo subsidiaries, including the valuable Indian Affiliates, (ii) certain material agreements that contain provisions prohibiting the grant of a security interest over such agreements, (iii) real property leases and fixtures affixed to real property that is not collateral, (iv) certain governmental licenses that prohibit the granting of liens on such licenses; and (v) certain insurance policies that prohibit the granting of liens on such policies. Assets that fall into one of these Excluded Assets categories represent sources of unencumbered value for

unsecured creditor recoveries for which the Official Committees should be granted standing to establish.

54. One such category of Excluded Assets is "Excluded Equity Interests," which consist of, among other things, the equity interests in subsidiaries that do not fall within the Credit Agreement's definition of Material Subsidiary, and which are not guarantors of the Debtors' prepetition debt obligations. The equity interests of at least eight entities in the Endo corporate structure, including the valuable Indian Affiliates, satisfy these criteria, and are therefore carved out of the lenders' collateral package.[16]

55. That the equity interests in the Debtors' valuable Indian Affiliates are unencumbered – a fact which the Debtors themselves have confirmed by email (*see* Exhibit H) – bears emphasis in light of the India operations' fundamental importance to the Debtors' business. Notwithstanding the fact that these Indian Affiliates do not constitute "Material Subsidiaries" under the relevant Credit Agreement definition, roughly half of the Company's total headcount is part of the India operations, and the Indian Affiliates are responsible for manufacturing a significant amount of the Company's generic products, which are essential to the Company's financial success. Not surprisingly, the Debtors' filings with this Court have highlighted the critical importance of the India operations, and how any disruption associated with the India entities would yield grave consequences. FDA ¶136 ("Because of the Company's substantial manufacturing and R&D presence in India, [the Debtors' CFO] believe[s] that continuing [certain India-related] payments in the ordinary course is essential to prevent disruption in the Company's

[16] The following subsidiaries each satisfy the criteria for "Excluded Equity Interests" and are thus carved out of the lenders' collateral package: Par Formulations Private Limited, Par Biosciences Private Limited, Endo Ventures Cyprus Limited, Par Active Technologies Private Limited, Astora Women's Health Bermuda ULC (Bermuda), Astora Women's Health Technologies (Ireland), Astora Women's Health Ireland Limited (Ireland), CPEC LLC (Delaware), and Endo Pharma Information Consulting (Suzhou) Company Limited (China).

global operations….The Indian Non-Debtor Affiliates are critical to the viability of the Company's current and future product development and manufacturing operations….").

56. Another Excluded Asset category consists of contracts, agreements, and leases that contain provisions prohibiting the grant of a security interest, so long as such prohibition is not overridden by the UCC Anti-Assignment Override Provisions.[17] Such contracts are generally governed by non-U.S. law. Among other things:

- Endo Ventures Limited, a Debtor, is party to a commercialization agreement with third-party, non-Debtor Taiwan Liposome Company ("TLC"), [redacted]
- [redacted]

Accordingly, each such contract, [redacted] should be held to be excluded from the Prepetition Secured Parties' collateral package.

57. Similarly, certain insurance policies are not assignable, and are therefore unencumbered, and certain government licenses prohibit or restrict security interests, and are therefore unencumbered.

[17] The "Anti-Assignment Override Provisions" refer to sections 9-406 through 9-409 of the UCC.

58. Real property leases, detailed in the Disputed Asset Complaint, together with affixed fixtures, are also included in the definition of Excluded Assets, and are therefore not part of the Prepetition Secured Parties' collateral package.

iii. *Liens on Certain Assets Are Subject to Avoidance*

59. The Disputed Assets Complaint also seeks the avoidance of certain liens, including (i) liens over inventory, deposit accounts, material agreements, intellectual property (including intellectual property-related agreements), receivables, and intercompany loans owned by Irish Debtors, (ii) liens over receivables, including intercompany loans, owned by Luxembourg Debtors, and (ii) liens over certain insurance policies.

60. The Debtors own certain insurance policies that may have been pledged to the Prepetition Secured Parties, but the appropriate steps were not taken to perfect liens on these assets. Because these assets are subject to unperfected liens, a hypothetical judgment creditor contemplated by section 544(a) of the Bankruptcy Code could obtain a lien that ranks higher in priority than that of the Prepetition Secured Parties, and the liens over these assets may be avoided.

61. The Disputed Assets Complaint likewise seeks the avoidance of liens over certain assets held by Irish and Luxembourg Debtors. In the case of the Irish Debtors, the assets in question are subject merely to "floating" charges under Irish law, which rank junior in priority to the liens held by a hypothetical judgment lien creditor contemplated by section 544(a) of the Bankruptcy Code, and are therefore avoidable. In the case of Luxembourg Debtors, [redacted] and thus any associated attachment of a lien constitutes a transfer subject to avoidance under section 549.

62. Section 544(a) of the Bankruptcy Code contemplates the avoidance of any lien that could be avoided by a hypothetical creditor who extends credit on the petition date and enjoys a

lien that a judgment lien creditor could obtain, regardless of the actual existence of such creditor.[18] In determining the rights of a hypothetical creditor under section 544(a), courts look to the applicable law of the jurisdiction governing the assets in question—including, as is the case here, foreign law. *See, e.g. SK PM Corp. v. Sharp (In re SK Foods, L.P.)*, No. EC-12-1624, 2013 Bankr. LEXIS 5195 (B.A.P. 9th Cir. Dec. 10, 2013) (looking at Australian law to determine the rights of a trustee as a hypothetical judgment lien creditor where the assets were stock certificates in an Australian company); *see also Ho-Cak Fed. v. Herrell (In re DeCora)*, No. 08-cv-315, 2008 U.S. Dist. LEXIS 87692 (W.D. Wis. Oct. 27, 2008) (looking to tribal law to determine the extent of a trustee's rights as a hypothetical judgment lien creditor where the assets in dispute were created and governed by tribal law).

63. The fifteen Debtors that are incorporated in Ireland entered into debentures governed by Irish law that collectively purported to create security interests—including "charges" and "security assignments" under Irish law—over substantially all of the Irish Debtors' assets (including, among other things, (i) receivables, (ii) equity interests that various Debtors own in other Irish Debtors, (iii) material agreements, (iv) deposit accounts (including approximately $305 million reflected on the balances thereof as of the Petition Date), (v) inventory, (vi) intellectual property and intellectual property licenses owned by or for the benefit of an Irish Debtor (including the licenses relating to Xiaflex), and (vii) intercompany loans.

64. Under Irish law, there are two types of charges—fixed charges and floating charges. A fixed charge is a charge over specifically identified assets over which the secured party retains

[18] 11 U.S.C. § 544(a –(a)(1) ("The trustee shall have, as of the commencement of the case, and without regard to any knowledge of the trustee or of any creditor, the rights and powers of, or may avoid any transfer of property of the debtor or any obligation incurred by the debtor that is voidable by (1) a creditor that extends credit to the debtor at the time of the commencement of the case, and that obtains, at such time and with respect to such credit, a judicial lien on all property on which a creditor on a simple contract could have obtained such a judicial lien, whether or not such a creditor exists[.]").

some degree of control. A floating charge is a charge that hovers over a shifting pool of assets and "crystallizes" into something similar to a fixed charge upon the occurrence of certain triggering events, including certain events delineated by statute (e.g., an order for appointment of a receiver) or by the relevant security instrument.[19]

65. While the Prepetition Secured Parties may maintain that the Irish debentures grant them a fixed charge over these assets, in fact none of the debentures, other security documents and schedules specifically identify the relevant assets—as is required under Irish law to obtain a fixed charge. These charges should therefore be characterized as floating charges.[20]

66. Under Irish law, certain creditors—including unsecured creditors with employee-compensation claims arising, for example, from an employment contract—rank senior in recovery to holders of floating charges in an Irish liquidation proceeding. *See* Companies Act, 2014 (Act No. 38/2014) (Ir.), sec. 621(2)[21] ("(2) In a winding up there shall be paid in priority to all other debts—….(b) all wages or salary—….(i) whether or not earned wholly or in part by way of commission, or (ii) whether payable for time or for piece work, of any employee in respect of

[19] *See Re J.D. Brian Ltd t/a East Coast Print and Publicity*, [2015] IESC 62 (Ir.) at ¶38 *citing In re Keenan Bros. Ltd.*, [1985] I.R. 401 (Ir.) at p. 418 with approval ("a fixed charge takes effect, upon its creation, on the assets that are expressed to be subject to it. . . and the company will be able to deal with those assets only to the extent permitted by the terms of the charge. . . [I]n the case of a floating charge. . . it is of its nature, dormant and hovering, it does not attach to the assets expressed to be subject to it so as to prevent the company from continuing to deal with those assets in the ordinary course of business, until the happening of some event, such as the appointment of a liquidator, which shows that the company is no longer in business, or until the chargee intervenes.")

[20] That the Irish Debtors' assets may be subject to a mere floating charge and that such Prepetition Secured Parties' interests could be subordinated to recovery of creditors was expressly disclosed in the offering memorandum related to certain Debtor note issuances. *Offering Memorandum and Consent Solicitation Statement dated May 14, 2020 issued by Par Pharmaceutical, Inc., Endo Designated Activity Company, Endo Finance LLC and Endo Finco Inc. for Offers to Exchange Certain First Lien Notes*, at p. 49 ("Under Section 621 of the Irish Companies Act 2014 (as amended)[(the "Companies Act")], in a winding-up of an Irish company, certain preferential debts. . . have priority over debts secured by a floating charge. If the assets of the relevant company available for the payment of general creditors are insufficient to pay the preferential debts, they are required to be paid out of the property subject to the floating charge. Such preferential debts would comprise, among other things. . . social security and pension scheme contributions and remuneration, salaries and wages of employees and certain contractors.").

[21] Statue available at https://www.irishstatutebook.ie/eli/2014/act/38/section/621/enacted/en/html.

services rendered to the company during the period of 4 months before the relevant date, (c) all accrued holiday remuneration becoming payable to any employee….on the termination of the employee's employment before or by the effect of the winding up order or resolution."). Accordingly, under Irish law, a hypothetical judgment creditor (i.e., a creditor with an unsatisfied judgment based on an employment-related claim) could obtain a priority in recovery ahead of a creditor holding a floating charge. There is, therefore, a hypothetical judgment creditor under Irish law that could rank higher in priority to the Prepetition Secured Parties with respect to these particular assets for the purposes of section 544(a).

67. Moreover, because the Prepetition Secured Parties' floating charge has not yet "crystalized" into something equivalent to a fixed charge, the assets subject to the lenders' floating charge may still be utilized in the ordinary course of the Debtors' business (including to satisfy judgments). *Re J.D. Brian Ltd*, [2015] IESC at ¶38; *see Robson v. Smith*, [1895] 2 Ch 118. A contract counterparty that pursued a breach of contract claim against the Debtors, and that received a judicial lien in respect of such claim, may look to assets that are subject to an un-crystallized floating charge to satisfy the hypothetical judgment lien. This is so because, under Irish law, a breach of contract creditor may, in the ordinary course of business, take enforcement steps against specific assets that are otherwise subject to a floating charge where the floating charge has not yet crystalized. Under these circumstances, the hypothetical judgment lien creditor would recover ahead of the floating chargeholder and thus, the floating charge may be voided under section 544(a) of the Bankruptcy Code.

68. Similarly, the Luxembourg Debtors own certain intercompany loans and receivables, and purported to grant security interests ("pledges") in those loans and receivables to the Prepetition Secured Parties under Luxembourg law. But under the applicable contract, the

liens only extended to obligations in which both the obligor and the obligation are specifically identified in the schedules to such pledge agreements. *See, e.g.,* Receivables Pledge Agreement, by and among Endo Luxembourg Finance Company I S.a.r.l., dated as of April 27, 2017, § 2.1(a), §1.2 (definitions of "Collateral" and "Obligor"). As discussed above, the prepetition schedules attached to the pledge agreements did not identify any obligations and, in many cases, any obligors, thereby indicating that no receivables or intercompany loans were properly pledged. [redacted] The purported expansion of the liens on these receivables and intercompany loans is avoidable under section 549 of the Bankruptcy Code. But, in any case, certain existing intercompany loans held by Luxembourg Debtors were not identified in any schedules and therefore would be unencumbered on a number of grounds.

69. Thus, using section 544(a)'s strong-arm powers and the powers under section 549, the Debtors have a colorable basis for asserting a claim as a hypothetical judgment lien creditor to avoid the floating charges on the receivables, Deposit Accounts, inventory, material agreements and intellectual property licenses that were not specifically identified in the Irish security documents, and also with respect to the above-referenced receivables owned by the Luxembourg Debtors that were not properly identified in the schedules to the relevant pledge agreements as of the Petition Date.

C. The Prepaid Compensation Claims Are Colorable

70. The Prepaid Compensation Complaint seeks to avoid roughly $94 million in Prepaid Compensation payments (the "Prepetition Compensation Claims") to insiders that were made just before (and with full knowledge that) the Debtors would file bankruptcy.[22] The assertion

[22] To be sure, the Debtors paid approximately $95 million in Prepaid Compensation. Transfers of Prepaid Compensation to certain transferees are not currently being sought to be avoided. The Official Committees reserve

that Prepetition Compensation Claims were preferences and/or fraudulent transfers is not only colorable, but is strong and straightforward—as are the claims that certain directors violated their fiduciary duties by authorizing such payments.

i. *Background*

71. As explained in greater detail in the Prepaid Compensation Complaint, the Debtors, at the direction of their board, prepaid their executives nearly $95 million that was either expressly attributable to the post-bankruptcy filing period or otherwise would have been payable post-filing—precisely in an attempt to evade restrictions imposed by the Bankruptcy Code on such payments. Of these payments, more than half – or about $55.4 million – were made to the Debtors' four most senior executives, with the remainder – another approximately $39.4 million – made to another 18 very senior executives.

72. First, between November 3, 2021, and December 23, 2021, the Debtors caused certain insiders to be paid a total of approximately $58.3 million on account of (a) then outstanding compensation awards that were scheduled to be paid over the course of the next several years and (b) compensation awards for the year 2022. The Debtors then, on or about July 15, 2022, caused certain insiders to be paid approximately $13.2 million on account of (a) then outstanding compensation awards that were scheduled to be paid over the course of the next several years and (b) compensation awards for the year 2023. Finally, on or about August 12, 2022, the Debtors caused certain insiders to be paid approximately $22.1 million on account of compensation awards for the year 2023.

all rights to amend or to later seek to avoid transfers to additional recipients of Prepaid Compensation. Nevertheless, the Official Committees do seek to hold the relevant directors responsible for all of the approximately $95 million in Prepaid Compensation that such directors allowed to be paid in violation of their fiduciary duties.

73. All of the payments were made within one year of the Petition Date, and payments totaling approximately $35 million were made within the month preceding filing. These payments nakedly preferred the insiders who presided over Endo's bankruptcy to general unsecured creditors and opioid claimants (whom the Debtors now assert will receive little to no recovery). These payments provided the executives with compensation far in excess of any benefit received by prepetition Endo, and were transparently designed to avoid the scrutiny of the Court and creditors.

74. These payments were likewise made at a time when the relevant Debtors were balance sheet insolvent based on their funded debt exposure alone, and even more so if one were to include, in cases where such Debtors were named defendants, understated opioid and other litigation liabilities, including substantial numbers of lawsuits related to vaginal mesh, price-fixing, and other non-opioid-related litigations. As the Prepaid Compensation Complaint pleads, by the Petition Date, multiple Debtors had been sued in well over 3,000 opioid-related cases alleging claims worth hundreds of billions of dollars.[23] Collectively, these creditor groups alleged claims worth hundreds of billions of dollars arising from opioid and non-opioid practices, based on conduct and sales. This does not even include filed non-opioid litigation claims and unfiled opioid litigation claims that would have been filed but for the bankruptcy proceeding.

ii. *The Prepaid Compensation Payments Were Preferences*

75. The Proposed Claim that the Prepaid Compensation should be avoided as a preference is straightforward and unassailable. The Debtors entered into separate agreements with [redacted] executive obligating them to make bonus payments. Days or weeks later, they then transferred $93.6 million in bonus payments to the insiders in between November 1, 2021, and August 12, 2022, (November being approximately nine months, and August 12, 2022, being

[23] Endo Int'l plc, Annual Report (Form 10-K) (Feb. 26, 2020) at F-45.

four days before the Petition Date). Because these transfers occurred during the preference period, were on account of antecedent debt, were made while the Debtors were insolvent, and enabled the transferees (all of whom were insider unsecured creditors) to receive far more than they would have in a chapter 7 liquidation, they are avoidable preferences. *See generally* 11 U.S.C. § 547(b); *In re Teligent, Inc.*, 380 B.R. 324, 338-39 (Bankr. S.D.N.Y. 2008).[24]

iii. *The Prepaid Compensation Payments Were Intentional Fraudulent Transfers*

76. Under the Bankruptcy Code, a transfer made within two years before a chapter 11 bankruptcy filing can be avoided if it is made by the debtor "with actual intent to hinder, delay, or defraud any entity to which the debtor was or became, on or after the date that such transfer was made or such obligation was incurred, indebted[.]" 11 U.S.C. § 548(a)(1)(A).[25] As the statutory language, phrased in the disjunctive, makes clear, an intent to "hinder" or "delay" suffices, even in the absence of an intent to "defraud." *In re Tronox Inc.*, 503 B.R. 239, 278 (Bankr. S.D.N.Y. 2013) (stating that intentional fraud is found where there is an intent either to hinder or delay creditors).

77. Intent may be inferred from circumstantial evidence. *Sharp Int'l Corp. v. State St. Bank & Trust Co. (In re Sharp Int'l Corp.)*, 403 F.3d 43, 56 (2d Cir. 2005). Courts have considered a variety of factors or "badges of fraud" to determine whether actual intent exists. *Adelphia Recovery Tr. v. Bank of Am., N.A.*, 624 F. Supp. 2d 292, 335 (S.D.N.Y. 2009). Some of these badges, which are not exclusive and need not all be present to find actual fraud, include (i) the general chronology of events (such as whether the transfer was done just prior to the bankruptcy

[24] In addition, the Official Committees have determined, based on due diligence to date, that there are no viable affirmative defenses available to the putative defendants.

[25] Applicable non-bankruptcy law, made applicable under section 544(b) of the Bankruptcy Code, is similar.

filing), (ii) whether the debtor was insolvent or became insolvent after the transfer, and (iii) whether the transfer was made to an insider. *In re Silver State Holdings*, No. 19-41579, 2020 WL 7414434, at *18-19 (Bankr. N.D. Tex. Dec. 17, 2020). In *In re Enron Corp.*, the court found an intent to hinder or delay creditors where the debtor paid bonuses "in direct anticipation" of an imminent bankruptcy filing "to avoid perceived delays" that would result from subjecting such payments to bankruptcy court approval, and to place the funds outside of the advance scrutiny of the creditors and the bankruptcy court. 2005 WL 6237551, at *39-40 (Bankr. S.D. Tex. Dec. 9, 2005).

78. Here, the Prepaid Compensation easily fits the criteria of an actual fraudulent transfer. To begin with, the transfers fell well within the two-year look-back period in the Bankruptcy Code. 11 U.S.C. § 548(a)(1).

79. In addition, the Debtors' intent to hinder or delay their creditors is apparent from their own actions and admissions. The Debtors adopted and approved of the Prepaid Compensation scheme in anticipation of bankruptcy. Unlike earlier programs, the compensation was paid in cash, up front, creating the inference that the Debtors were trying to avoid subjecting the payments to Court and creditor scrutiny. And if that inference were not obvious enough, the Company understood that prepaying executive compensation before a bankruptcy filing would mitigate the risk of influence from courts and creditors and avoid potential uncertainties from court and creditor oversight. This is precisely the type of evidence that the *Enron* Court found probative of an intent to hinder or delay creditors. *See Enron*, 2005 WL 6237551, at *39 ("The payments were made in direct anticipation of the imminent filing of the Enron bankruptcy and to avoid the perceived delays in timely obtaining authority from the bankruptcy court, if any such authority could be obtained . . . ."). These claims too are plainly colorable.

iv. *The Prepaid Compensation Payments Were Constructively Fraudulent Transfers*

80. A transfer is constructively fraudulent if the transferor "received less than a reasonably equivalent value in exchange for such transfer or obligation," and either:

> (I) was insolvent on the date that such transfer was made or such obligation was incurred, or became insolvent as a result of such transfer or obligation;
>
> (II) was engaged in business or a transaction, or was about to engage in business or a transaction, for which any property remaining with the debtor was an unreasonably small capital;
>
> (III) intended to incur, or believed that the debtor would incur, debts that would be beyond the debtor's ability to pay as such debts matured; or
>
> (IV) made such transfer to or for the benefit of an insider, or incurred such obligation to or for the benefit of an insider, under an employment contract and not in the ordinary course of business.

11 U.S.C. § 548(a)(1)(B)(ii).[26]

81. Here, the Prepaid Compensation was made for less than reasonably equivalent value and meet at least two of the four residual criteria: it was made while the Debtors were insolvent and it was made to and for the benefit of insiders under an employment contract and not in the ordinary course of business. The Prepaid Compensation Complaint easily satisfies each of these prongs. The Debtors made the Prepaid Compensation payments without obtaining anything of substance from the insiders. The Debtors did not obtain better performance from the insiders as a result of the Prepaid Compensation; the Debtors did not obtain promises from the insiders to remain with the Debtors that did not exist prior to paying the Prepaid Compensation; and any value that may have been obtained on account of the Prepaid Compensation did not inure to the prepetition Debtors but to the estates. Furthermore, the Debtors were clearly insolvent as a result

[26] Applicable non-bankruptcy law is similar (absent the fourth prong).

of their funded and, where applicable, other liabilities, and the Debtors decided to make the Prepaid Compensation payments pursuant to employment agreements not in the ordinary course.

v. *The Debtors' Board of Directors Breached Their Fiduciary Duties in Approving the Prepaid Compensation*

82. The directors, in their capacity as such, owed fiduciary duties, including, but not limited to, of care, loyalty, and good faith to the Debtors and its residual claimants in deciding whether to authorize executive bonuses in contemplation of filing a bankruptcy petition, in deciding who should receive a bonus, and in deciding the amounts of the bonuses. [redacted] In contemplation of the bankruptcy filing and in order to defeat the limitations of section 503 of the Bankruptcy Code, the directors authorized the Debtors to make these transfers. Rather than complying with applicable law and developing a program that would comply with the Bankruptcy Code, the directors instructed the Debtors to pay more than $94 million of cash payments in anticipation of its bankruptcy filing to evade the limitations imposed by the Bankruptcy Code on executive compensation.

83. Accordingly, the directors breached their fiduciary duties by, among other things, (a) failing to act in a deliberate and knowledgeable way in identifying and exploring alternative executive compensation plans; (b) enacting an executive bonus plan that was outside the bounds of reason; (c) consciously and intentionally disregarding their responsibilities and endorsing efforts to circumvent applicable law regarding executive bonuses; and (d) acting in a manner that cannot be attributed to rational business purpose. Furthermore, certain of the directors breached their duties of loyalty by authorizing and approving the Prepetition Compensation program as to themselves.

84. Thus, the Committee should be authorized to pursue each of these colorable claims arising from the Prepaid Compensation.

D. The Secured Debt Claims Are Colorable

85. The Secured Debt Complaint seeks to avoid—as both constructively and actually fraudulent—obligations that Debtors incurred in connection with (1) a June 2020 notes exchange (the "2020 Uptier") and (2) a 2019 refinancing (the "2019 Uptier"), as well as related liens. It also seeks to avoid obligations and liens that certain Debtors incurred in connection with a 2021 refinancing of a term loan (the "2021 Refinancing"). The Secured Debt Complaint pleads facts sufficient to state each of these claims and therefore each is colorable.

i. *The 2020 Uptier Was Constructively Fraudulent*

86. Section 544(b) of the Bankruptcy Code allows for the avoidance of "any transfer of property of the debtor or any obligation incurred by the debtor that is voidable under applicable law." The Uniform Voidable Transactions Act (the "UVTA"), in turn provides, in pertinent part, that a "transfer or obligation incurred by a debtor is voidable . . . if the debtor . . . incurred the obligation without receiving a reasonably equivalent value in exchange for the . . . obligation, and the debtor was insolvent at that time."[27] UVTA § 39-23.5(a). The 2020 Uptier was a constructive fraudulent transaction under this standard, as explained in detail in the Secured Debt Complaint and below.

87. Through the 2020 Uptier, the Debtors gave noteholders newly created notes along with $47 million in cash for old notes. The new notes consisted of three tranches: First Lien Notes, Second Lien Notes, and unsecured notes. The new notes, plus the cash, had an aggregate face

[27] Both New York, where certain Debtors have their principal place of business, and Pennsylvania, where other Debtors have their principal place of business, have enacted the UVTA, including this provision. *See* NY DCL § 273(a)(2); 12 Pa.C.S.A. Stat. § 5105(a). Should New York law apply, the 2019 Uptier may alternatively be subject to a similar standard under the New York UVTA's predecessor, the New York Fraudulent Conveyance's Act ("NYFCA"). *See* 2006 NY DCL § 273.

value of $2.766 billion. This bundle of notes and cash was exchanged for three tranches of old notes—all unsecured—which were retired through the transaction. The old notes also had an aggregate face value of $2.766 billion.

88. The 2020 Uptier appeared on paper to be an exchange of close to identical value, when considering only the face value of the new and old notes. But the 2020 Uptier was a bad deal for the Debtors. Both the new and old notes were traded on debt markets and therefore the then-market value of these notes can be determined by the trading prices in the lead up to the 2020 Uptier (for the old debt) and immediately after the 2020 Uptier (for the new debt). The old notes had an aggregate market value of roughly $2.016 billion leading up to the exchange. In contrast, the new notes had an aggregate market value of roughly $2.420 billion following the exchange—roughly $400 million more. This difference in value was because two of the tranches of the new notes were secured, whereas all of the old debt was unsecured, and the new notes had a higher coupon, meaning noteholders would receive more in interest.

89. Not only did the Debtors give noteholders notes worth over $400 million more than the notes the 2020 Uptier retired, the Debtors also gave noteholders $47 million in cash, meaning the total consideration provided by the Debtors in the 2020 Uptier was worth **$450 million** more than the consideration provided by the noteholders. This was not an exchange of reasonably equivalent value. *See In re Adler, Coleman Clearing Corp.*, 247 B.R. 51, 106, (Bankr. S.D.N.Y. 1999), *aff'd*, 263 B.R. 406 (S.D.N.Y. 2001) (quoting favorably that "an important element of [this analysis] is fair market value"); *see also Armstrong v. Collins*, No. 01CIV.2437(PAC), 2010 WL 1141158, at *29 (S.D.N.Y. Mar. 24, 2010) (explaining that the Court must "delve beyond form to the substance of the transaction") (citation omitted). Because the Debtors that issued this new debt

were all insolvent at the time, the 2020 Uptier was a constructive fraudulent transaction under the UVTA.

90. From the perspective of the Debtors that had guaranteed the old debt, the 2020 Uptier was even further from an equivalent exchange of value. Before the 2020 Uptier, these Debtors were guarantors of the old notes and after the 2020 Uptier they were still guarantors of the same amount (in face value) of new notes. However, while the old notes had been unsecured, these Debtors were required, as part of the 2020 Uptier, to provide their assets as collateral for the new notes. Regardless of the market value of the new or old notes, these Debtors did not receive any consideration for providing these new, valuable security interests. *See In re TOUSA, Inc.*, 680 F.3d 1298, 1302, 1311-12 (11th Cir. 2012) (affirming bankruptcy court's findings that affiliates did not receive reasonably equivalent value for granting liens to support new debt incurred to settle obligations on unsecured debt that the affiliates previously guaranteed); *see also Rubin v. Manufacturers Hanover Tr. Co.*, 661 F.2d 979, 991 (2d Cir. 1981) ("if the debt secured by the transaction is not the debtor's own, then his giving of security will deplete his estate without bringing in a corresponding value from which his creditors can benefit").[28]

ii. *The 2019 Uptier Was Constructively Fraudulent*

91. The Secured Debt Complaint adequately pleads that the 2019 Uptier was a constructively fraudulent transaction for reasons similar to the 2020 Uptier. In the 2019 Uptier, the Debtors issued newly created first lien notes (the "New First Lien Notes") with a face value of

[28] Named Opioid Defendant Par Pharmaceutical, Inc. ("PPI"), the issuer of the New First Lien Notes, was uniquely harmed by the Uptiers. PPI was made to issue new debt, but the proceeds of this new debt in PPI's name were immediately used to retire the old notes issued by *other* Endo entities. *See Marquis Products, Inc. v. Conquest Carpet Mills, Inc.*, 150 B.R. 487, 491 (Bankr. D. Me. 1993) ("[A]s a general rule, an insolvent debtor receives 'less than a reasonable equivalent value' where it transfers its property in exchange for a consideration which passes to a third party.") (citations omitted).

$1.5 billion. With the proceeds of these notes, the Debtors redeemed four tranches of old unsecured notes. The old notes had an aggregate face value of $1.643 billion.

92. As with the 2020 Uptier, the 2019 Uptier was not an exchange of reasonably equivalent value. The Debtors issued the new notes and received $1.5 billion in proceeds. But the market value of the new notes was actually approximately $1.547 billion. This means the buyers of the new notes received roughly $47 million more in value than they paid in proceeds. The Debtors then used these $1.5 billion in proceeds to redeem old notes that had a market value of only approximately $1.44 billion, meaning the Debtors paid $54 million more than the market value of these notes to redeem them.

93. This was not a reasonably equivalent exchange of value, as the Debtors ultimately gave up over $100 million more in market value than they received. *See In re Adler*, 247 B.R. at 106 (explaining market value is an "important" element of reasonable equivalence of value). PPI, the Debtor that issued the new notes, was insolvent, so the 2019 Uptier was a constructive fraudulent transaction under the UVTA.

94. Again, as in the 2020 Uptier, the Debtors that had guaranteed the old notes were called upon not only to guarantee the new notes, but also to collateralize them. And these Debtors did not receive reasonably equivalent value for the security interests they provided, as the only value they received from the 2019 Uptier was the extinguishment of their prior, unsecured guarantees (which were replaced with new guarantees for the new debt). *See In re TOUSA*, 680 F.3d at 1302, 1311-12; *see also Rubin*, 661 F.2d at 991. Because these guarantors were also insolvent, this too was a constructively fraudulent transaction under the UVTA.[29]

[29] As with the 2020 Uptier, PPI was again uniquely harmed. PPI was made to issue the entire tranche of new secured notes, but the proceeds were immediately taken from PPI to pay off the old notes issued by other Debtors. *See Marquis Products, Inc.*, 150 B.R. at 491 (Bankr. D. Me, 1993).

iii. *The Uptiers Were Intentionally Fraudulent*

95. The Secured Debt Complaint also alleges that Endo's board of directors undertook the Uptiers with an "intent to hinder and delay" opioid claimants' recoveries in a potential bankruptcy, stating a claim for intentional fraudulent transfer under section 548(a)(1)(A) of the Bankruptcy Code and applicable state law. *See*, *e.g.*, NY DCL § 273(1); 12 Pa. Stat. § 5109. As set forth in the Secured Debt Complaint, Endo's "Project Zed" set out to "mitigate" Endo's opioid litigation liabilities by various means including debt refinancings and internal corporate restructurings. This included the Uptiers. By exchanging its unsecured debt for secured debt in the Uptiers, Endo intended to drive down opioid claimants' potential recoveries in a bankruptcy in order to obtain increased settlement leverage in its on-going negotiations with public opioid claimants. During the same period, Endo was also engaged in intercompany transfers that had the effect of moving value away from named defendants in the opioid lawsuits (the "Named Opioid Defendants," as further defined in the Secured Debt Complaint). Endo's plan succeeded, culminating in the settlements embodied in the Restructuring Support Agreement which laid the foundation for the credit bid and this Chapter 11 filing. Had Endo not used the Uptiers to increase its secured debt and hinder and delay its opioid claimants, Endo would have had sufficient unpledged assets to provide meaningful recoveries to opioid claimants in and other unsecured creditors in a bankruptcy.

96. The Secured Debt Complaint sets forth evidence of intent to hinder and delay that makes this claim not only colorable, but unusually well supported at the pleadings stage. To establish intent to hinder and delay, the Secured Debt Complaint alleges direct evidence showing that, at the same time the board of directors of Endo International plc (the "Board") was discussing and approving the 2020 Uptier to increase its secured debt, it was also discussing that its secured debt reduced potential recoveries of opioid claimants in Chapter 11 and that this was a specific

point of leverage in Endo's ongoing settlement negotiations with the State Attorneys' General. This evidence that the Board had the harm to creditors consciously in mind at the time it acted is especially strong evidence of intent to hinder and delay. *See In re Lyondell Chem. Co.*, 554 B.R. 635, 650 (S.D.N.Y. 2016) (explaining that intent to hinder, delay, or defraud looks to whether the debtor had the effect that the conveyance would have on the harmed creditors "in mind" at the time).

97. The Secured Debt Complaint also alleges facts showing multiple "badges of fraud" sufficient to support the inference that the Board intended to hinder and delay opioid claimants. *See In re Saba Enterprises, Inc.*, 421 B.R. 626, 644 (Bankr. S.D.N.Y. 2009) ("the existence of several badges of fraud constitutes clear and convincing evidence of actual intent") (internal citations and quotations omitted):

98. ***Recent Litigation:*** The threat or fact of recent litigation against the debtor is a quintessential badge of fraud. *See, e.g., In re Tronox Inc.*, 429 B.R. 73, 95 (Bankr. S.D.N.Y. 2010). Here, the facts alleged in the complaint show the very close connections between the opioid litigation and the Uptiers. Endo launched Project Zed in direct response to a rising tide of opioid litigation and with the objective of mitigating its financial exposure to that litigation. And Endo's Strategic Planning Committee, created to supervise Project Zed, including the progress of opioid litigations and settlement efforts, was simultaneously responsible for the Uptiers. Indeed, the Board discussed the 2020 Uptier as part of the same Project Zed Update that also addressed Endo's secured debt as a point of settlement leverage with opioid claimants.

99. ***Pattern of Transactions:*** "[T]he existence or cumulative effect of a pattern or series of transactions or course of conduct after the . . . onset of financial difficulties, or pendency or threat of suits by creditors" is another badge of fraud. *In re Kaiser*, 722 F.2d 1574, 1583 (2d

Cir. 1983). The Secured Debt Complaint alleges a series of transactions with the "cumulative effect" of reducing opioid claimants' and other unsecured creditors' potential recoveries in Chapter 11. This pattern includes more than just the cumulative effect of the two Uptiers. During the same period, Endo was also engaged in intercompany transactions that reduced the value of Named Opioid Defendants where opioid claimants' claims would lie.

100. ***Transfers of Substantially all Assets:*** That a transfer deprives the debtor of substantially all of its assets is a badge of fraud. *See*, *e.g.*, *In re Lyondell*, 554 B.R. at 653. Here, as set forth in the Secured Debt Complaint, when viewed in the context of the opioid claimants' claims and the assets that would have been available to fund payment, the transfers deprived the Named Opioid Defendants of substantially all of their assets, such that opioid claimants could no longer expect meaningful recovery in bankruptcy. *See id.* at 654 (finding that transaction that subjected "majority of [debtor's] assets . . . to liens" "had the effect of essentially stripping [debtor] of its assets" and there was a badge of fraud).

101. ***Unusualness of the Transactions:*** "[A] questionable transfer not in the usual course of business" can be a badge of fraud. *In re Tops Holding II Corp.*, 646 B.R. 617, 675 (Bankr. S.D.N.Y. 2022). As detailed in the complaint, the Uptiers were unusual transactions because they were undertaken in response to a threat of impending bankruptcy and on unfavorable terms for the insolvent issuers, while Endo was also in negotiation to settle opioid litigation liabilities and actively considering and preparing for Chapter 11 filings. Separately, they were unusual because Endo caused Named Opioid Defendant PPI—a holding company for an operating segment of the business—to issue third-party external debt, contrary to Endo's existing practices, and [redacted]

[redacted]

102. ***Lack of Reasonably Equivalent Value:*** That conveyances were made without receiving reasonably equivalent value is a badge of fraud. *See In re Lyondell*, 554 B.R. at 653. As the Secured Debt Complaint alleges, and as discussed in Section I(D)(i) and (ii), *supra*, neither PPI nor the other Debtors that took on debt obligations or provided security interests in support of the Uptiers received reasonably equivalent value.

103. ***Insolvency of Debtors:*** That a debtor was insolvent or became insolvent shortly after a conveyance is a badge of fraud. *In re Lyondell*, 554 B.R. at 653. Each of the Named Opioid Defendants was insolvent long before the start of Project Zed. Endo was balance sheet insolvent on a consolidated basis since 2018, without accounting for contingent opioid liabilities. And the 2020 Uptier also caused PPI, the Named Opioid Defendant entity that Endo selected to issue new secured notes, to become balance sheet insolvent (without accounting for PPI's contingent opioid liabilities).

104. ***General Chronology and Circumstances:*** Courts recognize that it is impossible to definitively list all badges of fraud, and that many other general circumstances may add to and support an inference of intent. *See In re Kaiser*, 722 F.2d at 1582-83. Here, additional circumstances supporting an intent to hinder and delay creditors include that the Board's Strategic Planning Committee recognized the 2019 Uptier would use secured debt capacity that might otherwise be used to fund settlement with opioid claimants; that the notes Endo refinanced through the Uptiers were not maturing imminently, but were being refinanced years before their maturity dates; and that the 2020 Uptier, extending notes with 2023 and 2025 maturities, failed to prevent Endo's 2022 bankruptcy filing regardless.

105. These badges support the inference that Endo engaged in the Uptiers with an intent to hinder or delay opioid claimants. *See Beskrone v. OpenGate Capital Grp. (In re Pennysaver USA Publ'g, LLC)*, 587 B.R. 445, 461 (Bankr. D. Del. 2018) ("The confluence of several [badges of fraud] in one transaction generally provides conclusive evidence of an actual intent to defraud.") (internal citations and quotations omitted).

106. The Uptiers also fall within applicable lookback periods for intentional fraudulent transfer under sections 544(b) and 548(a)(1)(A) of the Bankruptcy Code and applicable state law and under. The UVTA, adopted in Pennsylvania and New York, allows for a four-year lookback for intentional fraudulent transfer claims, reaching both the 2020 and 2019 Uptiers.[30] NY DCL § 278; 12 Pa. Stat. § 5109. An intentional fraudulent transfer claim can also be brought under Bankruptcy Code § 548(a)(1)(A) under the "collapsing" doctrine, even as to transfers occurring more than two years before the Petition Date.[31]

E. The 2021 Refinancing Claims Are Colorable

107. The Secured Debt Complaint seeks to avoid obligations and security interests provided by certain Debtors in connection with the 2021 Refinancing as constructively fraudulent transactions.

[30] Should New York law apply, the 2019 Uptier may alternatively be subject to the NYFCA. *See* note 27, *supra*. The NYFCA applies substantially the same standard. *See* 2006 NY DCL § 276.

[31] Here, the Uptiers were part of a Debtor defendant-orchestrated scheme that continued into the two-year lookback as part of Endo's Project Zed. This included, at least, the defendants' ongoing settlement negotiations with the State Attorneys General in 2021, in which Endo hindered and delayed claimants' recoveries by deploying its new uptiered capital structure as settlement leverage, and culminated in the Restructuring Support Agreement which is the foundation for these Chapter 11 proceedings. As such, the Court can "collapse" the scheme and look to the last-in-time element of the scheme in applying the lookback. *See In re Tronox Inc.*, 503 B.R. at 269 ("[t]here is no question on this record that Defendants devised, carried out and had complete knowledge that the 'Project Focus' transfers in 2002 were part of "a single integrated scheme" that extended into the lookback period); *In re Maxus Energy Corp.*, No. 18-50489, 2019 WL 4343722, at *3, 7-8 (D. Del. Sept. 12, 2019) (considering allegations defendants engaged in coordinated strategy to hinder recovery, the "last act" of which was "the planned filing of a bankruptcy proceeding," and finding such a theory of "collapsing" was not improper as a matter of law).

i. *Background*

108. In September 2015, Endo acquired the Par family of companies. Certain of the Par entities were involved in the manufacture and distribution of opioids and would later be named defendants in opioid lawsuits (the "Par Named Opioid Defendants, as defined in the Secured Debt Complaint"). In 2015 and 2016, the [redacted], debt that other Debtors had taken on even before the Par Named Opioid Defendants were acquired (the "Original Guarantees and Security"). As explained in further detail in the Secured Debt Complaint, the Original Guarantees and Security ultimately benefited the Par Named Opioid Defendants' [redacted] But the Par Named Opioid Defendants themselves did not receive any direct benefit.

109. The Original Guarantees and Security were terminated in 2017 when Debtors refinanced the underlying debt (the "2017 Refinancing"). However, the Par Named Opioid Defendants were again caused to guarantee, and provide new liens in connection with, the 2017 New Debt (the "2017 Guarantees and Security"). Then, in 2021, the Debtors refinanced the underlying debt again. Specifically, the 2021 Refinancing used proceeds from a new $2 billion secured term loan (the "2021 Term Loan") and a new $1.295 billion tranche of First Lien Notes (with the 2021 Term Loan, the "2021 New Debt") to retire $3.296 billion in term loan debt from the 2017 Refinancing. The Par Named Opioid Defendants again issued guarantees, and extended their liens to collateralize, the 2021 New Debt (the "2021 Guarantees and Security").

110. As pled in the Secured Debt Complaint, the Par Named Opioid Defendants were insolvent even before they issued the guarantees and liens in 2015 and 2016 due to contingent opioid liabilities.

ii. *The 2021 Refinancing Was Constructively Fraudulent*

111. As discussed, a transaction in which an insolvent debtor receives less than reasonably equivalent value is avoidable under both the Bankruptcy Code and state fraudulent transfer law. *See* Section I(D)(i), *supra*. The Official Committees can plead and will be able to prove that the 2021 Refinancing was not a reasonably equivalent exchange of value for the Par Named Opioid Defendants, as they provided the 2021 Guarantees and Security but got nothing in return. *See In re TOUSA, Inc.,* 680 F.3d at 1302, 1311-12.

112. This is so because the Par Named Opioid Defendants were insolvent when they gave the Original Guarantees and Security and did not receive reasonably equivalent value at the time in 2015 and 2016, meaning these Original Guarantees and Security were avoidable. *In re Jesup & Lamont, Inc.*, 507 B.R. 452, 471 (Bankr. S.D.N.Y. 2014) (explaining benefit flowing solely to third party does not constitute reasonably equivalent value). In the 2017 Refinancing, the only value the still insolvent Par Named Opioid Defendants received for the 2017 Guarantees and Security was the extinguishment of the Original Guarantees and Security. But, as noted, this was no value at all, as these were *already* avoidable. As such, the 2017 Guarantees and Security were, in turn, avoidable and the same dynamics are therefore true of the 2021 Refinancing—the Par Named Opioid Defendants gave the 2021 Guarantees and Security and received in exchange only the extinguishment of the already avoidable 2017 Guarantees and Security.

113. Because the Par Named Opioid Defendants never received reasonably equivalent value for the Original Guarantees and Security, they never received such value at any point. And because the Par Named Opioid Defendants were insolvent at all times, each new provision of guarantees and security, including in 2021, was a constructively fraudulent transaction.

II. THE DEBTORS' FAILURE TO BRING THE PROPOSED CLAIMS IS UNJUSTIFIED

114. Where, as here, the Proposed Claims are colorable, courts turn to the second step in the *In re STN* analysis: whether the "debtor unjustifiably failed to bring suit" and whether, "by evidentiary hearing or otherwise," the "action asserting such claim(s) is likely to benefit the reorganization estate." *In re STN,* 779 F.2d at 904-05.

115. In making the determination, the Court need only engage in a limited assessment to ensure "that there is a sufficient likelihood of success to justify the anticipated delay and expense to the bankruptcy estate that the initiation and continuation of litigation will likely produce." *In re Adelphia Commc'ns Corp.,* 330 B.R. at 374. This standard does not require the Court to "conduct a minitrial." *In re Am.'s Hobby Ctr.,* 223 B.R. at 282. Rather, the Court need only assure itself that the proposed litigation is not a "hopeless fling" and that the "prospective rewards can reasonably be expected to be commensurate with the litigation's foreseeable cost." *In re Adelphia Commc'ns Corp.,* 330 B.R at 386.

116. That standard is plainly met here: In the first instance, the Debtors have waived or intend to sell (for essentially no consideration) substantially all of the claims at issue here. Not only that, but in order to pursue the sale process that the Debtors themselves have proposed, the Court will be required to adjudicate the scope of the Prepetition Secured Parties' liens and collateral to confirm that the Prepetition Secured Parties' credit bid only encompasses encumbered assets. Thus, under the Debtors' own conception of what is beneficial to the estate (i.e., a sale process), the Proposed Claims must be adjudicated. That the Debtors have failed to bring the Proposed Claims to do just that (or even consent to the Official Committees' standing to do so) warrants a grant of standing to the Official Committees.

117. The Proposed Claims, moreover, are not only viable but of such magnitude in value that they could materially improve the recoveries of unsecured creditors and opioid claimants, thus outweighing any delay and cost associated with litigating them. The claims pressed in the Deposit Account and Disputed Assets Complaints could result in a finding that a significant portion of the Debtors' property is unencumbered, dramatically shifting recoveries and materially increasing them for unsecured creditors and opioid claimants. And the claims pressed in the Prepaid Compensation Complaint could result in $95 million or more of unencumbered assets being returned to the estates. The claims pressed in the Secured Debt Complaint could result in a reduction of estate liabilities by billions of dollars and eliminate liens of similar value. Indeed, any delay and expense that would be incurred in prosecuting all of the Proposed Claims is outweighed by the monetary value of any one of those claims alone.

118. The Official Committees are also in a far superior position than the Debtors to pursue the Proposed Claims diligently, disinterestedly and efficiently. The Debtors have entered into stipulations that prevent them from bringing claims against the Prepetition Secured Parties, and conflicts of interest prevent them from bringing claims against their own insiders. As the Third Circuit once recognized, "if managers can devise any opportunity to avoid bringing a claim that would amount to reputational self-immolation, they will seize it." *Official Comm. of Unsecured Creditors of Cybergenics Corp. v. Chinery*, 330 F.3d. 548, 573 (3rd Cir. 2003) ("Cybergenics"); *see also Smart World Techs., LLC v. Juno Online Servs., Inc. (In re Smart World Techs.)*, 423 F.3d 166, 177 (2d Cir. 2005) ("Derivative standing . . . may be necessary to avoid the inherent conflict of interest that exists when those with the power to pursue a claim are those who may be the target of such a claim.").

119. Indeed, a debtor "would be hard-pressed to voluntarily initiate an adversary proceeding . . . [seeking] to unwind a transaction implemented by the very same executives who still remain in control." *Official Comm. of Asbestos Claimants v. Bank of N.Y. (In re G-I Holdings, Inc.)*, No. 04-3423, 2005 WL 2899139, at *n.12 (D.N.J. Sept. 9, 2005) (internal quotations and citations omitted); *see also G-I Holdings, Inc. v. Those Parties Listed on Exhibit A (In re G-I Holdings, Inc.)*, 313 B.R. 612, 643 (Bankr. D. N.J. 2004) (where a debtor is "operating under at least the influence of conflicts of interest . . . it is perfectly reasonable to assume that this dynamic is, to some degree, influencing its decision-making process."). But that is the case here, where the Proposed Claims would require, among other things, that "the debtor's management . . . avoid fraudulent transfer[s] that it itself made"—including, in the case of the Prepaid Compensation, to *itself*—which "immediately gives rise to the proverbial problem of the fox guarding the henhouse." *Cybergenics*, 330 F.3d. at 573.

120. As noted above, on January 3, January 10, and January 18, of this year the Official Committees requested that the Debtors consent to the Official Committees' standing to pursue the Proposed Claims. The Debtors have indicated that they needed to review the filed complaints (rather than the detailed presentations and descriptions of the claims) to determine whether they would consent to standing, only further emphasizing the importance of having independent parties pursue these claims.

121. Further, the Debtors are not positioned to pursue the Prepetition Compensation Claims, having agreed to sell those claims to the Stalking Horse Bidder in exchange for no consideration, and with the terms of the proposed sale further providing that the Stalking Horse Bidder will immediately *release* the Prepetition Compensation Claims upon completion of the sale.

III. EXCLUSIVE SETTLEMENT AUTHORITY IS APPROPRIATE

122. The Debtors' unwillingness to pursue the Proposed Claims also makes them unable to effectively manage or settle any resulting litigation. Indeed, the Debtors have shown, repeatedly, throughout these Bankruptcy Cases, that they are willing to waive and/or sell the Proposed Claims for little or no consideration. Moreover, it is indisputable that any decision to settle any of the Proposed Claims, and at what level, will have a disproportionate economic impact on the Debtors' unsecured creditors and opioid claimants, whose interests the Official Committees represent in these cases. As a result, the Official Committees should be granted the exclusive right to settle and compromise the Proposed Claims. *See, e.g., In re Dewey & LeBeouf LLP*, No. 12-12321, 2012 WL 5985445, at *7 (Bankr. S.D.N.Y. Nov. 29, 2012).

123. In the event that the Official Committees are granted standing to pursue the Proposed Claims, the Official Committees should be granted sole authority to settle each or any of the Proposed Claims, on specific terms to be agreed among the Official Committees. Sole settlement authority for the Official Committees shall provide, among other things, that unless otherwise ordered by the Bankruptcy Court at the request of an Official Committee (i) neither party would have the authority to bind the other party to settle a particular claim, (ii) to the extent one party determines to settle its prosecution of any such claims with either the Debtors, the Ad Hoc First Lien Group, and/or any other defendants, the other party shall have the ability to continue prosecuting such claims regardless of such settlement and such settlement would not impact the continued prosecution of the claims by the other party, and (iii) the exercise of any settlement authority would be subject to the ultimate supervision and approval of the Bankruptcy Court.

CONCLUSION

124. For the foregoing reasons, the Official Committees respectfully request that the Court enter an order substantially in the form of Exhibit A hereto: (i) granting the Official

Committees derivative standing to commence and prosecute the Proposed Claims on behalf of the Debtors' estates; and (ii) granting the Official Committees exclusive authority to settle such claims on behalf of the Debtors' estates.

125. The Official Committees reserve all rights, claims, defenses, and remedies, including, without limitation, to supplement and amend each of the complaints prosecuting the Proposed Claims in accordance with applicable law, including after the completion of discovery, to add additional defendants or remove defendants as they may determine is necessary or appropriate, and to raise further and other claims and causes of action in connection with the prosecution of those complaints.

Dated: January 23, 2023
New York, New York

KRAMER LEVIN NAFTALIS & FRANKEL LLP

/s/ *Kenneth H. Eckstein*

Kenneth H. Eckstein
Rachael L. Ringer
Ariel N. Lavinbuk
David E. Blabey, Jr.
Natan Hamerman
Andrew Pollack
Kramer Levin Naftalis & Frankel LLP
1177 Avenue of the Americas
New York, New York 10036
Telephone: (212) 715-9100
Facsimile: (212) 715-8000
Email: keckstein@kramerlevin.com
rringer@kramerlevin.com
alavinbuk@kramerlevin.com
dblabey@kramerlevin.com
nhamerman@kramerlevin.com
apollack@kramerlevin.com

Counsel to the Official Committee of Unsecured Creditors

COOLEY LLP
By: */s/ Cullen D. Speckhart*

Cullen D. Speckhart
Ian Shapiro
Michael Klein
Reed A. Smith
55 Hudson Yards
New York, NY 10001
Telephone: (212) 479-6000
Email: cspeckhart@cooley.com
ishapiro@cooley.com
mklein@cooley.com
reed.smith@cooley.com

Lead Counsel to the Official Committee of Opioid Claimants

KLESTADT WINTERS JURELLER SOUTHARD & STEVENS, LLP

By: /s/ *Tracy L. Klestadt*

Tracy L. Klestadt
Brendan Scott
200 West 41st Street, 17th Floor
New York, New York 10036
Telephone: (212) 972-3000
Facsimile: (212) 972-2245
Email: tklestadt@klestadt.com
bscott@klestadt.com

Proposed Conflicts Counsel to the Official Committee of Opioid Claimants

Exhibit A

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	:	Chapter 11
ENDO INTERNATIONAL plc, *et al.*,	:	Case No. 22-22549 (JLG)
Debtors.	:	(Jointly Administered)

ORDER GRANTING THE OFFICIAL COMMITTEE OF UNSCURED CREDITORS AND THE OFFICIAL COMMITTEE OF OPIOID CLAIMANTS (I) LEAVE, STANDING, AND AUTHORITY TO COMMENCE AND PROSECUTE CERTAIN CLAIMS ON BEHALF OF THE DEBTORS AND (II) SETTLEMENTAUTHORITY IN RESPECT OF SUCH CLAIMS

Upon consideration of the motion [Docket No. ___] (the "Motion")[1] of the Official Committee of Unsecured Creditors (the "Creditors' Committee") of the above-captioned debtors and debtors-in-possession (the "Debtors") and the Official Committee of Opioid Claimants (the "OCC" and together with the Creditors' Committee, the "Official Committees") for entry of an order (the "Order"), pursuant to 11 U.S.C. §§ 105(a), 1103(c) and 1109(b), granting the Official Committees (i) derivative standing to commence and prosecute certain claims on behalf of the Debtors' estates, and (ii) exclusive authority to settle such claims on behalf of the Debtors' estates; and of any objections thereto and the record of these chapter 11 cases; and that this Court has jurisdiction to order the relief provided herein in accordance with 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the Southern District of New York*, dated January 31, 2012; and that the Motion and the relief requested therein constitute a core proceeding under 28 U.S.C. § 157(b); and that venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and that due and proper notice of the Motion has been

[1] Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to them in the Motion.

given, and no other or further notice need be provided; and that the Court has found and determined that the relief sought in the Motion is in the best interests of the Debtors' estates, and that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and for good and sufficient cause appearing therefor:

IT IS HEREBY ORDERED THAT:

1. The Motion is granted to the extent set forth herein.

2. All objections, if any, to the Motion or the relief requested therein, that have not been withdrawn, waived, or settled, are overruled.

3. The Official Committees are granted standing, and are authorized on behalf of the Debtors' estates, to commence and prosecute to conclusion the Proposed Claims, with the full rights and privileges of, and in the stead of, the Debtors. The Official Committees are granted exclusive authority to settle the Proposed Claims on the terms set forth in the Motion.

4. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

5. The Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation of this Order.

Dated: _____, 2023
New York, New York

THE HONORABLE JAMES L. GARRITY, JR.
UNITED STATES BANKRUPTCY JUDGE

Exhibit B

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re: ENDO INTERNATIONAL plc, *et al.*, Debtors.	Chapter 11 Case No. 22-22549 (JLG) (Jointly Administered)
OFFICIAL COMMITTEE OF UNSECURED CREDITORS, on behalf of the Debtors' estates, and OFFICIAL COMMITTEE OF OPIOID CLAIMANTS, on behalf of the Debtors' estates, Plaintiffs, v. WILMINGTON TRUST, NATIONAL ASSOCIATION, in its capacities as Collateral Trustee under that certain First Lien Collateral Trust Agreement dated April 27, 2017 and Second Lien Collateral Trust Agreement dated June 16, 2020, Defendant.	**Adv. Pro. No. 23-_____(JLG)**

PROPOSED COMPLAINT OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS AND THE OFFICIAL COMMITTEE OF OPIOID CLAIMANTS

The Official Committee of Unsecured Creditors (the "**Creditors' Committee**") and the Official Committee of Opioid Claimants (the "**OCC**", and together with the Creditors' Committee, the "**Committees**") of Endo International plc ("**Endo**") and its affiliated debtors and debtors in possession (the "**Debtors**"), on behalf of and as representative of the Debtors' estates, for their complaint ("**Complaint**") against Wilmington Trust, National Association (the "**Collateral Trustee**"), in its capacities as collateral trustee under a first lien Collateral Trust Agreement, dated

as of April 27, 2017 (as amended, supplemented, restated or otherwise modified and in effect from time to time, the "**First Lien Collateral Trust Agreement**"), and a second lien Collateral Trust Agreement, dated as of June 16, 2020 (as amended, supplemented, restated or otherwise modified and in effect from time to time, the "**Second Lien Collateral Trust Agreement**," and together with the First Lien Collateral Trust Agreement, the "**Collateral Trust Agreements**"), upon information and belief and based on their investigation to date, allege as follows:

INTRODUCTION

1. This is a proceeding to establish the validity and extent of the Collateral Trustee's prepetition liens on the Debtors' U.S. deposit accounts. Those accounts, which were worth nearly $670 million on the Petition Date, were pledged to the Collateral Trustee as representative of the Debtors' secured creditors – *but the Collateral Trustee never perfected its liens*.

2. Perfection of a lien on a deposit account is often accomplished by "control" – for instance, through the execution of a deposit account control agreement, or "**DACA**" – but it is undisputed that the Collateral Trustee had no control here. In fact, the secured creditors agreed to a contractual provision relieving the Debtors of any obligation to provide DACAs. Thus, while it would have been easy enough to obtain DACAs (especially since 24 of the 26 U.S. deposit accounts are held at the same bank), the Collateral Trustee did not avail itself of this protection.

3. Instead, the secured creditors have contended that the funds in the Debtors' deposit accounts on the Petition Date are identifiable "proceeds" of their other collateral, an alternative means of perfection that requires the Collateral Trustee to prove that it can trace such alleged proceeds back to its original collateral. To date the Collateral Trustee has offered no proof on tracing. Unless and until it does so – a tall order, in light of the Debtors' material commingling of encumbered and unencumbered funds – the Collateral Trustee has no perfected lien. But even if

tracing were possible, there are two separate and fundamental impediments to the Collateral Trustee asserting a perfected lien on the U.S. deposit accounts – one based on the plain language of the Collateral Trustee's contract and one based on the Uniform Commercial Code.

4. *First*, the contractual hurdle. The secured creditors' tracing-based theory of perfection hinges on the assumption that the original collateral (e.g., inventory) on which the Collateral Trustee asserts a perfected lien was converted into cash proceeds when sold. Since the Uniform Commercial Code ("**UCC**") provides for continued perfection in "identifiable cash proceeds" of original collateral, the secured creditors contend that the Collateral Trustee remained perfected in the Debtors' deposit accounts notwithstanding the absence of DACAs. This argument fails. The fatal problem for the Collateral Trustee is that it agreed in the Collateral Trust Agreements to "automatically…release" its lien "as to any property of a Grantor that becomes an Excluded Asset" – a term that includes "zero balance accounts."[1] The four collection accounts that serve as the initial repository for substantially all cash proceeds of inventory or other collateral under the Debtors' cash management system are, by the Debtors' own admission, zero balance accounts. Thus, in each instance that proceeds of inventory or other assets pledged to the Collateral Trustee were converted to zero balance deposit accounts (thereby "becom[ing] an Excluded Asset"), any lien on that purported collateral was released.

5. The consequences of this contractual release are far-reaching. The four zero-balance collection accounts are the effective gateway to the Debtors' cash management system. Therefore, substantially all of the proceeds of the Collateral Trustee's original collateral were made subject to the contractual release at the very outset of their entry into the system. Any efforts to

[1] *See, e.g.*, First Lien Collateral Trust Agreement § 4.1(a)(4).

trace beyond the point of the lien release therefore are impossible, as funds transferred from the collection accounts to other Debtor accounts were no longer proceeds of collateral. *See, e.g.*, UCC § 9-315(a)(1) (providing for continuation of lien following disposition of collateral "*unless* the secured party authorized the disposition free of the security interest") (emphasis added).

6. *Second*, the statutory hurdle. While the UCC generally allows for the tracing of proceeds of collateral, it contains an important exception: "A transferee of funds from a deposit account takes the funds free of a security interest in the deposit account unless the transferee acts in collusion with the debtor in violating the rights of the secured party." UCC § 9-332(b). This transferee exception applies here. Just as substantially all cash proceeds enter the Debtors' system through four zero balance collection accounts, substantially all such proceeds are eventually transferred to a deposit account held by a *different debtor*, either the so-called "Pool Leader" that serves as the ultimate repository of most proceeds or (in some cases) another intermediary Debtor. Each Debtor transferee that takes funds from a different Debtor transferor thus takes such funds "free of a security interest in the deposit account" from which such funds were transferred.

7. Therefore, because (i) the Collateral Trustee has not identified the alleged cash proceeds on which it asserts a lien, and (ii) such lien has in any event been released by operation of either a contractual or statutory release, the Committees, on behalf of the Debtors' estates, are entitled to a declaration that the Debtors' U.S. deposit accounts were unencumbered as of the Petition Date and to avoidance of any unperfected prepetition liens thereon. [2]

[2] In addition to the Deposit Accounts that are the subject of this Complaint (i.e., the U.S. deposit accounts), the Committees are challenging the secured parties' liens on deposit accounts owned by Irish Debtors (worth approximately $300 million) and Luxembourg Debtors (worth approximately $50 million) by separate complaint, as the deficiencies in those liens differ in various respects from the deficiencies as to liens on U.S. accounts.

JURISDICTION AND VENUE

8. Pursuant to 28 U.S.C. §§ 157 and 1334(b), this Court has subject matter jurisdiction over this adversary proceeding, which arises under title 11 and arises in and relates to cases under title 11, specifically *In re Endo International plc, et al.*, Case No. 22-22549 (JLG).

9. The statutory and legal predicates for the relief sought herein are 11 U.S.C. §§ 544 and 550, 28 U.S.C. §§ 2201 and 2202, N.Y. UCC §§ 9-314, 9-315, 9-317 and 9-332 (or such other comparable UCC provisions of any State that are determined to apply), and Rule 7001 of the Federal Rules of Bankruptcy Procedure.

10. This adversary proceeding is a "core" proceeding to be heard and determined by the Court pursuant to 28 U.S.C. § 157(b)(2), and the Court may enter final orders for matters contained herein.

11. Venue is proper in the Southern District of New York pursuant to 28 U.S.C. § 1409.

12. Pursuant to Bankruptcy Rule 7008, Plaintiffs state that they consent to the entry of final orders or judgments by the Court if it is determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the Constitution.

PROCEDURAL BACKGROUND

13. On August 16, 2022 (the "**Petition Date**"), each of the Debtors commenced a case by filing a voluntary petition for relief in this Court under Chapter 11 of the Bankruptcy Code. The Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

14. On September 2, 2022, the United States Trustee for Region 2 appointed the Creditors' Committee to act as the official committee of unsecured creditors of the Debtors [ECF No. 161], and the OCC to serve as the official committee of opioid claimants [ECF No. 163].

15. On January 23, 2023, in accordance with the procedures set forth in the final cash collateral order entered in these cases [Case No. 22-22549, ECF No. 535, at 64] (the "**Cash Collateral Order**"), the Committees moved for standing to prosecute this Complaint [Case No. 22-22549, ECF No. ●] (the "**Standing Motion**"). Standing was conferred by [order/stipulation] dated ____. [Case No. 22-22549, ECF No. ●].

16. Under the Cash Collateral Order, the Debtors entered into numerous stipulations relating to the validity, extent, enforceability and perfection of the claims and liens of the Prepetition Secured Parties. *See, e.g.,* Cash Collateral Order at E.1 – E.5. The Debtors' stipulations included the following (the "**Cash Stipulation**"):

> All of the Debtors' cash, including, without limitation, all of the (a) cash proceeds of accounts receivable, (b) cash proceeds of the Prepetition Collateral, (c) cash proceeds of Excluded Assets (as defined in the Credit agreement) (to the extent such cash proceeds would not otherwise constitute Excluded Assets), and (d) cash (i) in the Debtors' Deposit Accounts (as defined in the Credit Agreement) pledged pursuant to any Collateral Documents as of the Petition Date or (ii) pursuant to Bankruptcy Code section 552(b), deposited into the Debtors' Deposit Accounts after the Petition Date, constitutes cash collateral of the Prepetition Secured Parties within the meaning of Bankruptcy Code section 363(a) (the "Cash Collateral"); *provided that*, notwithstanding anything to the contrary in this paragraph 3, (x) cash or Deposit Accounts comprising Excluded Assets and (y) the Deposit Accounts owned by Debtors formed or incorporated in Luxembourg shall constitute Cash Collateral only to the extent that, in each case of clauses (x) and (y), the Prepetition Secured Parties have an interest in such cash or Deposit Accounts within the meaning of Bankruptcy Code section 363(a) or 552(b) of the Bankruptcy Code and/or applicable law.

Id. at E.3.

THE PARTIES

17. The Creditors' Committee is an official committee of unsecured creditors appointed in these cases by the United States Trustee for the Southern District of New York on September 2, 2022, under section 1102 of the Bankruptcy Code. [Dkt. No. 161].

18. The OCC is an official committee of opioid claimants appointed in these cases by the United States Trustee for the Southern District of New York on September 2, 2022, under section 1102 of the Bankruptcy Code. [Dkt. No. 163].

19. The Committees are vested with, among other things, the powers described in section 1103 of the Bankruptcy Code, including the power to investigate the acts, conduct, assets, liabilities, and financial condition of the Debtors.

20. The Committees, as plaintiffs, bring this action on behalf of the estates of the Debtors.

21. The Collateral Trustee is incorporated in Delaware with its principal place of business in Delaware. It is named in its capacity as first- and second-lien Collateral Trustee and holds liens to secure the Debtors' first and second lien obligations under the Credit Agreement and Senior Secured Indentures (each as defined below), and certain other security documents. Defendant filed notices of appearance in the Debtors' bankruptcies at ECF Nos. 89 & 90 in Case No. 22-22549.

FACTS

I. The Secured Debt, Its Collateral, and the Gaps Therein

22. Certain of the Debtors (the "**Debtor Obligors**"), as detailed below, are obligated on funded debts incurred prior to the Petition Date. Certain of these debt obligations are secured by various Debtor assets pursuant to the terms contained in the secured debt documentation.

A. The Secured Debt Documents

23. Endo International plc, a company incorporated in the Republic of Ireland, Endo Luxembourg Finance Company I S.á.r.l., a private limited liability company incorporated under the laws of Luxembourg, and Endo LLC, a limited liability company organized under the laws of Delaware, are the lead borrowers, together with the other Debtor Obligors, under a Credit

Agreement dated April 27, 2017 (as amended by the First Amendment, dated as of March 28, 2019, and as amended and restated by the Amendment and Restatement Agreement, dated as of March 25, 2021, and as otherwise supplemented or modified as of the Petition Date, the "**Credit Agreement**"). A list of the Debtor Obligors is attached as **Exhibit 1**.

24. The Credit Agreement provides for both a revolving credit facility (the "**Revolving Credit Facility**") and certain term loans (the "**Term Loan Facility**" and together with the Revolving Credit Facility, the "**Credit Facilities**"). As of the Petition Date, the outstanding principal balance of the Term Loan Facility was approximately $1.98 billion, and the outstanding principal balance of the Revolving Credit Facility was approximately $277 million.

25. The Debtor Obligors are also obligated on certain first lien and second lien notes (the "**First Lien Notes**" and "**Second Lien Notes**," respectively). The First Lien Notes consist of: (i) the 6.125% Senior Secured Notes due 2029, issued pursuant to that certain indenture dated as of March 25, 2021, by and among Endo U.S. Inc. and Endo Luxembourg Finance Company I S.à.r.l., as issuers, Computershare Trust Company, National Association ("**Computershare**"), as trustee, and the guarantors party thereto; (ii) the 7.5% Senior Secured Notes due 2027, issued pursuant to that certain indenture dated as of March 28, 2019, by and among Par Pharmaceuticals, Inc., as issuer, Computershare, as trustee, and the guarantors party thereto; and (iii) the 5.875% Senior Secured Notes due 2024, issued pursuant to that certain indenture dated as of April 27, 2017, by and among Endo Designated Activity Company ("**Endo DAC**"), Endo Finance LLC ("**Endo Finance**"), and Endo Finco Inc. ("**Endo Finco**") as issuers, Computershare, as trustee, and the guarantors party thereto. As of the Petition Date, the aggregate outstanding amount of outstanding First Lien Notes was approximately $3.595 billion.

26. The Second Lien Notes consist of those certain 9.5% senior secured second lien notes due July 31, 2027, issued pursuant to that certain indenture, dated June 16, 2020 by and among Endo DAC, Endo Finance, and Endo Finco as issuers, Wilmington Savings Fund Society, FSB, as trustee, and the guarantors party thereto. As of the Petition Date, the aggregate amount of outstanding Second Lien Notes was approximately $940 million. The indentures pursuant to which the First Lien Notes and Second Lien Notes were issued are referred to herein as the "**Senior Secured Indentures**."

27. To secure the obligations arising under the Credit Facilities, the First Lien Notes, and the Second Lien Notes, the Debtor Obligors entered into various security documents granting the Collateral Trustee first-priority liens on and security interests in certain of the Debtors' assets in respect of the Debtor Obligors' first lien obligations, and second-priority liens on and security interests in certain of the Debtors' assets in respect of the Debtor Obligors' second lien obligations (collectively, the "**Prepetition Security Documents**"). One such Prepetition Security Document is the U.S. Pledge and Security Agreement, dated as of April 27, 2017 (as amended, restated, supplemented, or otherwise modified from time to time, the "**First Lien Pledge and Security Agreement**"), granting the First Lien Collateral Trustee first-priority liens on and security interests in certain of the Debtors' assets.

28. On April 27, 2017, the Debtor Obligors and the Collateral Trustee, among certain others, entered into the First Lien Collateral Trust Agreement in respect of the Debtor Obligors' first lien obligations. On June 16, 2020, the Debtor Obligors and the Collateral Trustee, among certain others, entered into the Second Lien Collateral Trust Agreement in respect of the Debtor Obligors' second lien obligations.

29. The Credit Facilities and the First Lien Notes are secured on a *pari passu* basis by first-priority liens on and security interests in various collateral. The Second Lien Notes are secured by second-priority liens and security interests on substantially the same collateral.

30. Claims for principal, interest and all other obligations (if any) arising under or in connection with the Credit Facilities and First Lien Notes are referred to as the "**First Lien Claims**" and the holders thereof, the "**First Lien Creditors**." As of the Petition Date, the aggregate amount of all First Lien Claims asserted by First Lien Creditors exceeded $5.86 billion. Claims for principal, interest and all other obligations (if any) arising under or in connection with the Second Lien Notes are referred to as the "**Second Lien Claims**" and the holders thereof, the "**Second Lien Creditors**." As of the Petition Date, the aggregate amount of all Second Lien Claims asserted by Second Lien Creditors exceeded $940 million. The First Lien Creditors and Second Lien Creditors are referred to collectively as the "**Prepetition Secured Parties**".

B. The Contractual Provisions Delineating and Circumscribing the Liens

31. **The unperfected liens on Deposit Accounts.** Under the Prepetition Security Documents, the Debtor Obligors granted a security interest to the Collateral Trustee in favor of the Prepetition Secured Parties in certain enumerated assets including the Debtors' rights and interest in "Deposit Accounts." *See* First Lien Pledge and Security Agreement at Art. II; *see also* Credit Agreement, § 1.01, definition of "Collateral"; Collateral Trust Agreement, definition of "Collateral." However, the Credit Agreement also provides that "[n]otwithstanding anything to the contrary herein or in any other Loan Document, no [Debtor Obligor] shall have any obligation to perfect through control agreements or 'control' with respect to any assets" (other than with respect to certain limited asset types not relevant here). Credit Agreement §5.09(g). On information and belief, it is undisputed that the Collateral Trustee did not perfect its liens on the Debtors' U.S. Deposit Accounts by way of DACAs nor any other form of "control."

32. **The "Excluded Accounts."** The debt documents also carve out certain enumerated asset categories from the Prepetition Secured Parties' collateral. These carved-out assets are referred to in the Credit Agreement and other debt documents as "Excluded Assets." One type of Excluded Asset is "Excluded Accounts," which is defined to include "zero balance accounts so long as the balance in such account is zero at the end of each Business Day." Credit Agreement, § 1.01, definition of "Excluded Accounts", subpart (v). Excluded Accounts is also defined to include "any Deposit Account the maximum daily balance of which does not exceed $1,000,000 individually, or in the aggregate, together with the maximum daily balance of all such other Deposit Accounts excluded pursuant to this clause (iv) at any time, $3,000,000." *Id.* subpart (iv).

33. A list of the Debtors' zero balance accounts and the Debtors who hold them is attached hereto as **Exhibit 2**.

34. **The automatic release of certain collateral.** The Credit Agreement, the Senior Secured Indentures, and the Collateral Trust Agreements all provide that the Collateral Trustee's liens upon collateral will be automatically released (the "**Contractual Release**") with respect to any asset of a Debtor Obligor that becomes an "Excluded Asset." Collateral Trust Agreement, § 4.1(a)(4) ("The Collateral Trustee's Liens upon the Collateral will be automatically, and without the need for any consent or approval of any Secured Party or the Collateral Trustee…, released in any of the following circumstances: … as to any property of a Grantor that becomes an Excluded Asset (as defined in the Credit Agreement)"); Credit Agreement, § 9.13(d) ("[U]pon…any property of a Loan Party becoming an Excluded Asset…the security interests in such Collateral shall be automatically released."); Senior Secured Indentures § 12.06 ("The Collateral securing the Obligations will automatically and without the need for any further action by any Person be

released in any of the following circumstances: (1) in whole or in part, as applicable, as to all or any portion of property subject to such Liens…that is or becomes an Excluded Asset.").[3]

II. The Debtors' Cash Management System and the Routine Commingling and Inter-Debtor Transfers It Entails

35. The Debtors use a centralized cash management system for the collection, management, disbursement and investment of funds used in their daily operations.[4] Under this system, the Debtors maintain twenty-six (26) deposit accounts in the United States (the "**Deposit Accounts**"), primarily with Bank of America. *Id.* at ¶ 13. None of these accounts is held at Wilmington Trust, National Association.

36. Four of the Debtors' Deposit Accounts are referred to as collection accounts (collectively, the "**Collection Accounts**"), which are responsible for receiving substantially all payments from customers and third parties. *Id*.; FDA ¶118. The Collection Accounts are zero balance accounts, as the Debtors have acknowledged. Cash Management Motion at ¶13.

37. Funds are swept out of the Collection Accounts daily to one of seven "**Concentration Accounts**," six of which are also zero balance accounts. This leaves a balance of zero for each of the four Collection Accounts at the end of each business day.

38. The Concentration Accounts funds are ultimately passed on to a master cash-pooling account held by Debtor Endo Finance Operations LLC (the "**Pool Leader**"), which acts as a central banker for the other U.S. Debtors, makes advances and holds deposits, and facilitates

---

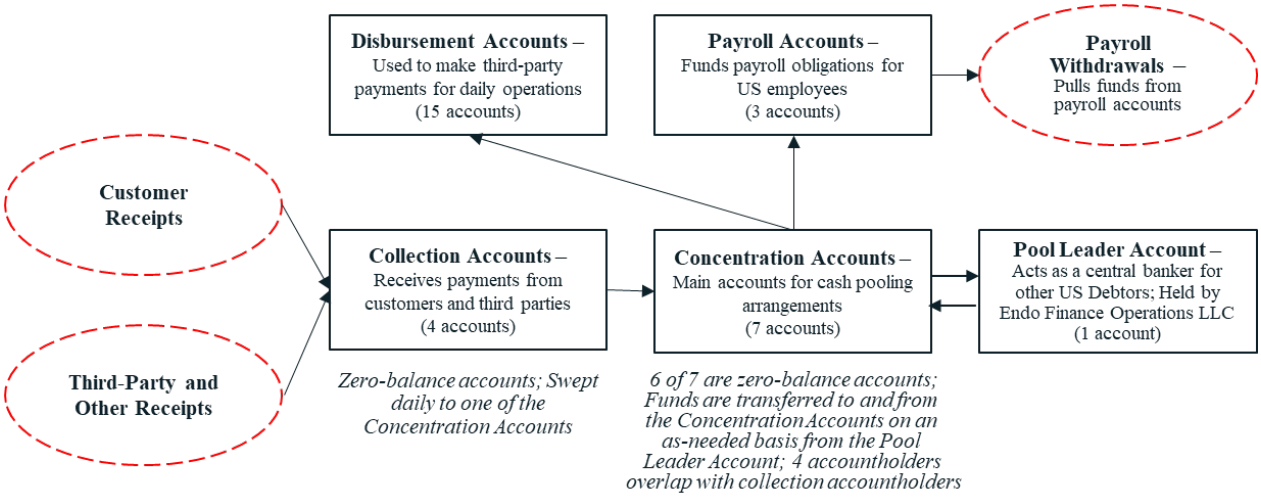
[3] Each of the Senior Secured Indentures has substantially identical lien release provisions.

[4] *Motion of the Debtors for Entry of Interim and final Orders (I) Authorizing the Debtors to (A) Continue Using existing Cash Management Systems, Bank Accounts, and Business Forms et al* (the "**Cash Management Motion**") [Case No. 22-22549, ECF No. 16] at ¶11.

transfers to fund international operations. FDA at ¶11. This leaves a balance of zero for each of the zero balance Concentration Accounts at the end of each Business Day as well.

39. Most Debtor funds, including those that are not the Collateral Trustee's collateral or proceeds of their collateral, flow to the Pool Leader account, are commingled there, and then flow back out to other Debtors on an as-needed basis (e.g., to make third party payments towards general operations, payroll, disbursement, receipts and accounts payable). On information and belief, many millions of dollars are paid to and from the Pool Leader account on any given day.

40. The following schematic is a simplified depiction of the basic flow of funds through the Debtors' cash management system:



41. As of the Petition Date, the Debtors held approximately $670 million across their various U.S. Deposit Accounts. **Exhibit 3**, attached hereto, details the various U.S. Deposit Account holdings on a Debtor-by-Debtor basis as of the Petition Date.[5]

[5] On information and belief, the Debtors filed their petitions following the close of business on the Petition Date.

III. The Collateral Trustee Does Not Have Perfected Liens on Deposit Accounts

42. The Collateral Trustee, on behalf of the Prepetition Secured Parties, was granted a lien on the Deposit Accounts, but it did not perfect that lien through control. The Collateral Trustee and Prepetition Secured Parties likewise cannot establish that they hold perfected liens over the Deposit Accounts through any other method.

A. The Prepetition Secured Parties Did Not Obtain a Perfected Lien on Deposit Accounts Through Control

43. A security interest in a deposit account "may be perfected by control of the collateral." UCC § 9-314(a). A secured party is deemed to have "control" of a deposit account if "(1) the secured party is the bank with which the deposit account is maintained; (2) the debtor, secured party, and bank have agreed in an authenticated record that the bank will comply with instructions originated by the secured party directing disposition of the funds in the deposit account without further consent by the debtor; or (3) the secured party becomes the bank's customer with respect to the deposit account." UCC § 9-104. A security interest in a deposit account is perfected by control "when the secured party obtains control and remains perfected in control only while the secured party retains control." UCC § 9-314(b).

44. Such control is often obtained through entry into deposit account control agreements. Here, no DACAs are in place with respect to the Deposit Accounts. The Collateral Trustee and Prepetition Secured Parties do not otherwise have control over these deposit accounts. In fact, as noted above, the relevant debt documentation expressly disclaimed any obligation on the part of the Debtors to enter into DACAs with their secured lenders. *See* Credit Agreement §5.09(g).

B. The Prepetition Secured Parties Cannot Establish a Perfected Lien Through any Other Method

45. The Debtors, by way of the Cash Stipulation, have stipulated to the existence of liens on the Deposit Accounts. Certain of the Prepetition Secured Parties have asserted that "all or nearly all of the Debtors' cash" is encumbered by perfected security interests because it constitutes the identifiable proceeds of their other collateral, such as inventory.[6] But the Prepetition Secured Parties have not shown that the Deposit Accounts are the identifiable proceeds of other collateral, nor could they in light of the Contractual Release, the nature of the Debtors' centralized (and commingled) cash management system, and applicable UCC provisions.

i. The Collateral Trustee Has Not Proven Through Tracing that the Deposit Accounts Are the Proceeds of its Collateral

46. Under the UCC, "a security interest attaches to any identifiable proceeds of collateral." UCC § 9-315(a)(2). "Proceeds that are commingled with other property are identifiable proceeds … to the extent that the secured party identifies the proceeds by a method of tracing, including application of equitable principles, that is permitted under law…" *Id*. § 9-315(b)(1). The burden is on the secured creditor – here, the Collateral Trustee – to prove that its alleged security interest in proceeds has attached and is perfected.

47. The Debtors' cash management system resulted in the routine commingling of proceeds of encumbered and unencumbered assets. Proceeds of unencumbered assets included: (1) Revolving Credit Facility draws; (2) other financings; (3) certain interest income; (4) unencumbered asset sales; (5) payments associated with litigation and other claims; and

[6] *See* Reply of Ad Hoc First Lien Group to Statement and Reservation of Rights of Official Committee of Unsecured Creditors [Dkt. No. 280], ¶4.

(6) funds from unknown sources that the Prepetition Secured Parties cannot identify as encumbered.

48. Revolving Credit Facility Draws: On June 28, 2019, Endo Luxembourg Finance Company I S.a.r.l. drew $300,000,000 from the Revolving Credit Facility, which funds were deposited with the [redacted] Nothing in the Collateral Trust Agreement, Credit Agreement, or other documents purport to grant the Collateral Trustee a lien on Revolving Credit Facility draws. Accordingly, these funds were unencumbered when drawn and unencumbered when they entered the Debtors' cash management system.

49. Other Financings: On March 28, 2019, the Debtors finalized the issuance of new Senior Secured Notes due 2027 and received approximately $1.5 billion in funds. This amount was deposited with [redacted] Nothing in the Collateral Trust Agreement, Credit Agreement, or other document purports to grant the Collateral Trustee a lien on this note issuance. Accordingly, these funds were unencumbered when received and unencumbered when they entered the Debtors' cash management system.

50. Interest Income from Recipients of Irish and Luxembourg Entities: [redacted]

[redacted] Nothing in the Collateral Trust Agreement, Credit Agreement, or other document purports to grant the Collateral Trustee a lien on this type of interest expense. Accordingly, these funds were unencumbered when drawn and unencumbered when they entered the Debtors' cash management system.

51. Asset Sales: In October 2021, the Debtors sold unencumbered real estate at Chestnut Ridge along with certain regulatory approvals to Stride Pharma Inc. and received [redacted] Nothing in the Collateral Trust Agreement, Credit Agreement, or other document purports to grant the Collateral Trustee a lien on these assets. Accordingly, these funds were unencumbered when drawn and unencumbered when they entered the Debtors' cash management system.

52. Payments Associated With Litigation and Other Claims: Funds received by the Debtors in connection with settlements for legal disputes are also not collateral or proceeds of collateral,[7] and such funds are commingled with funds that are allegedly encumbered proceeds of collateral. [redacted]

[7] The Committees have, contemporaneously with the filing of this Complaint, filed a separate challenge seeking, among other things, a declaration that these and other assets are not encumbered. *See* Standing Motion, Ex. B.

[redacted] Nothing in the Collateral Trust Agreement, Credit Agreement, or other document purports to grant the Collateral Trustee a lien on these funds. Accordingly, these funds were unencumbered when received and when they entered the Debtors' cash management system.

53. Payments Associated With Insurance Policies: On information and belief, the Debtors may have received payments from their insurance providers, which payments were made in respect of insurance policies that were not Prepetition Secured Party collateral. Accordingly these funds, to the extent received into the Debtors system, were unencumbered.

54. Other Unknown Sources: Additionally, the Debtors and other parties have been unable to identify the source of certain funds that have entered the Debtors' system. For example, [redacted] On information and belief, there is no reasonable method by which the

Prepetition Secured Parties could establish that such funds were encumbered upon entering the Debtors' cash management system.

ii. The Deposit Accounts Are Not the Proceeds of the Collateral Trustee's Collateral Because of the Contractual and Statutory Release

55. More importantly, even absent the routine commingling discussed above, the Collateral Trustee cannot establish that any Deposit Accounts are proceeds of its collateral.

56. The Contractual Release. As noted above, essentially all of the funds received into the Debtors' cash management system are deposited with one of four zero balance Collection Accounts. Under Section 4.1 of the Collateral Trust Agreement (and section 9.13 of the Credit Agreement, and section 12.06 of the Senior Secured Indentures), the lien on "Excluded Assets," which include zero balance accounts, is automatically released.

57. The Statutory Release. Essentially all of the funds received by the Debtors begin at their Collection Accounts, then make their way to the Concentration Accounts, and are subsequently transferred from the Concentration Accounts to the Pool Leader account, which is held by a different Debtor than the Debtors that hold the Collection Accounts and/or Concentration Accounts. Section 9-332(b) of the UCC provides that "the transferee of funds from a deposit account takes the funds free of a security interest in the deposit account unless the transferee acts in collusion with the debtor in violating the rights of the secured party." UCC § 9-332(b).

58. Accordingly, each Debtor that holds a U.S. Deposit Account to which funds are transferred from another Debtor takes those funds free of a security interest in the original Deposit Account. These transfers occur with persistent regularity, and implicate essentially every dollar in the Debtors' domestic cash management system, such that as of the Petition Date nearly every Deposit Account balance was no longer subject to the Collateral Trustee's tracing-based liens.

CLAIMS FOR RELIEF

COUNT ONE

Declaratory Judgment that the Deposit Accounts Are Not Subject to the Collateral Trustee's Liens Because the Collateral Trustee Has Not Traced the Proceeds of its Collateral

(28 U.S.C. §§ 2201 and 2202, UCC § 9-315, Fed. R. Bankr. P. 7001)

59. Plaintiffs incorporate all preceding paragraphs as if fully re-alleged herein.

60. The Collateral Trustee did not have control of any of the Deposit Accounts, whether by DACAs or otherwise, prior to the Petition Date nor at any other relevant time.

61. Given the foregoing, the Collateral Trustee had no perfected security interest in the Deposit Accounts as of the Petition Date unless (at a minimum, and subject to Counts Two and Three below) it can identify the alleged proceeds of its collateral in accordance with UCC § 9-315.

62. Because the Debtors routinely commingled funds, any proceeds of the Collateral Trustee's collateral were commingled with unencumbered funds from other sources.

63. The Collateral Trustee has not identified any Deposit Accounts (nor any other assets) as proceeds of its collateral.

64. The Prepetition Secured Parties assert (and the Debtors have stipulated) that the Collateral Trustee held a perfected security interest in the Deposit Accounts on the Petition Date.

65. Accordingly, an actual, substantial and justiciable controversy exists between Plaintiffs and the Collateral Trustee concerning the scope and extent of the Collateral Trustee's interest in the Deposit Accounts.

66. Plaintiffs are entitled to a judgment declaring that the Collateral Trustee did not have any perfected security interest in the Deposit Accounts as of the Petition Date.

COUNT TWO

Declaratory Judgment that Deposit Accounts are Not Subject to the Collateral Trustee's Liens Because of the Contractual Release

(28 U.S.C. §§ 2201 and 2202, UCC § 9-315, Fed. R. Bankr. P. 7001)

67. Plaintiffs incorporate all preceding paragraphs as if fully re-alleged herein.

68. Pursuant to section 4.1 of the Collateral Trust Agreement, Section 9.13 of the Credit Agreement, and Section 12.06 of the Senior Secured Indentures, the Collateral Trustee's lien (if any) on the proceeds of its collateral was released on each occasion that any such proceeds were deposited with one of the Debtors' Excluded Accounts.

69. In addition, to the extent any of the Deposit Accounts had a maximum daily balance less than $1 million, or a maximum aggregate daily balance of $3 million together with all such other Deposit Accounts having a maximum daily balance less than $1 million, any purported lien on any such Deposits Accounts would also be subject to the Contractual Release as such accounts are also Excluded Accounts. Credit Agreement, § 1.01, definition of "Excluded Accounts", subpart (iv).

70. The Prepetition Secured Parties assert (and the Debtors' have stipulated) that the Collateral Trustee held a perfected security interest in the Deposit Accounts on the Petition Date.

71. Accordingly, an actual, substantial and justiciable controversy exists between Plaintiffs and the Collateral Trustee concerning the scope and extent of the Collateral Trustee's interest in the Deposit Accounts.

72. Plaintiffs are entitled to a judgment declaring that the Collateral Trustee did not have any perfected security interest in the Deposit Accounts on the Petition Date.

COUNT THREE

Declaratory Judgment that Deposit Accounts Are Not Subject to Any Liens Held by the Collateral Trustee Because of the Statutory Release

(28 U.S.C. §§ 2201 and 2202, UCC §§ 9-315 and 9-332, Fed. R. Bankr. P. 7001)

73. Plaintiffs incorporate all preceding paragraphs as if fully re-alleged herein.

74. Pursuant to Section 9-332(b) of the UCC, "the transferee of funds from a deposit account takes the funds free of a security interest in the deposit account unless the transferee acts in collusion with the debtor in violating the rights of the secured party." UCC § 9-332(b).

75. As described above, funds are regularly transferred from one Deposit Account to another in the normal course of operations in the Debtors' cash management system. In particular, all or substantially all of the funds entering the Debtors' cash management system enter the system through one of the four zero balance Collection Accounts, and are subsequently transferred to Deposit Accounts held by other Debtors, including the Deposit Account held by the Pool Leader.

76. No Debtor transferee has colluded with any Debtor transferor in efforts to violate secured party rights. To the contrary, the Debtors and Prepetition Secured Parties have both taken the position that the Deposit Accounts are subject to perfected liens. Cash Collateral Order §E.

77. Accordingly, any perfected lien held by the Prepetition Secured Parties was released each time funds were transferred from a Deposit Account held in the name of one Debtor entity to a Deposit Account held in the name of a different Debtor entity.

78. The Prepetition Secured Parties assert (and the Debtors' have stipulated) that the Collateral Trustee held a perfected security interest in the Deposit Accounts on the Petition Date.

79. Accordingly, an actual, substantial and justiciable controversy exists between Plaintiffs and the Collateral Trustee concerning the scope and extent of the Collateral Trustee's interest in the Deposit Accounts.

80. Plaintiffs are entitled to a judgment declaring that the Collateral Trustee did not have any perfected security interest in the Deposit Accounts on the Petition Date.

COUNT FOUR

Avoidance of Unperfected Liens

28 U.S.C. §§ 2201 and 2202, UCC §9-317, 11 U.S.C. § 544(a)(1), Fed. R. Bankr. P. 7001)

81. Plaintiffs incorporate all preceding paragraphs as if fully re-alleged herein.

82. Section 544(a)(1) of the Bankruptcy Code provides that "(a) The trustee shall have, as of the commencement of the case, and without regard to any knowledge of the trustee or of any creditor, the rights and powers of, or may avoid any transfer of property of the debtor or any obligation incurred by the debtor that is voidable by— (1) a creditor that extends credit to the debtor at the time of the commencement of the case, and that obtains, at such time and with respect to such credit, a judicial lien on all property on which a creditor on a simple contract could have obtained such a judicial lien, whether or not such a creditor exists."

83. The Committees, suing on behalf of and in the name of the Debtors, have the powers of the trustee, and have the status of a hypothetical lien creditor by virtue of Section 544(a)(1) of the Bankruptcy Code.

84. Pursuant to Section 9-317(a)(2) of the UCC, an unperfected security interest is subordinate to the rights of a person who becomes a lien creditor before the security interest is perfected.

85. For the reasons described in Counts One through Three, the Collateral Trustee's security interest in the Debtors' Deposit Accounts was unperfected as of the Petition Date. Therefore, as of the Petition Date the Collateral Trustee's interests in the Debtors' Deposit Accounts were subordinate to the Debtors' rights as a hypothetical lien creditor under Bankruptcy Code § 544(a)(1).

COUNT FIVE

Declaratory Judgment that the Cash Stipulation is Void

(28 U.S.C. §§ 2201 and 2202, Fed. R. Bankr. P. 7001)

86. Plaintiffs incorporate all preceding paragraphs as if fully re-alleged herein.

87. The Cash Stipulation asserts, among other things, that "[a]ll of the Debtors' cash…constitutes cash collateral of the Prepetition Secured Parties."

88. The Cash Stipulation is inaccurate. As described herein, not only have the Prepetition Secured Parties failed to establish their lien on any "cash proceeds" of other collateral, they cannot do so because of the Contractual Release and the operation of UCC 9-332(b).

89. The Prepetition Secured Parties have nevertheless asserted (and the Debtors' have stipulated) that the Collateral Trustee held a perfected security interest in substantially all of the Debtors' cash.

90. Accordingly, an actual, substantial and justiciable controversy exists between Plaintiffs and the Collateral Trustee concerning the validity and/or applicability of the Cash Stipulation.

91. Plaintiffs are entitled to a judgment declaring that the Cash Stipulation is inaccurate, null, and void, and not binding on the Committees and not binding on the Debtors' estates.

RESERVATION OF RIGHTS

92. The Plaintiffs hereby specifically reserve the right to bring any and all causes of action that they may maintain against the Collateral Trustee or such other defendants as the Plaintiffs may determine are necessary or appropriate, including, without limitation, causes of action arising out of the same facts set forth herein, to the extent discovery in this action or further investigation by the Plaintiffs reveals such further causes of action.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request entry of a judgment in its favor against the Collateral Trustee as follows:

(a) On claims one through three, a judgment declaring that the Collateral Trustee did not have any perfected security interest in the Deposit Accounts as of the Petition Date;

(b) On claim four, avoidance of any unperfected liens on the Deposit Accounts pursuant to section 544(a)(1) of the Bankruptcy Code;

(c) On claim five, a judgment declaring that the Cash Stipulation is inaccurate, null, and void, and not binding on the Committee nor the Debtors' estates;

(d) For all claims, such other and further relief as this Court may deem just and proper.

[*Remainder of Page Intentionally Left Blank*]

Dated: January 23, 2023

Respectfully submitted,

KRAMER LEVIN NAFTALIS & FRANKEL LLP

/s/ *Draft*
Kenneth H. Eckstein
Rachael L. Ringer
David E. Blabey, Jr.
Natan Hamerman
Andrew Pollack
Kramer Levin Naftalis & Frankel LLP
1177 Avenue of the Americas
New York, New York 10036
Telephone: (212) 715-9100

Counsel to the Official Committee of Unsecured Creditors

COOLEY LLP

/s/ *Draft*
Cullen D. Speckhart
Ian Shapiro
Michael Klein
Reed Smith
55 Hudson Yards
New York, NY 10001
Telephone: (212) 479-6000

Lead Counsel to the Official Committee of Opioid Claimants

Exhibit 1

Debtor Obligors

Exhibit 1
Debtor Obligors

Row #	Debtor Obligors
1.	70 MAPLE AVENUE, LLC
2.	ACTIENT PHARMACEUTICALS LLC
3.	ACTIENT THERAPEUTICS, LLC
4.	ANCHEN INCORPORATED
5.	ANCHEN PHARMACEUTICALS, INC.
6.	ASTORA WOMEN'S HEALTH, LLC
7.	AUXILIUM INTERNATIONAL HOLDINGS, LLC
8.	AUXILIUM PHARMACEUTICALS, LLC
9.	AUXILIUM US HOLDINGS, LLC
10.	BERMUDA ACQUISITION MANAGEMENT LIMITED*
11.	BIOSPECIFICS TECHNOLOGIES LLC
12.	BRANDED OPERATIONS HOLDINGS, INC.
13.	DAVA INTERNATIONAL, LLC
14.	DAVA PHARMACEUTICALS, LLC
15.	ENDO AESTHETICS LLC
16.	ENDO BERMUDA FINANCE LIMITED
17.	ENDO DESIGNATED ACTIVITY COMPANY
18.	ENDO EUROFIN UNLIMITED COMPANY
19.	ENDO FINANCE IV UNLIMITED COMPANY (formerly ENDO FINANCE IV LIMITED)
20.	ENDO FINANCE LLC

Row #	Debtor Obligors
21.	ENDO FINANCE OPERATIONS LLC
22.	ENDO FINCO INC.
23.	ENDO GENERICS HOLDINGS, INC.
24.	ENDO GLOBAL AESTHETICS LIMITED
25.	ENDO GLOBAL BIOLOGICS LIMITED
26.	ENDO GLOBAL DEVELOPMENT LIMITED
27.	ENDO GLOBAL FINANCE LLC
28.	ENDO GLOBAL VENTURES
29.	ENDO HEALTH SOLUTIONS INC.
30.	ENDO INNOVATION VALERA, LLC
31.	ENDO INTERNATIONAL PLC
32.	ENDO IRELAND FINANCE II LIMITED
33.	ENDO LLC
34.	ENDO LUXEMBOURG FINANCE COMPANY I S.A R.L.
35.	ENDO LUXEMBOURG HOLDING COMPANY S.A R.L. (product of merger with ENDO LUXEMBOURG FINANCE COMPANY II S.A R.L.)
36.	ENDO LUXEMBOURG INTERNATIONAL FINANCING SARL
37.	ENDO MANAGEMENT LIMITED
38.	ENDO PAR INNOVATION COMPANY, LLC
39.	ENDO PHARMACEUTICALS FINANCE LLC
40.	ENDO PHARMACEUTICALS INC.

Row #	Debtor Obligors
41.	ENDO PHARMACEUTICALS SOLUTIONS, INC.
42.	ENDO PHARMACEUTICALS VALERA, INC.
43.	ENDO PROCUREMENT OPERATIONS LIMITED
44.	ENDO TOPFIN LIMITED
45.	ENDO U.S. INC.
46.	ENDO US HOLDINGS LUXEMBOURG I S.A R.L. (product of merger with ENDO US HOLDINGS LUXEMBOURG II S.A R.L.)
47.	ENDO VENTURES AESTHETICS LIMITED (F/K/A ENDO AESTHETICS LOGISTICS LIMITED UNTIL DECEMBER 9, 2020)
48.	ENDO VENTURES BERMUDA LIMITED
49.	ENDO VENTURES LIMITED
50.	GENERICS BIDCO I, LLC
51.	GENERICS INTERNATIONAL (US) 2, INC.
52.	GENERICS INTERNATIONAL (US), INC.
53.	GENERICS INTERNATIONAL VENTURES ENTERPRISES LLC
54.	HAWK ACQUISITION IRELAND LIMITED
55.	INNOTEQ, INC.
56.	JHP ACQUISITION, LLC
57.	JHP GROUP HOLDINGS, LLC
58.	KALI LABORATORIES 2, INC.
59.	KALI LABORATORIES, LLC

Row #	Debtor Obligors
60.	LUXEMBOURG ENDO SPECIALTY PHARMACEUTICALS HOLDING I SARL(S) (product of merger with LUXEMBOURG ENDO SPECIALTY PHARMACEUTICALS HOLDING II SARL(S))
61.	MOORES MILL PROPERTIES L.L.C.
62.	PALADIN LABS CANADIAN HOLDING INC.
63.	PALADIN LABS INC.
64.	PAR LABORATORIES EUROPE, LTD.
65.	PAR PHARMACEUTICAL 2, INC.
66.	PAR PHARMACEUTICAL COMPANIES, INC.
67.	PAR PHARMACEUTICAL HOLDINGS, INC.
68.	PAR PHARMACEUTICAL, INC.
69.	PAR STERILE PRODUCTS, LLC
70.	PAR, LLC
71.	QUARTZ SPECIALTY PHARMACEUTICALS, LLC
72.	SLATE PHARMACEUTICALS, LLC
73.	TIMM MEDICAL HOLDINGS, LLC
74.	VINTAGE PHARMACEUTICALS, LLC

Notes:

* Not an obligor or guarantor on any of the Debtors' secured debt obligations other than the Revolving Credit Facility and Term Loan Facility, which such Debtor became obligated on as of August 12, 2022.

Exhibit 2

Zero Balance Accounts

Exhibit 2

Zero Balance Accounts

Debtor Zero Balance Accounts			
	Bank Institution	**Account Number**	**Legal Entity**
1	[redacted]	[redacted]	[redacted]
2			
3			
4			
5			
6			
7	Bank of America	*8474	Endo Aesthetics LLC
8	[redacted]	[redacted]	[redacted]
9			
10			
11			
12	Bank of America	*4582	Endo Pharmaceuticals Inc.
13	[redacted]	[redacted]	[redacted]
14			
15			
16	BAML - Canada	*9208	Paladin Labs Inc.
17	[redacted]	[redacted]	[redacted]
18			
19	Bank of America	*4621	Par Pharmaceutical, Inc.
20	[redacted]	[redacted]	[redacted]
Notes:			
[redacted]			

Exhibit 3

U.S. Deposit Account Balances as of the Petition Date

Exhibit 3

Debtor Account Balances as of Petition Date

Debtors' US Accounts					
	Bank Institution	**Acct Number**	**Legal Entity**	**Type**	**Closing Balance as of Petition Date (8/16/2022)**
1.	Bank of America	*5764	Astora Women's Health, LLC	Concentration	-
2.	Bank of America	*1323	Auxilium Pharmaceuticals Inc	Disbursements	1,898,262
3.	Bank of America	*6353	Auxilium Pharmaceuticals Inc	Concentration	-
4.	Wells Fargo	*9007	BioSpecifics Technologies Corp	Utility Deposit Intercompany	2,000
5.	Wells Fargo	*9015	BioSpecifics Technologies Corp	Intercompany	-
6.	Bank of America	*4609	Endo Aesthetics LLC	Disbursements	1,764,471
7.	Bank of America	*8458	Endo Aesthetics LLC	Concentration	-
8.	Bank of America	*8461	Endo Aesthetics LLC	Payroll	-
9.	Bank of America	*8474	Endo Aesthetics LLC	Collection	-
10.	Bank of America	*2285	Endo Finance LLC	Disbursements	-
11.	Bank of America	*2203	Endo Finance Operations LLC	Pool Leader	658,156,309
12.	Bank of America	*4595	Endo Health Solutions Inc.	Intercompany	-
13.	Bank of America	*1787	Endo Pharmaceuticals Inc.	P-Card	No Data
14.	Bank of America	*4566	Endo Pharmaceuticals Inc.	Concentration	-
15.	Bank of America	*4579	Endo Pharmaceuticals Inc.	Payroll	-
16.	Bank of America	*4582	Endo Pharmaceuticals Inc.	Collection	-
17.	Bank of America	*8420	Endo Pharmaceuticals Inc.	Disbursements	7,681,964

Debtors' US Accounts					
	Bank Institution	**Acct Number**	**Legal Entity**	**Type**	**Closing Balance as of Petition Date (8/16/2022)**
18.	Bank of America	*1199	Endo U.S. Inc.	Intercompany	-
19.	Bank of America	*0861	Generics Bidco I, LLC	Disbursements	1,996,826
20.	Bank of America	*3994	Generics Bidco I, LLC	Concentration	-
21.	Bank of America	*8725	Hawk Acquisition Ireland Limited	Intercompany	766,888
22.	Bank of America	*3989	Par Pharmaceutical, Inc.	P-Card	No Data
23.	Bank of America	*4605	Par Pharmaceutical, Inc.	Concentration	-
24.	Bank of America	*4618	Par Pharmaceutical, Inc.	Payroll	-
25.	Bank of America	*4621	Par Pharmaceutical, Inc.	Collection	-
26.	Bank of America	*8438	Par Pharmaceutical, Inc.	Disbursements	405,654
Total					**$672,672,374**

Notes:

Bank of America - Canada account *9208 owned by Paladin Labs Inc., a Canadian Debtor, is also a zero balance Collection Account.

Exhibit C

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re: ENDO INTERNATIONAL plc, *et al.*, Debtors.	Chapter 11 Case No. 22-22549 (JLG) (Jointly Administered)
OFFICIAL COMMITTEE OF UNSECURED CREDITORS, on behalf of the Debtors' estates; OFFICIAL COMMITTEE OF OPIOID CLAIMANTS, on behalf of the Debtors' estates, Plaintiffs, v. WILMINGTON TRUST, NATIONAL ASSOCIATION, in its capacities as Collateral Trustee under that certain First Lien Collateral Trust Agreement dated April 27, 2017 and Second Lien Collateral Trust Agreement dated June 16, 2020, Defendant.	**Adv. Pro. No. 23-_____(JLG)**

PROPOSED COMPLAINT OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS AND THE OFFICIAL COMMITTEE OF OPIOID CLAIMANTS

The Official Committee of Unsecured Creditors (the "**Creditors' Committee**") and the Official Committee of Opioid Claimants (the "**OCC**", and together with the Creditors' Committee, the "**Committees**" or the "**Plaintiffs**") of Endo International plc ("**Endo**") and its affiliated debtors and debtors in possession (collectively, the "**Debtors**"), on behalf of and as representative of the Debtors' estates, for their complaint ("**Complaint**") against Wilmington Trust, National Association (the "**Collateral Trustee**"), in its capacities as collateral trustee under a certain Collateral Trust Agreement, dated as of April 27, 2017 (as amended, supplemented, amended and

restated or otherwise modified and in effect from time to time, the "**First Lien Collateral Trust Agreement**"), and a certain Second Lien Collateral Trust Agreement, dated as of June 16, 2020 (as amended, supplemented, amended and restated or otherwise modified and in effect from time to time, the "**Second Lien Collateral Trust Agreement**," and together with the First Lien Collateral Trust Agreement, the "**Collateral Trust Agreements**"), upon information and belief and based on their investigation to date, allege as follows:

INTRODUCTION

1. This complaint seeks to undo the overreaching stipulations made by the Debtors in favor of the Secured Parties that purported to concede that, prior to the Petition Date, the Secured Parties had properly perfected liens and security interests in substantially all of the Debtors' assets. Many of those stipulations are unmoored from reality. The Committees' investigations have uncovered valuable unencumbered assets which should be made available for unsecured creditors, and not baselessly bestowed by the Debtors on the very parties for whose benefit this entire bankruptcy is being conducted: their secured lenders.

2. Before bankruptcy, the Debtors purported to grant liens and security interests to the Collateral Trustee for the benefit of the Debtors' first lien creditors (collectively, the "**First Lien Secured Parties**") and second lien creditors (collectively, the "**Second Lien Secured Parties**" and together with the First Lien Secured Parties, the "**Secured Parties**") in certain categories of assets to secure the Debtors' obligations under a credit agreement and four issues of secured notes.

3. Despite this allegedly broad grant, however, the Committees have uncovered through their investigations that, as of the Petition Date, the Debtors owned valuable unencumbered assets on which no lien was granted, or as to which no lien was properly perfected. These assets include, among other things, the equity in the Debtors' valuable Indian non-debtor

affiliates, deposit accounts in Luxembourg credited with approximately $50 million as of the Petition Date, intellectual property associated with the Debtors' most valuable product—Xiaflex—among other intellectual property, hundreds of millions of dollars of intercompany receivables (including over $200 million owed by the Indian non-debtor affiliates to certain Luxembourg Debtors), commercial tort claims, and more.

4. The Debtors previously acknowledged—in writing—that at least some of these assets were unencumbered, including the equity interests in their Indian affiliates. (*See* Exhibit 1, attached hereto.) Yet despite these acknowledgements, and despite the fact that several other categories of assets discussed herein are indisputably unencumbered, the Debtors and the Ad Hoc First Lien Group have refused to agree to a stipulation that might have mooted at least part of this litigation. Accordingly, the Committees now bring this adversary proceeding for declaratory relief and avoidance (the "**Challenges**"), to preserve unencumbered assets for the benefit of the Debtors' estates and creditors.

JURISDICTION AND VENUE

5. Pursuant to 28 U.S.C. §§ 157 and 1334(b), this Court has subject matter jurisdiction over this adversary proceeding, which arises under title 11 and arises in and relates to cases under title 11, specifically *In re Endo International plc, et al.*, Case No. 22-22549 (JLG).

6. The statutory and legal predicates for the relief sought herein are 11 U.S.C. §§ 544, 549, 550 and 551, 28 U.S.C. §§ 2201 and 2202, N.Y. Uniform Commercial Code (the "**UCC**") §§ 9-314, 9-315, and 9-332 (or such other comparable Uniform Commercial Code provisions of any State that are determined to apply), and Rule 7001 of the Federal Rules of Bankruptcy Procedure.

7. This adversary proceeding is a "core" proceeding to be heard and determined by the Court pursuant to 28 U.S.C. § 157(b)(2), and the Court may enter final orders for matters contained herein.

8. Venue is proper in the Southern District of New York pursuant to 28 U.S.C. § 1409.

9. Pursuant to Bankruptcy Rule 7008, Plaintiffs state that they consent to the entry of final orders or judgments by the Court if it is determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the Constitution.

THE PARTIES

10. The Creditors' Committee is an official committee of unsecured creditors appointed in these cases by the United States Trustee for the Southern District of New York on September 2, 2022, under section 1102 of the Bankruptcy Code. [Dkt. No. 161].

11. The OCC is an official committee of opioid claimants appointed in these cases by the United States Trustee for the Southern District of New York on September 2, 2022, under section 1102 of the Bankruptcy Code. [Dkt. No. 163].

12. The Committees are vested with, among other things, the powers described in section 1103 of the Bankruptcy Code, including the power to investigate the acts, conduct, assets, liabilities, and financial condition of the Debtors.

13. The Committees bring this action on behalf of the estates of the Debtors. The Committees have standing to pursue this Complaint under Section 1103 of the Bankruptcy Code and the *Order Granting Motion of Official Committee of Unsecured Creditors and Official Committee of Opioid Claimants for (I) Leave, Standing and Authority to Commence and Prosecute Certain Claims and Causes of Action on Behalf of the Debtors' Estates and (II) Exclusive Settlement Authority* [Dkt. No. ●].

14. Defendant Collateral Trustee is incorporated in Delaware with its principal place of business in Delaware. It is named in its capacity as first- and second-lien Collateral Trustee and holds liens to secure the Debtors' first and second lien obligations under the Credit Agreement and Senior Secured Indentures (each as further defined below), and certain other loan, note and security documents. Defendant filed notices of appearance in the Debtors' bankruptcies at Dkt. Nos. 89 & 90 in Case No. 22-22549.

FACTS

15. The Debtors are a pharmaceutical company that develops, manufactures, and sells branded and generic products.

16. The Debtors have four principal operating segments: (1) branded pharmaceuticals, which includes its flagship product, Xiaflex; (2) sterile injectables; (3) generic pharmaceuticals; and (4) international pharmaceuticals.

17. All of the Debtors' products, except for those sold in the international pharmaceuticals segment, are sold in the U.S. only, and upon information and belief, approximately 97% of the Debtors' total revenues in 2021 were derived from U.S. customers. *See* 10-K for fiscal year ending December 31, 2021.

18. Certain Debtor products, however, are manufactured abroad.

19. Par Pharmaceutical, Inc. ("**Par Pharma**"), a U.S. Debtor, is the parent company of (and owns the equity interests of) Par Formulations Private Limited ("**PFPL**"), an Indian non-Debtor entity.

20. PFPL in turn is the parent company of Par Biosciences Private Limited and Par Active Technologies Private Limited, both Indian companies. Par Active Technologies Private

Limited, Par Bioscience Private Limited, and Par Formulations Private Limited are referred to collectively as the "**Indian Affiliates**."

21. The Indian Affiliates are not Debtors, but manufacture certain generic products that are sold by U.S. Debtor entities.

22. In addition to the Debtors incorporated in the United States (the "**US Debtors**"), several Debtors are organized under Irish law (the "**Irish Debtors**"), and others are organized under Luxembourg law (the "**Lux Debtors**").[1] There are Debtors organized in other jurisdictions, including Bermuda and the United Kingdom.

A. The Cash Collateral Order and the Committees' Investigation

23. On August 16, 2022, (the "**Petition Date**"), the Debtors filed voluntary petitions in this Court under chapter 11 of title 11 (the "**Chapter 11 Cases**") of the United States Code (the "**Bankruptcy Code**").

24. On October 27, 2022, the Court entered an order (the "**Cash Collateral Order**") [Dkt. No. 535] approving the Debtors' request to use the Secured Parties' cash collateral.

25. Under paragraph E of the Cash Collateral Order, the Debtors and the Secured Parties agreed and stipulated to the validity, extent and enforceability of the various obligations owing to, and liens held by, the Secured Parties, and that such liens covered substantially all of the Debtors' assets (the "**Stipulations**"). *See* Cash Collateral Order ¶ E. In the same order, the Debtors

---

[1] The Irish Debtors include Endo International plc, Endo Designated Activity Company ("**Endo DAC**"), Endo Finance IV Unlimited Company, Endo Management Limited, Endo Procurement Operations Limited, Endo Global Development Limited, Endo TopFin Limited, Endo Ventures Aesthetics Limited, Endo Ventures Limited, Endo Global Biologics Limited, Endo Global Aesthetics Limited, Astora Women's Health Ireland Limited, Endo Eurofin Unlimited Company, Endo Ireland Finance II Limited, and Hawk Acquisition Ireland Limited.

The Lux Debtors include Endo Luxembourg Holding Company, S.a.r.l., Endo Luxembourg Finance Company I S.a.r.l. ("**ELFC I**" or "**Lux Borrower**"), Endo Luxembourg International Financing S.a.r.l., Luxembourg Endo Specialty Pharmaceuticals Holding I S.a.r.l., and Endo US Holdings Luxembourg I S.a.r.l..

also granted releases of, and/or waived all claims against, the Secured Parties (the "**Releases**" and together with the Stipulations and any other stipulations, admissions, waivers, and releases, the "**Stipulations and Releases**"), arising out of the Debtors' secured borrowings. *See, e.g.*, Cash Collateral Order ¶ E.1(d).

26. Each of the Stipulations and Releases, among other items, were subject to the Committees' right to investigate and challenge by January 20, 2023 (the "**Challenge Deadline**"). *See* Cash Collateral Order ¶ 19.[2] The Committees did not join, and are not bound by, the Stipulations or the Releases until after the Challenge Deadline (as tolled in the Cash Collateral Order).

27. The Cash Collateral Order provides that "either Committee may file a standing motion seeking to commence any Challenge and an adversary proceeding seeking to prosecute such Challenge in parallel without having to first obtain standing." *See* Cash Collateral Order ¶ 19. Under the Cash Collateral Order, the filing of the Committees' motion seeking standing to pursue certain challenges tolls the Challenge Deadline with respect to such challenges. *Id.*

28. After the entry of the Cash Collateral Order, the Committees investigated, among other things, the claims and liens of the Secured Parties, as well as the Stipulations and Releases.

29. As a result of their investigations, which remain ongoing, the Committees have determined that (i) substantial, valuable estate assets are not subject to liens held by the Secured Parties, or are subject to unperfected or otherwise avoidable liens, and (ii) valuable estate claims are being inappropriately waived by the Debtors under the Cash Collateral Order.

[2] The Challenge Deadline was extended by agreement of the First Lien Lenders and the Debtors to January 23, 2023.

30. The Debtors and the Ad Hoc First Lien Group, on behalf of the Secured Parties, have refused to stipulate with the Committees that the Debtors' assets that are the subject of this Complaint are either (i) not subject to the Secured Parties' liens or (ii) subject to avoidable liens. [3]

B. The Debtors' Prepetition Secured Debt

31. On the Petition Date, the Debtors were liable for funded debt obligations that arose under (a) a credit agreement, which provided for a revolving credit facility and a term loan facility, and (b) four series of secured notes.

i. The Credit Agreement

32. On April 27, 2017, Endo, Lux Borrower, and Endo LLC, a Delaware limited liability company, together with certain other Debtor guarantors entered into the Credit Agreement, which was amended and restated on March 25, 2021 (as amended, supplemented, amended and restated or otherwise modified and in effect from time to time, the "**Amended and Restated Credit Agreement**" or "**Credit Agreement**") with JPMorgan Chase Bank, N.A., as swing line lender, issuing bank, and administrative agent, and the lenders party thereto from time to time.

33. The Credit Agreement establishes a senior secured revolving credit facility (the "**Revolving Credit Facility**") and a senior secured term loan facility (the "**Term Loan Facility**" and, together with the Revolving Credit Facility, the "**Credit Facilities**"). As of the Petition Date, approximately $277,875,675.00 was outstanding under the Revolving Credit Facility, and approximately $1,982,282,812.50 was outstanding under the Term Loan Facility.

[3] The "**Ad Hoc First Lien Group**" refers to that creditor group identified in the *Verified Statement of the Ad Hoc First Lien Group Pursuant to Bankruptcy Rule 2019* [Dkt. No. 63].

ii. The First Lien Notes

34. On April 27, 2017, Endo DAC, Endo Finance LLC, and Endo Finco, Inc. issued $300 million aggregate principal amount of 5.875% senior secured notes due October 15, 2024 (the "**5.875% Notes**"), that were guaranteed by certain other Debtors. The 5.875% Notes were issued pursuant to an Indenture dated April 27, 2017 (as amended, supplemented, amended and restated or otherwise modified and in effect from time to time, the "**5.875% Notes Indenture**"), by and among Debtors Endo DAC, Endo Finance LLC, and Endo Finco Inc., as issuers, the guarantor parties thereto, and Computershare Trust Company, National Association, as successor indenture trustee ("**Computershare**" and in such capacity and including any predecessors and successors thereto, the "**First Lien Indenture Trustee**").

35. The 5.875% Notes are secured on a *pari passu* basis with the Debtors' other first lien obligations with first-priority liens on, and security interests in, the Collateral (as defined below). As of the Petition Date, approximately $300 million was outstanding under the 5.875% Notes Indenture.

36. On March 28, 2019, Par Pharma issued $1.5 billion aggregate principal amount of 7.500% senior secured notes due on April 1, 2027 (the "**7.500% Notes**"), that were guaranteed by certain other Debtors. The 7.500% Notes were issued pursuant to an Indenture dated March 28, 2019 (as amended, supplemented, amended and restated or otherwise modified and in effect from time to time, the "**7.500% Notes Indenture**"), by and among Debtor Par Pharma, as issuer, the guarantor parties thereto, and the First Lien Indenture Trustee. In June 2020, the Debtors issued an additional $516 million of 7.500% Notes under the 7.500% Notes Indenture.

37. The 7.500% Notes are secured on a *pari passu* basis with the Debtors' other first lien obligations with first-priority liens on, and security interests in, the Collateral.

38. As of the Petition Date, approximately $2 billion was outstanding under the 7.500% Notes Indenture.

39. On March 25, 2021, Debtors Lux Borrower and Endo U.S. Inc. issued $1.295 billion of 6.125% Senior Secured Notes due 2029 (the "**6.125% Notes**," and together with the 5.875% Notes and the 7.500% Notes, the "**First Lien Notes**"), which were guaranteed by certain other Debtors.

40. The 6.125% Notes were issued pursuant to an Indenture dated May 25, 2021 (as amended, supplemented, amended and restated or otherwise modified and in effect from time to time, the "**6.125% Notes Indenture**" and, collectively with the 5.875% Notes Indenture and the 7.500% Notes Indenture, the "**First Lien Notes Indentures**"), by and among Lux Borrower and Endo U.S. Inc., as issuers, the guarantor parties thereto, and the First Lien Indenture Trustee.

41. The 6.125% Notes are secured on a *pari passu* basis with the Debtors' other first lien obligations with first-priority liens on, and security interests in, the Collateral. As of the Petition Date, approximately $2 billion was outstanding under the 6.125% Notes Indenture.

iii. The Second Lien Notes

42. On June 16, 2020, Debtors Endo DAC, Endo Finance LLC, and Endo Finco, Inc. issued $940 million aggregate principal amount of 9.500% senior secured second lien notes due July 31, 2027 (the "**Second Lien Notes**") under an indenture dated June 16, 2020 (as amended, supplemented, amended and restated or otherwise modified and in effect from time to time, the "**Second Lien Notes Indenture**," and together with the First Lien Notes Indentures, the "**Senior Secured Indentures**"), which were guaranteed by certain other Debtors. The Second Lien Notes are secured by a second-priority lien on the Collateral in accordance with the terms of the Second Lien Prepetition Security Documents (defined below) and the Second Lien Collateral Trust

Agreement. On the Petition Date, approximately $941 million of Second Lien Notes were outstanding.

43. Upon information and belief, the First Lien Notes, Second Lien Notes, and Credit Facilities (together, the "**Secured Debt Obligations**") were each marketed to and sold primarily to U.S.-based investors. All of the Secured Debt Obligations were incurred, individually or jointly, by Debtors domiciled primarily in the U.S.[4] The proceeds of the Secured Debt Obligations were used to support the Debtors' operations and ultimately, sales to U.S.-based customers.

iv. The Prepetition Security Documents and Collateral Package

44. To secure the obligations arising under the Credit Agreement and the First Lien Notes, the relevant Debtor Obligors entered into certain collateral and security documents, such as the US Pledge and Security Agreement, dated April 27, 2017 (the "**US Pledge and Security Agreement**," and together with all other domestic and foreign first-lien security documents, mortgages, debentures, pledges, and foreign and domestic security filings, the "**First Lien Prepetition Security Documents**"), purportedly granting the Collateral Trustee first-priority liens on, and security interests in, various Debtor assets.

45. To secure the obligations under the Second Lien Indenture, the Debtors entered into certain collateral and security documents (together with all other domestic and foreign second-lien security documents, mortgages, debentures, pledges, and foreign and domestic security filings, the "**Second Lien Prepetition Security Documents**" and together with the First Lien Prepetition Secured Documents, the "**Prepetition Security Documents**") purportedly granting the Collateral Trustee second-priority liens on, and security interests in, various Debtor assets. The Debtors'

[4] The Debtors obligated on the Secured Debt Obligations, as applicable, are referred to as the "**Debtor Obligors**".

assets subject to the first and second priority liens created by the Prepetition Security Documents constitute the collateral (collectively, the "**Collateral**").

46. On April 27, 2017, the relevant Debtor Obligors, the First Lien Indenture Trustee, and the First Lien Collateral Trustee (the "**First Lien Secured Parties**") entered into the First Lien Collateral Trust Agreement in respect of the first lien obligations. The First Lien Collateral Trust Agreement governs, among other things, the respective rights, interests and obligations of the First Lien Secured Parties with respect to the Collateral.

47. On June 16, 2020, the Debtors, the Second Lien Indenture Trustee, and the Second Lien Collateral Trustee (the "**Second Lien Secured Parties**") entered into the Second Lien Collateral Trust Agreement. The Second Lien Collateral Trust Agreement governs, among other things, the interests and obligations of the Second Lien Secured Parties with respect to the Collateral.

48. The Prepetition Security Documents grant the Collateral Trustee, on behalf of the Secured Parties, liens on, and security interests in, certain Collateral to secure the Secured Debt Obligations.

a. "Excluded Assets"

49. The Collateral identified in the various Prepetition Security Documents includes various categories of assets, such as deposit accounts, equipment, inventory, letters of credit, and various other asset types (some of which may be unperfected). *See, e.g.*, US Pledge and Security Agreement, Article 2. All of the Prepetition Security Documents, however, expressly exclude certain categories of assets from the Secured Parties' Collateral. The assets that are excluded from the Collateral package are referred to as "Excluded Assets," a term defined in the Credit Agreement and referenced (either directly or indirectly) in each Prepetition Security Document. *See* Credit

Agreement, def. of Collateral ("provided that Collateral shall exclude Excluded Assets"); *see, e.g.*, First Lien Collateral Trust Agreement, def. of Collateral ("in no event shall 'Collateral' include any Excluded Assets (as defined in the Credit Agreement)").

50. The definition of "Excluded Assets" in the Credit Agreement includes, in relevant part:

- Leasehold interests in real property (b);
- Fixtures affixed to real property that is not collateral (c);
- Leases and contracts in which granting a security interest would violate the lease or contract or require consent (e);
- Excluded equity interests, which are defined elsewhere (f);
- Assets expressly excluded pursuant to the Agreed Security Principles (g);
- Commercial tort claims worth less than $1 million (k); and
- State licenses that prohibit or restrict security interests (m).

Credit Agreement, def. of Excluded Assets.

b. The Agreed Security Principles

51. The grant of liens and security interests in assets of Endo entities organized under foreign law (the "**Foreign Loan Parties**") is governed in part by Agreed Security Principles that are attached as schedule 1.01A to the Credit Agreement (the "**Agreed Security Principles**"). *See* "Agreed Security Principles," Schedule 1.01A to the Credit Agreement.[5] The Agreed Security

[5] The Agreed Security Principles are attached as Schedule 1.01A to the original Credit Agreement entered into on April 27, 2017. Although the original Credit Agreement was amended and restated on March 25, 2021 by the Amended and Restated Credit Agreement the Agreed Security Principles in their original form remain in effect.

Principles also describe certain steps that the parties may take (while disclaiming others) to perfect those foreign law security interests.

52. Under the Agreed Securities Principles, and subject to various exceptions detailed therein, the Debtors are required to grant liens and security interests in favor of the Secured Parties only in the following assets of the Foreign Loan Parties: (a) owned real property having a market value of more than $20 million or real property leases with an unexpired term of 90 years of more, (b) equity interests in entities that are Material Subsidiaries, (c) receivables, (d) material contracts, (e) intellectual property, (f) insurance policies of the Foreign Loan Parties, (g) bank accounts, and (h) other material assets. *See* Agreed Security Principles at Sections 2(D)–(L).

c. Irish Security Documents

53. As further security for the Secured Debt Obligations, the Irish Debtors entered into debentures governed by Irish law that collectively purported to create security interests in all of their assets other than Excluded Assets, including equity interests in other Irish Debtors, material agreements (in particular intercompany loan agreements), deposit accounts, receivables, inventory, and intellectual property. *See, e.g.*, Irish-law governed debenture dated April 27, 2017 entered into among Endo Designated Activity Company, certain other Debtors, and Wilmington Trust, National Association (related to purported grant of security interest over certain assets).

d. Lux Security Documents

54. As further security for the Secured Debt Obligations, the Lux Debtors entered into certain receivables pledge agreements governed by Luxembourg law purporting to create security interests in favor of the Secured Parties in certain intercompany monetary obligations and liabilities. *See, e.g.*, Receivables Pledge Agreement, dated as of April 27, 2017, between Endo Luxembourg Finance Company I S.[a].r.l. and the Collateral Trustee, § 2.1(a), §1.2 (definitions of

"Collateral" and "Obligor"). Certain Lux Debtors and other Debtors also entered into share pledge agreements purporting to create security interests in favor of the Secured Parties in equity interests of the Lux Debtors.

COUNT I

DECLARATORY JUDGMENT THAT EQUITY INTERESTS IN SUBSIDIARIES ARE UNENCUMBERED (28 U.S.C. §§ 2201, 2202)

55. The Committees restate and reallege the allegations in paragraphs 1 through 54 above, as if fully set forth within.

56. The equity interests in certain Debtor subsidiaries and affiliates, including the valuable Indian Affiliates, are unencumbered.

57. The definition of Excluded Assets in the Credit Agreement and Prepetition Security Documents includes "any Excluded Equity Interests." *See* Credit Agreement, clause (f) of def. of Excluded Assets.

58. The term "Excluded Equity Interests" is defined to include, in relevant part:

> . . . (c) Equity Interests in any Excluded Subsidiary [including, among other things, any Immaterial Subsidiary] (other than an Excluded Subsidiary that is a Guarantor and except to the extent a security interest therein can be perfected by filing a Uniform Commercial Code financing statement (or PPSA or similar filing statements)) . . . (e) any other Equity Interests (or any portion thereof) to the extent expressly excluded pursuant to the Agreed Security Principles…

Credit Agreement, def. of Excluded Equity Interest; *see also id.*, def. of Excluded Subsidiary (which includes "Immaterial Subsidiaries"). The Credit Agreement and Prepetition Security

Documents further define Immaterial Subsidiary as any "Restricted Subsidiary[6] that is not a Material Subsidiary." Credit Agreement, def. of Immaterial Subsidiary.

59. Schedule 3.01 to the Credit Agreement, attached to the March 25, 2021 Amended and Restated Credit Agreement, identifies the following subsidiaries as both not Material Subsidiaries and not Unrestricted Subsidiaries (*i.e.*, Restricted Subsidiaries): Astora Women's Health Bermuda ULC (Bermuda), Astora Women's Health Technologies (Ireland), Astora Women's Health Ireland Limited (Ireland), CPEC LLC (Delaware), Endo Pharma Information Consulting (Suzhou) Company Limited (China), Endo Ventures Cyprus Limited ("**EVCL**"), Par Active Technologies Private Limited (India), Par Bioscience Private Limited (India), and Par Formulations Private Limited (India) (collectively, the "**Non-Collateral Subsidiaries**").

60. Additionally, in June 2021, Endo designated EVCL as an Excluded Subsidiary, which (together with release documentation) led to the termination of the liens and security interests granted by EVCL on the following equity interests owned by EVCL: (i) all equity in Endo Ventures Bermuda Limited and (ii) 55% of the common equity in Endo Global Ventures (together, the "**Terminated Equity Interests**").

61. Upon information and belief, none of the Non-Collateral Subsidiaries have been designated Unrestricted Subsidiaries. Furthermore, if the Non-Collateral Subsidiaries had been designated Unrestricted Subsidiaries, they would then fall under the definition of Excluded Subsidiary, *see* Credit Agreement, def. of Excluded Subsidiary, and therefore still fall squarely within the definition of Excluded Equity Interests.

---

[6] "**Restricted Subsidiary**" is defined as any subsidiary other than an "Unrestricted Subsidiary," which in turn is defined as a subsidiary referred to as such on Schedule 3.01, or such other subsidiary designated by its board of directors after March 25, 2021. Upon information and belief, no subsidiary has been so designated after such date.

62. The Agreed Security Principles provide, in relevant part:

> (F) Liens over Equity Interests
> 1. Subject to (A) and (B) above, equitable share charges (or the equivalent in local jurisdictions) will be made over Equity Interests in Foreign Loan Parties that are Material Subsidiaries in accordance with Section 5.09. For the avoidance of doubt, share charges over Foreign Subsidiaries which are not Material Subsidiaries is not required.

Credit Agreement, Schedule 1.01A.

63. Based on Schedule 3.01 of the Credit Agreement, and in accordance with the Agreed Security Principles, no Non-Collateral Subsidiary is a Material Subsidiary or a guarantor of the Secured Debt Obligations. Accordingly, the equity interests in each Non-Collateral Subsidiary is an Excluded Equity Interest as defined in the Credit Agreement.

64. The Debtors have confirmed to the Committees in writing that the equity interests in Par Active Technologies Private Limited (India), Par Bioscience Private Limited (India), and Par Formulations Private Limited (India)—three Non-Collateral Subsidiaries organized in India—are unencumbered. *See* Exhibit 1.

65. Discovery may uncover additional equity interests in subsidiaries that are unencumbered.

66. Notwithstanding the termination of the liens and security interests granted by EVCL, the definitions of Excluded Equity Interest and Excluded Assets, and the Debtors' express declaration to the Committees that the equity interests in certain Non-Collateral Subsidiaries are unencumbered, the Debtors stipulated as to the validity and perfection of the Secured Parties' liens on, and security interests in, substantially all of the Debtors' assets, without carving out the equity interests in the Non-Collateral Subsidiaries or the Terminated Equity Interests.

67. The Debtors' Stipulations are incorrect and overbroad because (i) the equity interests in each Non-Collateral Subsidiary are Excluded Equity Interests and Excluded Assets and

therefore not subject to the Secured Parties' liens, and (ii) any liens on, and security interests in, the Terminated Equity Interests have been released.

68. Accordingly, an actual, substantial and justiciable controversy exists concerning the scope and extent of the Collateral Trustee's interest in the Debtors' equity interest in the Non-Collateral Subsidiaries and the Terminated Equity Interests.

69. The Court should therefore enter a declaratory judgment that, notwithstanding the Debtors' Stipulations, (i) none of the Secured Parties have a lien on, or security interest in, the equity of the Non-Collateral Subsidiaries or the Terminated Equity Interests, and (ii) the Debtors' Stipulations as to the Non-Collateral Subsidiaries or the Terminated Equity Interests are incorrect, null and void, and not binding on the Committees and not binding on the Debtors' estates.

COUNT II

DECLARATORY JUDGMENT THAT LUX ACCOUNTS ARE UNENCUMBERED (28 U.S.C. §§ 2201, 2202)

70. The Committees restate and reallege the allegations in paragraphs 1 through 69 above, as if fully set forth within.

71. On the Petition Date, the Lux Debtors held five deposit accounts at Bank of America (the "**Lux Accounts**") that are identified on Exhibit 2.

72. One of the Lux Accounts is a Bank of America account owned by ELFC I, which had a balance of approximately $49 million on the Petition Date (the "**ELFC I Account**").

73. Under applicable law, to properly grant a security interest in a deposit account, the Debtor owning the account must execute a written document providing for such grant.

74. None of the Prepetition Security Documents purported to grant a security interest to the Secured Parties in any Lux Account. Accordingly, the Lux Accounts are not Collateral to which the liens or security interests of the Secured Parties attached.

75. Discovery may uncover additional deposit accounts on which the Secured Parties do not have liens or security interests.

76. Nevertheless, the Debtors' Stipulations purport to stipulate as to the validity and perfection of the Secured Parties' liens on, and security interests in, all assets of the Lux Debtors without carving out the Lux Accounts.

77. Accordingly, an actual, substantial and justiciable controversy exists concerning the scope and extent of the Collateral Trustee's interest in the Lux Accounts, including the ELFC I Account.

78. The Court should therefore enter a declaratory judgment that, notwithstanding the Debtors' Stipulations, (i) none of the Secured Parties have a lien on, or security interest in, any Lux Accounts, and (ii) the Debtors' Stipulations as to the Lux Accounts are incorrect, null and void, and not binding on the Committees and not binding on the Debtors' estates.

COUNT III

DECLARATORY JUDGMENT CONCERNING COMMERCIAL TORT CLAIMS (U.S.C. §§ 2201, 2202)

79. The Committees restate and reallege the allegations in paragraphs 1 through 78 above, as if fully set forth within.

80. Upon information and belief, the Debtors own or are otherwise a claimant in connection with multiple commercial tort claims (the "**Commercial Tort Claims**"), including the patent infringement claims listed on Exhibit 3 attached hereto.

81. The Commercial Tort Claims include those listed on Exhibit 3, each of which were identified in the Debtors' schedules of assets and liabilities, as well as certain other claims that the Committees are bringing simultaneously with this Complaint or may bring hereafter.

82. Discovery may uncover additional Commercial Tort Claims and/or the Committees may pursue additional Commercial Tort Claims on behalf of the Debtors' estates (including, e.g., breach of fiduciary duty, aiding and abetting breach of fiduciary duty, fraudulent conveyance, negligence, malpractice, etc.).

A. Commercial Tort Claims Worth Less than $1 Million

83. The definition of Excluded Assets under the Credit Agreement and Prepetition Security Documents includes "commercial tort claims that, in the reasonable determination of Parent, are not expected to result in a judgment in excess of $1,000,000." Credit Agreement, clause (k) of def. of Excluded Assets.

84. Any commercial tort claims owned by the Debtors that are not expected to result in a judgment over $1 million therefore constitute Excluded Assets under the Credit Agreement, and are not Collateral to which the liens or security interests of the Secured Parties attach.

B. Commercial Tort Claims Worth More Than $1 Million

85. The Prepetition Security Documents purport to grant the Secured Parties a security interest in any "Commercial Tort Claim having a value reasonably believed … to be, individually or in the aggregate, in excess of $1,000,000 belonging to such [Debtor] that has arisen in the course of such [Debtors'] business … described in Exhibit E, which are all of such [Debtors'] Commercial Tort Claims reasonably believed by such [Debtor] to be, individually or in the aggregate, in excess of $1,000,000…." *See* US Pledge and Security Agreement, section 4.10.

86. No Commercial Tort Claims are listed on Exhibit E to the US Pledge and Security Agreement, or in any other Prepetition Security Document. *See* US Pledge and Security Agreement, Ex. E (listing "None" under Commercial Tort Claims).

87. Upon information and belief, no Prepetition Security Document specifically identifies or purports to encumber any Commercial Tort Claims.

88. Under UCC Sections 9-108(e) and 9-204(b), to grant a security interest in Commercial Tort Claims, the grantor must identify each such claim with specificity, or no security interest will arise unless the underlying document pursuant to which the security interest was granted is amended or supplemented to identify such Commercial Tort Claims. *See* UCC § 9-108, cmt.5. Upon information and belief, no Prepetition Security Document was so amended or supplemented.

89. Importantly, under the same sections of the UCC, to grant a security interest in a Commercial Tort Claim, the claim must have come into existence at the time of the grant. Claims arising after the date on which the debtor entered into the security agreement but which remain unidentified will not be subject to the security interest, even if the purported grant includes an "after-acquired property" clause. *See* UCC § 9-204, cmt. 4.

C. The Debtors' Stipulation Regarding Commercial Tort Claims

90. Notwithstanding the definition of Excluded Assets and the failure to specifically identify any Commercial Tort Claims in the Prepetition Security Documents, the Debtors stipulated as to the validity and perfection of the Secured Parties' liens on, and security interests in, substantially all of the Debtors' assets, without carving out Commercial Tort Claims. *See* Cash Collateral Order at ¶ E.

91. The Debtors' Stipulations are incorrect because Commercial Tort Claims worth less than $1 million are Excluded Assets and not subject to the Secured Parties' liens.

92. The Debtors' Stipulations are also incorrect because the Secured Parties did not take the necessary steps to grant any lien on or security interest in any Commercial Tort Claims, including claims worth more than $1 million, and therefore such Commercial Tort Claims are not subject to the Secured Parties' liens.

93. Accordingly, an actual, substantial, and justiciable controversy exists concerning whether the Stipulations are correct and supportable and whether the Secured Parties have valid and perfected liens on or security interests in the Commercial Tort Claims.

94. The Court should therefore enter a declaratory judgment that, notwithstanding the Debtors' stipulations, (i) none of the Secured Parties have a lien on or security interest in any of the Commercial Tort Claims, and (ii) the Debtors' Stipulations as to the Commercial Tort Claims are incorrect, null and void, and not binding on the Committees and not binding on the Debtors' estates.

COUNT IV

DECLARATORY JUDGMENT THAT UNENCUMBERED LEASEHOLD INTERESTS AND FIXTURES AFFIXED THERETO ARE UNENCUMBERED (28U.S.C. §§ 2201 and 2202)

95. The Committees restate and reallege the allegations in paragraphs 1 through 94 above, as if fully set forth within.

96. Upon information and belief, the Debtors hold certain leasehold interests in real property (the "**Unencumbered Leasehold Interests**"), including those listed on Exhibit 4 attached hereto. Discovery may uncover additional Unencumbered Leasehold Interests.

97. The definition of Excluded Assets under the Credit Agreement and Prepetition Security Documents includes "leasehold interests in real property (except leasehold interests of the kind described in Section (E)1(y) of the Agreed Security Principles)." *See* Credit Agreement, clause (b) of the def. of Excluded Assets. The Unencumbered Leasehold Interests are therefore not Collateral and not subject to the Secured Parties' liens or security interests.

98. Certain of the real property subject to the Debtors' leasehold interests contain fixtures affixed thereto.

99. The definition of Excluded Assets under the Credit Agreement and Prepetition Security Documents also includes "any fixture affixed to any real property to the extent (A) such real property does not constitute Collateral . . . ." *See* Credit Agreement, clause (c) of the def. of Excluded Assets. Fixtures affixed to the Unencumbered Leasehold Interests (which are not Collateral) are therefore not Collateral and not subject to the Secured Parties' liens or security interests.

100. Notwithstanding the inclusion of leasehold interests in real property and fixtures affixed to real property that is not Collateral in the definition of Excluded Assets in the Credit Agreement and Prepetition Security Documents, the Debtors stipulated as to the validity and perfection of the Secured Parties' liens on, and security interests in, substantially all of the Debtors' assets, without carving out the Unencumbered Leasehold Interests and fixtures affixed thereto.

101. The Debtors' Stipulations are incorrect and overbroad because all leasehold interests in real property and all fixtures affixed thereto are Excluded Assets and not subject to the Secured Parties' liens.

102. Accordingly, an actual, substantial, and justiciable controversy exists concerning whether the Stipulations are correct and supportable and whether the Secured Parties have valid

and perfected liens on or security interests in any Unencumbered Leasehold Interests and fixtures affixed thereto.

103. The Court should therefore enter a declaratory judgment that, notwithstanding the Debtors' stipulations, (i) none of the Secured Parties have a lien on or security interest in any of the Debtors' Unencumbered Leasehold Interests and in fixtures affixed thereto, and (ii) the Debtors' Stipulations as to the Unencumbered Leasehold Interests and fixtures affixed thereto are incorrect, null and void, and not binding on the Committees and not binding on the Debtors' estates.

COUNT V

DECLARATORY JUDGMENT THAT UNENCUMBERED LICENSES ARE UNENCUMBERED (28 U.S.C §§ 2201 and 2202)

104. The Committees restate and reallege the allegations in paragraphs 1 through 103 above, as if fully set forth within.

105. Upon information and belief, certain Debtors have obtained licenses from various states allowing them to operate drug manufacturing and other drug related facilities in those states. On information and belief, the laws of certain states that have granted such licenses prohibit the granting of security interests in those licenses, and such prohibitions are not overridden by the provisions of such state's UCC.

106. The definition of Excluded Assets in the Credit Agreement and Prepetition Security Documents includes "any governmental licenses or state or local franchises, charters and authorizations, to the extent a security interest in any such license, franchise, charter or authorization is prohibited or restricted thereby." *See* Credit Agreement, clause (m) of the def. of Excluded Assets.

107. Certain government licenses owned by the Debtors cannot be subject to a security interest under applicable law, and therefore are Excluded Assets not properly part of the Collateral (such licenses are referred to as the "**Unencumbered Licenses**"). Discovery may uncover additional Unencumbered Licenses.

108. Notwithstanding the inclusion of governmental licenses in the definition of Excluded Assets in the Credit Agreement and Prepetition Security Documents, the Debtors stipulated as to the validity and perfection of the Secured Parties' liens on, and security interests in, substantially all of the Debtors' assets, without carving out the Unencumbered Licenses.

109. The Debtors' Stipulations are incorrect and overbroad because the Unencumbered Licenses are Excluded Assets and not subject to the Secured Parties' liens.

110. Accordingly, an actual, substantial and justiciable controversy exists concerning the scope and extent of the Collateral Trustee's interest in the Unencumbered Licenses.

111. The Court should therefore enter a declaratory judgment that, notwithstanding the Debtors' stipulations, (i) none of the Secured Parties have a lien on, or security interest in, the Unencumbered Licenses, and (ii) the Debtors' Stipulations as to the Unencumbered Licenses are incorrect, null and void, and not binding on the Committees and not binding on the Debtors' estates.

COUNT VI

DECLARATORY JUDGMENT THAT EXCLUDED MATERIAL AGREEMENTS ARE UNENCUMBERED (28 U.S.C. §§ 2201 and 2202)

112. The Committees restate and reallege the allegations in paragraphs 1 through 111 above, as if fully set forth within.

113. On information and belief, the Debtors are party to certain material agreements that contain restrictions on the grant of a security interest in such agreement(s), or otherwise contain anti-assignment provisions. Certain of these agreements are governed by non-US law, and thus the UCC (including the UCC's Anti-Assignment Override Provisions)[7] does not apply to such agreements.

114. The definition of Excluded Assets in the Credit Agreement and Prepetition Security Documents includes "contract[s]…to the extent that a grant of a security interest therein would violate or invalidate such lease, license or agreement or purchase money or similar arrangement or create a right of termination in favor of any other party thereto . . . or otherwise require consent thereunder . . . ." Credit Agreement, clause (e) of the def. of Excluded Assets. Each such agreement (the "**Excluded Material Agreements**"), including those identified below, is therefore not properly part of the Collateral.

115. Discovery may uncover additional Excluded Material Agreements.

A. The TLC Agreement and the TLC Deposit

116. Endo Ventures Limited, an Irish Debtor, is a party to a commercialization agreement (the "**TLC Agreement**") with third-party non-debtor Taiwan Liposome Company ("**TLC**").

117. In connection with the TLC Agreement, Endo Ventures Limited deposited $85 million to fund certain future obligations (the "**TLC Deposit**") [redacted]

[7] The "Anti-Assignment Override Provisions" refer to UCC Sections 9-406 through 9-409.

118. [redacted]

119. [redacted]

120. Accordingly, upon information and belief, the TLC Deposit [redacted], and all related assets, are Excluded Assets and should be excluded from the Secured Parties' Collateral package.

121. Notwithstanding the definition of Excluded Assets in the Credit Agreement and Prepetition Security Documents, the Debtors stipulated as to the validity and perfection of the Secured Parties' liens on, and security interests in, substantially all of the Debtors' assets, without carving out the TLC Deposit, or any of the contractual rights associated therewith.

122. The Debtors' Stipulations are incorrect and overbroad because the TLC Deposit, [redacted] are Excluded Assets and not subject to the Secured Parties' liens.

123. Accordingly, an actual, substantial and justiciable controversy exists concerning the scope and extent of the Collateral Trustee's interest in the TLC Deposit.

124. The Court should therefore enter a declaratory judgment that, notwithstanding the Debtors' Stipulations, none of the Secured Parties have a lien on, or security interest in, Excluded Material Agreements, including the TLC Deposit, [redacted]

B. [redacted] Agreement Related to Protective Cell Captive Insurance

125. Similarly, on information and belief, Debtor [redacted]

[redacted]

[redacted].

133. Accordingly, the [redacted] Agreement (and any of the contractual rights associated therewith) constitutes an Excluded Asset under subpart (e) of the definition of Excluded Asset.

134. Notwithstanding the definition of Excluded Assets in the Credit Agreement and Prepetition Security Documents, the Debtors stipulated as to the validity and perfection of the Secured Parties' liens on, and security interests in, substantially all of the Debtors' assets, without carving out protective cell captive insurance-related assets (including the [redacted] Agreement and the [redacted]) that appropriately should be considered Excluded Assets.

135. The Debtors' Stipulations are incorrect and overbroad because any such assets (including the [redacted] Agreement and the [redacted]) are Excluded Assets and not properly part of the Collateral.

136. Accordingly, an actual, substantial and justiciable controversy exists concerning the scope and extent of the Collateral Trustee's interest in Excluded Material Agreements (including the [redacted] Agreement and [redacted].

137. The Court should therefore enter a declaratory judgment that, notwithstanding the Debtors' Stipulations, (i) none of the Secured Parties have a lien on or security interest in any Excluded Material Agreements (including the [redacted] Agreement and the [redacted] and (ii) the Debtors' Stipulations as to the Excluded Material Agreements [redacted] Agreement and the [redacted] are incorrect, null and void, and not binding on the Committees and not binding on the Debtors' estates .

COUNT VII

DECLARATORY JUDGMENT THAT UNENCUMBERED ANTI-ASSIGNMENT POLICIES ARE UNENCUMBERED (U.S.C. §§ 2201, 2202)

138. The Committees restate and reallege the allegations in paragraphs 1 through 137 above, as if fully set forth within.

139. Upon information and belief, the Debtors own insurance policies that insure the Debtors or under which the Debtors are otherwise beneficiaries. Upon information and belief, such policies may include directors' and officers' insurance policies, liability policies, product liability policies, excess liability coverage policies, and other similar policies. Discovery may reveal additional insurance policies that the Debtors own and under which the Debtors are beneficiaries.

140. Upon information and belief, certain of the Debtors' insurance policies prohibit the grant of a security interest in such policies, or the assignment of such policy to any third-party (the "**Unencumbered Anti-Assignment Policies**").

141. Discovery may reveal additional Unencumbered Anti-Assignment Policies.

142. The definition of Excluded Assets in the Credit Agreement and Prepetition Security Documents includes "contract[s]…to the extent that a grant of a security interest therein would violate or invalidate such lease, license or agreement or purchase money or similar arrangement or create a right of termination in favor of any other party thereto…." Credit Agreement, clause (e) of the def. of Excluded Assets.

143. The UCC by its own terms does not apply to insurance policies (other than casualty policies to the extent constituting proceeds of other collateral). UCC § 9-109(d)(8).

144. Accordingly, the UCC's Anti-Assignment Override Provisions do not apply to the Unencumbered Anti-Assignment Policies.

145. To the extent that any of the Debtors' insurance policies contain provisions prohibiting the grant of a security in such policies, or providing that such policies are otherwise not assignable to any third-party, then such policies meet the applicable criteria under clause (e) of the definition of Excluded Assets and are not properly part of the Collateral.

146. Notwithstanding the definition of Excluded Assets, the Debtors stipulated as to the validity and perfection of the Secured Parties' liens on, and security interests in, substantially all of the Debtors' assets, without carving out these Unencumbered Anti-Assignment Policies.

147. The Debtors' Stipulations are incorrect and overbroad because such Unencumbered Anti-Assignment Policies are Excluded Assets and therefore not subject to the Secured Parties' liens.

148. Accordingly, an actual, substantial and justiciable controversy exists concerning the scope and extent of the Collateral Trustee's interest in the Unencumbered Anti-Assignment Policies.

149. The Court should therefore enter a declaratory judgment that, notwithstanding the Debtors' stipulations, (i) none of the Secured Parties have a lien on, or security interest in, any of the Unencumbered Anti-Assignment Policies, and (ii) the Debtors' Stipulations as to the Unencumbered Anti-Assignment Policies are incorrect, null and void, and not binding on the Committees and not binding on the Debtors' estates.

COUNT VIII

DECLARATORY JUDGMENT THAT SUBJECT POLICIES ARE UNENCUMBERED (U.S.C. §§ 2201, 2202)

150. The Committees restate and reallege the allegations in paragraphs 1 through 149 above, as if fully set forth within.

151. Upon information and belief, the Debtors own insurance policies that insure the Debtors or under which the Debtors are otherwise beneficiaries. Upon information and belief, such policies may include directors' and officers' insurance policies, liability policies, product liability policies, excess coverage policies, and other similar policies (all such insurance policies other than casualty policies to the extent constituting proceeds of other collateral, the "**Subject Policies**").

152. Discovery may reveal additional Subject Policies that the Debtors own and under which the Debtors are beneficiaries.

153. The UCC does not apply to insurance policies (other than casualty insurance policies to the extent constituting proceeds of other collateral). UCC § 9-109(d)(8). Accordingly, in order to perfect a security interest in such insurance policies, the filing of a UCC-1 financing statement is not sufficient, and additional steps must be taken in accordance with applicable law in order to properly encumber such insurance policies. *See* UCC § 9-109(d)(8).

154. On information and belief, the Secured Parties have not taken any additional steps to perfect any security interest the Debtors may have granted in the Subject Policies beyond filing a UCC-1 financing statement (including obtaining the consent of the applicable insurers).

155. Notwithstanding the Secured Parties' failure to perfect a security interest in insurance policies (other than casualty insurance policies to the extent constituting proceeds of other collateral), the Debtors stipulated as to the validity and perfection of the Secured Parties'

liens on, and security interests in, substantially all of the Debtors' assets, without carving out the Subject Policies.

156. The Debtors' Stipulations are incorrect and overbroad because the Secured Parties did not properly perfect a security interest in the Subject Policies.

157. Accordingly, an actual, substantial and justiciable controversy exists concerning whether the Secured Parties have valid and perfected security interests in the Subject Policies.

158. The Court should therefore enter a declaratory judgment that, notwithstanding the Debtors' stipulations, (i) none of the Secured Parties have a perfected lien on or security interest in any of the Subject Policies, and (ii) the Debtors' Stipulations as to the Subject Policies are incorrect, null and void, and not binding on the Committees and not binding on the Debtors' estates.[8]

COUNT IX

AVOIDANCE OF LIENS ON THE SUBJECT POLICIES (11 U.S.C. §§ 544(a)(1), 550, and 551)

159. The Committees restate and reallege the allegations in paragraphs 1 through 158 above, as if fully set forth within.

160. Pursuant to sections 544(a)(1) and (2) of the Bankruptcy Code, the Debtors, the bankruptcy trustee, and the Committees (acting on behalf of the estates) have the rights and powers (as of the commencement of these Chapter 11 cases and without regard to any knowledge of the

[8] The Secured Parties also failed to take steps to perfect a security interest in certain of the Subject Policies that are Unencumbered Anti-Assignment Policies. To the extent the Court finds that the Secured Parties did not have liens on, or security interests in, the Unencumbered Anti-Assignment Policies, a perfection declaration related to such policies is not necessary.

Debtors, any trustee, or any other creditors), or may avoid any transfer of property of the Debtors or any obligation that is incurred by the Debtors that is voidable by:

- A creditor that extends credit to a debtor at the time of the commencement of the case, and that obtains, at such time and with respect to such credit, a judicial lien on all property on which a creditor on a simple contract could have obtained such a judicial lien, whether or not such a creditor exists; or

- A creditor that extends credit to a debtor at the time of the commencement of the case, and obtains, at such time and with respect to such credit, an execution against a Debtor that is returned unsatisfied at such time, whether or not such a creditor exists.

11 U.S.C. § 544(a)(1), (2).

161. In this instance, any security interests or "charges" in the Subject Policies are avoidable pursuant to section 544(a)(1) of the Bankruptcy Code.

162. Because the Secured Parties do not have properly perfected liens on or security interests in the Subject Policies, any and all liens on, and security interests in, the Subject Policies should be avoided pursuant to section 544(a) of the Bankruptcy Code, and such property or the value of such property, if previously transferred, should be recovered to the Debtors' estates pursuant to section 550(a) of the Bankruptcy Code and/or automatically preserved for the benefit of the Debtors' estates pursuant to section 551 of the Bankruptcy Code.[9]

COUNT X

DECLARATORY JUDGMENT THAT THE LUX RECEIVABLES ARE UNENCUMBERED (11 U.S.C. §§ 2201, 2202)

163. The Committees restate and reallege the allegations in paragraphs 1 through 162 above, as if fully set forth within.

[9] Certain of the Subject Policies may contain anti-assignment provisions and therefore may be Unencumbered Anti-Assignment Policies. To the extent the Court finds that the Secured Parties did not have liens on, or security interests in, the Unencumbered Anti-Assignment Policies, avoidance of liens related to such policies is not necessary.

164. The Lux Debtors own certain intercompany receivables which consist of monetary obligations and liabilities, including intercompany loan obligations from Debtors and non-Debtor subsidiaries, including certain of the Indian Affiliates, set forth in Exhibit 5 hereto (the "**Lux Receivables**"). [10]

165. For example, certain of the Indian Affiliates owe more than $220 million to ELFC I, a Lux Debtor, on various intercompany loan obligations that purport to arise from intercompany funding and allow the Debtors to expand manufacturing in India.

166. The Lux Debtors entered into certain pledge agreements governed by Luxembourg law ("**Lux Receivables Pledge Agreements**") that purport to create security interests in favor of the Secured Parties in monetary obligations and liabilities, including intercompany obligations, of certain "Obligors." *See, e.g.*, Receivables Pledge Agreement, dated as of April 27, 2017, between Endo Luxembourg Finance Company I S.a.r.l. and the Collateral Trustee.

167. Each Lux Receivables Agreement grants "pledges" from the Pledgor in favor of the First Lien Secured Parties or Second Lien Secured Parties, as applicable, "over its right, title and interest in Collateral . . . ." *Id.* § 2.1(a).

168. "Collateral" is defined in each Lux Receivables Pledge Agreement as "all monetary obligations and liabilities, whether present or future, actual or contingent, owed by any Obligor to the Pledgor including, without limitation, all claims under any intercompany loan agreement . . . ." *Id.* § 1.2 (def. of "Collateral").

[10] The Committees reserve all rights regarding intercompany claims, including whether any purported intercompany loans are subject to recharacterization, disallowance or other challenges. Nothing in the Complaint shall be deemed an admission regarding the nature, validity, character, or allowability of any intercompany loan or claim.

169. "Obligor" is defined in each Lux Receivables Pledge Agreement as "any present or future subsidiary of the Parent owing any Collateral to the Pledgor listed in Schedule A hereto which shall be accurate, at the date of this Agreement, and updated from time to time by the Pledgor and at least once per year." *Id.* (def. of "Obligor").

170. To the extent that the schedule attached to a Lux Receivables Pledge Agreement does not identify an Obligor as of the Petition Date, the Lux Receivables Pledge Agreement did not grant a valid lien on any Collateral owned by that Obligor, regardless of whether such Collateral was listed on the schedule.

171. To the extent that the schedule attached to a Lux Receivables Pledge Agreement does not identify particular Collateral as of the Petition Date, the Lux Receivables Pledge Agreement did not grant a valid lien on that Collateral as of the Petition Date, regardless of whether an Obligor was listed on the schedule.

172. The Lux Receivables Pledge Agreements therefore do not grant liens to the applicable Secured Parties to the extent the schedule attached to a Lux Receivables Pledge Agreement does not identify both the Obligor and the Collateral.

A. First Lien Pledge Agreements

173. The schedules attached to certain Lux Receivables Pledge Agreements purporting to grant liens in favor of the First Lien Lenders (together with the 2020 Lux Receivables Pledge Agreement (defined below), the "**First Lien Lux Receivables Pledge Agreements**"), when they were signed in 2017, contained spaces for "Date," "Parties," and "Details of Claim." All of those schedules were blank and did not identify any "Parties" (i.e., Obligors) or any "Details of Claim" (i.e., Collateral). *See id.*

174. As a result of repeated requests for additional information and detail related to the schedules concerning the Lux Receivables, the Debtors provided the Committees with a copy of a Lux Receivables Pledge Agreement, dated January 13, 2020, between Endo Luxembourg International Financing S.a.r.l. and the Collateral Trustee (the "**2020 Lux Receivables Pledge Agreement**"). Schedule A in the 2020 Lux Receivables Pledge Agreement was blank and did not identify any Obligors or Collateral.

175. On information and belief, no other First Lien Lux Receivables Pledge Agreement exists.

176. The First Lien Lux Receivables Pledge Agreements purported to pledge to the First Lien Secured Parties only those Lux Receivables properly identified in the schedules to those agreements.

177. Because the schedules were blank and did not identify any "Obligors" or any "Collateral," the Lux Receivables, including certain existing intercompany loans held by Lux Debtors, were never properly identified in any schedule that existed prepetition attached to any First Lien Lux Receivables Pledge Agreements.

178. Accordingly, the First Lien Lux Receivables Pledge Agreements did not pledge the intercompany loans that constitute Lux Receivables, those intercompany loans were not Collateral, and are not subject to the First Lien Secured Parties' liens.

B. Second Lien Pledge Agreements

179. The schedules attached to the Lux Receivables Pledge Agreements purporting to grant liens in favor of the Second Lien Secured Parties (the "**Second Lien Lux Receivables Pledge Agreements**" and such schedules, the "**Second Lien Schedules**"), that were signed in 2020,

identified only a small subset of Obligors and did not identify any specific Collateral, as required under the Lux Receivables Pledge Agreements.[11]

180. On information and belief, no other Second Lien Lux Receivables Pledge Agreements or Second Lien Schedules exist.

181. The Obligors listed in the Second Lien Schedules did not include any of the Indian Affiliates.

182. The Second Lien Lux Receivables Pledge Agreements purported to pledge to the Secured Parties, as defined in the Second Lien Trust Agreement, the Lux Receivables properly identified in the schedules to those agreements. *See* Second Lien Lux Receivables Pledge Agreements at section 2.1(a) (granting second priority pledge over right, title and interest in Collateral to the Second Lien Collateral Trustee).

183. Because the schedules only identified "Obligors" and did not identify any "Collateral," the Lux Receivables, including certain existing intercompany loans held by the Lux Debtors, were never properly identified in any schedule attached to any Second Lien Lux Receivables Pledge Agreements that existed prepetition.

184. Accordingly, the Second Lien Lux Receivables Pledge Agreements did not pledge the intercompany loans that constitute Lux Receivables, those intercompany loans were not Collateral, and are not subject to the Second Lien Secured Parties' liens.

[11] The parties clearly understood that the definition of "Obligor" in the Lux Receivables Pledge Agreements requires that both the "Obligor" and the "Collateral"—and not just the "Obligor"—be listed on Schedule A, because the First Lien Lux Receivables Pledge Agreements all contained space for "Details of Claim" (i.e., Collateral), and [redacted]

[redacted]

185. After repeated requests for additional information related to the schedules concerning the Lux Receivables, [redacted]

187. Section 549 of the Bankruptcy Code provides that "the trustee may avoid a transfer of property of the estate…that occurs after the commencement of the case; and is not authorized under this title or by the court." 11 USC § 549(a).

188. The Lux Receivables identified in the [redacted] were unencumbered on the Petition Date.

189. In addition, any security interests in the Lux Receivables purportedly granted by the [redacted] are avoidable under 11 U.S.C. § 549(a).

190. Nevertheless, the Debtors' Stipulations purport to stipulate as to the validity and perfection of the Secured Parties' liens on, and security interests in, all collateral of the Lux Debtors without carving out the Lux Receivables.

191. Accordingly, an actual, substantial and justiciable controversy exists concerning the scope and extent of the Collateral Trustee's interest in the Lux Receivables [redacted]

192. The Court should therefore enter a declaratory judgment that, notwithstanding the Debtors' Stipulations, (i) none of the First Lien Secured Parties have a lien on or security interest in any Lux Receivables; (ii) none of the Second Lien Secured Parties have a lien on or security interest in any Lux Receivables; (iii) any lien or security interest purportedly arising on account of the [redacted] is an avoidable security interest, and (iv) the Debtors' Stipulations as to the Lux Receivables are incorrect, null and void, and not binding on the Committees and not binding on the Debtors' estates.

COUNT XI

AVOIDANCE OF LIENS ON LUX RECEIVABLES (11 U.S.C. §§ 549, 550, and 551)

193. The Committees restate and reallege the allegations in paragraphs 1 through 192 above, as if fully set forth within.

194. Section 549 of the Bankruptcy Code provides that "the trustee may avoid a transfer of property of the estate…that occurs after the commencement of the case; and is not authorized under this title or by the court." 11 USC §549(a).

195. The Lux Debtors own the Lux Receivables.

[redacted]

197. [redacted]

198. Other than certain adequate protection liens granted under the Cash Collateral Order, the Court has not authorized the granting of any lien on any asset of the Debtors for the benefit of the First Lien Secured Parties or the Second Lien Secured Parties, including on the Lux Receivables.

199. Notwithstanding the Debtors' Stipulations as to the validity and perfection of the Secured Parties' liens on, and security interests in, the Lux Receivables, (i) the Secured Parties failed to properly obtain or perfect their purported liens on, and security interests in, the Lux Receivables identified in the [redacted] and (ii) any security interests in the Lux Receivables purportedly arising as a result of the [redacted] are avoidable under 11 U.S.C. § 549(a).

200. Because the Secured Parties did not have properly perfected liens on or security interests in the Lux Receivables as of the Petition Date, any and all liens on, and security interests in, the Lux Receivables identified in the [redacted] asserted by the Secured Parties should be avoided under section 549(a) of the Bankruptcy Code, and such property or the value of such property, if previously transferred, should be recovered by the Debtors' estates under section 550(a) of the Bankruptcy Code and/or automatically preserved for the benefit of the Debtors' estates under section 551 of the Bankruptcy Code.

COUNT XII

DECLARATORY JUDGMENT THAT UNIDENTIFIED IRISH ASSETS ARE UNPERFECTED (11 U.S.C. §§ 544(a)(1), 550, and 551)

201. The Committees restate and reallege the allegations in paragraphs 1 through 200 above, as if fully set forth within.

202. On information and belief, on the Petition Date, the Irish Debtors owned, among other things, intellectual property (including exclusive intellectual property licenses associated with the drug Xiaflex), material contracts, inventory, receivables, and deposit accounts reflecting balances of approximately $305 million (*see* Exhibit 6, listing balances of deposit accounts owned by Irish Debtors), including the TLC Deposit (the "**Irish Assets**").

203. The Irish Debtors and the Collateral Trustee entered into debentures under Irish law in 2017 and 2020 (the "**Irish Law Debentures**") purportedly creating security interests (including "charges" and "security assignments" in Irish parlance) in favor of the Secured Parties over all of the Irish Debtors' assets, other than Excluded Assets (as defined in the Credit Agreement and Prepetition Secured Documents), including certain of the Irish Assets.

204. The Irish Law Debentures purport to grant the Secured Parties, among other things, a "fixed charge" on certain of the Irish Assets.

205. Under Irish law, a fixed charge is a charge granted in specifically identified assets over which the secured party retains some degree of control. In the Matter of Keenan Brothers Limited (In Liquidation) [1985] IR 401 (Ir.), [1985] ILRM 641 (Ir.), [1986] BCLC 242 (Ir.);[12] In

[12] Available at: https://ie.vlex.com/vid/re-keenan-bros-ltd-793393497.

the Matter of The Companies (Amendment) Act, 1990, and in the Matter of Holidair Ltd and Related Companies [1994] 1 IR 416 (Ir.).[13]

206. Despite purporting to grant a "fixed charge" over certain of the Irish Assets, the Irish Law Debentures do not specifically identify many of the assets that are subject to the "fixed charge" (any such assets not specifically identified, the "**Unidentified Irish Assets**").

207. In particular, the Irish Law Debentures identify only a narrow subset of intercompany loan agreements as "material agreements," and a few "assigned" deposit accounts, but do not specifically identify any other material agreements, deposit accounts, intellectual property or associated licenses, receivables, or inventory.

208. Because the Irish Law Debentures do not specifically identify the Unidentified Irish Assets, under Irish law, the "charge" those agreements purported to grant never became a "fixed charge."

209. Instead, the Irish Law Debentures created only a "floating charge" over the Unidentified Irish Assets.

210. Under Irish law, a "floating charge" can "crystallize" into something similar to a fixed charge only upon a triggering event specified by the relevant security instrument or by law (e.g., an order for appointment of a receiver).[14] The possibilities that the Irish Debtors' assets

---

[13] Available at: https://ie.vlex.com/vid/re-holidair-ltd-793145945.

[14] *See* Re J.D. Brian Ltd (In Liquidation) (t/a East Coast Print and Publicity) and others, [2015] IESC 62 (Ir.) at ¶38 *citing* In the Matter of Keenan Brothers Limited, [1985] I.R. 401 at 418 with approval ("a fixed charge takes effect, upon its creation, on the assets that are expressed to be subject to it . . . and the company will be able to deal with those assets only to the extent permitted by the terms of the charge . . . . [I]n the case of a floating charge . . . it is of its nature, dormant and hovering, it does not attach to the assets expressed to be subject to it so as to prevent the company from continuing to deal with those assets in the ordinary course of business, until the happening of some event, such as the appointment of a liquidator, which shows that the company is no longer in business, or until the chargee intervenes.") (available at https://ie.vlex.com/vid/re-j-d-brian-793725949).

might be deemed subject to a floating charge rather than a fixed charge, and that such Secured Parties' interests could be subordinated to recovery of other creditors, was expressly disclosed in the offering memoranda related to certain of the Debtors' issuances of secured notes. *See* Offering Memorandum and Consent Solicitation Statement for Exchange Offer relating to Certain Securities of Par Pharmaceutical, Inc., Endo DAC, Endo Finance LLC, and Endo Finco, Inc., dated May 14, 2020, at 49–53.

211. Under Irish law, certain creditors—including unsecured creditors with employee-compensation claims arising, for example, from an employment contract—rank senior in recovery to holders of floating charges in an Irish liquidation proceeding. *See* Companies Act, 2014 (Act No. 38/2014) (Ir.), sec. 621(2).[15] Other creditors, including breach of contract creditors operating in the ordinary course of business, may likewise be able to take enforcement steps against assets subject to a floating charge that has not yet crystalized.[16]

212. Pursuant to sections 544(a)(1) and (2) of the Bankruptcy Code, the Debtors, the bankruptcy trustee, and the Committees (acting on behalf of the estates) have the rights and powers (as of the commencement of these Chapter 11 cases and without regard to any knowledge of the Debtors, any trustee, or any other creditors), or may avoid any transfer of property of the Debtors or any obligation that is incurred by the Debtors that is voidable by:

- A creditor that extends credit to a debtor at the time of the commencement of the case, and that obtains, at such time and with respect to such credit, a judicial lien on all property on which a creditor on a simple contract could have obtained such a judicial lien, whether or not such a creditor exists; or

[15] Statute available at https://www.irishstatutebook.ie/eli/2014/act/38/section/621/enacted/en/html.

[16] Re J.D. Brian Ltd, [2015] IESC 62 at ¶38; see Robson v. Smith, [1895] 2 Ch 118.

- A creditor that extends credit to a debtor at the time of the commencement of the case, and obtains, at such time and with respect to such credit, an execution against a Debtor that is returned unsatisfied at such time, whether or not such a creditor exists.

11 U.S.C. § 544(a)(1), (2).

213. In determining the rights of a hypothetical creditor under section 544(a), courts look to the applicable law of the jurisdiction governing the assets and/or liens in question—including, as is the case here, foreign law.

214. The Committees, acting on behalf of and in the name of the Debtors, have the powers of the trustee, and hold the status of a hypothetical creditor by virtue of Section 544(a)(1) or (2) of the Bankruptcy Code who extends credit and obtains either a lien on relevant property equivalent to the lien which might be obtainable by judgment creditors or an execution that goes unsatisfied. A hypothetical judgment lien creditor may obtain, under Irish law, an interest in the Unidentified Irish Assets with a higher priority than the liens held by the Secured Parties, and thus any Secured Parties' liens over such assets are avoidable.

215. Notwithstanding the Debtors' Stipulations as to the validity and perfection of the Secured Parties' liens on, and security interests in, certain of the Debtors' assets, the Secured Parties charges over the Unidentified Irish Assets are avoidable.

216. The Debtors' Stipulations are incorrect and overbroad because any liens on, or security interests in, the Unidentified Irish Assets are avoidable under 11 U.S.C. § 544(a).

217. The Court should therefore enter a declaratory judgment that, (i) notwithstanding the Debtors' Stipulations, any liens on, or security interests asserted by the Secured Parties in, the Unidentified Irish Assets are not "fixed charges" under Irish law, but avoidable "floating charges", and (ii) the Debtors' Stipulations as to the Unidentified Irish Assets are incorrect, null and void, and not binding on the Committees and not binding on the Debtors' estates.

COUNT XIII

AVOIDANCE OF LIENS ON THE UNIDENTIFIED IRISH ASSETS (11 U.S.C. §§ 544(a)(1), 550, and 551)

218. The Committees restate and reallege the allegations set forth in paragraphs 1 through 217 above, as if fully set forth within.

219. Pursuant to sections 544(a)(1) and (2) of the Bankruptcy Code, the Debtors, the bankruptcy trustee, and the Committees (acting on behalf of the estates) have the rights and powers (as of the commencement of these Chapter 11 cases and without regard to any knowledge of the Debtors, any trustee, or any other creditors), or may avoid any transfer of property of the Debtors or any obligation that is incurred by the Debtors that is voidable by:

- A creditor that extends credit to a debtor at the time of the commencement of the case, and that obtains, at such time and with respect to such credit, a judicial lien on all property on which a creditor on a simple contract could have obtained such a judicial lien, whether or not such a creditor exists; or
- A creditor that extends credit to a debtor at the time of the commencement of the case, and obtains, at such time and with respect to such credit, an execution against a Debtor that is returned unsatisfied at such time, whether or not such a creditor exists.

11 U.S.C. § 544(a)(1), (2).

220. In this instance, any security interests or "charges" in the Unidentified Irish Assets are avoidable pursuant to section 544(a) of the Bankruptcy Code.

221. Because a hypothetical judgment lien creditor could have obtained an interest in the Unidentified Irish Assets ahead of the Secured Parties' floating charges, any and all liens on, and security interests in, the Unidentified Irish Assets asserted by the Secured Parties should be avoided under section 544(a) of the Bankruptcy Code, and such property or the value of such property, if previously transferred, should be recovered by the Debtors' estates under section

550(a) of the Bankruptcy Code and/or automatically preserved for the benefit of the Debtors' estates under section 551 of the Bankruptcy Code.

COUNT XIV

DECLARATORY JUDGMENT THAT THE STIPULATIONS AND RELEASES ARE NULL AND VOID INSOFAR AS THEY ARE INCONSISTENT WITH CHALLENGES PURSUED BY THE COMMITTEES

222. The Committees restate and reallege the allegations in paragraphs 1 through 221above, as if fully set forth within.

223. The Stipulations and Releases under the Cash Collateral Order purport to bind all parties in interest following the Challenge Deadline. *See*, *e.g.*, Cash Collateral Order ¶17. To the extent any of the Stipulations and Releases are inconsistent with a judicial determination resulting from a successful Committee challenge (in this complaint or other Challenges (as defined in the Cash Collateral Order)), then any such Stipulations and Releases should be deemed null and void to the extent inconsistent with such judicial determination.

224. The Secured Parties may assert that the Stipulations and Releases operate to bar certain of the Committees' challenges, or preclude receipt of any benefit from a challenge if successful. The Committees dispute this notion, and maintain that, if any Committee challenge is successful, the Stipulations and Releases would be inapplicable to the extent inconsistent with any of the resulting consequences flowing from a judicially adjudicated challenge.

225. Accordingly, an actual, substantial and justiciable controversy exists concerning the effect of any Stipulations and Releases on any challenge.

226. In the event a challenge is successful, any inconsistent Stipulations and Releases should be held to be null and void with respect to such challenge, whether expressly referenced or otherwise.

227. The Court should therefore enter a declaratory judgment that, in the event a challenge is successful, any inconsistent Stipulations and Releases are null and void with respect to such challenge, whether expressly referenced or otherwise.

COUNT XV

OBJECTION TO ALLOWANCE OF CLAIMS DUE TO PENDING AVOIDANCE ACTIONS (11 U.S.C. §§ 105, 502, 506, 544, and 551 and Fed. R. Bankr. P. 3007, 3012, and 7001)

228. The Committees restate and reallege the allegations in paragraphs 1 through 227 above, as if fully set forth within.

229. Under the Cash Collateral Order, the Prepetition Liens are deemed to have been, as of the Petition Date, legal, valid, binding, and perfected secured claims.

230. Under the Cash Collateral Order, the Secured Parties have been excused from filing proofs of claims with respect to any of the Prepetition Secured Indebtedness, the Adequate Protection Liens, or the Adequate Protection Superpriority Claims.

231. The Committees hereby objects, under sections 105, 502, 506, 544, and 551 of the Bankruptcy Code, to the allowance of such claims.

232. Under the applicable provisions of the Bankruptcy Code, including without limitation section 502(b), and Bankruptcy Rules 3007, 3012, and 7001, each of the Secured Parties' claims should be disallowed until such time as the Committees' claims herein have been fully resolved.

COUNT XVI

RECHARACTERIZATION OF PAYMENT OF INTEREST, FEES, COSTS, AND EXPENSES (11 U.S.C. § 506(b))

233. The Committees restate and reallege the allegations in paragraphs 1 through 232 above, as if fully set forth within.

234. Under section 506(b) of the Bankruptcy Code, "[t]o the extent that an allowed secured claim is secured by property the value of which . . . is greater than the amount of such claim, there shall be allowed to the holder of such claim, interest in such claim, and any reasonable fees, costs, or charges provided for under the agreement or State statute under which such claim arose."

235. Only oversecured creditors, and not undersecured creditors, are entitled to receive such interest, costs, fees, and related payments.

236. Under the Cash Collateral Order, the right to recharacterize payment of post-petition interest to the Secured Parties and post-petition payments to the Secured Parties' professionals was preserved. *See* Cash Collateral Order ¶¶ 4(d), 5(e).

237. To the extent that the First Lien Secured Parties and/or the Second Lien Secured Parties were undersecured as of the Petition Date, whether as a result of the successful pursuit of challenges brought herein and/or concurrently herewith or for other reasons, all post-petition payments of interest, fees, costs, and expenses made to date to, or incurred for the benefit of, the Secured Parties, as undersecured creditors, on account of the Secured Debt Obligations, should be applied against the principal amount of the Secured Debt Obligations.

COUNT XVII

DECLARATORY JUDGMENT REGARDING OTHER UNENCUMBERED ASSETS

238. The Committees restate and reallege the allegations in paragraphs 1 through 237 above, as if fully set forth within.

239. Based on information that the Debtors provided to the Committees to date, prior to entering into the Stipulations and Releases, the Debtors did not do sufficient due diligence to determine which of their assets were encumbered and which were unencumbered. As noted

throughout this Complaint, the Committees have uncovered numerous specific instances in which the Stipulations were overbroad and in which the assets uncovered—if not subject to improper Stipulations and Releases in favor of the secured parties—could and should inure to the benefit of unsecured creditors.

240. Similarly, on November 23, the Debtors filed a motion to authorize that section 363 sale, including the entry into an agreement with proposed purchasers. *See Debtors' Motion for an Order (I) Establishing Bidding, Noticing, and Assumption and Assignment Procedures, (II) Approving Certain Transaction Steps, (III) Approving the Sale of Substantially all of the Debtors' Assets and (IV) Granting Related Relief* (the "**Sale Motion**") [Dkt. No. 728] ¶49(d) (such purchasers, the "**Stalking Horse Bidder**," and such agreement, the "**Stalking Horse Agreement**").

241. The Sale Motion sought authorization to, among other things, establish bidding procedures for the sale of substantially all of the Debtors' assets, including unencumbered assets (the "**Sale**"), and ultimately to approve the Sale.

242. Through the Sale, the Stalking Horse Bidder proposes to acquire the Debtors' unencumbered assets for $5 million in cash consideration. The Committees have asked the Debtors to identify the assets that will be sold to the Stalking Horse Bidder that they contend are unencumbered or subject to liens that were not properly perfected. The Debtors have not produced any documents listing or otherwise identifying such assets.

243. As part of their investigation and to remedy the deficiencies in the Debtors' due diligence process, the Committees have asked the Debtors to disclose information with which the Committees could identify all unencumbered assets and all assets subject to unperfected liens, but, to date, the Debtors have not disclosed all of the requested information and/or the information is

not sufficient for the Committees to reach conclusions. Accordingly, there may be additional assets that belong to the Debtors that the Debtors have improperly included within the scope of the Stipulations that, in fact, are unencumbered and/or subject to unperfected liens.

244. Because such assets are being pledged and stipulated to improperly, without adequate due diligence by the Debtors, without adequate disclosure by the Debtors to the Committees, and without justification under the governing legal documents, an actual, substantial and justiciable controversy exists concerning the scope and extent of the Collateral Trustee's interest in the Debtors' assets.

245. The Court should therefore enter a declaratory judgment (a) identifying all of the Debtors' unencumbered assets that are not properly included within the Stipulations, (b) ordering that only assets specifically proven by the Defendant to be pledged and perfected are included within the ambit of the Stipulations, and/or (c) ordering that the Stipulations and Releases are not binding on the Committees, including any Stipulations that may apply to any other complaints filed by the Committees.

COUNT XVIII

AVOIDANCE OF LIENS ON THE DEBTORS'UNENCUMBERED ASSETS (11 U.S.C. §§ 544(a)(1), 550, and 551)

246. The Committees restate and reallege the allegations in paragraphs 1 through 245 above, as if fully set forth within.

247. Pursuant to sections 544(a)(1) and (2) of the Bankruptcy Code, the Debtors, the bankruptcy trustee, and the Committees (acting on behalf of the estates) have the rights and powers (as of the commencement of these Chapter 11 cases and without regard to any knowledge of the

Debtors, any trustee, or any other creditors), or may avoid any transfer of property of the Debtors or any obligation that is incurred by the Debtors that is voidable by:

- A creditor that extends credit to a debtor at the time of the commencement of the case, and that obtains, at such time and with respect to such credit, a judicial lien on all property on which a creditor on a simple contract could have obtained such a judicial lien, whether or not such a creditor exists; or

- A creditor that extends credit to a debtor at the time of the commencement of the case, and obtains, at such time and with respect to such credit, an execution against a Debtor that is returned unsatisfied at such time, whether or not such a creditor exists.

11 U.S.C. § 544(a)(1), (2).

248. Any Debtor assets subject to unperfected liens are avoidable pursuant to section 544(a) of the Bankruptcy Code.

249. As described in the prior count and throughout this Complaint, the Debtors are purporting to enter into the Stipulations and Releases, and the Stalking Horse Agreement, without adequate diligence, without adequate disclosure, and without justification under the legal documents. As a consequence, the Committees' investigation has already uncovered specific instances (described above) in which the Debtors are stipulating to the Secured Parties' purported interest in assets where, in fact, that interest is subject to avoidance. Such assets—if not subject to improper Stipulations in favor of the Secured Parties—could inure to the benefit of unsecured creditors. Discovery may uncover additional Debtor assets as to which any Secured Parties' security interest has not been properly perfected and is subject to avoidance under section 544(a) of the Bankruptcy Code. Any such liens on, or security interests in, such property or the value of such property, if previously transferred, should be avoided, and recovered by the Debtors' estates under section 550(a) of the Bankruptcy Code and/or automatically preserved for the benefit of the Debtors' estates under section 551 of the Bankruptcy Code.

RESERVATION OF RIGHTS

250. The Plaintiffs hereby specifically reserve the right to bring any and all causes of action that it may maintain against the Collateral Trustee or any additional defendants as they may determine is necessary or appropriate, including, without limitation, causes of action arising out of the same facts set forth herein, to the extent discovery in this action or further investigation by the Plaintiffs reveals such further causes of action.

PRAYER FOR RELIEF

WHEREFORE, the Committees respectfully request that the Court enter judgment in its favor as follows:

(a) on Count I, declaring that none of the Secured Parties have a lien on or security interest in the equity of the Non-Collateral Subsidiaries;

(b) on Count II, declaring that none of the Secured Parties have a lien on or security interest in any of the Lux Accounts;

(c) on Count III, declaring that the none of the Secured Parties have a lien on or security interest in any of the Commercial Tort Claims;

(d) on Count IV, declaring that none of the Secured Parties have a lien on or security interest in any of the Unencumbered Leasehold Interests or fixtures affixed thereto;

(e) on Count V, declaring that none of the Secured Parties have a lien on or security interest in the Unencumbered Licenses;

(f) on Count VI, declaring that none of the Secured Parties have a lien on or security interest in the Excluded Material Agreements;

(g) on Count VII, declaring that none of the Secured Parties have a lien on or security interest in any of the Unencumbered Anti-Assignment Policies;

(h) on Count VIII, declaring that none of the Secured Parties have a perfected lien on or security interest in any of the Subject Policies;

(i) on Count IX, avoiding the Secured Parties' unperfected liens on, or security interests in, any of the Subject Policies;

(j) on Count X, declaring that none of the Secured Parties have a lien on or security interest in any Lux Receivables and that any lien or security interest arising under the [redacted] is avoidable;

(k) on Count XI, avoiding the Secured Parties' unperfected liens on or security interests in Lux Receivables identified only on the [redacted]

(l) on Count XII, declaring that the Secured Parties have avoidable security interests in the Unidentified Irish Assets in the Debtors' possession on the Petition Date;

(m) on Count XIII, avoiding the Secured Parties' unperfected or otherwise voidable liens on the Unidentified Irish Assets and the Subject Policies;

(n) on Count XIV, declaring that, in the event a challenge is successful, any inconsistent Stipulations and Releases are null and void with respect to such challenge, whether expressly referenced or otherwise;

(o) on Count XV, disallowing each of the Secured Parties' claims until such time as the Committees' claims herein have been fully restored;

(p) on Count XVI, recharacterizing any post-petition payments of interest, fees, costs, and expenses made to date to, or incurred for the benefit of, the Secured Parties as payments of principal;

(q) on Count XVII, declaring that all Debtor assets not properly included within the Stipulations are unencumbered;

(r) on Count XVIII, avoiding all unperfected or otherwise avoidable liens on Debtor assets; and

(s) granting the Committees such other and further relief as the Court deems just, proper, and equitable, including the costs and expenses of this action.

The Committees reserve all rights, claims, defenses, and remedies, including, without limitation, the right to supplement and amend this Complaint in accordance with applicable law, including after the completion of discovery, to add additional defendants as they may determine necessary or appropriate, and to raise further and other claims and causes of action in connection with the prosecution of this Complaint.

[*Remainder of Page Intentionally Left Blank*]

Dated: January 23, 2023
New York, New York

KRAMER LEVIN NAFTALIS & FRANKEL LLP

/s/ [*Draft*]
Kenneth H. Eckstein
David E. Blabey, Jr.
Rachael L. Ringer
Natan Hamerman
Elan Daniels
Kramer Levin Naftalis & Frankel LLP
1177 Avenue of the Americas
New York, New York 10036
Telephone: (212) 715-9100

Counsel to the Official Committee of Unsecured Creditors

COOLEY LLP
By: [*Draft*]
Cullen D. Speckhart
Ian Shapiro
Michael Klein
Reed A. Smith
55 Hudson Yards
New York, NY 10001
Telephone: (212) 479-6000

Lead Counsel to the Official Committee of Opioid Claimants

Exhibit 1

Archived: Friday, January 20, 2023 10:51:33 AM
From: Hill, Evan A
Mail received time: Thu, 22 Sep 2022 11:23:28
Sent: Thu, 22 Sep 2022 15:23:18
To: Daniels, Elan Wasson, Megan
Cc: Fisher, David J. McKay, Michael Blabey, Jr., David E. Byowitz, Alice J. Hamerman, Natan Klegon, Matthew Ringer, Rachael Elberg, Shana A Kestecher, Jason N Fee, Cameron M
Subject: [EXTERNAL] RE: Endo - Indian Equity Pledges
Importance: Normal
Sensitivity: None

Elan,

Apologies, I thought I had responded. After conferring with my colleagues, we can confirm that the prepetition liens do not extend to the equity in the Indian entities and the equity does not constitute prepetition collateral.

Please let us know if it would still be helpful to discuss.

Regards,
Evan

Evan A. Hill
Counsel
Skadden, Arps, Slate, Meagher & Flom LLP
One Manhattan West | New York | NY | 10001
T: +1.212.735.3528 | **F: +1.917.777.3528**
evan.hill@skadden.com

From: Daniels, Elan <EDaniels@KRAMERLEVIN.com>
Sent: Thursday, September 22, 2022 11:16 AM
To: Wasson, Megan <MWasson@KRAMERLEVIN.com>; Hill, Evan A (NYC) <Evan.Hill@skadden.com>
Cc: Fisher, David J. <DFisher@KRAMERLEVIN.com>; McKay, Michael <MMcKay@KRAMERLEVIN.com>; Blabey, Jr., David E. <DBlabey@KRAMERLEVIN.com>; Byowitz, Alice J. <AByowitz@KRAMERLEVIN.com>; Hamerman, Natan <NHamerman@KRAMERLEVIN.com>; Klegon, Matthew <MKlegon@KRAMERLEVIN.com>; Ringer, Rachael <RRinger@KRAMERLEVIN.com>
Subject: [Ext] RE: Endo - Indian Equity Pledges

Hi Evan,

I may have missed it, but did you ever connect us with the appropriate folks to discuss the subject referenced below? If not, please do so.

Thanks,

Elan Daniels

Elan Daniels
Senior Attorney

Kramer Levin Naftalis & Frankel LLP
1177 Avenue of the Americas, New York, New York 10036
T 212.715.9575 **F** 212.715.8000

From: Wasson, Megan <MWasson@KRAMERLEVIN.com>
Sent: Monday, September 19, 2022 6:16 PM
To: Hill, Evan A <Evan.Hill@skadden.com>
Cc: Daniels, Elan <EDaniels@KRAMERLEVIN.com>; Fisher, David J. <DFisher@KRAMERLEVIN.com>; McKay, Michael <MMcKay@KRAMERLEVIN.com>; Blabey, Jr., David E. <DBlabey@KRAMERLEVIN.com>; Byowitz, Alice J. <AByowitz@KRAMERLEVIN.com>; Hamerman, Natan <NHamerman@KRAMERLEVIN.com>; Klegon, Matthew <MKlegon@KRAMERLEVIN.com>; Ringer, Rachael <RRinger@KRAMERLEVIN.com>
Subject: Endo - Indian Equity Pledges

Hi Evan,

As discussed, I'm copying the relevant corporate/bankruptcy folks to set up a discussion on the Indian equity pledges – I think some subset of this group would appreciate a call with your relevant corporate/bankruptcy folks to discuss the equity in the Indian non-Debtors and to what extent it is/is not pledged.

Thanks,
Megan

Exhibit 2

Exhibit 2

Deposit Accounts Owned by Lux Debtors

Bank	Bank Account No.	Debtor Entity	Closing Balance as of Petition Date (USD Equivalent)
Bank of America	XXXXXXXX0012	Endo Luxembourg Finance Company I S.a.r.l.	$48,769,334
Bank of America	XXXXXXXX2019	Endo Luxembourg Finance Company I S.a.r.l.	$113,553
Bank of America	XXXXXXXX1011	Endo Luxembourg Holding Company S.a.r.l.	$192,268
Bank of America	XXXXXXXX6018	Endo Luxembourg Holding Company S.a.r.l	$321,993
Bank of America	XXXXXXXX8015	Endo Luxembourg International Financing S.a.r.l.	$13,641

Exhibit 3

Exhibit 3

Patent Infringement Claims

Case Name	Case Number	Debtors
NEXUS PHARMACEUTICALS, INC.	22-cv-05683	Endo International plc Endo Ventures Limited Par Pharmaceutical, Inc. Par Sterile Products, LLC
CIPLA LIMITED; CIPLA USA, INC.	22-cv-2814	Endo Par Innovation Company, LLC Par Pharmaceutical, Inc. Par Sterile Products, LLC
EAGLE PHARMACEUTICALS, INC.	18-cv-823	Endo Par Innovation Company, LLC Par Pharmaceutical, Inc. Par Sterile Products, LLC
BAXTER HEALTHCARE CORP.	21-cv-1184 21-cv-1186	Endo Ventures Limited Par Sterile Products, LLC

Exhibit 4

Exhibit 4

Leasehold Interests

Debtor	Description
Auxilium Pharmaceuticals, LLC	Administrative / R&D Building (Lease): 102 Rock Road Horsham, PA 19044
Auxilium Pharmaceuticals, LLC	Manufacturing Building (Lease): 102 Witmer Road Horsham, PA 19044
Auxilium Pharmaceuticals, LLC	Manufacturing Building (Lease): 70 Maple Avenue Rye, NY 10580
Auxilium Pharmaceuticals, LLC	Office / Administrative Building (Lease): 101-111 Rock Road Horsham, PA 19044
Auxilium Pharmaceuticals, LLC	Office / Administrative Building (Lease): 640 Lee Road Wayne, PA 19087
Biospecifics Technologies LLC	Office / Administrative Building (Lease): 2 Righter Parkway Suite 200, 2nd Floor Wilmington, DE 19803
Endo Luxembourg Holding Company S.à r.l.	Office / Administrative Building (Lease): 5 Place de la Gare Luxembourg, L-1616
Endo Pharmaceuticals Inc.	Office / Administrative Building (Lease): 1400 Atwater Drive Atwater Corporate Center Malvern, PA 19355
Endo Pharmaceuticals Valera Inc.	Manufacturing / R&D Building (Lease): 8 Clarke Drive Cranbury, NJ 08512
Endo Ventures Limited	Office / Administrative Building (Lease): Ballsbridge, Minerva House Simmonscourt Dublin, Ireland
Paladin Labs Inc.	Office / Administrative Building (Lease): 100 Boulevard Alexis-Nihon Suite 600 Saint-Laurent, QB H4M 2P2

Debtor	Description
Paladin Labs Inc.	Office / Administrative Building (Lease): 100 Boulevard Alexis-Nihon Suite 630 Saint-Laurent, QB H4M 2P2
Paladin Labs Inc.	Office / Administrative Building (Lease): 100 Boulevard Alexis-Nihon Suite 640 Saint-Laurent, QB H4M 2P2
Par Pharmaceutical, Inc.	Distribution Building (Lease): 22 Hemion Road Montebello, NY 10901
Par Pharmaceutical, Inc.	Office / Administrative Building (Lease): 300 Tice Boulevard Suite 230 Woodcliff, NJ 07677
Any other lease of real property to which any Debtor is a party.[1]	

[1] This list is based on document [XREF] found in the data room.

Exhibit 5

Exhibit 5

Lux Receivables

Debtor	Description	Net Book Value USD
Endo Luxembourg Finance Company I S.à r.l.	Deferred Finance Fees	$8,313,241.47
Endo Luxembourg Finance Company I S.à r.l.	Intercompany Receivable - Endo Bermuda Finance Limited	$149,736.90
Endo Luxembourg Finance Company I S.à r.l.	Intercompany Receivable - Endo Designated Activity Company	$503,266,296.13
Endo Luxembourg Finance Company I S.à r.l.	Intercompany Receivable - Endo Global Aesthetics Limited	$96,674,717.34
Endo Luxembourg Finance Company I S.à r.l.	Intercompany Receivable - Endo Global Biologics Limited	$2,065,226,550.00
Endo Luxembourg Finance Company I S.à r.l.	Intercompany Receivable - Endo Global Finance LLC	$327,327.65
Endo Luxembourg Finance Company I S.à r.l.	Intercompany Receivable - Endo International plc	$199,185,683.34
Endo Luxembourg Finance Company I S.à r.l.	Intercompany Receivable - Endo Luxembourg International Financing S.à r.l.	$74,398.02
Endo Luxembourg Finance Company I S.à r.l.	Intercompany Receivable - Endo Management Limited	$50,000.00
Endo Luxembourg Finance Company I S.à r.l.	Intercompany Receivable - Endo Procurement Operations Limited	$2,000.00
Endo Luxembourg Finance Company I S.à r.l.	Intercompany Receivable - Endo TopFin Limited	$50,000.00
Endo Luxembourg Finance Company I S.à r.l.	Intercompany Receivable - Endo US Holdings Luxembourg I S.a r.l.	$326,210.58
Endo Luxembourg Finance Company I S.à r.l.	Intercompany Receivable - Endo Ventures Limited	$514,117,910.17
Endo Luxembourg Finance Company I S.à r.l.	Intercompany Receivable - Hawk Acquisition Ireland Limited	$122,960.22
Endo Luxembourg Finance Company I S.à r.l.	Intercompany Receivable - Luxembourg Endo Specialty Pharmaceuticals Holding I S.à r.l.	$369,532.38
Endo Luxembourg Finance Company I S.à r.l.	Intercompany Receivable - Paladin Labs Canadian Holding Inc.	$471,102,118.36
Endo Luxembourg Finance Company I S.à r.l.	Intercompany Receivable - Par Active Technologies Private Limited SAP	$14,561,005.50
Endo Luxembourg Finance Company I S.à r.l.	Intercompany Receivable - Par Formulations Private Limited SAP	$224,991,103.57
Endo Luxembourg Holding Company S.à r.l.	Intercompany Receivable - Endo Luxembourg Finance Company I S.a r.l.	$2,873,629.40
Endo Luxembourg Holding Company S.à r.l.	Intercompany Receivable - Endo Luxembourg International Financing S.à r.l.	$129,839.40

Debtor	Description	Net Book Value USD
Endo Luxembourg Holding Company S.à r.l.	Intercompany Receivable - Endo US Holdings Luxembourg I S.a r.l.	$182,690.77
Endo Luxembourg Holding Company S.à r.l.	Intercompany Receivable - Luxembourg Endo Specialty Pharmaceuticals Holding I S.à r.l.	$133,598.04
Endo Luxembourg International Financing S.à r.l.	Intercompany Receivable - Endo U.S. Inc.	$1,455,772,826.00
Endo Luxembourg International Financing S.à r.l.	Intercompany Receivable - Hawk Acquisition Ireland Limited	$7,109,694,451.29
Endo US Holdings Luxembourg I S.à r.l.	Intercompany Receivable - Endo U.S. Inc.	$1,984,785.20
Luxembourg Endo Specialty Pharmaceuticals Holding I S.à r.l.	Intercompany Receivable - Endo Ireland Finance II Limited	$17,000.00
Luxembourg Endo Specialty Pharmaceuticals Holding I S.à r.l.	Intercompany Receivable - Par Pharmaceutical Holdings, Inc.	$1,989,103.34

Exhibit 6

Exhibit 6

Deposit Accounts of Irish Debtors

Deposit Accounts of Irish Debtors					**USD Equivalent**
	Bank Institution	**Acct Number**	**Legal Entity**	**Type**	**Closing Balance as of Petition Date (8/16/2022)**
1.	Bank of America – EMEA	*2015	Endo Designated Assignment Company	Disbursements	$332,792
2.	Bank of America	*5018	Endo Global Aesthetics Limited	Disbursements	$9,523,355
3.	Bank of America	*4010	Endo Global Biologics Limited	Disbursements	$101,620,355
4.	Bank of America	*8017	Endo International plc	Disbursements	$20,294,073
5.	Bank of America – EMEA	*8025	Endo International plc	Intercompany	$1,031,460
6.	Bank of America – EMEA	*5019	Endo Procurement Operations Limited	Intercompany	$2,758,013
7.	Bank of America – EMEA	*2012	Endo Ventures Limited	Payroll / Disbursements	$4,106,732
8.	Bank of America – EMEA	*2019	Endo Ventures Limited	Disbursements	$78,008,044
9.	Bank of America – EMEA	*2020	Endo Ventures Limited	Intercompany	$1,362,227
10.	Bank of America – EMEA	*2027	Endo Ventures Limited	Intercompany	$85,000,000
11.	Bank of America	*8725	Hawk Acquisition Ireland Limited	Intercompany	$766,888
	Total				**$304,803,939**

Exhibit D

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

In re: ENDO INTERNATIONAL PLC, *et al.*, Debtors.	Case No. 22-22549 (JLG) Chapter 11 Jointly Administered
OFFICIAL COMMITTEE OF UNSECURED CREDITORS, on behalf of the Debtors' estates, and OFFICAL COMMITTEE OF OPIOID CLAIMANTS, on behalf of the Debtors' estates Plaintiff, v. JOE BARBARITE, MARK G. BARBERIO, PATRICK BARRY TRACY BASSO, MARIE-THERESE BOLGER, JACK BOYLE, MARK BRADLEY, IVAN CAVUZIC, JENNIFER M. CHAO, BLAISE COLEMAN, SHANE M. COOKE, LIVIO DI FRANCESCO, NANCY J. HUTSON, MICHAEL HYATT, MATTHEW MALETTA, MICHAEL MCGUINNESS, WILLIAM P. MONTAGUE, THOMAS NEYLON, JENNY O'CONNELL, JAMES PAPP, LAURE PARK, ROBERT POLKE, FRANK RACITI, MICHAEL RANDOLPH, M. CHRISTINE SMITH, CHERYL STOUCH, RUTH THORPE, JAMES TURSI, DANIEL VAS,	**Adv. Pro. No. 23-_____(JLG)**

and,
SUSAN WILLIAMSON,

Defendants.

PROPOSED COMPLAINT OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS AND THE OFFICIAL COMMITTEE OF OPIOID CLAIMANTS

The Official Committee of Unsecured Creditors (the "**Creditors' Committee**") and the Official Committee of Opioid Claimants (the "**Opioid Committee**" and, together with the Creditors' Committee, the "**Committees**" or the "**Plaintiffs**") of Endo International plc and its affiliated debtors-in-possession (the "**Debtors**", the "**Company**", or "**Endo**"), having been vested with standing to sue on behalf of each of the Debtors' estates, files this complaint against the Defendants and alleges as follows:

NATURE OF ACTION

1. This is an action to avoid and recover approximately $94 million of cash payments made by Endo to or for the benefit of its senior executive officers in anticipation of its bankruptcy filing to evade the limitations imposed by the Bankruptcy Code on executive compensation once it filed for bankruptcy. Of these payments, more than half – or about $55.4 million – were made to the Debtors' four most senior executives, with the remainder – another approximately $[redacted] million – made to another 18 very senior executives. All of the payments were made within one year of the filing, and approximately $35 million were made within the month preceding Endo's bankruptcy filing. These payments nakedly preferred the insiders who presided over Endo's bankruptcy to general unsecured creditors (whom the Debtors now assert will receive little or no recovery). These payments provided the executives with compensation far in excess of any benefit received by prepetition Endo, and were transparently designed to avoid the scrutiny of the Court and creditors. Accordingly, the transfers constituted avoidable preferences under 11 U.S.C. § 547

as well as fraudulent transfers under 11 U.S.C. §§ 548 and 544 and applicable state law, and are recoverable for the benefit of Endo's estates pursuant to 11 U.S.C. § 550 and the applicable state law analogue.

2. This action also seeks to hold the directors that authorized and approved the scheme to frustrate Section 503(c) of the Bankruptcy Code responsible for the injury they have caused the estates. Before authorizing Endo to make over $95 million of cash payments,[1] [redacted]. Rather than defer paying such compensation or develop a compensation plan that complied with the Bankruptcy Code, Endo's directors approved and authorized a plan to circumvent the requirements of the Bankruptcy Code, avoid the supervision of the Court and creditors, and pay their most senior executives millions of dollars more than they could have received in the bankruptcy case. By authorizing, approving, and directing Endo to transfer over $95 million, and doing so in contemplation of a bankruptcy case, the directors breached their fiduciary duties of care, good faith, and loyalty. Accordingly, Endo's directors are liable for the damages that the Debtors have suffered as result of their breach of their fiduciary duties.

JURISDICTION

3. This is an adversary proceeding under Rule 7001 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**").

4. The Court has exclusive jurisdiction over this proceeding pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

[1] To be sure, the Debtors paid approximately $95 million in "prepaid bonuses." Transfers to certain transferees are not currently being sought to be avoided. Plaintiffs reserve all rights to amend or to later seek to avoid transfers to additional recipients of prepaid bonuses. Nevertheless, Plaintiffs do seek to hold the relevant directors responsible for all of the approximately $95 million that such directors allowed to be paid in violation of their fiduciary duties.

5. Venue in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

6. Pursuant to Bankruptcy Rule 7008, Plaintiffs state that they consent to the entry of final orders or judgments by the Court if it is determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the Constitution

7. The Committees have standing to pursue this Complaint under Section 1103 of the Bankruptcy Code and the *Order Granting Motion of Official Committee of Unsecured Creditors and Official Committee of Opioid Claimants for (I) Leave, Standing and Authority to Commence and Prosecute Certain Claims and Causes of Action on Behalf of the Debtors' Estates and (II) Exclusive Settlement Authority* [ECF No. ___].

PARTIES

8. On September 2, 2022, the United States Trustee for the Southern District of New York formed the Creditors' Committee in these chapter 11 cases. *See Notice of Appointment of Official Committee of Unsecured Creditors* [ECF No. 161].

9. On September 2, 2022, the United States Trustee for the Southern District of New York formed the Opioid Claimants' Committee in these chapter 11 cases. *See Notice of Appointment of Official Committee of Opioid Claimants* [ECF No. 163].

10. Upon information and belief, defendant Blaise Coleman ("**Coleman**") is an individual who is domiciled in Pennsylvania and works in Pennsylvania.

11. At all relevant times, Coleman was Endo International plc's and was, upon information and belief, certain other Debtors' Chief Executive Officer and was a member of the Board of Directors of Endo International plc and numerous subsidiaries, classified by Endo International plc as an Executive Officer in its Form 10-K Annual Reports pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934.

12. Upon information and belief, at all relevant times, Coleman was a director of the following Debtor entities: Branded Operations Holdings, Inc.; Generics International (US) 2, Inc.; Par Pharmaceutical Companies, Inc.; Endo International plc; Endo Pharmaceuticals Solutions Inc.; Endo Health Solutions Inc.; Anchen Incorporated; Kali Laboratories 2, Inc.; Par Pharmaceutical Holdings, Inc.; Endo Pharmaceuticals Valera Inc.; Actient Therapeutics LLC; Anchen Pharmaceuticals, Inc.; Generics International (US), Inc.; Endo Generics Holdings, Inc.; Innoteq, Inc.; Par Pharmaceutical 2, Inc.; Par Pharmaceutical, Inc.; and Endo Pharmaceuticals Inc.

13. Coleman was an insider of the Debtors as defined in Section 101(31) of the Bankruptcy Code.

14. Upon information and belief, defendant Matthew Maletta ("**Maletta**") is an individual who is domiciled in Pennsylvania and works in Pennsylvania.

15. At all relevant times, Maletta was Endo International plc's and was, upon information and belief, certain other Debtors' Executive Vice President, Chief Legal Officer and Secretary, classified by Endo International plc as an Executive Officer in its Form 10-K Annual Reports pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934.

16. Maletta was an insider of the Debtors as defined in Section 101(31) of the Bankruptcy Code.

17. Upon information and belief, defendant Mark Bradley ("**Bradley**") is an individual who is domiciled in Pennsylvania and works in Pennsylvania.

18. At all relevant times, Bradley was Endo International plc's and was, upon information and belief, certain other Debtors' Executive Vice President and Chief Financial Officer, classified by Endo International plc as an Executive Officer in its Form 10-K Annual Reports pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934.

19. Upon information and belief, at all relevant times Bradley was a director of the following Debtor entities: Branded Operations Holdings, Inc.; Generics International (US) 2, Inc.; Endo U.S. Inc.; Endo Health Solutions Inc.; Kali Laboratories 2, Inc.; Bermuda Acquisition Management Limited; Hawk Acquisition Ireland Limited; Endo Generics Holdings, Inc.; Endo Finco Inc.; and Par Pharmaceutical 2, Inc. At all relevant times Bradley was a Manager of Endo Finance LLC and Endo Global Finance LLC.

20. Bradley was an insider of the Debtors as defined in Section 101(31) of the Bankruptcy Code.

21. Upon information and belief, defendant Patrick Barry ("**Barry**") is an individual who is domiciled in Pennsylvania and works in Pennsylvania.

22. Upon information and belief, at all relevant times, Barry was Endo International plc's and was, upon information and belief, certain other Debtors' President of Global Commercial Operations, classified by Endo International plc as an Executive Officer in its Form 10-K Annual Reports pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934.

23. Upon information and belief, at all relevant time, Barry was a director of the following Debtor entities: Par Pharmaceutical Companies Inc.; Endo Pharmaceuticals Solutions Inc.; Anchen Incorporated; Par Pharmaceutical Holdings, Inc.; Anchen Pharmaceuticals, Inc.; Generics International (US), Inc.; Innoteq, Inc.; Par Pharmaceutical, Inc.; and Endo Pharmaceuticals Inc.

24. Barry was an insider of the Debtors as defined in Section 101(31) of the Bankruptcy Code.

25. Upon information and belief, defendant James Tursi ("**Tursi**") is an individual who is domiciled in Pennsylvania and works in Pennsylvania.

26. Upon information and belief, at all relevant times, Tursi was Endo International plc's and was, upon information and belief, certain other Debtors' Executive Vice President, Global Research and Development, classified by Endo International plc as an Executive Officer in its Form 10-K Annual Reports pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934.

27. Tursi was an insider of the Debtors as defined in Section 101(31) of the Bankruptcy Code.

28. Upon information and belief, defendant Tracy Basso ("**Basso**") is an individual who is domiciled in New Jersey and works in Pennsylvania.

29. Upon information and belief, at all relevant times, Basso was Endo International plc's and was, upon information and belief, certain other Debtors' Chief Human Resource Officer, classified by Endo Pharmaceutical Inc. as an insider in Endo Pharmaceutical Inc.'s Global Notes and Statement of Financial Affairs in Case No 22-22590-JLG [ECF No. 13].

30. Basso was an insider of the Debtors as defined in Section 101(31) of the Bankruptcy Code.

31. Upon information and belief, defendant Robert Polke ("**Polke**") is an individual who is domiciled in New York and works in New York.

32. Upon information and belief, at all relevant times until June 3, 2022, Polke was Par Pharmaceutical, Inc.'s Executive Vice President, Global Manufacturing Operations, classified by Par Pharmaceutical, Inc. as an insider in Par Pharmaceutical, Inc.'s Global Notes and Statement of Financial Affairs in Case No 22-22546-JLG [ECF No. 13].

33. Polke was an insider of the Debtors as defined in Section 101(31) of the Bankruptcy Code.

34. Upon information and belief, defendant Laure Park ("**Park**") is an individual who is domiciled in New Jersey and works in Pennsylvania.

35. Upon information and belief, at all relevant times, Park was Endo International plc's and [redacted] Senior Vice President, Investor Relations and Corporate Affairs, classified by Endo Pharmaceutical Inc. as an insider in Endo Pharmaceutical Inc.'s Global Notes and Statement of Financial Affairs in Case No 22-22590-JLG [ECF No. 13].

36. Park was an insider of the Debtors as defined in Section 101(31) of the Bankruptcy Code.

37. Upon information and belief, defendant Susan Williamson ("**Williamson**") is an individual who is domiciled in Pennsylvania and works in Pennsylvania.

38. Upon information and belief, at all relevant times, Williamson was Endo International plc's and [redacted] Senior Vice President and Chief Compliance Officer, classified by Endo Pharmaceutical Inc. as an insider in Endo Pharmaceutical Inc.'s Global Notes and Statement of Financial Affairs in Case No 22-22590-JLG [ECF No. 13].

39. Williamson was an insider of the Debtors as defined in Section 101(31) of the Bankruptcy Code.

40. Upon information and belief, defendant Joe Barbarite ("**Barbarite**") is an individual who is domiciled in Florida.

41. Upon information and belief, at all relevant times through June 3, 2022, Barbarite was Endo International plc's and was, upon information and belief, certain other Debtors' Executive Vice President, Global Quality and Compliance, classified by Par Pharmaceutical, Inc. as an insider in Par Pharmaceutical, Inc.'s Global Notes and Statement of Financial Affairs in Case No 22-22546-JLG [ECF No. 13].

42. Barbarite was an insider of the Debtors as defined in Section 101(31) of the Bankruptcy Code.

43. Upon information and belief, defendant Jack Boyle ("**Boyle**") is an individual who is domiciled in Pennsylvania and works in Pennsylvania.

44. Upon information and belief, at all relevant times, Boyle was Endo International plc's and Endo Pharmaceutical Inc.'s Senior Vice President, Corporate Development and Treasurer, classified by Endo Pharmaceutical Inc. as an insider in Endo Pharmaceutical Inc.'s Global Notes and Statement of Financial Affairs in Case No 22-22590-JLG [ECF No. 13].

45. Upon information and belief, at all relevant times Boyle was a Manager of the following Debtor entities Endo Finance LLC; Endo US Holdings Luxembourg I S.à r.l.; Endo Luxembourg Finance Company I S.à r.l.; Endo Luxembourg Holding Company S.à r.l.; and Endo Luxembourg International Financing S.à r.l.; and a director of the following Debtor entities: Endo U.S. Inc.; Bermuda Acquisition Management Limited; Hawk Acquisition Ireland Limited; Endo Generics Holdings, Inc.; and Endo Finco Inc.

46. Boyle was an insider of the Debtors as defined in Section 101(31) of the Bankruptcy Code.

47. Upon information and belief, defendant James Papp ("**Papp**") is an individual who is domiciled in Dublin, Ireland, and works in Dublin, Ireland.

48. Upon information and belief, at all relevant times, Papp was the Head of Endo Ventures Limited and Senior Vice President, Supply Chain of Endo International plc and of Endo Ventures Limited, classified by Endo Ventures Limited as an insider in Endo Ventures Limited's Global Notes and Statement of Financial Affairs in Case No 22-22550-JLG [ECF No. 13].

49. Upon information and belief, at all relevant times, Papp was a director of the following Debtor entities: Endo Global Development Limited; Endo Global Biologics Limited; Endo Global Ventures; Par Laboratories Europe, Ltd.; Endo Ventures Limited; Endo Ventures Aesthetics Limited; Endo Bermuda Finance Limited; Endo Designated Activity Company; Endo Global Aesthetics Limited; Hawk Acquisition Ireland Limited; Endo Ventures Bermuda Limited; Astora Women's Health Ireland Limited; Endo Eurofin Unlimited Company; Endo Finance IV Unlimited Company; Endo Management Limited; Endo TopFin Limited; Endo Procurement Operations Limited; and Endo Ireland Finance II Limited.

50. Papp was an insider of the Debtors as defined in Section 101(31) of the Bankruptcy Code.

51. Upon information and belief, defendant Michael McGuinness ("**McGuinness**") is an individual who is domiciled in Dublin, Ireland, and works in Dublin, Ireland.

52. McGuinness was originally hired [redacted], 2014, but was promoted to Senior Vice President, Global Quality Compliance for Endo International plc and Endo Ventures Limited, effective June 2022.

53. Upon information and belief, at all relevant times McGuiness was a director of Endo Global Ventures and Endo Ventures Bermuda Limited, and classified by Endo Ventures Limited as an insider in Endo Ventures Limited's Global Notes and Statement of Financial Affairs in Case No 22-22550-JLG [ECF No. 13].

54. McGuinness was an insider of Endo Ventures Limited as defined in Section 101(31) of the Bankruptcy Code.

55. Upon information and belief, defendant Ruth Thorpe ("**Thorpe**") is an individual who is domiciled in New Jersey.

56. Upon information and belief, at all relevant times through June 3, 2022, Thorpe was Endo International plc's and Endo Pharmaceutical Inc.'s Senior Vice President, Information Technology, classified by Endo Pharmaceutical Inc. as an insider in Endo Pharmaceutical Inc.'s Global Notes and Statement of Financial Affairs in Case No 22-22590-JLG [ECF No. 13].

57. Thorpe was an insider of the Debtors as defined in Section 101(31) of the Bankruptcy Code.

58. Upon information and belief, defendant Thomas Neylon ("**Neylon**") is an individual who is domiciled in Delaware and works in Pennsylvania.

59. Upon information and belief, at all relevant times, Neylon was Endo Pharmaceutical Inc.'s Senior Vice President, Tax, classified by Endo Pharmaceutical Inc. as an insider in Endo Pharmaceutical Inc.'s Global Notes and Statement of Financial Affairs in Case No 22-22590-JLG [ECF No. 13].

60. Upon information and belief, at all relevant times Neylon was a Manager of Endo Global Finance LLC.

61. Neylon was an insider of the Debtors as defined in Section 101(31) of the Bankruptcy Code.

62. Upon information and belief, defendant Michael Randolph ("**Randolph**") is an individual who is domiciled in Pennsylvania and works in Pennsylvania.

63. Upon information and belief, at all relevant times, Randolph was Endo International plc's and [redacted] Senior Vice President, Global Manufacturing Operations, classified by Par Pharmaceutical, Inc. as an insider in Par Pharmaceutical, Inc.'s Global Notes and Statement of Financial Affairs in Case No 22-22546-JLG [ECF No. 13].

64. Randolph was an insider of the Debtors as defined in Section 101(31) of the Bankruptcy Code.

65. Upon information and belief, defendant Livio Di Francesco ("**Di Francesco**") is an individual who is domiciled in Montreal, Quebec, Canada, and works in Montreal, Quebec, Canada.

66. Upon information and belief, at all relevant times, Di Francesco was the Vice President and General Manager of Paladin Labs Inc., classified by Paladin Labs Inc. as an insider in Paladin Labs Inc.'s Global Notes and Statement of Financial Affairs in Case No 22-22617-JLG [ECF No. 13].

67. Upon information and belief, at all relevant times Di Francesco was a director of the Debtor entities Paladin Labs Inc. and Paladin Labs Canadian Holding, Inc.

68. Di Francesco was an insider of the Debtors as defined in Section 101(31) of the Bankruptcy Code.

69. Upon information and belief, defendant Cheryl Stouch ("**Stouch**") is an individual who is domiciled in Pennsylvania and works in Pennsylvania.

70. Upon information and belief Stouch joined Endo in May 2020 as Executive Director of IT Corporate Functions & End User Services. Stouch was appointed Senior Vice President, Information Technology and Chief Information Officer of Endo International plc and [redacted], effective June 2022.

71. Stouch was an insider of the Debtors as defined in Section 101(31) of the Bankruptcy Code.

72. Upon information and belief, defendant Frank Raciti ("**Raciti**") is an individual who is domiciled in Pennsylvania and works in Pennsylvania.

73. Upon information and belief, at all relevant times, Raciti was Endo Pharmaceutical Inc.'s Vice President, Controller & Chief Accounting Officer, classified by Endo Pharmaceutical Inc. as an insider in Endo Pharmaceutical Inc.'s Global Notes and Statement of Financial Affairs in Case No 22-22590-JLG [ECF No. 13].

74. Upon information and belief, at all relevant times Raciti was a Manager of Luxembourg Endo Specialty Pharmaceuticals Holding I S.à r.l.

75. Raciti was an insider of the Debtors as defined in Section 101(31) of the Bankruptcy Code.

76. Upon information and belief, defendant Jenny O'Connell ("**O'Connell**") is an individual who is domiciled in Dublin, Ireland, and works in Dublin, Ireland.

77. Upon information and belief, at all relevant times, O'Connell was Endo Ventures Limited's Executive Director, Supply Chain, classified by Endo Ventures Limited as an insider in Endo Ventures Limited's Global Notes and Statement of Financial Affairs in Case No 22-22550-JLG [ECF No. 13].

78. Upon information and belief, at all relevant times O'Connell was a director of the following Debtor entities: Endo Global Development Limited; Endo Global Biologics Limited; Endo Ventures Limited; Endo Ventures Aesthetics Limited; Endo Bermuda Finance Limited; Endo Designated Activity Company; Endo Global Aesthetics Limited; Hawk Acquisition Ireland Limited; Endo Eurofin Unlimited Company; Endo Finance IV Unlimited Company; Endo Management Limited; Endo TopFin Limited; Endo Procurement Operations Limited; and Endo Ireland Finance II Limited.

79. O'Connell was an insider of the Debtors as defined in Section 101(31) of the Bankruptcy Code.

80. Upon information and belief, defendant Ivan Cavuzic ("**Cavuzic**") is an individual who is domiciled in Dublin, Ireland.

81. Upon information and belief, at all relevant times, Cavuzic was Endo Ventures Limited's Executive Director, API Sourcing, classified by Endo Ventures Limited as an insider in Endo Ventures Limited's Global Notes and Statement of Financial Affairs in Case No 22-22550-JLG [ECF No. 13].

82. At all relevant times until June 16, 2022, Cavuzic was a director of Endo Global Biologics Limited and Endo Global Aesthetics Limited.

83. Cavuzic was an insider of the Debtors as defined in Section 101(31) of the Bankruptcy Code.

84. Upon information and belief, defendant Daniel Vas ("**Vas**") is an individual who is domiciled in Montreal, Quebec, Canada, and works in Montreal, Quebec, Canada.

85. Upon information and belief, at all relevant times, Vas was Paladin Labs Inc.'s Executive Director, Finance, classified by Paladin Labs Inc. as an insider in Paladin Labs Inc.'s Global Notes and Statement of Financial Affairs in Case No 22-22617-JLG [ECF No. 13].

86. Upon information and belief, at all relevant times, Vas was a director of Debtor entities Paladin Labs Inc. and Paladin Labs Canadian Holding, Inc.

87. Vas was an insider of the Debtors as defined in Section 101(31) of the Bankruptcy Code.

88. The defendants listed in the foregoing paragraphs 8-87 are collectively referred to as the "**Insider Executives**."

89. Upon information and belief, defendant Jennifer M. Chao ("**Chao**") is an individual who is domiciled in New York.

90. At all relevant times, Chao was a director of Endo International plc, classified by Endo International plc as a director in Endo International plc's Form 10-K Annual Reports pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934.

91. Upon information and belief, defendant M. Christine Smith ("**Smith**") is an individual who is domiciled in Washington.

92. At all relevant times, Smith was a director of Endo International plc, classified by Endo International plc as a director in Endo International plc's Form 10-K Annual Reports pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934.

93. Upon information and belief, defendant Mark G. Barberio ("**Barberio**") is an individual who is domiciled in New York.

94. At all relevant times, Barberio was a director of Endo International plc, classified by Endo International plc as a director in Endo International Plc's Form 10-K Annual Reports pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934.

95. Upon information and belief, defendant Michael Hyatt ("**Hyatt**") is an individual who is domiciled in New York.

96. At all relevant times, Hyatt was a director of Endo International plc, classified by Endo International plc as a director in Endo International plc's Form 10-K Annual Reports pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934.

97. Upon information and belief, defendant Nancy J. Hutson ("**Hutson**") is an individual who is domiciled in Florida.

98. At all relevant times, Hutson was a director of Endo International plc, classified by Endo International plc as a director in Endo International plc's Form 10-K Annual Reports pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934.

99. Upon information and belief, defendant Shane M. Cooke ("**Cooke**") is an individual who is domiciled in Ireland.

100. At all relevant times, Cooke was a director of Endo International plc, classified by Endo International plc as a director in Endo International plc's Form 10-K Annual Reports pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934.

101. Upon information and belief, defendant William P. Montague ("**Montague**") is an individual who is domiciled in New York.

102. At all relevant times, Montague was a director of Endo International Plc, classified by Endo International plc as a director in Endo International plc's Form 10-K Annual Reports pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934.

103. Upon information and belief, defendant Marie-Therese Bolger ("**Bolger**") is an individual who is domiciled in Dublin, Ireland, and works in Dublin, Ireland.

104. Upon information and belief, at all relevant times, Bolger was a director of Endo Ventures Limited.

105. The defendants listed in the foregoing paragraphs 89-104 are collectively referred to as the "**Director Defendants**."

106. This Court may exercise personal jurisdiction over the Insider Executives and the Director Defendants pursuant to Fed. R. Bankr. P. 7004(d)&(f) and Fed. R. Civ. P. 4.

BACKGROUND

107. On August 16, 2022 (the "**Petition Date**"), the Debtors filed petitions in the United States Bankruptcy Court for the Southern District of New York for relief under Chapter 11 of the Bankruptcy Code, 11 U.S.C. §§ 101 *et seq* (the "**Bankruptcy Code**").

A. Prepetition Executive Compensation

108. In the years preceding the Petition Date, the Debtors maintained executive compensation programs, which were overseen and approved by the compensation committee (the "**Compensation Committee**") of the Debtors' board of directors (the "**Board**"), as well as by the Board itself.

109. In 2020 and 2021, Endo awarded its senior executives three principal types of compensation in addition to salary: annual cash incentive compensation, long-term incentive compensation, and cash continuity compensation.

110. Annual incentive compensation was awarded in cash and paid based upon satisfaction of one-year incentive targets. The incentive targets included both financial and operational metrics.

111. Awards of annual incentive compensation were, upon information and belief, generally made in February for a given calendar year. Performance targets were assessed after the conclusion of the year, and, if the targets were met, upon information and belief, compensation was paid in March of the following year.

112. Long-term incentive compensation historically was awarded in restricted stock and performance stock units. Restricted stock awards vested ratably over a three-year period. Performance stock units vested based upon satisfaction of performance targets, which the Company measured using a three-year performance period. The stated objective of the program was to align certain senior executives' compensation over a multi-year period directly with the interests of shareholders of the Company by motivating and rewarding creation and preservation of long-term shareholder value.

113. In 2020, the form of long-term incentive compensation was amended to provide that 50% of the awards would be payable in cash, rather than equity-based units (the "**2020 Long Term Cash Awards**"). The 2020 Long Term Cash Awards vested and were paid ratably every six months over a three-year period. Unlike the long-term incentive compensation that they were initially part of, they were not subject to any performance targets.

114. In 2021, the form of long-term incentive compensation was further amended to provide that 25% of the awards would be payable in cash, rather than equity-based units (the "**2021 Long Term Cash Awards**"). The 2021 Long Term Cash Awards vested and were paid ratably every six months over a three-year period. Unlike the long-term incentive compensation which they were initially a part of, they were not subject to any performance targets.

115. Awards of long-term incentive compensation were generally made, upon information and belief, in March for a given calendar year. Long-term cash compensation was paid every six months during the three-year vesting period, provided that the recipient remained employed on that date.

116. Continuity compensation was authorized by the Compensation Committee, in light of Endo's stock's poor performance, to "increase [the] realizable earnings of Endo's" senior executives (the "**Continuity Compensation Awards**"). These awards were granted, as relevant here, in 2020 and 2021.

117. The Continuity Compensation Awards were in the form of cash bonuses. The 2020 Continuity Compensation Awards were generally awarded in November 2020 and provided that the cash bonuses would be paid, and would vest, in three equal installments on June 15, 2021, September 15, 2021, and December 15, 2021.

118. The 2021 Continuity Compensation Awards were granted, upon information and belief, on or about [redacted]. The 2021 Continuity Compensation Awards granted in [redacted] of 2021 provided that the cash bonus would be [redacted] on [redacted], and [redacted].

119. All Continuity Compensation Awards would vest and be paid if the applicable senior executive did not resign or was not terminated for cause.

B. The November 2021 Changes to the Executive Compensation Program

120. In the summer and fall of 2021, the Debtors began to analyze (i) potential modifications to the Insider Executives' existing executive compensation awards and (ii) future executive compensation plans.

121. On [redacted] 2021, [redacted] met to consider (i) changes to certain of the awards previously made to the Insider Executives under Debtors' 2020 and 2021 executive compensation programs and (ii) the 2022 executive compensation program (collectively, the "**November 2021 Executive Compensation Program**").

122. Upon information and belief, before [redacted] met to consider the November 2021 Executive Compensation Program, the Company was contemplating a near term bankruptcy filing. [redacted] the Board of Endo International plc had authorized the Company to commence a sale process pursuant to Section 363 of the Bankruptcy Code.[2]

123. Numerous aspects of the proposed November 2021 Executive Compensation Program expressly contemplated a near term bankruptcy filing by the Company:

a. the proposal repeatedly specified that existing and future executive compensation awards would be paid "[redacted];"

[2] *See* Endo_Debtor_00014302.

b. The proposed recipients of the revised executive compensation awards were assessed to determine whether they were "[redacted];

c. [redacted];

d. In fact, the [redacted] and

e. It further cautioned that the "[redacted]"

(i) Features of the November 2021 Executive Compensation Program

a. Prepayment of Awards from Earlier Years

124. Long Term Cash Awards. As of November 1, 2021, a substantial portion of the 2020 and 2021 Long Term Cash Awards due to the Insider Executives remained unvested and unpaid. By their terms, the 2020 and 2021 Long Term Cash Awards would not have become fully vested or paid until March 6, 2023, and March 5, 2024, respectively.

125. As part of the November 2021 Executive Compensation Program, the Company altered the established vesting and payment requirements for the 2020 and 2021 Long Term Cash awards to provide that all previously outstanding and unvested amounts due to the Insider Executives would be accelerated and prepaid in full in November 2021. Amounts prepaid to an Insider Executive would thereafter be subject to clawback – that is the Insider Executive would be contractually required to return them – if the Insider Executive was not employed on the previously scheduled vesting date of each installment.

126. Upon information and belief, the Company neither conducted diligence concerning its ability to actually clawback these amounts nor analyzed the time it would take, or the costs the Company would incur, to successfully clawback such amounts.

127. 2021 Incentive Compensation Awards. In February 2021, upon information and belief, Endo awarded incentive compensation to the Insider Executives. The awards were subject to compliance with metrics that were 70% weighted to financial performance and 30% weighted to operational performance, in both cases during the calendar year 2021.

128. As part of the November 2021 Executive Compensation Program, the Company accelerated the assessment of compliance with the incentive compensation performance metrics. Rather than wait until the completion of 2021 to assess whether the performance metrics had been met, the Company conducted an interim assessment of the metrics based on only a portion of 2021 financial and operational performance.

129. Based on this accelerated assessment of less than a full year of performance, the Company awarded the Insider Executives their full incentive compensation for 2021.

130. The Company proposed to prepay these amounts in full on or about November 1, 2021, rather than in March 2022 as had been its prior practice. Each Insider Executive's prepaid incentive compensation was also subject to clawback if the Insider Executive left the Company before March 1, 2022.

131. Continuity Compensation Awards. In November 2020, the Company granted [redacted] of the Insider Executives continuity compensation for 2021. Each of these awards was payable June 15, 2021, September 15, 2021, and December 15, 2021.

132. [redacted].

133. As part of the November 2021 Executive Compensation Program, the Company agreed to prepay, on or about November 1, 2021, all outstanding and unpaid portions of each

Insider Executive's Continuity Compensation Awards ([redacted]).

134. Mr. Randolph and Ms. Stouch each received a promotion effective June 2022. Mr. Randolph became Global Head of Manufacturing Operations, effective June 2022. Ms. Stouch became Senior Vice President, Information Technology and Chief Information Officer, effective June 2022. [redacted].

135. Each Insider Executive's prepaid continuity compensation was also subject to clawback if the Insider Executive left the Company prior to any previously scheduled vesting date.

136. The chart immediately below illustrates the extent to which the Debtors fast-tracked payments on account of prior awards in anticipation of their bankruptcy filing.

[redacted]

b. Accelerated Award and Payment of 2022 Executive Compensation

137. Under the November 2021 Executive Compensation Program, the Company proposed to make executive compensation awards for 2022 to many of the Insider Executives (the "**2022 Awards**") in November 2021.

138. These awards were to be made several months earlier than the Company's prior practice, under which awards were set, upon information and belief, in February of the year to which they related.

139. The amount of each Insider Executive's 2022 Award was computed as the sum of the executive's target annual incentive compensation and long-term incentive compensation.

140. Unlike prior years, under the 2022 Awards, the full amount of the long-term incentive benefit was paid in cash. No portion of the long-term incentive benefit was paid in stock or stock-based compensation.

141. Unlike prior years, the Company proposed to prepay the 2022 Awards in full to Insider Executives on or about November 1, 2021. This payment schedule departed from the Company's prior practice, which would have called for incentive compensation for 2022 to be paid in March 2023 and for long-term cash compensation to be paid in ratable amounts every six months over a three-year period ending in 2025.

142. 60% of the 2022 Awards was expressly retention-based. 60% of the prepaid compensation was subject to clawback if the recipient's employment with the Company terminated earlier than December 31, 2022, for any reason other than a so-called "Qualifying Termination."

143. 40% of the 2022 Awards was expressly subject to compliance with performance metrics. This portion of the 2022 Awards was subject to clawback if the performance targets were

not satisfied as of December 31, 2022, or if the Insider Executive was not employed on December 31, 2022.

144. In other words, the Company paid 2022 incentive compensation long before it could have possibly determined whether 2022 annual performance metrics were met. Indeed, it paid annual incentive compensation for 2022 before 2022 had even begun.

145. As the chart below shows, the Debtors altered their prior practice and managed to prepay the Insider Executives all of their 2022 Awards before filing for bankruptcy.

(ii) Approval of the November 2021 Executive Compensation Program

146. On November 1, 2021, the Board approved and adopted the November 2021 Executive Compensation Program.

147. When the Board considered and approved the November 2021 Executive Compensation Program, the Board understood that, [redacted].

148. When the Board approved and adopted the November 2021 Executive Compensation Program, the Board left unchanged its incentive and retention compensation programs as to employees that would not qualify as "Insiders" under the Bankruptcy Code.

149. Under the November 2021 Executive Compensation Program approved and adopted by the Board, Endo International plc was authorized to fund the November 2021 Payments either directly or indirectly (and whether by utilization of available credit facilities, capital contributions or in other such manner as an authorized officer may approve) on account of the Insider Executives employed by other debtor entities. Ultimately, upon information and belief, the November 2021 Payments were made by debtor entities Endo Pharmaceuticals Inc., Par Pharmaceutical, Inc., Endo Ventures Limited, and Paladin Labs Inc. (together the "**Subsidiary Debtors**").

150. After Board approval was granted, the Company reiterated that the purpose of the November 2021 Executive Compensation Program was to evade the Bankruptcy Code's limitations on post-petition executive compensation.

151. In talking points explaining the Board's decision, the Company explained that

> If . . . we choose . . . a chapter 11 filing . . . then certain restrictions on payments of executive compensation would make it difficult or impossible to ensure that the full amount of approved compensation and retention programs is paid to certain individuals.
>
> Accordingly, the Board has authorized the prepayment of previously approved compensation . . . for the senior executive team members and certain other employees, many of which are directors of the Company's subsidiaries. The restrictions on payment of executive compensation only apply to this limited number of individuals in the Company and this is why prepayments were only made to this specific group.[3]

[3] *See* Endo_Debtor_00015958.

152. The Company reiterated this explanation in its Proxy Statement, filed April 28, 2022, explaining that "[d]epending on the outcome of the contingency planning efforts, there is a risk of future restrictions on the payment of executive compensation, making it difficult to ensure that the full amount of approved compensation will be paid to the [Named Executive Officers]."

(iii) Payments to Insider Executives under the November 2021 Executive Compensation Program

153. On or about November 1, 2021, Endo International plc, on behalf of itself and all of its subsidiaries, entered into individual retention agreements with, upon information and belief, [redacted] of the Insider Executives that established the terms for the payment of their compensation awards under the November 2021 Executive Compensation Program (the "**November 2021 Agreements**"). The November 2021 Agreements provided that the Company would transfer cash on account of the relevant prepayments.

154. Between November 3, 2021, and December 23, 2021, the Debtors, pursuant to the Board's direction, caused the Insider Executives to be paid a total of approximately $[redacted] million under the November 2021 Executive Compensation Program (the "**November 2021 Payments**"). Exhibit A sets forth the amount of the November 2021 Payments made to each of the Insider Executives in respect of each category of compensation contemplated by the November 2021 Executive Compensation Plan as well as the dates on which such payments were made.

155. Approximately $33.4 million of November 2021 Payments was paid to the four most senior executives of the Company (the "**Top Four Executives**").

156. Approximately $[redacted] million of November 2021 Payments was paid to 15 other Insider Executives of the Company (the "**Other Insider Executives**").

B. The Summer 2022 Executive Compensation Program

157. [redacted] met to consider further executive compensation awards for 2023 (the "**2023 Awards**").[4] Initially, [redacted].[5]

158. The payment metrics were subsequently modified to be consistent with the 2022 Awards. While 60% – or more than half – of the 2023 Awards remained retention-based, the remaining 40% were made contingent on the satisfaction of a [redacted] performance metric.

159. Like the 2022 Awards, the 2023 Awards were prepaid in full. 40% of each award was subject to clawback if the performance metric was not satisfied (or if the recipient left before March 1, 2024), and 60% was subject to clawback if the recipient left employment before December 31, 2023.

160. Regardless of when it occurred, upon a "change of control" (i) the performance-based portion the 2023 Awards would be deemed earned at target and (ii) Debtors' ability to claw back the retention-based portion of the 2023 Awards would terminate.

161. Under the terms of the 2023 Awards, a Section 363 sale of the Company constitutes a "change of control."

162. On the Petition Date, the Company filed a restructuring support agreement requiring it to execute a Section 363 sale of substantially all its assets by July of 2023. Under the restructuring support agreement and the associated stalking horse agreement, the stalking horse bidder—the presumptive purchaser of substantially all of the Debtors' assets—has agreed to pay

[4] *See* Endo_Debtor_00000182.
[5] *See* Endo_Debtor_00000182.

$5 million to purchase all unencumbered "Transferred Assets" which includes, among other things, the claims asserted below seeking to recover approximately $95 million for the benefit of the estate. The restructuring support agreement and the stalking horse agreement provide that the causes of actions asserted herein shall be released by the stalking horse purchaser on the closing date of the sale.

163. [redacted][6]

164. On August 9, 2022, the Board approved and adopted the Summer 2022 Executive Compensation Program as to the Top Four Executives.

165. [redacted]. (the "**July 2022 Agreements**"). [redacted].

166. On or about July 15, 2022 – one month before these cases were filed – the Debtors caused a total of $[redacted] to be prepaid to 14 Insider Executives (the "**July 2022 Payments**"). Exhibit B sets forth the amount of the July 2022 Payments made to each of the 14 Insider Executives in respect of each category of compensation contemplated by the Summer 2022 Executive Compensation Plan.

167. The below chart illustrates when the July 2022 Payments would have been paid absent the prepayment scheme.

[6] *See* Endo_Debtor_00017680.

168. When the Board considered and approved of the July 2022 Payments, the Board understood that, upon commencing chapter 11 cases, the Bankruptcy Code would restrict, but not bar, the payment of executive compensation.

169. As set forth in Exhibit B, $ was prepaid in respect of the 2023 Awards and $ was prepaid to four of the 14 Insider Executives in respect of .

170. On or about August 11, 2022, Endo International plc on behalf of itself and all of its subsidiaries, entered into letter agreements with each of Top Four Executives memorializing the terms of their potential awards under the 2023 Awards and obligating the Debtors to comply with such terms (the "**August 2022 Agreements**," and together with the July 2022 Agreements, the "**Summer 2022 Agreements**"). The August 2022 Agreements obligated the Company to pay each Top Four Executive on August 12, 2022.

171. When the Board considered and approved of the August 2022 Agreements, and the payments made under such agreements, the Board knew that an Endo bankruptcy was imminent. The Board also understood that, upon commencing chapter 11 cases, the Bankruptcy Code would

restrict, but not bar, the payment of executive compensation. Knowing this, the Board approved and authorized the August 2022 Agreements, and the payments under such agreements.

172. On or about August 12, 2022 – four days before these cases were filed – the Debtors caused a total of $22,092,045 to be prepaid to the Top Four Executives in respect of the 2023 Awards (the "**August 2022 Payments**," and together with the July 2022 Payments, the "**Summer 2022 Payments**"). Exhibit B sets forth the amount of the August 2022 Payments made to each of the Top Four Executives in respect of each category of compensation contemplated by the Summer 2022 Executive Compensation Plan.

173. When the Board approved and adopted the Summer 2022 Executive Compensation Program, the Board left unchanged its incentive and retention compensation programs as to employees that did not qualify as "Insiders" under the Bankruptcy Code.

174. The below chart illustrates when the payments made pursuant to the November 2021 Executive Compensation Program and the Summer 2022 Executive Compensation Program would have been made had the Debtors not attempted to circumvent Section 503(c) of the Bankruptcy Code.

175. Material facts were so obvious, with respect to approving the Summer 2022 Payments and the November 2021 Payments, that, upon information and belief, the Boards' failure to consider and act on them was negligent and in bad faith regardless of any advice it may have received, including that there was no legitimate reason to pay all bonuses prior to filing bankruptcy rather than in installments over time.

C. The Lack of Reasonably Equivalent Value

176. The awards and payments under the November 2021 Executive Compensation Program and the Summer 2022 Executive Compensation Program did not provide the Company with reasonably equivalent value for numerous reasons, including the following:

a. Neither the November 2021 nor the Summer 2022 Executive Compensation Program modified pre-existing employment agreements in any material way. Further, under each program the Insider Executive's obligation to repay any accelerated or prepaid awards expired upon the Insider Executive's departure from the Company, which departure could be for an array of reasons;

b. The Company did not receive reasonably equivalent value for the retention-based awards and payments under the November 2021 Executive Compensation Program and the Summer 2022 Executive Compensation Program;

   (i) Such retention payments would not have been approved had the Company presented them to this or another bankruptcy court for approval post-filing; and

   (ii) Among other things, on information and belief, (1) the amounts of the retention-based awards and payments are much larger than permissible under Section 503(c)(1) of the Bankruptcy Code, and (2) the Insider Executives did not meet the other requirements of that section, including that they had not received bona fide jobs offers from another business at the same or a greater rate of compensation;

c. The Company acknowledged that it awarded and paid these retention-based amounts pre-petition to circumvent the prohibitions of Section 503(c)(1) [redacted]. Such payments cannot, as a matter of bankruptcy law, provide the Company with reasonably equivalent value;

d. Prepayment of the amounts under the November 2021 Executive Compensation Program and the Summer 2022 Executive Compensation Program saddled the

Company with the collection risk and costs of recovering prepayments from each of the over 22 Insider Executives who received them in the event that retention or performance metrics were not met. These costs, by themselves, dictate that the Company did not receive reasonably equivalent value for the payments made under these programs;

e. Even if the pre-filing payment of retention-based compensation for the post-petition period were permissible, the Company clearly did not receive reasonably equivalent value for making retention awards because the Insider Executives were already receiving substantial other compensation that required them to remain at the Company through 2024. [redacted]:

(i) [redacted];

(ii) [redacted];

(iii) [redacted];

(iv) [redacted]; and

(v) [redacted];

f. Although the November 2021 Executive Compensation Program accelerated these payments so that they were made in November 2021, the Insider Executives were still contractually required to remain at the Debtors for more than two additional years if they wished to retain all of the awards. These accelerated payments provide substantial incentive for the Insider Executives to remain employed at the Company through early 2024.

g. Upon information and belief, many of the Insider Executives' employment agreements obligated Insider Executives to continue working for the Company for

several years and not to compete for a period of up to 24 months after the insider's employment terminated.

(i) The Top Four Executives each were party to an employment contract under which each committed to work for the Debtors for three-years. The earliest expiration date under these employment contracts was March 6, 2023, and the latest was February 13, 2024;

(ii) Each of the Top Four Executives agreed not to compete with the Company for a period of not less than a year after leaving the Company: Mr. Coleman agreed not to compete for a period of 24 months, Mr. Bradley agreed not to compete for a period of 12 months; Mr. Maletta agreed not to compete for a period of 12 months; and Mr. Barry agreed not to compete for a period of 18 months;

h. The terms of the accelerated 2020 and 2021 payments already required the Insider Executives to remain employed at the Company until 2024 to avoid forfeiting a portion of those awards. Despite the obviously retentive nature of these payments, 60% of the Company's 2022 Awards and 2023 Awards to Insider Executives were explicitly retention-based. The award and payment of these explicitly retention-based amounts – [redacted] – were unnecessary to assure that the Insider Executives remained at the Company because the accelerated 2020 and 2021 payments already provided ample incentive for the Insider Executives to remain employed at the Company. The retention component of the 2022 and 2023 Awards therefore did not provide the Company or the Subsidiary Debtors with reasonably equivalent value.

i. The November 2021 Executive Compensation Program and the Summer 2022 Executive Compensation Program were extremely expensive. The aggregate compensation awarded to the Insider Executives under the November 2021 Executive Compensation Program and the Summer 2022 Executive Compensation Program exceeded comparable bankruptcy court-approved key employee incentive plans (the "**Comparable KEIPs**"). The average aggregate payout per participant under the plans exceed the average payout per participant under the Comparable KEIPs. Because the amount of aggregate compensation awarded under the November 2021 Executive Compensation Program and the Summer 2022 Executive Compensation Program exceeded the Comparable KEIPS, the Company did not receive reasonably equivalent value for the compensation payments.

j. Upon information and belief, none of the Insider Executives had competing offers of employment at the time they received payments under the November 2021 Executive Compensation Program and the Summer 2022 Executive Compensation Program. Moreover, the payment of not less than [redacted] in retention payments was far more than necessary to keep the Insider Executives employed at the Company;

k. The prepetition Debtors, to the extent they received anything in exchange for making the November 2021 and Summer 2022 Payments, only received an unsecured promise of future performance, which does not constitute reasonably equivalent value;

l. The accelerated 2020 and 2021 payments were also entirely gratuitous, merely substituting a new and more onerous payment schedule for an existing less onerous one. It did not provide the Company or the Subsidiary Debtors with reasonably equivalent value; and

m. Despite being so expensive, a substantial portion of the awards and payment made under the November 2021 Executive Compensation Program and the Summer 2022 Executive Compensation Program did not benefit the prepetition Company at all. The Company filed its Chapter 11 cases in August 2022, eight and a half months after the November 2021 payments and one month (or even merely a few days) after the Summer 2022 payments. As a result, any performance incentive or retention benefit resulting from these payments accrued to the prepetition Company for only a portion of 2022, not the full year. Similarly, no portion of the 2023 Awards – which explicitly provide compensation for employment and performance during 2023 – even arguably accrued to the prepetition Company. Because the great majority of the payments under the November 2021 Executive Compensation Program and the Summer 2022 Executive Compensation Program purported to induce the Insider Executives to remain employed or to meet performance targets after the Petition Date, they did not provide the prepetition Debtors with reasonably equivalent value.

F. Insolvency of Endo International Plc and the Subsidiary Debtors

177. No later than November 1, 2021, Endo International plc and each of the Subsidiary Debtors was also insolvent, inadequately capitalized, and unable to pay debts as they became due.

178. As of November 1, 2021, the fair value of Endo International plc's, and of each Subsidiary Debtors', liabilities (excluding opioid liabilities) exceeded the fair value of assets.

179. Endo International plc and each of the Subsidiary Debtors borrowed, issued and/or guaranteed, as applicable, more than $8.3 billion in funded indebtedness outstanding as of November 1, 2021, comprised of revolving loans, term loans, secured notes and unsecured notes.

180. Endo International plc and each of the Subsidiary Debtors was insolvent as of November 1, 2021, through the Petition Date after eliminating the book value of any equity

interests of insolvent subsidiaries and before accounting for contingent liabilities under the guarantees or from various litigations.

181. If the Court were to consider contingent funded debt and litigation liabilities, to the extent applicable, Endo International plc and each of the Subsidiary Debtors was deeply insolvent as of November 1, 2021, through the Petition Date.

182. Upon information and belief, Endo International plc is the ultimate parent of the Debtors and, as a holding company, was insolvent as of November 2021 through the Petition Date based upon its primary liabilities under the credit facilities because it had limited assets beyond the equity interests in, and intercompany claims against, insolvent subsidiaries.

183. Upon information and belief, Endo Pharmaceuticals Inc. is one of the Debtors' primary U.S. operating subsidiaries but as of November 2021 through the Petition Date it had a shareholder deficit before accounting for any contingent liabilities.

184. Upon information and belief, Par Pharmaceutical, Inc. is one of the Debtors' primary U.S. operating subsidiaries but as of November 2021 through the Petition Date it had a shareholder deficit before accounting for any contingent liabilities.

185. Upon information and belief, Endo Ventures Limited is one of the Debtors' primary Irish operating subsidiaries but as of November 2021 through the Petition Date it had a shareholder deficit before accounting for contingent liabilities.

186. Upon information and belief, Paladin Labs Inc. is one of the Debtors' primary Canadian operating subsidiaries but as of November 2021 through the Petition Date it had a shareholder deficit before accounting for any contingent liabilities.

187. In addition, any approach to valuing the crushing opioid liabilities at entities which were named defendants shows that such liabilities exceeded such entities' assets throughout the period in which November 2021 and Summer 2022 Payments were made to the Insider Executives.

188. By the Petition Date, multiple Debtors had been sued in more than 3,500 opioid-related lawsuits. These opioid-related lawsuits included claims by: (a) states, counties, cities, municipalities, public hospitals, school districts, and Native American tribes; (b) private hospitals; (c) individuals seeking damages for alleged personal injuries; (d) children born with neonatal abstinence syndrome; (e) third-party payors seeking damages for alleged economic injuries; (f) independent emergency room physicians; and (g) demands made by the DOJ. The plaintiffs have alleged that the defendants' misleading marketing led health care providers to prescribe opioids inappropriately, which in turn led to addiction, misuse, and abuse. Collectively, these creditor groups alleged claims worth billions of dollars based on conduct and sales arising from opioid practices. This does not even include filed non-opioid litigation claims and unfiled opioid litigation claims that would have been filed but for the bankruptcy proceeding.

G. The Debtors' Chapter 11 Proposal and Projected Recoveries Thereunder

189. On the Petition Date, the Debtors filed a restructuring support agreement (the "**RSA**") between the Debtors and an ad hoc group of first lien lenders (the "**First Lien Lenders**") [ECF No. 20].

190. The RSA bound the Debtors to pursue a Section 363 sale of substantially all their assets, with the First Lien Lenders acting as a stalking horse bidder.

191. The Debtors have repeatedly acknowledged that the amount of the proposed stalking horse bid is insufficient to provide any recovery to general unsecured creditors.

192. Had the Insider Executives not received prepayment of the November 2021 Payments and the Summer 2022 Payments, the Insider Executives would have held unsecured claims against Endo for the amount of those payments, which, according to the Debtors, would have been entitled to little to no recovery.

193. By prepaying the November 2021 Payments and the Summer 2022 Payments, Endo enabled the Insider Executives to receive payment in full on their claims for multiple forms of executive compensation. As a result, they received more in respect of their compensation claims than they would have received if the Debtors' bankruptcy cases were cases under chapter 7 of the Bankruptcy Code.

COUNT ONE
(Preferential Transfers – Summer 2022 Payments – 11 U.S.C §§ 547 & 550)

(Against Blaise Coleman, Matthew Maletta, Mark Bradley, Patrick Barry, James Tursi, Tracy Basso, Laure Park, Susan Williamson, Jack Boyle, James Papp, Michael McGuinness, Thomas Neylon, Michael Randolph, Livio Di Francesco, Cheryl Stouch, Frank Raciti, Jenny O'Connell, and Daniel Vas)

194. Plaintiffs repeat and reallege each and every allegation set forth in paragraphs 1 through 193 of the Complaint as though set forth fully again in support of this claim for relief.

195. Endo made payments in cash to or for the benefit of Blaise Coleman, Matthew Maletta, Mark Bradley, Patrick Barry, James Tursi, Tracy Basso, Laure Park, Susan Williamson, Jack Boyle, James Papp, Michael McGuinness, Thomas Neylon, Michael Randolph, Livio Di Francesco, Cheryl Stouch, Frank Raciti, Jenny O'Connell, and Daniel Vas (together the "**Summer Insider Executives**"), in the form of the Summer 2022 Payments, totaling $[redacted], as set forth in Exhibit B.

196. The Summer 2022 Payments were transfers of property, or an interest in property, of Endo.

197. The Summer 2022 Payments were made within 90 days before the Petition Date.

198. The Summer 2022 Payments, which were made in satisfaction of existing obligations under the Summer 2022 Executive Compensation Program and the retention agreements signed by the Company and the Summer Insider Executives, were made for or on account of an antecedent debt owed by Endo to the Summer Insider Executives before the Summer 2022 Payments were made.

199. Under 11 U.S.C. § 547(f), Endo is presumed to have been insolvent (and was in fact insolvent) when the Summer 2022 Payments were made.

200. The Summer 2022 Payments enabled the Summer Insider Executives to receive more than they would have received if (i) the Debtors' bankruptcy cases were cases under chapter 7 of the Bankruptcy Code, (ii) the Summer 2022 Payments had not been made and (iii) the Summer Insider Executives were paid in accordance with the Bankruptcy Code. The Summer Insider Executives were unsecured creditors and would have been entitled, according to the Debtors, to little to no recovery on account of their claims.

201. The Summer 2022 Payments constitute avoidable preferences within the meaning of 11 U.S.C. § 547.

202. As a result of the foregoing, the Plaintiffs are entitled to a judgment against the Summer Insider Executives: (a) avoiding the Summer 2022 Payments; (b) directing the Summer 2022 Payments be set aside; (c) recovering the Summer 2022 Payments pursuant to 11 U.S.C. § 550; and (d) awarding pre- and post- judgment interest.

COUNT TWO
(Preferential Transfers – November 2021 Payments – 11 U.S.C §§ 547 & 550)

(Against Blaise Coleman, Matthew Maletta, Mark Bradley, Patrick Barry, Tracy Basso, Robert Polke, Laure Park, Susan Williamson, Joe Barbarite, Jack Boyle, James Papp, Michael McGuinness, Ruth Thorpe, Thomas Neylon, Livio Di Francesco, Frank Raciti, Jenny O'Connell, Ivan Cavuzic, and Daniel Vas)

203. Plaintiffs repeat and reallege each and every allegation set forth in paragraphs 1 through 193 of the Complaint as though set forth fully again in support of this claim for relief.

204. Endo made payments in cash to or for the benefit of Blaise Coleman, Matthew Maletta, Mark Bradley, Patrick Barry, Tracy Basso, Robert Polke, Laure Park, Susan Williamson, Joe Barbarite, Jack Boyle, James Papp, Michael McGuinness, Ruth Thorpe, Thomas Neylon, Livio Di Francesco, Frank Raciti, Jenny O'Connell, Ivan Cavuzic, and Daniel Vas, (together the "**November Insider Executives**") in the form of the November 2021 Payments, totaling $[redacted], as set forth in Exhibit A.

205. The November 2021 Payments were transfers of property, or an interest in property, of Endo.

206. Upon information and belief, each of the November Insider Executives was an "insider" as that term is defined in 11 U.S.C. § 101(31)(B)(i), (ii), (iii), and/or (E).

207. The November 2021 Payments were made between 90 days and one year before the Petition Date.

208. The November 2021 Payments were made for or on account of an antecedent debt owed by Endo to the November Insider Executives before the November 2021 Payments were made.

209. The November 2021 Payments were made while Endo was insolvent.

210. The November 2021 Payments enabled the November Insider Executives to receive more than they would have received if (i) the Debtors' bankruptcy cases were cases under chapter

7 of the Bankruptcy Code, (ii) the November 2021 Payments had not been made and (iii) the November Insider Executives were paid in accordance with the Bankruptcy Code.

211. The November 2021 Payments constitute avoidable preferences within the meaning of 11 U.S.C. § 547.

212. As a result of the foregoing, the Plaintiffs are entitled to a judgment against the November Insider Executives: (a) avoiding the November 2021 Payments; (b) directing the November 2021 Payments be set aside; (c) recovering the November 2021 Payments pursuant to 11 U.S.C. § 550; and (d) awarding pre- and post- judgment interest.

COUNT THREE

(Actual Fraudulent Transfers – Summer 2022 Payments – 11 U.S.C §§ 548(a)(1)(A) & 550)

(Against all Summer Insider Executives)

213. Plaintiffs repeat and reallege each and every allegation set forth in paragraphs 1 through 193 of the Complaint as though set forth fully again in support of this claim for relief.

214. Within two years of the Petition Date, Endo made transfers to or on behalf of the Summer Insider Executives in the form of the Summer 2022 Payments, totaling $[redacted], as set forth in Exhibit B.

215. The Summer 2022 Payments constitute transfers of property of Endo.

216. The Summer 2022 Payments were made with intent to hinder, delay, or defraud creditors.

217. The Summer 2022 Payments were prepaid in full in a transparent effort to avoid (i) Court and creditor oversight and (ii) the provisions of the Bankruptcy Code regarding executive compensation.

218. As a result of the foregoing, the Plaintiffs are entitled to a judgment against the Summer Insider Executives: (a) avoiding the Summer 2022 Payments and the Summer 2022

Agreements; (b) directing the Summer 2022 Payments be set aside; (c) recovering the Summer 2022 Payments pursuant to 11 U.S.C. § 550; and (d) awarding pre- and post- judgment interest.

COUNT FOUR
(Actual Fraudulent Transfers – Summer 2022 Payments – 11 U.S.C § 544(b); Applicable State Law (or Foreign Law), Including Without Limitation 12 Pa. C.S. § 5104; NY Debt. & Cred. L. §276)

(Against all Summer Insider Executives)

219. Plaintiffs repeats and realleges each and every allegation set forth in in paragraphs 1 through 193 of the Complaint as though set forth fully again in support of this claim for relief.

220. Pursuant to Section 544 of the Bankruptcy Code, the Plaintiffs brings this claim on behalf of the Debtors' estate and its creditors under the Pennsylvania Uniform Voidable Transfer Act ("**PUVTA**"), 12 Pa. C.S. §§ 5101 *et seq.*, New York Debtor and Creditor Law ("**NY Debt. & Cred. L.**") §§ 270 *et seq*.

221. Within four years of the Petition Date, Endo made transfers to or on behalf of the Summer Insider Executives in the form of the Summer 2022 Payments, totaling $[redacted], as set forth in Exhibit B.

222. The Summer 2022 Payments constitute transfers of property of Endo.

223. The Summer 2022 Payments were made with intent to hinder, delay, or defraud creditors.

224. The Summer 2022 Payments were prepaid in full in a transparent effort to avoid (i) Court and creditor oversight and (ii) the provisions of the Bankruptcy Code regarding executive compensation.

225. Each of the Summer Insider Executives was an "insider" as that term is defined in PUVTA § 5101; NY Debt. & Cred. L. § 270(h)(2) (i), (ii), (iii), and/or (3).

226. As a result of the forgoing, the Plaintiffs are entitled to recover the Summer 2022 Payments from the Summer Insider Executives. PUVTA § 5107; NY Debt. & Cred. L. § 276.

227. As a result of the foregoing, the Plaintiffs are entitled to a judgment against the Summer Insider Executives: (a) avoiding the Summer 2022 Payments and the Summer 2022 Agreements; (b) directing the Summer 2022 Payments be set aside; (c) recovering the Summer 2022 Payments; and (d) awarding pre- and post- judgment interest.

COUNT FIVE
(Constructive Fraudulent Transfers – Summer 2022 Payments – 11 U.S.C §§ 548(B)(ii)(I), (IV) & 550)

(Against all Summer Insider Executives)

228. Plaintiffs repeat and reallege each and every allegation set forth in paragraphs 1 through 193 of the Complaint as though set forth fully again in support of this claim for relief.

229. Within two years of the Petition Date, Endo made transfers to or on behalf of the Summer Insider Executives in the form of the Summer 2022 Payments, totaling $[redacted], as set forth in Exhibit B.

230. The Summer 2022 Payments were made or incurred for less than reasonably equivalent value principally due to the absence of any evidence of flight risk, the fact that the bonuses were prepaid on account of future services and that the composition of, and metrics for obtaining, the bonuses were much more favorable to the Summer Insider Executives than the Company's historical bonuses.

231. The Summer 2022 Payments constitute transfers of property of Endo.

232. The Summer 2022 Payments were made while Endo was insolvent.

233. Each of the Summer Insider Executives was an "insider" as that term is defined in 11 U.S.C. § 101(31)(B)(i), (ii), (iii), and/or (E).

234. The Summer 2022 Payments were made pursuant to the terms of Endo's executive compensation programs and/or the Summer 2022 Agreements between Endo and the Summer Insider Executives memorializing the specific awards to be paid under the compensation programs.

235. The Summer 2022 Payments and the Summer 2022 Agreements were made outside of the ordinary course because, among other things, they were (i) awarded and paid in contemplation of the Company's imminent bankruptcy filing, a non-ordinary course event; (ii) awarded and prepaid to avoid the limitations the Bankruptcy Code imposed on the payment of executive compensation during a bankruptcy case; (iii) awarded well before the Company's historical practice would have called for the award of 2023 executive compensation, and (iv) prepaid in full, subject to clawback, rather than after completion of the applicable performance or retention period, as had been the Company's historical practice.

236. Thus, the Summer 2022 Payments constitute avoidable fraudulent transfers within the meaning of 11 U.S.C. §§ 548(a)(1)(B)(ii)(I) and (IV) because they were (i) made for less than reasonably equivalent value, and (ii) both (a) made at a time when the Company was insolvent and (b) paid to insiders under employment contracts outside of the ordinary course.

237. As a result of the foregoing, the Plaintiffs are entitled to a judgment against the Summer Insider Executives: (a) avoiding the Summer 2022 Payments and the Summer 2022 Agreements; (b) directing the Summer 2022 Payments be set aside; (c) recovering the Summer 2022 Payments; and (d) awarding pre- and post- judgment interest.

COUNT SIX
(Constructive Fraudulent Transfers – Summer 2022 Payments – 11 U.S.C § 544(b); Applicable State Law (or Foreign Law), Including Without Limitation PUVT §§ 5104, 5105; NY Debt. & Cred. L. §274)

(Against all Summer Insider Executives)

238. Plaintiffs repeat and reallege each and every allegation set in paragraphs 1 through 193 of the Complaint as though set forth fully again in support of this claim for relief.

239. Pursuant to Section 544 of the Bankruptcy Code, the Plaintiffs bring this claim on behalf of the Debtors' estate and its creditors under applicable state law (and foreign law), including without limitation PUVT §§ 5104, 5105; NY Debt. & Cred. L. §274.

240. Within four years of the Petition Date, Endo made transfers to or on behalf of the Summer Insider Executives in the form of the Summer 2022 Payments, totaling $[redacted].

241. The Summer 2022 Payments were made or incurred for less than reasonably equivalent value.

242. The Summer 2022 Payments constitute transfers of property of Endo.

243. The Summer 2022 Payments were made while Endo was insolvent or believed or reasonably should have believed that it would incur debts beyond its ability to pay as they became due.

244. As a result of the foregoing, the Plaintiffs are entitled to a judgment against the Summer Insider Executives: (a) avoiding the Summer 2022 Payments and the Summer 2022 Agreements; (b) directing the Summer 2022 Payments be set aside; and (c) recovering the Summer 2022 Payments; and (d) awarding pre- and post- judgment interest.

COUNT SEVEN
(Constructive Fraudulent Transfers – November 2021 Payments – 11 U.S.C §§ 548(B)(ii)(I), (IV) & 550)

(Against all November Insider Executives)

245. Plaintiffs repeat and reallege each and every allegation set forth in paragraphs 1 through 193 of the Complaint as though set forth fully again in support of this claim for relief.

246. Within two years of the Petition Date, Endo made transfers to or on behalf of the November Insider Executives in the form of the November 2021 Payments, totaling $[redacted].

247. The November 2021 Payments were made or incurred for less than reasonably equivalent value principally due to the absence of any evidence of flight risk.

248. The November 2021 Payments constitute transfers of property of Endo.

249. The November 2021 Payments were made while Endo was insolvent.

250. Each of the November Insider Executives was an "insider" as that term is defined in 11 U.S.C. § 101(31)(B)(i), (ii), (iii), and/or (E).

251. The November 2021 Payments were made pursuant to the terms of Endo's executive compensation programs and/or the November 2021 Agreements between Endo and the November Insider Executives memorializing the specific awards to be paid under the compensation program.

252. The November 2021 Payments and the November 2021 Agreements were made outside of the ordinary course because, among other things, they were (i) awarded and paid in contemplation of the Company's imminent bankruptcy filing, a non-ordinary course event; (ii) awarded and prepaid to avoid the limitations the Bankruptcy Code imposed on the payment of executive compensation during a bankruptcy case; (iii) awarded well before the Company's historical practice would have called for the award of 2023 executive compensation,

and (iv) prepaid in full, subject to clawback, rather than after completion of the applicable performance or retention period, as had been the Company's historical practice.

253. Thus, the November 2021 Payments constitute avoidable fraudulent transfers within the meaning of 11 U.S.C. §§ 548(a)(1)(B)(ii)(I) and (IV) because they were (i) made for less than reasonably equivalent value, and (ii) both (a) made at a time when the Company was insolvent and (b) paid to insiders under employment contracts outside of the ordinary course.

254. As a result of the foregoing, the Plaintiffs are entitled to a judgment against the November Insider Executives: (a) avoiding the November 2021 Payments and the November 2021 Agreements; (b) directing the November 2021 Payments be set aside; (c) recovering the November 2021 Payments; and (d) awarding pre- and post- judgment interest.

COUNT EIGHT
(Constructive Fraudulent Transfers – November 2021 Payments – 11 U.S.C § 544(b); Under Applicable State Law (and Foreign Law), Including Without Limitation PUVTA §§ 5104-5105; NY Debt. & Cred. L. §274)

(Against all November Insider Executives)

255. Plaintiffs repeat and reallege each and every allegation set forth in paragraphs 1 through 193 of the Complaint as though set forth fully again in support of this claim for relief.

256. Pursuant to Section 544 of the Bankruptcy Code, the Plaintiffs bring this claim on behalf of the Debtors' estate and its creditors under applicable state law (and foreign law), including without limitation PUVTA §§ 5104, 5105; NY Debt. & Cred. L. §274.

257. Within four years of the Petition Date, Endo made transfers to or on behalf of the November Insider Executives in the form of the November 2021 Payments, totaling $[redacted].

258. The November 2021 Payments were made or incurred for less than reasonably equivalent value principally due to the absence of any evidence of flight risk.

259. The November 2021 Payments constitute transfers of property of Endo.

260. The November 2021 Payments were made while Endo was insolvent or believed or reasonably should have believed that it would incur debts beyond its ability to pay as they became due.

261. As a result of the foregoing, the Plaintiffs are entitled to a judgment against the November Insider Executives: (a) avoiding the November 2021 Payments and the November 2021 Agreements; (b) directing the November 2021 Payments be set aside; (c) recovering the November 2021 Payments; and (d) awarding pre- and post- judgment interest.

COUNT NINE
(Actual Fraudulent Transfers – November 2021 Payments – 11 U.S.C §§ 548(a)(1)(A) & 550)

(Against all November Insider Executives)

262. Plaintiffs repeat and reallege each and every allegation set forth in paragraphs 1 through 193 of the Complaint as though set forth fully again in support of this claim for relief.

263. Within two years of the Petition Date, Endo made transfers to or on behalf of the November Insider Executives in the form of the November 2021 Payments, totaling $[redacted], as set forth in Exhibit B.

264. The November 2021 Payments constitute transfers of property of Endo.

265. The November 2021 Payments were made with intent to hinder, delay, or defraud creditors.

266. The November 2021 Payments were prepaid in full in a transparent effort to avoid (i) Court and creditor oversight and (ii) the provisions of the Bankruptcy Code regarding executive compensation.

267. As a result of the foregoing, the Plaintiffs are entitled to a judgment against the November Insider Executives: (a) avoiding the November 2021 Payments and the November 2021

Agreements; (b) directing the November 2021 Payments be set aside; (c) recovering the November 2021 Payments pursuant to 11 U.S.C. § 550; and (d) awarding pre- and post- judgment interest

COUNT TEN
(Actual Fraudulent Transfers – November 2021 Payments – 11 U.S.C § 544(b); Applicable State Law (and Foreign Law), Including Without Limitation PUVTA § 5104; NY Debt. & Cred. L. §274)

(Against all November Insider Executives)

268. Plaintiffs repeat and reallege each and every allegation set forth in in paragraphs 1 through 193 of the Complaint as though set forth fully again in support of this claim for relief.

269. Pursuant to Section 544 of the Bankruptcy Code, the Plaintiffs bring this claim on behalf of the Debtors' estate and its creditors under the PUVTA § 5104; NY Debt. & Cred. L. §274 and applicable foreign law.

270. Within four years of the Petition Date, Endo made transfers to or on behalf of the November Insider Executives in the form of the November 2021 Payments, totaling $[redacted], as set forth in Exhibit B.

271. The November 2021 Payments constitute transfers of property of Endo.

272. The November 2021 Payments were made with intent to hinder, delay, or defraud creditors.

273. The November 2021 Payments were prepaid in full in a transparent effort to avoid (i) Court and creditor oversight and (ii) the provisions of the Bankruptcy Code regarding executive compensation.

274. Each of the November Insider Executives was an "insider" as that term is defined in PUVTA § 5101; NY Debt. & Cred. L. § 270(h)(2) (i), (ii), (iii), and/or (3).

275. As a result of the forgoing, the Plaintiffs are entitled to recover the November 2021 Payments from the November Insider Executives under applicable state law (and foreign law), including without limitation PUVTA § 5107; NY Debt. & Cred. L. §276.

276. As a result of the foregoing, the Plaintiffs are entitled to a judgment against the November Insider Executives: (a) avoiding the November 2021 Payments and the November 2021 Agreements; (b) directing the Summer 2022 Payments be set aside; (c) recovering the November 2021 Payments; and (d) awarding pre- and post- judgment interest.

COUNT ELEVEN
(Breach of Fiduciary Duty)

(Against Blaise Coleman, Jennifer M. Chao, M. Christine Smith, Mark G. Barberio, Michael Hyatt, Nancy J. Hutson, Shane M. Cooke, and William P. Montague as Directors of Endo International plc)

277. Plaintiffs repeat and reallege each and every allegation set forth in paragraphs 1 through 193 of the Complaint as though set forth fully again in support of this claim for relief.

278. In deciding whether to authorize executive bonuses in contemplation of filing a bankruptcy petition, in deciding who should receive a bonus, and in deciding the amounts of the bonuses, defendants Coleman, Chao, Smith, Barberio, Hyatt, Hutson, Cooke, and Montague, as directors of Endo International plc at all relevant times, owed fiduciary duties to act in good faith; to act honestly and responsibly; to exercise the care, skill, and diligence which would be exercised by a reasonable person; to have regard to the interests of the company's creditors; to preserve the assets of the company so that they can be applied in discharge of its liabilities; and not to make payments directly or indirectly to themselves to the detriment of general and independent creditors.

279. Each of these Defendants knew (or ought to have known) that Endo International plc was insolvent and engaged in the acts and omissions set forth above without due care and, or, with deliberate or reckless indifference to the outcome including by:

- approving, or allowing, payments that violated applicable law;
- failing to act in a deliberate and knowledgeable way in identifying and exploring alternative executive compensation plans;
- enacting an executive bonus plan that was outside the bounds of reason;
- consciously and intentionally, or negligently, disregarding their responsibilities and endorsing efforts to circumvent applicable law regarding executive bonuses;
- acting in a manner that cannot be attributed to rational business purpose;
- failing to have proper regard to the interests of the company's creditors; and
- failing to take steps to preserve the assets of the company for the benefit of its creditors.

280. By authorizing and approving the payment by the Company of the November 2021 and August 2022 Payments to himself, Defendant Coleman further breached his fiduciary duties to Endo International plc including (without limitation) to act in good faith and in what he considers to be the best interest of the company, and not to make payments directly or indirectly to himself to the detriment of general and independent creditors.

281. Further, each defendant Coleman, Chao, Smith, Barberio, Hyatt, Hutson, Cooke, and Montague also breached their fiduciary duties, including but not limited to their duty to act in good faith in what they consider to be the best interest of the company by negligently, grossly negligently, consciously, and/or intentionally approving or allowing payments that violated applicable law and by acting in a manner that cannot be attributed to a rational business purpose.

282. As a consequence, Defendants Coleman, Chao, Smith, Barberio, Hyatt, Hutson, Cooke, and Montague breached their fiduciary duties and acted in bad faith by without due care, grossly negligently, and/or consciously disregarding and abdicating their duties to Endo International plc, and the Debtors.

283. Each of these Defendants' breach of fiduciary duty was the proximate cause, and a substantial factor, in causing Endo International plc and the Debtors (and creditors of the Debtors) to suffer losses of more than $94 million. Accordingly, Plaintiffs hereby require these defendants to:

a) (in accordance with section 232 of the Companies Act 2014 of Ireland) (I) account to Endo International plc for any gain which they made directly from the breach of duty, and/or (II) indemnify Endo International plc for any loss or damage resulting from that breach;

b) compensate the Company in the amount of all loss or damage suffered; and

c) as constructive trustees of Endo International plc's funds caused to be misapplied by these defendants, to account for all amounts received by them; and

284. Plaintiffs further request that the Court enter a judgment in favor of the Plaintiffs against each director defendant as set forth in this claim, together with pre- and post-judgment interest, and award aggravated damages and such other relief that the Court deems appropriate, including, but not limited to, reasonable attorneys' fees, expenses, and costs.

COUNT TWELVE
(Breach of Fiduciary Duty)

(Against Blaise Coleman and Patrick Barry as Directors of Endo Pharmaceuticals Inc.)

285. Plaintiffs repeat and reallege each and every allegation set forth in in paragraphs 1 through 193 of the Complaint as though set forth fully again in support of this claim for relief.

286. Defendants Coleman and Barry, as directors of Endo Pharmaceuticals Inc. at all relevant times, owed fiduciary duties of care, loyalty, and good faith to Endo Pharmaceuticals Inc. and its residual claimants in deciding whether to authorize and approve of executive bonuses in contemplation of filing a bankruptcy petition, in deciding who should receive a bonus, and in deciding the amounts of the bonuses.

287. Upon information and belief, each of these Defendants engaged in the acts and omissions set forth above without due care and, or, with deliberate or reckless indifference to the outcome, including by:

- failing to act in a deliberate and knowledgeable way in identifying and exploring alternative executive compensation plans;
- enacting an executive bonus plan that was outside the bounds of reason;
- consciously and intentionally, or negligently, disregarding their responsibilities and endorsing efforts to circumvent applicable law regarding executive bonuses; and
- acting in a manner that cannot be attributed to rational business purpose;

288. Upon information and belief defendants Coleman and Barry further breached their duty of loyalty by authorizing, approving, and/or failing to exercise due care in allowing Endo Pharmaceuticals Inc. to make the November 2021 and August 2022 Payments to themselves.

289. In addition, and upon information and belief, each Defendant Coleman and Barry breached their duty of good faith by negligently, grossly negligently, consciously, and/or intentionally approving or allowing payments that violated applicable law and by acting in a manner that cannot be attributed to a rational business purpose.

290. As a consequence, Defendants Coleman and Barry breached their fiduciary duties and acted without due care and, or, in bad faith by consciously disregarding and abdicating their duties to Endo Pharmaceuticals Inc.

291. Defendants' breach of fiduciary duty was the proximate cause, and a substantial factor, in causing Endo Pharmaceuticals Inc. (and creditors of Endo Pharmaceuticals Inc.) to suffer losses of more than $78 million.

292. Plaintiffs request that the Court enter a judgment in favor of the Plaintiffs against each director defendant as set forth in this claim, together with pre- and post-judgment interest,

and award punitive damages and such other relief that the Court deems appropriate, including, but not limited to, reasonable attorneys' fees, expenses, and costs.

COUNT THIRTEEN
(Breach of Fiduciary Duty)

(Against Blaise Coleman and Patrick Barry as Directors of Par Pharmaceutical, Inc.)

293. Plaintiffs repeat and reallege each and every allegation set forth in in paragraphs 1 through 193 of the Complaint as though set forth fully again in support of this claim for relief.

294. Defendants Coleman and Barry, as directors of Par Pharmaceutical, Inc. at all relevant times, owed fiduciary duties of care, loyalty, and good faith to Par Pharmaceutical, Inc. and its residual claimants with respect to allowing Par Pharmaceutical, Inc. to prepay executive bonuses in contemplation of filing a bankruptcy petition.

295. Upon information and belief, each Defendant, Coleman and Barry, engaged in the acts and omissions set forth above without due care and, or, with deliberate or reckless indifference to the outcome, including by:

- failing to act in a deliberate and knowledgeable way in identifying and exploring alternative executive compensation plans;
- enacting an executive bonus plan that was outside the bounds of reason;
- consciously and intentionally, or negligently, disregarding their responsibilities endorsing efforts to circumvent applicable law regarding executive bonuses; and
- acting in a manner that cannot be attributed to rational business purpose;

296. In addition, and upon information and belief, each Defendant Coleman and Barry breached their duty of good faith by negligently, grossly negligently, consciously, and/or intentionally approving or allowing payments that violated applicable law and by acting in a manner that cannot be attributed to a rational business purpose.

297. Each of Defendants Coleman's and Barry's breach of fiduciary duty was the proximate cause, and a substantial factor, in causing Par Pharmaceutical, Inc. (and the creditors of Par Pharmaceutical, Inc.) to suffer losses of more than $7.5 million.

298. Plaintiffs request that the Court enter a judgment in favor of the Plaintiffs against each director defendant as set forth in this claim, together with pre- and post-judgment interest, and award punitive damages and such other relief that the Court deems appropriate, including, but not limited to, reasonable attorneys' fees, expenses, and costs.

COUNT FOURTEEN
(Breach of Fiduciary Duty)

(Against James Papp, Jenny O'Connell, and Marie-Therese Bolger as Directors of Endo Ventures Limited; and Against Daniel Vas and Livio Di Francesco as Directors of Paladin Labs Inc.)

299. Plaintiffs repeat and reallege each and every allegation set forth in in paragraphs 1 through 193 of the Complaint as though set forth fully again in support of this claim for relief.

300. Each Defendant, Papp, O'Connell, and Bolger, as directors of Endo Ventures Limited at all relevant times, owed fiduciary duties to act in good faith; to act honestly and responsibly; to exercise the care, skill, and diligence which would be exercised by a reasonable person; to have regard to the interests of the company's creditors; to preserve the assets of the company so that they can be applied in discharge of its liabilities; and not to make payments directly or indirectly to themselves to the detriment of general and independent creditors.

301. Each Defendant, Vas and Di Francesco, as directors of Paladin Labs Inc. at all relevant times, owed fiduciary duties of care, loyalty, and good faith to Paladin Labs Inc. and its residual claimants with respect to allowing Paladin Labs Inc. to prepay executive bonuses in contemplation of filing a bankruptcy petition.

302. Upon information and belief, each Defendant, Papp, O'Connell, Bolger, knew (or ought to have known) that Endo Ventures Limited was insolvent and each Defendant Papp, O'Connell, Bolger, Vas, and Di Francesco engaged in the acts and omissions set forth above without due care and, or, with deliberate or reckless indifference to the outcome, including by:

- consciously, intentionally, and/or negligently approving payments that violated applicable law;
- failing to act in a deliberate and knowledgeable way in identifying and exploring alternative executive compensation plans;
- enacting an executive bonus plan that was outside the bounds of reason;
- consciously and intentionally, or negligently, disregarding their responsibilities when endorsing efforts to circumvent applicable law regarding executive bonuses;
- failing to have proper regard to the interests of the company's creditors;
- failing to take steps to preserve the assets of the company for the benefit of its creditors; and
- acting in a manner that cannot be attributed to rational business purpose.

303. As a consequence, and upon information and belief, each Defendant, Papp, O'Connell, Bolger, Vas, and Di Francesco breached their fiduciary duties and acted in bad faith by without due care, grossly negligently, consciously disregarding, and/or abdicating their duties to Endo Ventures Limited and/or Paladin Labs Inc., as applicable.

304. Upon information and belief, and as set forth above, by rewarding cash bonuses to Defendants Papp, O'Connell, and Bolger, each Defendant Papp, O'Connell, and Bolger breached their fiduciary duties to Endo Ventures Limited including, without limitation, their duties to act in good faith and in what they consider to be the best interests of the company, and not to make payments directly or indirectly to themselves to the detriment of general and independent creditors.

305. Further, upon information and belief and as set forth above, each Defendant, Vas and Di Francesco, breached their duty of loyalty to Paladin Labs Inc. by rewarding cash bonuses

to Defendants Vas and Di Francesco, which served their own interests and conflicted with the interests of Paladin Labs Inc. and its creditors.

306. Upon information and belief, each Defendant Papp, O'Connell, Bolger, Vas, and Di Francesco also breached their duty of good faith by negligently, grossly negligently, consciously, and/or intentionally approving or allowing payments that violated applicable law and by acting in a manner that cannot be attributed to a rational business purpose.

307. With respect to Endo Ventures Limited, Defendant Papp's, O'Connell's, and Bolger's breach of fiduciary duty was the proximate cause, and a substantial factor, in causing Endo Ventures Limited (and creditors of Endo Ventures Limited) to suffer losses of more than $[redacted] million. Accordingly, Plaintiffs hereby require Defendants to:

a) (in accordance with section 232 of the Companies Act 2014 of Ireland) (I) account to Endo Ventures Limited for any gain which they made directly from the breach of duty, and/or (II) indemnify Endo Ventures Limited for any loss or damage resulting from that breach; and

b) compensate Endo Ventures Limited in the amount of all loss or damage suffered.

308. Further, upon information and belief, because each Defendant Papp, O'Connell, and Bolger, as directors of Endo Ventures Limited, received misapplied funds in the knowledge that such payments breached applicable law, they hold those misapplied funds as constructive trustees for Endo Ventures Limited and Plaintiffs are entitled to and hereby require Defendants to account for all such misapplied funds.

309. With respect to Paladin Labs Inc., Defendants Vas's and Di Francesco's breach of fiduciary duty was the proximate cause, and a substantial factor, in causing Paladin Labs Inc. (and the creditors of Paladin Labs Inc.) to suffer losses of more than $2.1 million.

310. Plaintiffs request that the Court enter a judgment in favor of the Plaintiffs against each director defendant as set forth in this claim, together with pre- and post-judgment interest,

and award aggravated or punitive damages and such other relief that the Court deems appropriate, including, but not limited to, reasonable attorneys' fees, expenses, and costs.

COUNT FIFTEEN
(Unjust Enrichment)

(Against all Insider Executives)

311. Plaintiffs repeat and reallege each and every allegation set forth in in paragraphs 1 through 193 of the Complaint as though set forth fully again in support of this claim for relief.

312. The Debtors conferred upon the Insider Executives unjustified payments in the form of the November 2021 and Summer 2022 Payments. The Insider Executives appreciated, accepted, and/or retained, in whole or in part, these payments conferred by the Debtors.

313. The Insider Executives were enriched and profited from their acceptance of the unjustified November 2021 and Summer 2022 Payments, under circumstances in which it would be unjust for the Insider Executives to be permitted to retain the benefit. Under common law principles of unjust enrichment (including common law principles under Irish law), the Insider Executives should not be permitted to retain the benefits of this unjust enrichment, as they were obtained and retained through a scheme to circumvent applicable law as more fully described above.

314. Because the Insider Executives' retention of the November 2021 and Summer 2022 Payments conferred by the Debtors is unjust and inequitable, Plaintiffs suffered damages as a result of the Insider Executives' unjust enrichment, and are entitled to, and hereby seek disgorgement and restitution, together with pre- and post-judgment interest, of each Insider Executives' wrongful benefits in a manner established by the Court.

RESERVATION OF RIGHTS

315. The Plaintiffs hereby specifically reserve the right to bring any and all causes of action that it may maintain against the Insider Executives and the Director Defendants including, without limitation, causes of action arising out of the same transaction(s) set forth herein, to the extent discovery in this action or further investigation by the Plaintiffs reveals such further causes of action.

PRAYER FOR RELIEF

WHEREFORE, by reason of the foregoing, Plaintiffs request that the Court enter judgment in favor of the Plaintiffs and against the Insider Executives and the Director Defendants as set forth in the foregoing claims, together with pre- and post-judgment interest; an award of punitive or aggravated damages for the breaches of fiduciary duties; and such other relief that the Court deems appropriate, including, but not limited to, reasonable attorneys' fees, expenses, and costs.

[*Remainder of Page Intentionally Left Blank]*

January __, 2023
New York, NY

Respectfully submitted,

KRAMER LEVIN NAFTALIS & FRANKEL LLP

By:_____
Kenneth H. Eckstein
Rachael L. Ringer
P. Bradley O'Neill
David E. Blabey, Jr.
1177 Avenue of the Americas
New York, NY 10036
Telephone: (212) 715-9100
Facsimile: (212) 715-8000
Email: keckstein@kramerlevin.com
rringer@kramerlevin.com
boneill@kramerlevin.com
dblabey@kramerlevin.com

Counsel for the Official Committee of Unsecured Creditors of Endo International plc, et al.

AKIN GUMP STRAUSS HAUER & FELD LLP

By:_____
Arik Preis
Mitchell P. Hurley
Joseph L. Sorkin
One Bryant Park
New York, NY 10036-6745
Telephone: (212) 872-1000
Facsimile: (212) 872-1002
Email: apreis@akingump.com
mhurley@akingump.com
jsorkin@akingump.com

-and-

Kate Doorley
2001 K Street NW
Washington, DC 20006
Telephone: (202) 887-4000
Facsimile: (202) 887-4288
Email kdoorley@akingump.com

Special Counsel to the Official Committee of Opioid Claimants of Endo International plc, et al.

Exhibit A

(November 2021 Payments)

Exhibit B

(Summer 2022 Payments)

Exhibit E

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re: **ENDO INTERNATIONAL plc, *et al.*,** **Debtors.**[1]	**Chapter 11** **Case No. 22-22549 (JLG)** **(Jointly Administered)**
THE OFFICIAL COMMITTEE UNSECURED CREDITORS OF ENDO INTERNATIONAL PLC, on behalf of the Debtors' estates, and THE OFFICIAL COMMITTEE OF OPIOID CLAIMANTS OF ENDO INTERNATIONAL PLC, on behalf of the Debtors' estates, **Plaintiffs,** **v.** **WILMINGTON TRUST, N.A., JPMORGAN CHASE BANK, N.A., COMPUTERSHARE TRUST CO., N.A., WILMINGTON SAVINGS FUND SOCIETY, FSB, and JOHN DOES 1-100,** **Defendants.**	**Adversary Proceeding No. 23-_____** **[PROPOSED] COMPLAINT**

[PROPOSED] COMPLAINT OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS AND THE OFFICIAL COMMITTEE OF OPIOID CLAIMANTS

The Official Committee of Unsecured Creditors (the "Creditors' Committee") and the Official Committee of Opioid Claimants (the "Opioid Committee" and, together with the Creditors' Committee, the "Committees" or the "Plaintiffs") of Endo International plc and its affiliated debtors-in-possession (the "Debtors", the "Company", or "Endo"), having been vested

[1] The last four digits of Debtor Endo International plc's tax identification number are 3755. Due to the large number of debtors in these chapter 11 cases, a complete list of the debtor entities and the last four digits of their federal tax identification numbers is not provided here. A complete list of debtor entities may be obtained on the website of the Debtors' claims and noticing agent at https://restructuring.ra.kroll.com/Endo. The location of the Debtors' service address for purposes of these chapter 11 cases is: 1400 Atwater Drive, Malvern, PA 19355.

with standing to sue on behalf of each of the Debtors' estates, file this complaint against the Defendants and allege as follows:

NATURE OF THE ACTION

1. This complaint seeks to avoid secured debt obligations and associated liens on $2.96 billion of Endo's secured notes, based not just on insolvency and failure to obtain reasonable value in issuing the secured notes, but on the harm Endo knowingly and intentionally caused to its opioid claimant victims in issuing the notes to obtain advantages for itself in settlement negotiations with those claimants, and ultimately in these Chapter 11 proceedings, harming all of its unsecured creditors. The complaint also seeks to avoid guarantee obligations and liens of certain Debtors with respect to $2 billion in outstanding term loan debt.

2. In contrast to other opioid manufacturers that sought Chapter 11 protection in the face of their massive liability for their roles in the opioid crisis, Endo has pursued a different course. Endo deferred a bankruptcy filing until 2022 while it undertook a process of what Endo called "structural optimization," code-named "Project Zed," in an attempt to "mitigate" its opioid litigation liabilities. Those efforts at "mitigation" unlawfully hindered and delayed the recoveries of Endo's opioid claimants (along with other unsecured creditors), reshaping Endo's recovery waterfall, providing settlement leverage that broke deadlocked negotiations with public opioid plaintiffs, and laying the foundation for what would ultimately become Endo's Chapter 11 cases, including the sale and credit bid by which Endo now seeks to slough off its liability to the victims of the opioid crisis.

3. Endo's efforts to "structural[ly] optimiz[e]" and "mitigate" its opioid liabilities included two "uptier" debt transactions that replaced $4.4 billion of Endo's unsecured notes with new notes including almost $3 billion in new secured debt. During this same period, Endo also

engaged in complex intercompany transactions, transferring valuable assets from insolvent Named Opioid Defendant subsidiaries (as defined below) without any apparent fair consideration.

4. The effect of these restructurings, as Endo's Board understood,[2] was to further subordinate the claims of opioid victims, providing Endo with settlement leverage in ongoing negotiations with public opioid claimants. In other words, as Endo faced thousands of lawsuits alleging hundreds of billions of dollars of liability for its role in the opioid crisis, which litigation was putting Endo's entire enterprise at risk and pushing the Company towards a bankruptcy filing, Endo chose to increase the amount of secured debt on its balance sheet by more than 80%, from $3.7 billion to $6.9 billion, not by raising new money to settle those litigations, but instead by converting unsecured debt to secured debt to subordinate those litigants' claims and gain settlement leverage.

5. Endo Board materials show, for example, that in April 2020 Endo was engaged in negotiations with the State Attorneys General concerning Endo's massive opioid liabilities. On April 28, 2020, Endo's Board discussed that the Company's position in these negotiations emphasized that opioid claimants' "realistic" recoveries in Chapter 11 would be limited by Endo's secured debt as well as the likelihood of declining Endo revenues. As part of the very same Board discussion, the Board was also considering an exchange of unsecured debt for secured debt that would further subordinate opioid claimants and, all else being equal, would reduce their potential recoveries in a future Chapter 11 proceeding. Only two weeks later, Endo announced a new uptier offer that ultimately added $1.46 billion of secured notes to Endo's capital structure.

6. The settlement leverage that Endo obtained by increasing the amount of its secured debt benefited Endo whether Endo was pursuing out-of-court settlements or, especially, a

[2] Unless otherwise noted, all references to Endo's Board or "the Board" are to the Board of Endo International plc.

settlement in connection with a Chapter 11 filing. If Endo filed under Chapter 11, the portion of Endo's value required to compensate opioid victims would have a substantial effect on the shape and outcome of an Endo bankruptcy, including on whether Endo could attract buyers in a sale under § 363 of the Bankruptcy Code ("§ 363 Sale"). At the same time, increasing the amount of Endo's secured debt could provide Endo with a potential credit bidder for the company if Endo's financial condition continued to decline and cash buyers were uninterested.

7. Following the June 2020 closing of this uptier transaction, through continuing discussion with Endo's advisors, the State Attorneys General were confronted with the fact that Endo had now placed billions of dollars of financial debt claims ahead of opioid claims in a company that was declining financially. Endo pressed its position that it had limited ability to pay opioid claims in a bankruptcy. One after another, individual states began to settle, apparently based on Endo's ability to pay their now further subordinated opioid claims, not on the extent of Endo's liability.

8. Endo's efforts culminated with the Restructuring Support Agreement ("RSA") and Chapter 11 filing in this case. The RSA embodies a settlement with public opioid plaintiffs produced through leverage that resulted from transactions that Endo entered into with conscious awareness that they would hinder and delay opioid claimants' recoveries. That settlement is the foundation for a Chapter 11 proceeding in which potential recoveries for opioid claimants, and unsecured creditors as a whole, will likely be a fraction of what they could have been prior to the uptier transactions.

9. By this complaint the Committees seek to avoid the liens associated with obligations of issuers and guarantors in connection with the secured notes that Endo issued in the two uptier transactions, and to recover excessive interest payments. Separately, the complaint also

seeks to avoid guarantees and liens entered into by certain insolvent Endo subsidiaries in support of Endo's outstanding term loan, for which those subsidiaries never received reasonably equivalent value. In both instances, the claims seek to increase the assets available to pay claims of unsecured creditors.

10. Endo's pre-petition financial maneuvering, through intercompany transfers that devalued Named Opioid Defendants and uptiers that subordinated opioid and other unsecured claims, all undertaken while Endo was insolvent, was trying to "mitigate" its opioid litigation claims, and was actively planning for bankruptcy, crosses the line. Bankruptcy is supposed to level the playing field for creditors. Pre-bankruptcy restructurings that transform the Debtors' capital structure to predetermine bankruptcy outcomes against an entire class of creditors cannot be reconciled with that basic, systemic goal. It is all the more unfortunate that the victims of Endo's conduct in this case should also be the victims of the opioid crisis from which Endo profited handsomely.

JURISDICTION

11. This is an adversary proceeding under Rule 7001 of the Federal Rules of Bankruptcy Procedure.

12. The Court has jurisdiction over this matter under 28 U.S.C. §§ 157 and 1334.

13. This is a core proceeding under 28 U.S.C. § 157(b)(2).

14. Venue is proper under 28 U.S.C. § 1409.

15. The Committees have standing to pursue this complaint under section 1103 of the Bankruptcy Code and the *Order Granting Motion of Official Committee of Unsecured Creditors and Official Committee of Opioid Claimants for (I) Leave, Standing and Authority to Commence and Prosecute Certain Claims and Causes of Action on Behalf of the Debtors' Estates and (II) Exclusive Settlement Authority* [ECF No. ___].

PARTIES

16. Plaintiff Opioid Committee is an official committee of opioid claimants appointed on September 2, 2022 by the United States Trustee for Region 2 pursuant to section 1102(a) of the Bankruptcy Code (Dkt. No. 163) and consisting of the following seven members: (i) Blue Cross and Blue Shield Association, (ii) Erie County Medical Center Corporation, (iii) Michael Masiowski, M.D., (iv) Alan MacDonald, (v) Sean Higginbotham, (vi) Robert Asbury, as Guardian ad litem for NAS Infants, and (vii) Sabrina Barry (Dkt. No. 163).

17. Plaintiff Creditors' Committee is an official committee of unsecured creditors appointed on September 2, 2022 by the United States Trustee for Region 2 pursuant to section 1102(a) of the Bankruptcy Code, and consisting of the following seven members: (i) AmerisourceBergen Drug Corporation, (ii) Bayer AG, (iii) U.S. Bank National Trust Company, National Association, as Indenture Trustee, (iv) UMB Bank, National Association, as Indenture Trustee, (v) CQS Directional Opportunities Master Fund Limited, (vi) AFSCME District Council 47 Health & Welfare Fund, and (vii) Catherine Brewster (Dkt. No. 161).

18. Defendant Wilmington Trust, National Association, named in its capacities as first lien collateral trustee under the Collateral Trust Agreement, dated as of April 27, 2017, and second lien collateral trustee under the Second Lien Collateral Trust Agreement, dated as of June 16, 2020, as those agreements are supplemented from time to time, holds the liens to the Debtors' first and second lien debt obligations.

19. Defendant JPMorgan Chase Bank, N.A., is named in its capacities as administrative agent under the Credit Agreement, dated as of April 27, 2017 (as amended by the First Amendment, dated as of March 28, 2019, and as amended and restated on March 25, 2021), and the secured debt representative for the lenders under the Credit Agreement, and pursuant to the Collateral Trust Agreement, dated as of April 27, 2017, as supplemented from time to time.

20. Defendant Computershare Trust Company, N.A., successor trustee to Wells Fargo Bank, National Association, is named in its capacities as the trustee and the secured debt representative for the holders of the 5.875% Senior Secured Notes due 2024, 7.500% Senior Secured Notes due 2027 and 6.125% Senior Secured Notes due 2029, pursuant to the respective indentures governing such secured notes and the Collateral Trust Agreement, dated as of April 27, 2017, as supplemented from time to time.

21. Defendant Wilmington Savings Fund Society, FSB, successor trustee to Wells Fargo Bank, National Association, is named in its capacities as the trustee and the secured debt representative for the holders of the 9.500% Senior Secured Second Lien Notes due 2027, pursuant to the indenture governing such notes and the Second Lien Collateral Trust Agreement, dated as of June 16, 2020, as supplemented from time to time.

22. Defendants Does 1-100 are named as recipients of interest payments under secured debt obligations that the complaint seeks to avoid and to claw back.

FACTUAL BACKGROUND

23. On August 16, 2022 (the "Petition Date"), the Debtors filed petitions for relief under Chapter 11 of the Bankruptcy Code. The Debtors' Chapter 11 cases are being jointly administered pursuant to Fed. R. Bankr. P. 1015(b) (Dkt. No. 45). The Debtors continue to operate their businesses and manage their properties as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

24. On October 10, 2022, the Court entered the Cash Collateral Order (Dkt. No. 499), which addresses the Committees' rights to assert challenges to the validity, enforceability, priority or perfection of liens or secured indebtedness of the Debtors. Cash Collateral Order ¶ 19.

I. Obligations and Liens on $2.96 Billion of "Uptiered" Secured Notes Should Be Avoided As Fraudulent Transfers

A. Endo's liability to victims of the opioid crisis

25. Over 564,000 Americans have died as a result of the opioid crisis. By 2015, opioid overdoses caused the first sustained drop in U.S. life expectancy in recorded history. Almost three million Americans currently suffer from opioid use disorder. On October 27, 2017, the President declared the opioid crisis a public health emergency.

26. Between 2006 and 2014, Endo manufactured approximately 9-16% of all opioid Morphine Milligram Equivalents sold in the United States, generating billions of dollars for its stakeholders. Beginning in 2013-2014, various governmental authorities, including the City of Chicago, New York's Attorney General, and United States Attorney for the Eastern District of Pennsylvania, had already begun investigating Endo's marketing of opioids.

27. On June 8, 2017, the Food and Drug Administration took the unprecedented step of requesting that Endo remove its opioid product Opana ER from the market. The Food and Drug Administration cited the "opioid epidemic" and explained that Opana ER was being abused through injection, leading to, amongst other things, a "serious outbreak of HIV and hepatitis C." After 2017, despite winding down its branded opioid products business, Endo continued to manufacture and sell generic opioids as well as the opioid medication Percocet.

28. By January 2018, Endo was facing a multi-district opioid litigation that already included 1,400 lawsuits.

29. Endo has been sued by, among others, states, tribal governments, local governments, hospital and healthcare systems, and individuals directly harmed by the opioid crisis. Endo is alleged to have engaged in wide ranging wrongful and unlawful conduct in connection

with its marketing and sale of opioids. The plaintiffs in these cases allege that, among other conduct, Endo:

a. Made direct payments to doctors to keep prescribing opioids despite the ongoing crisis, disguised as speaker honorariums or payments for other pretextual services;[3]

b. Implemented a marketing campaign to intentionally mislead doctors and patients into believing that most patients who take prescribed opioids for long periods are not at risk of addiction;[4]

c. Secretly funded front groups and third-party advocacy groups to spread false claims about the dangers of opioids;[5]

d. Falsely promoted its opioid medication Opana ER as having less risk of abuse than other products; and

e. Falsely promoted misleading articles about opioid use.[6]

30. The consequences of that alleged conduct for the health and economic well-being of individuals, communities, and the nation have been profound. The lawsuits against Endo explain that one in four patients who received prescription opioids for long-term pain struggle with addiction.[7] More than 1,500 Americans die of opioid-related overdoses per week. And victims

[3] *E.g.*, Complaint Against Actavis LLC *et al., City and County of San Francisco v. Purdue Pharma L.P, et al.*, No. 3:18-cv-07591 (N.D. Cal. Dec. 18, 2018), ECF No. 1.
[4] *E.g.*, First. Am. Compl. ¶¶ 12–17, *State of Or. ex rel. Rosenblum v. Endo Health Solutions*, No. 21-cv-43773 (Or. Cir. Ct. Multnomah Cnty. June 9, (2022).
[5] *E.g.*, *id.;* Sec. Am. Compl. ¶¶ 116–17, *Barry Staubus v. Purdue Pharma, L.P.*, *et al*., No. C-41916 (Tenn. Cir. Ct. Sullivan Cnty. Feb. 15, 2018).
[6] *E.g.*, First. Am. Compl. ¶¶ 12–17, *State of Oregon ex rel. Rosenblum v. Endo Health Solutions*, No. 21-cv-43773 (Or. Cir. Ct. Multnomah Cnty. June 9, 2022); Sec. Am. Compl. ¶¶ 116–17, *Barry Staubus v. Purdue Pharma, L.P.*, *et al*., Case No. C-41916 (Tenn. Cir. Ct. Sullivan Cnty. Feb. 15, 2018).
[7] *E.g.*, Complaint Against Actavis LLC *et al., City and County of San Francisco v. Purdue Pharma L.P, et al.*, No. 3:18-cv-07591 (N.D. Cal. Dec. 18, 2018), ECF No. 1.

who survive their addiction tell of separation from their families, losing custody of their children, arrests, homelessness, and loss of employment.

31. These opioid lawsuits name various Endo subsidiaries as defendants for their roles in manufacturing, marketing, and distributing opioid medications, including DAVA Pharmaceuticals, LLC, Endo Generics Holdings, Inc., Endo Health Solutions Inc., Endo International plc, Endo Pharmaceuticals Inc., Generics Bidco I, LLC, Par Pharmaceutical Companies, Inc., Par Pharmaceutical, Inc., Par Sterile Products, LLC, Vintage Pharmaceuticals, LLC, Par Pharmaceutical Holdings, Inc., Endo Ventures Limited, and Paladin Labs Inc. (each a "Named Opioid Defendant").[8]

32. The opioid lawsuits, which include claims for a range of statutory, punitive, and other damages, seek recoveries in the trillions of dollars. Several peer-reviewed studies have analyzed damages associated with prescription opioid abuse, misuse, dependence, and death. Extrapolations from those studies indicate that by 2017, such ordinary damages (*excluding* statutory, punitive or similar special damages) amounted to between $640 billion and $940 billion dollars. On the Petition Date, Endo reported that it had spent $344 million on defense costs alone in connection with opioid lawsuits.

B. By 2018 Endo was insolvent and was preparing for a possible bankruptcy due to its opioid liabilities.

33. Endo's publicly filed financial statements show that, since March 2018, its liabilities have exceeded its assets on a consolidated basis without even taking account of its contingent opioid liabilities.

[8] Identifying certain Debtor entities as entities named as defendants in pre-petition opioid litigation and asserting claims that concern such Named Opioid Defendants in this complaint and at this time should not be interpreted as in any way implying that such entities are the only Debtor entities with liability to opioid claimants, and the Committees reserve all their rights with respect to identifying additional entities at which opioid claimants may have claims for purposes of this complaint or any other relevant dispute.

34. When opioid liabilities are taken into account, Endo International plc and each of its Named Opioid Defendant subsidiaries were insolvent at all times relevant to this complaint. By 2018 (indeed, years before) these Named Opioid Defendants had accumulated opioid liabilities that were many multiples greater than Endo's total enterprise value at that time or thereafter. Adding enterprise-threatening opioid litigation to Endo's existing balance sheet insolvency made bankruptcy reorganization a likely outcome. Endo recognized that fact and planned for it.

35. As Endo's First Day Declaration explained, in January 2018, Endo retained bankruptcy counsel at Skadden, Arps, Slate, Meagher & Flom ("Skadden") specifically "in connection with potential strategic alternatives to address the Opioid Lawsuits." Shortly thereafter, it retained PJT Partners as a "restructuring advisor." Endo Board materials show that, as early as July 2019, the Board was considering specific logistics of a Chapter 11 filing, motivated by "potential liabilities, particularly the opioid litigation," and that it was discussing a § 363 Sale as its preferred exit in bankruptcy. Since at least as early as October 2019, Endo was working with Skadden to prepare Chapter 11 pleadings and maintain them on hand.

36. During this same period, other opioid manufacturers—Endo's codefendants in the opioid lawsuits—were already entering Chapter 11. Insys Therapeutics Inc. filed for bankruptcy on June 10, 2019, explaining there was "no end in sight to the litigation" related to its opioid drug Subsys. Purdue Pharma L.P., which had no funded debt, filed for bankruptcy soon thereafter, on September 16, 2019, citing the scale of its opioid liabilities. Mallinckrodt plc followed suit not long after, filing for bankruptcy on October 12, 2020.

37. While other opioid manufacturers were proceeding through Chapter 11, Endo took a different approach with its opioid claimants.

C. Endo put off a bankruptcy filing while taking steps to minimize potential recoveries by opioid claimants—harming all unsecured creditors.

38. Although balance sheet insolvent and facing huge litigation liabilities, Endo delayed filing for bankruptcy while it engaged in a series of intercompany transactions that steadily reduced the value available to opioid creditors, and while it exchanged unsecured debt for $2.96 billion of new secured debt, without obtaining reasonably equivalent value, harming all of the Debtors' unsecured creditors.

39. The effect of these transactions was to further subordinate the very large opioid claims that Endo was facing, raise obstacles to opioid claimants' recovery, and leave opioid claimants, along with Endo's other unsecured creditors, with potentially less value in a future Chapter 11 proceeding.

40. As a result, Endo acquired leverage over opioid claimants in its negotiations to settle opioid litigation. Endo sought and used this leverage to negotiate for out-of-court settlements with public opioid claimants in particular, and simultaneously to prepare the ground for a likely bankruptcy filing where such leverage would substantially shape the course of the cases and their outcome.

1. "Project Zed"

41. As reflected in Endo Board materials, beginning at least as early as April 2018, Endo embarked on a program of so-called "structural optimization" in "mitigation" of its financial exposure to opioid litigation. Endo code-named this effort "Project Zed," a name it continued to use for its restructuring efforts as a whole, including its negotiations and settlements with public opioid plaintiffs, negotiations with the Ad Hoc First Lien Group, negotiation of the RSA, and ultimate Chapter 11 filing.

42. On April 26, 2018, the Board formed a new Committee, the Strategic Planning Committee ("SPC") responsible for Project Zed. The Board established the SPC to advise, guide and collaborate with management and outside "legal, financial and other advisors in the exploration of strategic options." The Board appointed three Board Members to the SPC, Messrs. Kimmel (Chairman of the Board at that time), Montague (who had served on the boards of Endo's ultimate parent companies since 2009), and Mansukani. Three months later, on July 31, 2018, the Board also appointed these same three Board members to an "Ad Hoc Opioid Settlement Committee."

43. The SPC's role included combined oversight of (1) Endo's financial exposure to opioid litigation, (2) opioid settlement efforts, and (3) planning and preparation for possible bankruptcy, with (4) the authority to recommend a broad range of debt finance transactions and internal corporate restructurings in pursuit of "structural optimization." The SPC was simultaneously authorized to "monitor Endo's present and future litigation and related potential financial exposure and any mitigation strategies proposed by management," and to make recommendations to the Board concerning such strategies, along with recommending "debt and equity capital markets transactions," "the need for any financing or re-financing," and "potential corporate restructuring options with respect to one or more of the Company's subsidiaries."[9]

2. Endo engaged in intercompany transactions that diminished potential recoveries of opioid claimants.

44. Following the inception of Project Zed, and consistent with Project Zed's goals of "mitigating" financial exposure to litigation and achieving "structural optimization," Endo engaged in multiple, complex, intercompany transactions that devalued already insolvent Named

[9] While the Company has produced thousands of pages in discovery detailing business strategy and reorganizations, the Company has heavily redacted discussion of the purposes for which it undertook Project Zed under a claim of attorney-client privilege.

Opioid Defendants.[10] These transactions reduced the assets available to satisfy opioid claims (and claims of other unsecured creditors) at Named Opioid Defendants. Further, these transactions took place even as Named Opioid Defendants generated $1 billion in operating profit between 2018 and 2022, which should have added to the value of Named Opioid Defendants. They include the following transactions:

45. **EPI:** Endo Pharmaceutical Inc. ("EPI") manufactured and distributed the opioid Percocet and is a Named Opioid Defendant. From the start of Project Zed in Q2 2018 through the Petition Date, Endo caused EPI's total assets to be depleted in book value from $12.07 billion to just $3.6 billion—a loss of over 70% of value in just four years. This loss of value was substantially the result of Endo transferring all of EPI's valuable subsidiaries away from EPI.

46. For example, the Debtors' quarterly financial data shows that in Q4 2020, Endo caused EPI, while insolvent, to transfer $7.1 billion of equity in EPI subsidiaries to [redacted]. As a result, Named Opioid Defendant EPI was deprived of valuable subsidiaries, including as much as $324 million worth of intellectual property it held.

47. EPI was left with only four subsidiaries, the Astora family of companies. But these entities carried their own substantial litigation liabilities stemming from Endo's marketing of defective transvaginal mesh products.

[10] Claims relating to these intercompany transfers are not subject to the Challenge Period and have not been raised in this complaint. The Committees reserve the right to seek standing to litigate such claims, or to bring them directly to the extent a standing motion is not required.

48. **EHSI**: Endo Health Solutions, Inc. ("EHSI"), like EPI, is a Named Opioid Defendant and formerly the ultimate parent company of Endo. Endo engaged in intercompany transactions that devalued EHSI. During the course of Project Zed, EHSI went from being owed approximately $7.1 billion in net intercompany claims (as of June 30, 2018) to *owing* over $300 million in intercompany claims (as of September 30, 2022).

49. For example, balances reported in the Debtors' quarterly financial data show that in Q3 2020, EHSI, while insolvent, transferred $5.432 billion in equity in its subsidiaries to EHSI's [redacted]

50. Similarly, in Q2 2022, just months before the bankruptcy, EHSI, while insolvent, [redacted] is not a Named Opioid Defendant.

51. **PPI:** Par Pharmaceuticals, Inc. ("PPI"), another Named Opioid Defendant, experienced a significant decline in value while engaging in similar intercompany transactions. At the start of Q2 2018, PPI held assets with a book value of $9.93 billion. As of the Petition Date, PPI held assets valued at just $3.51 billion. This was a 65% loss of asset value in four years and due, at least in part, to large intercompany transfers of assets.

52. For example, Debtors' quarterly financial data shows that in Q3 2018, PPI, while insolvent, transferred $1.247 billion of goodwill assets [redacted], also a Named Opioid Defendant. Based on contemporaneous entit-level financials, it appears Endo then caused PPCI to transfer these assets to a [redacted]

53. The net effect of intercompany activity during the period was to significantly devalue Named Opioid Defendants. As one example, based on Debtors' quarterly financial data, as of the end of Q2 2018 the Named Opioid Defendants, in aggregate, were owed over $9 billion in net intercompany receivables. But by the end of Q3 2022 they owed, in aggregate, close to $4.5 billion in intercompany payables, net of intercompany receivables.

3. Endo "uptiered" $2.96 billion in secured debt, pressuring opioid claimants to settle and laying the foundations for the RSA.

54. In 2019 and 2020 respectively, Endo's Board authorized two "uptier" debt exchanges ("Uptiers"), converting unsecured debt into $2.96 billion in new secured debt as detailed below. These two debt exchanges in two successive years came close to doubling Endo's total secured debt—from approximately $3.7 billion as of December 2018 to approximately $6.9 billion as of June 2020—and created approximately 43% of Endo's secured debt held on the Petition Date.

55. Endo's Board understood and, as described below, was fully informed of the effect of the Uptiers on the ability of Endo's opioid creditors to recover on their claims. Board materials confirm that the Board received information on and considered Endo's secured debt as a source of settlement leverage with opioid claimants at the very same time that it was discussing adding to Endo's secured debt. And Endo then successfully deployed its new capital structure as leverage in settlement negotiations with opioid claimants.

56. The two Uptiers are avoidable as constructive fraudulent transfers because Endo and its Named Opioid Defendant subsidiaries were insolvent at the time of the Uptiers and did not receive reasonably equivalent value. Among other things, the Uptiers represent an overpayment of an estimated $550 million in market value to noteholders, and they increased Endo's interest obligations by a total of approximately $53 million per year.

57. Moreover, the circumstances further detailed below, in addition to Endo's insolvency and the unfavorable terms of the Uptier transactions, show that Endo undertook the Uptiers with conscious knowledge and intent to hinder and delay recoveries by opioid claimants.

a. The 2019 Uptier

58. When Endo first considered an uptier restructuring of its debt in 2018, management advised against the strategy. In July 2018 presentation materials, Endo management evaluated the advisability of uptier debt transactions as "low," expressing various concerns including that an uptier would use up secured debt capacity permitted under Endo's lending agreements during "a time of uncertainty/potential need" arising from the opioid litigation.

59. Nonetheless, on November 6, 2018, the Board authorized an uptier transaction for the following year, allowing the issuance of $1.5 billion in new secured debt to be used to redeem existing unsecured notes.

60. On March 27, 2019, Endo closed an uptier debt transaction through which it issued new secured notes with a face value of $1.5 billion (the "2019 Notes"). The proceeds were used to finance the redemption of four tranches of existing unsecured notes with a face value of $1.642 billion, as follows:

	Face Amount	**Notes**	**Issuer(s)**[11]	**Indenture Date**	**Maturity Date**
Old Debt	$195 Million	6% Unsecured	Endo Finance/Endo Finco/Endo DAC	7/9/2015	7/15/2023
	$540 Million	5.375% Unsecured	Endo Finance/Endo Finco	6/30/2014	1/15/2023

[11] Certain issuers of the old debt were renamed, succeeded, or added by supplemental indenture. The chart shows issuers as of the 2019 Uptier.

	$518 Million	5.75% Unsecured	Endo Finance/Endo Finco	12/19/2013	1/15/2022
	$390 Million	7.25% Unsecured	Endo Finance/Endo Finco	6/8/2011	1/15/2022
New Debt	$1.5 Billion	7.5% Secured	PPI	3/28/2019	4/1/2027

61. The entity selected to issue the $1.5 billion in new secured debt was Named Opioid Defendant PPI. This was counter to Endo's past practices in multiple ways. Endo typically issued notes through finance subsidiaries such as Endo Finco Inc. ("Endo Finco"), Endo Designated Activity Company ("Endo DAC"), and Endo Finance LLC ("Endo Finance"). Also, Endo had for years used multiple such finance vehicles to co-issue each new tranche of notes that it issued. But, in 2019, Endo caused PPI, a holding company for one of Endo's operating segments, to alone issue the new secured note tranche and carry that debt on its books.

62. As a result of the 2019 Uptier, PPI took on $1.5 billion in secured debt. Endo used the proceeds exclusively to pay off notes that were issued before Endo's 2015 acquisition of PPI and other affiliated Par Pharmaceutical entities, and that were held by finance subsidiaries that had no connection to the Par Pharmaceutical business lines.

63. Prior to the 2019 Uptier, the Named Opioid Defendants, including PPI, along with other non-Issuer Endo subsidiaries, were guarantors of the unsecured notes that were redeemed through the 2019 Uptier. Following the 2019 Uptier, the 2019 Notes were secured by the assets of PPI and were guaranteed and secured by assets of the other Named Opioid Defendants and by substantially all other Endo subsidiaries.

64. Before taking the unusual step of financing the redemption of old Endo debt through the unrelated Named Opioid Defendant PPI, [redacted]

[redacted] Endo Finance's principal purpose was to issue and trade in debt and securities. [redacted]

65. An Endo [redacted] The reality was that PPI was made to incur $1.5 billion in secured debt to refinance unsecured notes issued long before Endo even acquired PPI, that had never benefited PPI, and did not belong on PPI's books.

66. The 2019 Uptier did not provide reasonably equivalent value.

a. Relative to the market prices at which the old unsecured notes and the new 2019 Notes traded, Endo overpaid to redeem its old unsecured notes by approximately $100 million:[12]

[12] Calculated as the difference between (i) the market value of the old unsecured notes based on 30-trading-day average prices as of March 11, 2019, three business days prior to the March 14, 2019 announcement date of the 2019 Uptier, and (ii) the market value of the new notes given as consideration based on 30-trading-day average prices as of April 2, 2019, three business days after the March 28, 2019 issuance of the new notes.

Old Unsecured Notes	Market Value of Old Unsecured Notes Tendered	Market Value of New Secured Notes Given	Value Lost By Company In Exchange
7.25% Sen. Notes due 2022	$368.1 million	$402.1 million	$34.0 million
5.75% Sen. Notes due 2022	$473.4 million	$512.3 million	$38.9 million
5.375% Sen. Notes due 2023	$439.9 million	$467.4 million	$27.4 million
6.00% Sen. Notes due 2022	$158.7 million	$165.0 million	$6.3 million
Total 2019 Uptier	$1.440 billion	$1.547 billion	**~ $107 million**

b. The new 2019 Notes also had a significantly higher coupon than the old notes. As a result, the 2019 Uptier increased Endo's interest obligations by $14 million in interest per year:

Notes	Change in Principal Outstanding	Interest Rate	Estimated Change in Interest Obligations
7.5% Sen. *Secured* Notes due 2027	+ $1.5 billion	7.500%	+ $112.5 million
7.25% Sen. Notes due 2022	– $390 million	7.250%	– $28.3 million
5.75% Sen. Notes due 2022	– $517.5 million	5.750%	– $29.8 million
5.375% Sen. Notes due 2023	– $539.6 million	5.375%	– $29.0 million
6.00% Sen. Notes due 2023	– $195.2 million	6.000%	– $11.7 million
Total 2019 Uptier			**+ ~$14 million**

67. Separately from the unfavorable market terms of the refinancing for Endo as a whole, PPI and the other guarantors of the unsecured notes did not receive reasonably equivalent value. PPI was made to become the issuer and provide security, and the other guarantors were made to provide guarantees and security for the new 2019 Notes, where previously they had been mere guarantors and had given no liens in respect of the unsecured notes that Endo was redeeming.

68. In addition to the insolvency of PPI and the 2019 Note guarantors, and the lack of equivalent value for these transactions, the surrounding circumstances, including the following, evidence the intent to undertake the 2019 Uptier in order to hinder and delay recovery by opioid claimants: (a) Endo was facing hundreds of billions of dollars in potential opioid liability from numerous opioid litigation claims; (b) Endo was actively considering and preparing for a possible Chapter 11 filing in which Endo knew that the opioid claims and their resolution would be a substantial, if not outcome determining, consideration; (c) the effect of the 2019 Uptier was to subordinate opioid claims and so increase Endo's settlement leverage with opioid claimants, either out-of-court or if Endo filed under Chapter 11; (d) refinancing was not necessary to avoid imminent debt maturities on the unsecured notes because the unsecured notes matured in 2022 and 2023—three to four years out from the 2019 Uptier; (e) the 2019 Uptier used up limited secured debt capacity that might have been used to fund opioid settlements; (f) Endo's use of PPI as issuer was preceded by [redacted], and that it derived no benefit from the 2019 Uptier; and (g) both before and after the 2019 Uptier, Endo was also engaging in intercompany transactions that reduced available asset value at Named Opioid Defendants.

b. Project Zed deployed Endo's new capital structure as leverage against opioid claimants.

69. Beginning at least as early as 2019, Endo was attempting to settle opioid claims with public opioid plaintiffs, focused substantially on negotiations with State Attorneys General. In Endo's view, negotiations had been largely unsuccessful "due, in part, to the limited financial knowledge of the State AGs." As of March 2020, the State of Oklahoma and two Ohio counties were the only public plaintiffs to have settled with Endo.

70. As reported in a Project Zed presentations to the SPC, in March 2020, at Endo's urging, Houlihan Lokey was engaged to serve as a financial advisor to the States, at Endo's expense and with the goal of "educating the State AGs regarding our financial reality." Endo then began to engage Houlihan Lokey in a discussion of "liquidity and capital structure constraint[s] and considerations."

71. On April 28, 2020, the SPC delivered a Project Zed Update to the Board, recorded in the agenda as "*including update on potential refinancing*" (original italics). The SPC provided the Board with a written presentation discussing Endo's strategy for attempting to persuade the States that the States should settle, rather than litigate and push Endo into bankruptcy. The presentation reports Houlihan Lokey's position, as the States' financial advisor, that "a C11 might be better for the State AGs," and that they "may potentially recover more from Endo in a C11 filing." Houlihan Lokey had observed to Endo that the opioid claims were "very large" and would result in a "meaningful payment [in bankruptcy] as plaintiffs will share pari passu with unsecured bond holders."

72. In response, the SPC reported what Endo viewed as the "likely reality of a C11." This included that "[s]ecured bond debt will need to be paid first . . . which could consume a significant portion of value before unsecured claims." The SPC also noted the potential that declining revenues would depress the proceeds of any sale, observing that "cash flows are not without risk (i.e. Vasostrict LOE)" (referring to Endo's anticipated loss of exclusivity from Vasostrict, which led to a material decline in Endo revenues). And the SPC noted their belief that opioid claimants' recoveries would depend on the entities where opioid claimants held their claims (a matter that was also being affected by the intercompany restructurings discussed above).

73. The very same April 28, 2020 Project Zed Update presentation also discussed and proposed that Endo should complete another uptier transaction to replace still more of Endo's unsecured notes with secured notes. Thus, the Board was discussing a substantial increase in secured debt at the same time that it was also discussing how Endo's secured debt reduced the potential bankruptcy recoveries of opioid claimants and supported Endo's negotiating position with the States.

74. Just two weeks later, on May 14, 2020, Endo announced an offer to exchange another $1.5 billion of its unsecured debt for new secured debt. This time the terms of the transaction were even more favorable to noteholders and even less favorable to Endo than the 2019 Uptier.

c. The 2020 Uptier

75. On May 14, 2020, Endo announced a debt exchange through which it would offer holders of its existing unsecured notes the option to exchange them for new notes and cash. The Board was aware of significant downsides to the proposed transaction, including that it might "agitate secured and unsecured bondholders and plaintiffs," that it would fail to capture any discount, increase interest rates, and use cash in a manner that would "reduce near term liquidity," and that it would "reduce secured capacity dollar for dollar." The Board proceeded anyway, with full knowledge of the effect of such a transaction on opioid claimants.

76. The 2020 Uptier closed on June 15, 2020. Participating unsecured noteholders surrendered unsecured notes with a face value of $2.766 billion and received (1) senior secured first lien notes with a face value of $516 million, (2) senior secured second lien notes with a face value of $941 million, (3) new senior unsecured notes with a face value of $1.26 billion, (collectively, the "2020 Notes") and (4) $47 million in cash. The 2020 Uptier exchanged the following notes:

	Face Amount	Notes/ Consideration	Issuer(s)[13]	Indenture Date	Maturity Date
Old Debt	$1.383 Billion	6% Unsecured	Endo Finance/Endo Finco/Endo DAC	7/9/2015	7/15/2023
	$1.178 Billion	6% Unsecured	Endo Finance/Endo Finco/Endo DAC	1/27/2015	2/1/2025
	$204 Million	5.375% Unsecured	Endo Finance/Endo Finco	6/30/2014	1/15/2023
New Debt & Cash Consideration	$516 Million	7.5% Secured First Lien	PPI	3/28/2019	4/1/2027
	$941 Million	9.5% Secured Second Lien	Endo Finance/Endo Finco/Endo DAC	6/16/2020	7/31/2027
	$1.261 Billion	6% Unsecured	Endo Finance/Endo Finco/Endo DAC	6/16/2020	6/30/2028
	$47 Million	Cash			

77. Prior to the 2020 Uptier, the Named Opioid Defendants, including PPI, along with other non-Issuer Endo subsidiaries, were guarantors of the unsecured notes that were redeemed through the 2020 Uptier. Following the 2020 Uptier, the 2020 Notes were secured by the assets of PPI and were guaranteed and secured by assets of the other Named Opioid Defendants and by substantially all other Endo subsidiaries.

[13] Certain issuers of the old debt were renamed, succeeded, or added by supplemental indenture. This chart shows issuers as of the 2020 Uptier.

78. The 2020 Uptier did not provide reasonably equivalent value.

a. The market value of the new secured notes exceeded the market value of the old notes by an estimated $404 million.[14] Endo also paid the old noteholders $47 million in cash as part of the exchange. In combination, the new debt and cash that Endo paid in the exchange was worth approximately $450 million more than the unsecured notes that Endo redeemed:

Old Unsecured Notes	Market Value of Old Unsecured Notes Tendered	Market Value of Debt/Cash Given	Value Lost By Company In Exchange
5.375% Sen. Notes due 2023	$151.7 million	$212 million (incl. $47.2 million cash)	$60 million (including cash)
6.000% Sen. Notes due 2023	$1.031 billion	$1.235 billion	$204 million
6.000% Sen. Notes due 2025	$833 million	$1.020 billion	$186 million
Total 2020 Uptier	$2.016 billion	$2.467 billion	**~ $450 million (incl $47.2 million cash)**

b. The new notes, like those issued in the 2019 Uptier, had a materially higher coupon. As a result, the 2020 Uptier increased interest obligations by approximately $39 million in annual owed interest as compared to the interest owed under the notes that the 2020 Uptier replaced:

Notes	Change in Principal Outstanding	Interest Rate	Estimated Change in Interest Obligation
7.5% Senior *Secured* Notes due 2027	+ $516 million	7.500%	+ $38.7 million
9.5% Senior *Secured 2L* Notes due 2027	+ $941.1 million	9.500%	+ $89.4 million

[14] Calculated as the difference between (i) the market value of the legacy unsecured notes based on 30-trading-day average prices as of May 11, 2020, three business days prior to the May 14, 2020 announcement date of the 2020 Uptier, and (ii) the market value of the debt/cash given as consideration based on 30-trading-day average prices as of June 23, 2020, three business days after the June 18, 2020 issuance of the new notes.

6.000% Senior Notes due 2028	+ $1.261 billion	6.000%	+ $75.7 million
5.375% Senior Notes due 2023	– $204.3 million	5.375%	– $11 million
6.000% Senior Notes due 2023	– $1.383 billion	6.000%	– $83 million
6.000% Senior Notes due 2025	– $1.178 billion	6.000%	– $70.7 million
Total 2020 Uptier			**+ ~$39 million**

79. While PPI was insolvent at all relevant times because of its opioid litigation liabilities, the 2020 Uptier also rendered PPI insolvent according to PPI's own books and records, without even taking account of its opioid litigation liabilities. Before the 2020 Uptier, PPI reported $987 million in shareholder equity. After the 2020 Uptier, in Q2 2020, PPI reported that its shareholder equity was $176 million in the red—a swing of more than $1 billion.

80. As in the case of the 2019 Uptier, separate from the unfavorable market terms of the refinancing for Endo as a whole, PPI and the other guarantors of the unsecured notes did not receive reasonably equivalent value. Those entities were made to provide guarantees and to give security for the new 2020 Notes where previously they had been mere guarantors of the unsecured notes that were being redeemed.

81. In addition to issuer PPI and the other Named Opioid Defendants, based on review and analysis of entity level financial information, the Endo entities Endo Finance, Endo Finco and Endo DAC were all insolvent at the time they issued the 2020 Notes.

82. The circumstances of the 2020 Uptier show that Endo entered into the 2020 Uptier and issued the Senior Secured 2020 Notes with an intent to hinder and delay recovery by opioid claimants. The same essential factors discussed with respect to the 2019 Uptier are also applicable to the issuance of the Senior Secured 2020 Notes but the Debtors were in deeper crisis and had less chance of avoiding an ultimate bankruptcy filing.

83. As the April 28, 2020 SPC presentation to Endo's Board acknowledged, Endo believed future revenues were at risk, making a bankruptcy even more likely at the time of the 2020 Uptier than it had been in 2019. Further, the 2020 Uptier refinanced unsecured notes that were not maturing until 2023 or 2025, and the refinancing did not even enable Endo to delay a bankruptcy filing in 2022, when it would have needed to address those maturities anyway. Endo's Board and managers were also consciously focused on the role of Endo's secured debt as leverage in its negotiations with the State Attorneys General at the time of the 2020 Uptier. And the effect of the 2020 Uptier on Endo's settlement leverage, was even more marked than in 2019, because the 2020 Uptier placed a further $1.4 billion of value in the hands of Endo's secured lenders, on top of the $1.5 billion added to secured debt in 2019.

d. Endo used this engineered leverage to break deadlock with the States and obtain highly favorable settlement terms.

84. Following the 2020 Uptier, Endo's representatives continued to meet with Houlihan Lokey and to explain that the States were now in a losing situation.

85. In August 2021, Skadden, PJT and Alvarez and Marsal—now engaged as Endo's financial advisor—prepared an "illustrative waterfall" analysis to "help facilitate discussions with Endo stakeholders" including opioid plaintiffs, and with the intention of presenting the analysis in connection with certain settlement offers. The waterfall showed that, following the two Uptiers opioid claimants would recover next to nothing in the event of a bankruptcy. According to Endo's waterfall, under the newly engineered capital structure, using an estimated "mid-point" total enterprise value of $10.4 billion, and assuming an opioid claim of $30 billion, opioid claimants could expect to recover only $44 million from named opioid defendants, a recovery of less than

0.15%.[15] That projected recovery is less than the $47 million in cash that Endo had paid unsecured financial institutions in order to uptier unsecured debt only one year earlier.

86. Ultimately, Endo's strategies were effective in breaking the deadlock with public opioid plaintiffs. In May 2020, State Attorneys General had been holding out for a $3.3 billion fund to settle their claims. Beginning in late 2021, certain States (including larger states such as New York, Texas and Florida), began to settle individually, based apparently on their view of Endo's ability to pay, not the extent of Endo's liabilities.

Agreement Date	Settling Parties	Nominal Settlement ($MM)
9/2021	New York	$50
10/2021	Alabama	$25
12/2021	Texas	$63
1/2022	Florida	$65
2/2022	Louisiana	$7.5
3/2022	West Virginia	$26
6/2022	Arkansas	$9.75
7/2022	Mississippi	$9

[15] In estimating this potential recovery Endo excluded Debtor Endo Ventures Limited, which is a Named Opioid Defendant as defined in this complaint. Plaintiffs further note that, by referring to Debtors' illustrative waterfall, Plaintiffs do not suggest that the $30 billion claim assumed reflects Debtors' total liability for opioid claims.

87. As Endo's financial situation continued to decline, Endo began negotiations with secured lenders in support of a bankruptcy filing. Those negotiations culminated in the RSA and the public opioid settlement that is embodied in its terms (the "RSA Settlement"), together with the proposed credit bid set forth in the RSA.

88. A great majority of public opioid plaintiffs have now agreed to participate in the RSA Settlement (including some of the individual settling parties described above) where they will share in a settlement trust of only $450 million, to be funded over ten years.[16]

89. Had Endo filed bankruptcy earlier than it did, without adding $2.96 billion of uptiered secured debt, a multi-billion dollar settlement fund could also have been available to opioid claimants here along with potentially significant value for other unsecured creditors. For instance, in the second quarter of 2018, when Endo created the SPC to supervise Project Zed, Endo had estimated distributable value, on a consolidated basis, that exceeded its secured debt by approximately $6 billion.

90. The decisions Endo took in implementing Project Zed harmed opioid claimants by subordinating their claims, forcing them toward settlements that they would not otherwise have accepted. The leverage Endo obtained by deferring a bankruptcy filing and exchanging unsecured for secured debt thus laid the foundation for the RSA and the credit bid which continue to shape these bankruptcy proceedings today.

e. Project Zed laid the foundation for the secured lenders' credit bid.

91. At the same time that Endo was engineering new secured debt as leverage for settlement with the public opioid plaintiffs, the Uptiers also served related goals for Endo's Board

[16] In several instances where Endo settled with individual states, it then failed to make settlement payments to the states prior to filing for bankruptcy. At this time it remains unclear what the outcome will be for those states.

and senior executives in the event that Endo filed for bankruptcy. SPC presentations show that, as early as July 2019, Endo and its advisors were focused on a § 363 Sale as a possible exit from bankruptcy. The Uptiers helped Endo to control the course of a potential bankruptcy by helping to preserve the option of a § 363 Sale even as Endo anticipated declining revenues that would make the company an increasingly unattractive target for an acquisition. By positioning first lien secured lenders to credit bid for the company, and thus limiting the need to raise cash in the market to fund an acquisition, the Uptiers would help to keep the option of a § 363 Sale alive.

92. The credit bid structure that resulted from the Uptiers has also had the effect of enabling the Board and Senior Management to negotiate favorable terms for themselves personally with their counterparties in the RSA, the Ad Hoc First Lien Group. As proposed credit bid buyers, the Ad Hoc First Lien Group is dependent on Endo's Board and senior management to guide a sale process to a successful conclusion and deliver value to the buyers. In that context, as reflected in the RSA negotiations and RSA, Endo's directors and officers have been able to secure promises of valuable personal benefits including: releases from personal liability for the opioid crisis as part of any opioid settlement; indemnification for personal liability (a significant benefit as Endo had struggled to find affordable D&O insurance given its opioid exposure); releases of estate claims against officers and directors (including claims relating to the $94 million in extraordinary executive compensation paid in the 10 months prior to the Petition Date and advance payments made to board members); and commitments to offer Newco equity to Endo's current officers, all of whom are to be retained as Newco employees under the RSA.

II. Guarantees and Liens on Endo's 2021 Term Loan Given By Certain Named Opioid Defendants Should Be Avoided as Fraudulent Transfers

93. In September 2015, Endo acquired Par Pharmaceuticals Holdings, Inc. and affiliated entities which included certain Par Named Opioid Defendants (as defined below). Endo

caused these Par Named Opioid Defendants to guarantee Endo's existing secured term loan debt and to provide liens in support of the debt.

94. The Par Named Opioid Defendants were already insolvent at the time of these transactions and they did not receive reasonably equivalent value for the guarantees and liens they provided. Endo then twice refinanced this debt, most recently in 2021. With each refinancing it caused the Par Named Opioid Defendants to reissue or reaffirm the guarantees and liens. Because the Par Named Opioid Defendants were insolvent at all relevant times, and never received reasonably equivalent value, either when initially granting the guarantees and liens or at the time of the later refinancings, the current guarantees and liens should be avoided as constructive fraudulent transfers. The details of these transactions are set out below.

95. On February 8, 2014, well before Endo acquired the Par Named Opioid Defendants, Endo's subsidiaries, Endo Luxembourg Finance Company I S.à.r.l. and Endo LLC, as co-borrowers, entered a credit agreement (the "2014 Credit Agreement") to borrow $1.1 billion through a "2014 Term Loan A" and $425 million through a "2014 Term Loan B."[17] The proceeds of this debt were used to refinance other, existing debt on Endo's books.

96. On June 12, 2015, Endo agreed to an amendment of the 2014 Credit Agreement. The same borrower subsidiaries borrowed an additional $3.415 billion through a new "2015 Term Loan B."

97. Proceeds of the 2015 Term Loan B were used to refinance the 2014 Term Loan B and to finance Endo's acquisition of affiliated Par Pharmaceutical entities (the "Par Acquisition"), including the following Named Opioid Defendants: Par Pharmaceutical Holdings, Inc., PPI, Par

[17] The 2014 credit agreement also made available a $750 million revolver.

Sterile Products, LLC, and Par Pharmaceutical Companies, Inc. (together, the "Par Named Opioid Defendants").

98. Endo closed the Par Acquisition on September 15, 2015. Following the acquisition, Endo caused the newly acquired Par Named Opioid Defendants to guarantee the 2014 Term Loan A and the 2015 Term Loan B and to provide liens on their assets in support of these same loans.

99. The borrowers of the loans, Endo Luxembourg Finance Company I S.à.r.l. and Endo LLC, were affiliates of the Par Named Opioid Defendants [redacted] Thus, when the Par Named Opioid Defendants provided guarantees and liens, they were providing value to the ultimate parent entity they shared with the borrower entities.

100. In 2015 and 2016, when the Par Named Opioid Defendants provided these guarantees and liens, they were insolvent due to the opioid liabilities that they had already accumulated, and remained insolvent at all times thereafter.

101. The Par Named Opioid Defendants did not receive reasonably equivalent value for these guarantees and liens. Endo had used the proceeds of the 2014 Term Loan A well before it acquired the Par entities. Some funds from the 2015 Term Loan B were used for the acquisition of the Par entities, but that value flowed from Endo's subsidiaries to the Par entities' prior owners. And while Endo paid off $2.4 billion in Par entity debt as part of the acquisition, that amount was approximately $2 billion less than the amount of outstanding Endo debt the Par Named Opioid Defendants were made to guarantee and collateralize in 2015.

102. On April 27, 2017, Endo paid off the 2014 Term Loan A and 2015 Term Loan B with the proceeds of a new $3.415 billion term loan (the "2017 Term Loan") and $300 million senior secured note tranche (the "2017 Notes" and the "2017 Refinancing"). The prior guarantees

and liens that the Par entities had provided were terminated and new guarantees and liens were agreed to in connection with this new debt. Specifically, the 2017 Refinancing consisted of the following old and new debt:

	Amount	Debt	Borrowers/Issuer(s)	Indenture/ Loan Agreement Date
Old Debt	$921 Million	2014 Term Loan A	Endo Luxembourg Finance Company I S.à.r.l./Endo LLC	2/8/2014
	$2.765 Billion	2015 Term Loan B	Endo Luxembourg Finance Company I S.à.r.l./Endo LLC	9/25/2015
New Debt	$3.415 Billion	2017 Term Loan Due	Endo Luxembourg Finance Company I S.à.r.l./Endo LLC	4/17/2017
	$300 Million	5.875% Senior Secured Notes	Endo Finance/Endo Finco/Endo DAC	4/27/2017

103. On March 11, 2021, Endo refinanced a second time—paying off $3.296 billion remaining on the 2017 Term Loan with the proceeds of a new $2 billion term loan (the "2021 Term Loan") and $1.295 billion secured note tranche (the "2021 Notes" and the "2021 Refinancing"). The Par entities were again made to guarantee, and provide security interests in connection with, the 2021 Term Loan and 2021 Notes. Specifically, the 2021 Refinancing consisted of the following old and new debt:

	Amount	Debt	Borrower/Issuer[18]	Indenture/ Loan Agreement Date

[18] Certain issuers of the old debt were renamed, succeeded, or added by supplemental indenture. This chart shows issuers as of the 2021 Term Loan.

Old Debt	$3.296 Billion	2017 Term Loan	Endo Luxembourg Finance Company I S.à.r.l./Endo LLC	4/17/2017
New Debt	$2 Billion	2021 Term Loan	Endo Luxembourg Finance Company I S.à.r.l./Endo LLC	
	$1.295 Billion	6.125% Senior Secured Notes	Endo Luxembourg Finance Company I S.à.r.l./Endo U.S. Inc.	3/25/2021

104. The 2017 Refinancing did not provide any benefit to the Par Named Opioid Defendants because the guarantees and liens granted in 2015 and released in 2017 were themselves fraudulent transfers for which the Par Named Opioid Defendants had never received equivalent value. The release of those invalid obligations and their replacement with new guarantees and liens had no value to the Par Named Opioid Defendants in 2017.

105. In the 2021 Refinancing, the Par Named Opioid Defendants affirmed their existing guarantees and pledges of security interests as applicable to the 2021 Term Loan. Because of the absence of value given in exchanged for the 2017 guarantees and liens, the 2021 Refinancing also failed to benefit the Par Named Opioid Defendants or provide equivalent value for guaranteeing and collateralizing the current 2021 Term Loan and 2021 Notes.

106. The Par Named Opioid Defendants' guarantees and liens supporting the 2021 Term Loans should be avoided as constructive fraudulent transfers.

FIRST CAUSE OF ACTION
(Constructive Fraudulent Transfer – 2020 Notes)

107. Plaintiff repeats and re-alleges the allegations contained above in all prior paragraphs, as though fully set forth at length here.

108. PPI, as issuer of the Senior Secured 7.5% 2020 Notes, Endo Finance, Endo Finco, and Endo DAC, as issuers of the 9.5% Senior Secured Second Lien Notes, and the Named Opioid Defendants, including PPI, as guarantors, and other Debtor guarantors of the Senior Secured 2020 Notes, incurred obligations pursuant to the Senior Secured 2020 Notes.

109. PPI, the other Opioid Defendants, Endo Finance, Endo Finco, and Endo DAC, and other Debtor guarantors of the Senior Secured 2020 Notes granted or affirmed a prior grant of liens that are security for the Senior Secured 2020 Notes.

110. PPI, the other Named Opioid Defendants, Endo Finance, Endo Finco, and Endo DAC granted the obligations, security interests, and liens in connection with the 2020 Notes without receiving fair or reasonably equivalent consideration.

111. PPI, the other Named Opioid Defendants, Endo Finance, Endo Finco, and Endo DAC were each insolvent at the time of the 2020 Uptier.

112. Based upon all of the above allegations, the obligations incurred in the 2020 Uptier by PPI, the other Named Opioid Defendants, Endo Finance, Endo Finco, and Endo DAC, and other Endo guarantors under or in relation to the Senior Secured 2020 Notes, including obligations or transfers arising in connection with guarantees or security agreements of such parties guaranteeing or securing Senior Secured 2020 Notes, are avoidable pursuant to § 548(a)(1)(B) of the Bankruptcy Code, § 544(b) of the Bankruptcy Code, and other applicable fraudulent transfer law incorporated through § 544(b).

113. The obligations and transfers that this claim seeks to avoid fall within the four-year lookback for fraudulent transfers of the Uniform Voidable Transactions Act. They also fall within the two-year lookback of Bankruptcy Code § 548(a)(1)(B), insofar as they are properly "collapsed" with later transactions that occurred during this two-year lookback period.

114. In accordance with § 550(a) of the Bankruptcy Code, the obligations incurred by such parties in connection with the Senior Secured 2020 Notes should be avoided, the liens securing such obligations should be avoided, excess interest paid on the Senior Secured 2020 Notes should be recovered from any transferee, and any such property should be automatically preserved for the benefit of the estates of PPI, the other Named Opioid Defendants, Endo Finance, Endo Finco, and Endo DAC, and other applicable Endo entities, pursuant to § 551 of the Bankruptcy Code.

SECOND CAUSE OF ACTION
(Intentional Fraudulent Transfer – 2020 Notes)

115. Plaintiff repeats and re-alleges the allegations contained above in all prior paragraphs, as though fully set forth here.

116. PPI, as issuer of the Senior Secured 7.5% 2020 Notes, Endo Finance, Endo Finco, and Endo DAC, as issuers of the 9.5% Senior Secured Second Lien 2020 Notes, the Named Opioid Defendants, including PPI with respect to the 9.5% Senior Secured Second Lien 2020 Notes, as guarantors, and other Debtor guarantors, incurred obligations pursuant to the Senior Secured 2020 Notes.

117. PPI and the other Named Opioid Defendants and other Debtor guarantors granted or affirmed the prior grant of liens that are security for the Senior Secured 2020 Notes.

118. Endo caused its subsidiaries to incur obligations and provide or affirm security interests and liens in connection with the Senior Secured 2020 Notes with actual intent to hinder, delay, or defraud present or future creditors of PPI, the other Named Opioid Defendants, and other Debtors.

119. Based upon all of the above allegations, the obligations incurred in the 2020 Uptier by PPI, the other Named Opioid Defendants, Endo Finance, Endo Finco, Endo DAC, and other

Debtor guarantors, under or in relation to the Senior Secured 2020 Notes, along with obligations or transfers arising in connection with guarantees or security agreements of such parties guaranteeing or securing Senior Secured 2020 Notes, are avoidable pursuant to § 548(a)(1)(A) of the Bankruptcy Code, § 544(b) of the Bankruptcy Code, and other applicable intentional fraudulent transfer law incorporated through § 544(b).

120. The obligations and transfers that this claim seeks to avoid fall within the four-year lookback for fraudulent transfers of the Uniform Voidable Transactions Act. They also fall within the two-year lookback of Bankruptcy Code § 548(a)(1)(A), insofar as they are properly "collapsed" with later transactions that occurred during this two-year lookback period.

121. In accordance with § 550(a) of the Bankruptcy Code, the obligations incurred by such parties in connection with the Senior Secured 2020 Notes should be avoided, the liens securing such obligations should be avoided, excess interest paid on the Senior Secured 2020 Notes should be recovered from any transferee, and any such property should be automatically preserved for the benefit of the estates of PPI, the other Opioid Defendants, Endo Finance, Endo Finco, and Endo DAC and other applicable Debtors pursuant to § 551 of the Bankruptcy Code.

THIRD CAUSE OF ACTION
(Constructive Fraudulent Transfer – 2019 Notes)

122. Plaintiff repeats and re-alleges the allegations contained above in all prior paragraphs, as though fully set forth at length here.

123. PPI as issuer, the other Named Opioid Defendants as guarantors, and other Debtor guarantors incurred obligations pursuant to the 2019 Notes.

124. PPI, the other Named Opioid Defendants, and other Debtor guarantors granted or affirmed the prior grant of liens that are security for the 2019 Notes.

125. PPI, the other Named Opioid Defendants, and other Debtor guarantors provided the obligations, security interests, and liens in connection with the 2019 Notes without receiving fair or reasonably equivalent consideration.

126. PPI, and the other Named Opioid Defendants were each insolvent at the time of the 2019 Uptier.

127. Based upon all of the above allegations, the obligations incurred by PPI, other Named Opioid Defendants, and other Debtor guarantors with respect to the 2019 Notes, including obligations or transfers in connection with guarantees or security agreements of such parties guaranteeing or securing the 2019 Notes, are avoidable pursuant to § 548(a)(1)(B) of the Bankruptcy Code, § 544(b) of the Bankruptcy Code, and other applicable fraudulent transfer law incorporated through § 544(b).

128. The obligations and transfers that this claim seeks to avoid fall within the four-year lookback for fraudulent transfers of the Uniform Voidable Transactions Act. They also fall within the two-year lookback of Bankruptcy Code § 548(a)(1)(B), insofar as they are properly "collapsed" with later transactions that occurred during this two-year lookback period.

129. In accordance with § 550(a) of the Bankruptcy Code, obligations incurred by such parties in connection with the 2019 Notes should be avoided, the liens securing those obligations should be avoided, the excess interest paid on the 2019 Notes should be recovered from any transferee, and any such property should automatically be preserved for the benefit of PPI and the Named Opioid Defendants' estates and for the estates of other applicable Debtors, pursuant to § 551 of the Bankruptcy Code.

FOURTH CAUSE OF ACTION
(Intentional Fraudulent Transfer – 2019 Notes)

130. Plaintiff repeats and re-alleges the allegations contained above in all prior paragraphs, as though fully set forth at length here.

131. PPI as issuer, and the other Named Opioid Defendants as guarantors, and other Debtor guarantors incurred obligations pursuant to the 2019 Notes.

132. PPI and the other Named Opioid Defendants, and other Endo guarantors, granted or affirmed the prior grant of liens that are security for the 2019 Notes.

133. Endo caused its subsidiaries to grant obligations and provide or affirm security interests and liens in connection with the 2019 Notes with actual intent to hinder, delay, or defraud present or future creditors of PPI and the other Named Opioid Defendants.

134. Based upon all of the above allegations, the obligations incurred by PPI and the other Named Opioid Defendants under the 2019 Notes, and by other Debtor guarantors, including obligations or transfers in connection with guarantees or security agreements of such parties guaranteeing or securing the 2019 Notes, are avoidable pursuant to § 548(a)(1)(A) of the Bankruptcy Code, § 544(b) of the Bankruptcy Code, and other applicable intentional fraudulent transfer law incorporated through § 544(b).

135. The obligations and transfers that this claim seeks to avoid fall within the four-year lookback for fraudulent transfers of the Uniform Voidable Transactions Act. They also fall within the two-year lookback of Bankruptcy Code § 548(a)(1)(A), insofar as they are properly "collapsed" with later transactions that occurred during this two-year lookback period.

136. In accordance with § 550(a) of the Bankruptcy Code, obligations incurred by such parties in connection with the 2019 Notes should be avoided, the liens securing those obligations should be avoided, the excess interest paid on the 2019 Notes should be recovered from any

transferee, and any such property should automatically be preserved for the benefit of PPI and the Named Opioid Defendants' estates, and for the estates of other applicable Debtors, pursuant to § 551 of the Bankruptcy Code.

FIFTH CAUSE OF ACTION
(Constructive Fraudulent Transfer – 2017 and 2021 Guarantees and Liens)

137. Plaintiff repeats and re-alleges the allegations contained above in all prior paragraphs, as though fully set forth at length herein.

138. The Par Named Opioid Defendants have been insolvent since the time Endo acquired them in 2015.

139. The Par Named Opioid Defendants incurred obligations pursuant to the 2017 Refinancing.

140. The Par Named Opioid Defendants provided guarantees and granted security interests and liens in connection with the 2017 Refinancing.

141. The 2021 Refinancing replaced the primary debt obligations resulting from the 2017 Refinancing, but the guarantees and liens granted by the Opioid Defendants in 2017 were not terminated and the Par Named Opioid Defendants reaffirmed the application of these liens to the 2021 Refinancing.

142. The Par Named Opioid Defendants did not receive fair or reasonably equivalent consideration or value for the obligations incurred and the security interests and liens provided in connection with the 2017 and 2021 Refinancings.

143. Based upon the above allegations, the guarantees, security interests and liens given by the Par Named Opioid Defendants in connection with the 2017 and 2021 Refinancings of Endo's term loans are avoidable pursuant to § 548(a)(1)(B) of the Bankruptcy Code, § 544(b) of the Bankruptcy Code and applicable fraudulent transfer law incorporated through § 544(b).

144. The obligations and transfers that this claim seeks to avoid fall within the four-year lookback for fraudulent transfers of the Uniform Voidable Transactions Act and the two-year lookback of Bankruptcy Code § 548(a)(1)(B).

145. In accordance with § 550(a) of the Bankruptcy Code, obligations incurred by the Par Named Opioid Defendants and liens and security interests in connection with the 2017 and 2021 Term Loans should be avoided and automatically preserved for the benefit of the Par Named Opioid Defendants' estates pursuant to § 551 of the Bankruptcy Code.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that judgment be entered in its favor against Defendants as follows:

1. Avoiding the obligations of the issuers and Named Opioid Defendant guarantors, and of other Debtor guarantors with respect to the Senior Secured 2020 Notes and the applicable liens and security interests securing such obligations, ordering the recovery of the excess interest paid by the issuers of the Senior Secured 2020 Notes, and preserving all related property for the benefit of the applicable Debtors' estates.

2. Avoiding the obligations of the issuers and Named Opioid Defendant guarantors, and of other Debtor guarantors with respect to the 2019 Notes and the applicable liens and security interests securing such obligations, ordering the recovery of the excess interest paid by the issuers of the 2019 Notes, and preserving all related property for the benefit of the applicable Debtors' estates.

3. Avoiding the Par Named Opioid Defendants' obligations, guarantees, liens and security interests with respect to the 2017 and 2021 Term Loans and preserving all related property for the benefit of the applicable Debtors' estates.

4. Providing for such other relief as justice and equity may require.

The Committees reserve all rights, claims, defenses, and remedies, including, without limitation, the right to supplement and amend this Complaint in accordance with applicable law, including after the completion of discovery, to add additional defendants or remove defendants as they may determine is necessary or appropriate, and to raise further and other claims and causes of action in connection with the prosecution of this Complaint.

Dated: January 23, 2023

Respectfully submitted,

COOLEY LLP

/s/ *Draft*

Cullen D. Speckhart
Ian Shapiro
Michael Klein
Reed A. Smith
55 Hudson Yards
New York, NY 10001
Telephone: (212) 479-6000
Facsimile: (212) 479-6275
Email: cspeckhart@cooley.com
ishapiro@cooley.com
mklein@cooley.com
reed.smith@cooley.com

Lead Counsel to the Official Committee of Opioid Claimants

KRAMER LEVIN NAFTALIS & FRANKEL LLP

/s/ *Draft*

Kenneth H. Eckstein
Rachael L. Ringer
Ariel N. Lavinbuk
David E. Blabey, Jr.
Natan Hamerman
Kramer Levin Naftalis & Frankel LLP
1177 Avenue of the Americas
New York, New York 10036
Telephone: (212) 715-9100
Facsimile: (212) 715-8000
Email: keckstein@kramerlevin.com
rringer@kramerlevin.com
alavinbuk@kramerlevin.com
dblabey@kramerlevin.com
nhamerman@kramerlevin.com

Counsel to the Official Committee of Unsecured Creditors

KLESTADT WINTERS JURELLER SOUTHARD & STEVENS, LLP

/s/ *Draft*

Tracy L. Klestadt
Brendan Scott
200 West 41st Street, 17th Floor
New York, New York 10036
Telephone: (212) 972-3000
Facsimile: (212) 972-2245
Email: tklestadt@klestadt.com
bscott@klestadt.com

Proposed Conflicts Counsel to the Official Committee of Opioid Claimants

[CONFLICTS COUNSEL TO THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS]

/s/ *Draft*

Proposed Conflicts Counsel to the Official Committee of Unsecured Creditors

Exhibit F

Kramer Levin

Natan Hamerman
Partner
T 212.715.7756
F 212.715.8065
NHamerman@KRAMERLEVIN.com

1177 Avenue of the Americas
New York, NY 10036
T 212.715.9100
F 212.715.8000

January 10, 2023

By Email

Albert L. Hogan III, Esq.
Skadden, Arps, Slate, Meagher & Flom LLP
155 N. Wacker Drive
Chicago, IL 60606
al.hogan@skadden.com

Re: *In re: Endo International plc et al.*, Case No. 22-22549 (JLG)

Dear Al:

This letter follows up on our calls on January 3 and January 8, with regard to UCC standing to prosecute claims, and a process to determine the valuation of India (and any other unencumbered assets) in advance of the sale hearing proposed in the Debtors' bidding procedures motion.

In the January 3 call, I first requested standing on behalf of the UCC to prosecute and settle various estate causes of action, which I described to you orally. I also raised with you the need for a process to judicially determine the valuation of India in advance of the sale hearing. I suggested that the UCC could file a declaratory complaint to determine that value (a process similar to what occurred in ResCap). When we spoke on January 8, you asked me to memorialize our standing request and further describe what the UCC is seeking in slightly more specificity. You did not substantively respond to my request regarding an India-valuation process, other than to say that the Debtors are still considering it and may address it in their upcoming bidding procedures reply papers.

This letter provides the information you requested on January 8, and requests, again, the Debtors' views concerning an India valuation process.

Standing

The UCC requests that the Debtors consent to the UCC's standing to commence, prosecute and have sole authority to settle,[1] the following adversary proceedings:

[1] "Sole" authority would be subject to objections from parties other than the Debtors, and approval by the Court. And, if the OCC is also granted standing, we would agree to share authority with them such that both

- Deposit Accounts: An adversary proceeding seeking a declaration that the Debtors' deposit accounts were unencumbered as of the petition date, such that the petition date value of those accounts is available to satisfy the claims of unsecured creditors. The Committee will assert that liens ostensibly granted on those accounts were never perfected. The liens were not perfected by control because the deposit accounts were not subject to control agreements. And the deposit accounts are likewise not "identifiable proceeds" of other collateral under section 9-315 of the UCC for two independent reasons. First, secured creditors agreed to a contractual release of their liens on four zero-balance "collection accounts" that serve as the gateway to the Debtors' cash management system. Second, the Debtors' cash management system operates such that any alleged "proceeds" of other collateral are continually transferred from one Debtor to another. These inter-company transfers result in the release of liens under section 9-332(b) of the UCC.

- Unencumbered Assets and Assets Subject to Avoidance: An adversary proceeding seeking declarations that certain assets are unencumbered, and to avoid liens on other assets, in both cases to make such assets available to satisfy the claims of unsecured creditors. More specifically, and subject to review as the Committee's investigation continues, the Committee will seek declarations that the following assets, *inter alia*, are unencumbered:

  - Excluded equity interests, including the Debtors' equity interests in its non-debtor Indian subsidiaries and in certain other subsidiaries;[2]
  - Commercial tort claims, including for patent infringement, breach of fiduciary duty, and fraudulent conveyance;
  - The Debtors' leasehold interests in real property;
  - Governmental licenses (to the extent liens are prohibited by applicable state law);
  - Deposit accounts held in the name of any Luxembourg Debtor, including Endo Luxembourg Finance Company I S.à.r.l.;
  - Cash associated with the Taiwan Liposome Company agreement; and
  - Cash associated with captive insurance.

  The Committee will also seek to avoid liens on, *inter alia*, cash associated with captive insurance, liability insurance policies and directors and officers insurance policies, and the following assets of the Irish Debtors: deposit accounts in the name of any Irish Debtor, intellectual property and intellectual property licenses (whether

the UCC and OCC's consent is needed to settle claims (again, subject to Court approval), on terms to be negotiated/agreed as between the UCC and OCC in the event either party were to settle.

[2] Astora Women's Health Bermuda ULC (Bermuda), Astora Women's Health Technologies (Ireland), Astora Women's Health Ireland Limited (Ireland), CPEC LLC (Delaware), Endo Pharma Information Consulting (Suzhou) Company Limited (China), Par Active Technologies Private Limited (India), Par Bioscience Private Limited (India), and Par Formulations Private Limited (India).

owned by or for the benefit of an Irish Debtor), other material agreements, receivables, and certain intercompany loans (to the extent not specifically identified in the Irish security documents), and inventory. The Committee maintains that these liens are avoidable because they are, at best, floating charges, and that, under Irish law, the prevailing statutory scheme affords holders of floating charges a priority that is subordinate to those of certain creditors—rendering such floating charges avoidable under 11 U.S.C. § 544(a). Pending additional discovery, the Committee also maintains that certain liens on Luxembourg receivables and certain intercompany loans are not perfected.[3] Finally, the Committee intends to object to the allowance of claims due to pending avoidance actions, as well as seeking recharacterization of payment of interest, fees, costs, and expenses to apply against principal balance.

- Claims Arising from Pre-Petition Compensation Payments: An adversary proceeding seeking to avoid as preferences and fraudulent transfers the roughly $95 million in prepaid compensation paid to executives and other insiders in the nine months before the Debtors' bankruptcy cases were filed, and to pursue the directors who breached their fiduciary duties in approving such payments. The Committee will plead, *inter alia*, that the Debtors (and their board) understood that, upon filing these bankruptcy cases, the Bankruptcy Code would restrict the payment of bonuses to insiders and, therefore, intentionally "accelerated" and "prepaid" such payments in an improper attempt evade the Code.

When we spoke, we also discussed claims arising from the 2020 exchange.[4] However, as briefly discussed during the January 9, 2023 Debtor-UCC weekly professionals' call, we would be amenable to adjourning the deadline on the 2020 exchange for 30 days, particularly if we can put a process in place for the other claims to proceed now in an efficient manner. Please let us know whether you would agree to that as well. If not, please let us know your position on standing.

Please note that we are also planning to assert claims for which we do not believe that we need derivative standing and which we do not view as subject to the Challenge Period

[3] As discussed, the UCC believes a stipulation regarding unencumbered assets and avoided liens is the most efficient way to proceed given the scope of assets that are undisputedly unencumbered in this case, and will avoid the UCC needed to seek declaratory judgments from the Court with respect to those assets. We are preparing a proposed stipulation to send to you, but we believe it is appropriate to move forward on multiple tracks in case that stipulation proves difficult to timely finalize.

[4] Namely, an adversary proceeding to avoid as fraudulent certain obligations incurred as part of June 2020 notes exchange. The gravamen of the claim, brought under 11 U.S.C. § 544(b), is that the market value of the three series of unsecured notes (the "Legacy Notes") tendered in the exchange was not reasonably equivalent in value to the new secured and unsecured obligations incurred (and other consideration given) in that exchange, and that the exchange occurred at a time when the obligors on the Legacy Notes were insolvent. The complaint will name as defendants the indenture trustees for the first and second-lien notes and seek to avoid the obligations of Debtors with respect to those notes.

deadline. For example, we expect to assert claims that 1L and 2L creditors are not entitled to any prepayment premium, make-whole or similar amounts under their governing documents and the facts and circumstances of the case. We will likely also be challenging the validity of certain intercompany claims. Please confirm that you agree that we do not need derivative standing for such claims. If you disagree, while reserving rights as to that disagreement, we nevertheless ask for your consent to derivative standing. Please also confirm that you do not view these claims (i.e., challenges to the prepayment premium/make-whole, and intercompany claim challenges) as subject to the Challenge Period.

India Valuation

We reiterate our view that there is a need to promptly determine the value of the Debtors' Indian non-debtor subsidiaries (and other unencumbered assets), and, likewise, determine whether the Stalking Horse Bidder will provide cash for those assets at the conclusion of the sale process contemplated by the Debtors. We continue to invite a dialogue on a suggested process. But we reserve the right, either if we do not hear from you, or if you do not have constructive views, to simply take appropriate action and/or address this matter with the Court.

We would appreciate a response by 4:00 p.m. on January 11.

Very truly yours,

/s/ *Natan Hamerman*

Natan Hamerman

Exhibit G

Cooley

Ian Shapiro
T: +1 212 479 6441
ishapiro@cooley.com

By Email

January 18, 2023

Albert L. Hogan III, Esq.
Skadden, Arps, Slate, Meagher & Flom LLP
155 N. Wacker Drive
Chicago, IL 60606
al.hogan@skadden.com

Re: *In re: Endo International plc* et al., Case No. 22-22549 (JLG)

Dear Al:

As you know, Cooley LLP acts as lead counsel to the Official Committee of Opioid Claimants ("OCC") in *In re: Endo International plc* et al., jointly administered under Case No. 22-22549 (JLG). This letter serves as the OCC's demand that the Debtors bring certain causes of action described below and, in the alternative, as a request for the Debtors' consent to the OCC's standing to commence an adversary proceeding as to those causes of action. In addition, on behalf of the OCC, we reiterate the requests of the UCC for consent to standing set forth in its letter of January 10, 2023. We note that the OCC intends to seek permission to proceed jointly with the UCC in prosecuting the claims set forth in the UCC's January 10 letter.

We make this demand while understanding that, based on the Debtors' stipulations in the Cash Collateral Order, the Debtors have already determined not to bring any such causes of action and that a demand is futile. Accordingly, to the extent that the Debtors decline the OCC's demand as to the claims and causes of action described herein, the OCC requests that the Debtors consent to the OCC's standing to commence, prosecute and have sole authority to settle[1] an adversary proceeding seeking to avoid as fraudulent transfers (a) certain transfers incurred in connection with the Debtors' March 2019 and June 2020 notes exchanges (together, the "Uptier Exchanges") and (b) certain transfers incurred in connection with the Debtors' existing term loan facility.

Uptier Exchanges

This claim alleges that the market value of the unsecured notes tendered in each of the Uptier Exchanges was not reasonably equivalent in value to the new secured and unsecured obligations incurred (and other consideration given) in the corresponding exchange, and that each exchange occurred at a time when the obligors on the relevant notes were insolvent. The claim also alleges that the company caused its subsidiaries to enter into the Uptier Exchanges with actual intent to hinder and delay recovery by opioid claimants. The complaint will name as defendants the indenture trustees and collateral trustees for the first

[1] "Sole" authority would be subject to objections from parties other than the Debtors, and approval by the Bankruptcy Court. Assuming the OCC and UCC are prosecuting claims by a joint standing application, we would expect settlement authority of the OCC and UCC to be governed by such terms as the OCC and UCC negotiate and agree, that neither party would have authority to bind the other party to settle a claim, and that the exercise of such settlement authority would be subject to the ultimate supervision and approval of the Bankruptcy Court.

Cooley

and second-lien notes, and recipients of interest on the notes, and will seek to avoid Debtors' obligations under the notes and associated guarantees and liens.

Term Loan Facility

This claim alleges that certain Par Pharmaceutical entities that Endo acquired in 2015 did not receive reasonably equivalent value with respect to guarantees and liens given to support Endo's outstanding term loan facility. Specifically, the claim alleges that these Par Pharmaceutical entities were insolvent when Endo acquired them and at all times thereafter. Following acquisition, the Par Pharmaceutical entities were made to guarantee and provide collateral to support Endo's existing term loan indebtedness. Subsequent refinancings of that indebtedness did not provide the Par Pharmaceutical entities with reasonably equivalent value. The complaint will name as defendants the first lien collateral trustee and administrative agent for the notes. The claim will seek to avoid guarantees and liens given by the Par Pharmaceutical entities in support of the term loan facility.

We would appreciate a response by 12:00 p.m. on January 20.

Sincerely,

/s/ Ian Shapiro

Ian Shapiro

Exhibit H

Wasson, Megan

From: Hill, Evan A <Evan.Hill@skadden.com>
Sent: Thursday, September 22, 2022 11:23 AM
To: Daniels, Elan; Wasson, Megan
Cc: Fisher, David J.; McKay, Michael; Blabey, Jr., David E.; Byowitz, Alice J.; Hamerman, Natan; Klegon, Matthew; Ringer, Rachael; Elberg, Shana A; Kestecher, Jason N; Fee, Cameron M
Subject: [EXTERNAL] RE: Endo - Indian Equity Pledges

Elan,

Apologies, I thought I had responded. After conferring with my colleagues, we can confirm that the prepetition liens do not extend to the equity in the Indian entities and the equity does not constitute prepetition collateral.

Please let us know if it would still be helpful to discuss.

Regards,
Evan

Evan A. Hill
Counsel
Skadden, Arps, Slate, Meagher & Flom LLP
One Manhattan West | New York | NY | 10001
T: +1.212.735.3528 | F: +1.917.777.3528
evan.hill@skadden.com

From: Daniels, Elan <EDaniels@KRAMERLEVIN.com>
Sent: Thursday, September 22, 2022 11:16 AM
To: Wasson, Megan <MWasson@KRAMERLEVIN.com>; Hill, Evan A (NYC) <Evan.Hill@skadden.com>
Cc: Fisher, David J. <DFisher@KRAMERLEVIN.com>; McKay, Michael <MMcKay@KRAMERLEVIN.com>; Blabey, Jr., David E. <DBlabey@KRAMERLEVIN.com>; Byowitz, Alice J. <AByowitz@KRAMERLEVIN.com>; Hamerman, Natan <NHamerman@KRAMERLEVIN.com>; Klegon, Matthew <MKlegon@KRAMERLEVIN.com>; Ringer, Rachael <RRinger@KRAMERLEVIN.com>
Subject: [Ext] RE: Endo - Indian Equity Pledges

Hi Evan,

I may have missed it, but did you ever connect us with the appropriate folks to discuss the subject referenced below? If not, please do so.

Thanks,

Elan Daniels

Elan Daniels
Senior Attorney

Kramer Levin Naftalis & Frankel LLP
1177 Avenue of the Americas, New York, New York 10036
T 212.715.9575 **F** 212.715.8000

From: Wasson, Megan <MWasson@KRAMERLEVIN.com>
Sent: Monday, September 19, 2022 6:16 PM
To: Hill, Evan A <Evan.Hill@skadden.com>
Cc: Daniels, Elan <EDaniels@KRAMERLEVIN.com>; Fisher, David J. <DFisher@KRAMERLEVIN.com>; McKay, Michael <MMcKay@KRAMERLEVIN.com>; Blabey, Jr., David E. <DBlabey@KRAMERLEVIN.com>; Byowitz, Alice J. <AByowitz@KRAMERLEVIN.com>; Hamerman, Natan <NHamerman@KRAMERLEVIN.com>; Klegon, Matthew <MKlegon@KRAMERLEVIN.com>; Ringer, Rachael <RRinger@KRAMERLEVIN.com>
Subject: Endo - Indian Equity Pledges

Hi Evan,

As discussed, I'm copying the relevant corporate/bankruptcy folks to set up a discussion on the Indian equity pledges – I think some subset of this group would appreciate a call with your relevant corporate/bankruptcy folks to discuss the equity in the Indian non-Debtors and to what extent it is/is not pledged.

Thanks,
Megan

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED
AND
IN THE MATTER OF PALADIN LABS CANADIAN HOLDING INC. AND PALADIN LABS INC.

APPLICATION OF PALADIN LABS INC. UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

Applicant

Court File No. CV-22-00685631-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE – COMMERCIAL LIST

Proceeding commenced at Toronto

AFFIDAVIT OF MARGO R. SIMINOVITCH

Fishman Flanz Meland Paquin LLP
4100-1250 René-Lévesque Blvd. West
Montreal, Quebec H3B 4W8
Tel: (514) 932-4100

Mark E. Meland
mmeland@ffmp.ca

Avram Fishman
afishman@ffmp.ca

Tina Silverstein
tsilverstein@ffmp.ca

Margo R. Siminovitch
msiminovitch@ffmp.ca

Trudel Johnston & Lespérance
90-750, Côte de la Place d'Armes
Montreal, Quebec H2Y 2X8
Tel: 514 871-8385

André Lespérance
andre@tjl.quebec

Co-counsel for Jean-François Bourassa, the Quebec Class Action Plaintiff (the "**Quebec Plaintiff**")

Court File No. CV-22-00685631-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE	**)**	**[ADD DATE]**
	)	
MR. JUSTICE MORAWETZ, C.J.	**)**	**OF [ADD MONTH], 2023**

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF AND IN THE MATTER OF PALADIN LABS CANADIAN HOLDING INC. AND PALADIN LABS INC.

Applicants

ORDER
(CCAA Representative and CCAA Representative Counsel Appointment Order)

THIS MOTION made by co-counsel for the Quebec Plaintiff pursuant to the *Companies' Creditors Arrangement Act,* R.S.C. 1985, c. C-36, as amended (the "**CCAA**") for, among other things, an order appointing a representative and representative counsel to the Canadian Personal Injury Claimants (as defined herein) in the present Court file and, as necessary, in the related Chapter 11 Proceedings (as defined in the Siminovitch Affidavit), was heard this day by way of video-conference.

ON READING (i) the Notice of Motion and (ii) the affidavit of Margo Siminovitch sworn October 16, 2023 and the exhibits thereto (the "**Siminovitch Affidavit**"), and on hearing the

submissions of counsel for the Quebec Plaintiff and such other counsel as were present, no one else appearing although duly served, as appears from the affidavit of service filed.

SERVICE

1. **THIS COURT ORDERS** that, if necessary, the time for service and filing of the Notice of Motion is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

DEFINITIONS

2. **THIS COURT ORDERS** that all capitalized terms not defined herein shall have the meanings set out in the Siminovitch Affidavit.

APPOINTMENT OF CCAA REPRESENTATIVE AND CCAA REPRESENATIVE COUNSEL

3. **THIS COURT ORDERS** that Jean-François Bourassa (the "**Quebec Plaintiff**") is hereby appointed as the CCAA Representative to represent the interests of all Canadian victims who were harmed as a result of using Paladin Labs' opioid drugs sold in Canada (the "**Canadian Personal Injury Claimants**"), in the Foreign Recognition Proceedings initiated by Paladin Labs in the present Court file and, as necessary, in the related Chapter 11 Proceedings.

4. **THIS COURT ORDERS** that the law firms of Fishman Flanz Meland Paquin LLP and Trudel Johnston Lespérance are appointed as **CCAA Representative Counsel** to jointly represent the interests of the Canadian Personal Injury Claimants in these proceedings, and, as necessary, in the Chapter 11 Proceedings.

5. **THIS COURT ORDERS** that the reasonable fees and disbursements of the CCAA Representative Counsel be borne by the Canadian Debtors.

MISCELLANEOUS

6. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada, outside Canada and against all persons against whom it may be enforceable.

7. **THIS COURT ORDERS** that this Order is effective from the date that it is made, and is enforceable without any need for entry and filing.

8. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, or abroad, to give effect to this Order and to assist the Applicants, the Information Officer, the CCAA Representative and CCAA Representative Counsel in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants, the Information Officer, the CCAA Representative and CCAA Representative Counsel as may be necessary or desirable to give effect to this Order, or to assist the Applicants, the Information Officer, the CCAA Representative and CCAA Representative Counsel in carrying out the terms of this Order.

9. **THIS COURT ORDERS** that each of the Applicants, the Information Officer, the CCAA Representative and CCAA Representative Counsel be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

10. **THIS COURT ORDERS** that this Order shall be effective as of 12:01 a.m. (Toronto time) on the date of this Order without the need for entry or filing of this Order.

_____

Chief Justice G.B. Morawetz

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED
AND
IN THE MATTER OF PALADIN LABS CANADIAN HOLDING INC. AND PALADIN LABS INC.

APPLICATION OF PALADIN LABS INC. UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

Applicant

Court File No. CV-22-00685631-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE – COMMERCIAL LIST

Proceeding commenced at Toronto

MOTION RECORD

(Returnable at a date and time to be determined by Chief Justice G.B. Morawetz)

Fishman Flanz Meland Paquin LLP
4100-1250 René-Lévesque Blvd. West
Montreal, Quebec H3B 4W8
Tel: (514) 932-4100

Mark E. Meland
mmeland@ffmp.ca

Avram Fishman
afishman@ffmp.ca

Tina Silverstein
tsilverstein@ffmp.ca

Margo R. Siminovitch
msiminovitch@ffmp.ca

Trudel Johnston & Lespérance
90-750, Côte de la Place d'Armes
Montreal, Quebec H2Y 2X8
Tel: 514 871-8385

André Lespérance
andre@tjl.quebec

Co-counsel for Jean-François Bourassa, the Quebec Class Action Plaintiff (the "**Quebec Plaintiff**")