NAMENDA DIRECT PURCHASER CLAIMS ADMINISTRATOR
C/O RUST CONSULTING – 6269
P.O. Box 44
Minneapolis, MN 55440-0044

IMPORTANT LEGAL MATERIALS

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FOR OFFICIAL USE ONLY

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☐ If the pre-printed information to the left is not correct or if there is no pre-printed information, please check the box and complete the information below:

Name: _____

Address: _____

City: _____

State: ___ ___ Zip Code: ___ ___ ___ ___ ___

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

In re Namenda Direct Purchaser Antitrust Litigation

Civil Action No. 1:15-cv-07488-CM-RWL (S.D.N.Y.)

PROOF OF CLAIM AND RELEASE

Your claim must be postmarked by: August 8, 2020

July 9, 2020

Notice ID Number:

INTRODUCTION

On May 27, 2020, the Court in this Action approved a $750 million Settlement reached between the direct purchaser plaintiffs and defendants Forest Laboratories, LLC, Forest Laboratories, Inc.,[1] Forest Laboratories Holdings Ltd.; and Actavis plc (collectively, "Defendants"). The notice of class action Settlement dated February 12, 2020, which was previously mailed to you, summarizes both the litigation and terms of the Settlement. The purpose of this Proof of Claim Form and Release is to ensure that you are able to participate in the distribution of the Settlement funds from the Settlement, net of attorneys' fees, service awards to Class Representatives, and other costs awarded by the Court (the "Net Settlement Fund"). In order for the Claims Administrator to make the proper calculation of your *pro rata* share of the Net Settlement Fund, please either (a) verify the accuracy of the net purchase volumes listed in Part II.A of this Proof of Claim and Release Form that are derived from purchase data produced in this Action or (b) submit the data required in Part II.B of this Proof of Claim and Release Form.

PART I: CLAIMANT IDENTIFICATION

Please provide this information. In addition, if purchases were made in a name other than the Claimant's name, for example if you are filing this Proof of Claim and Release Form based on an assignment, please include documentation of your right to assert a claim with respect to those claimed purchases.

Employer Tax Identification Number: _____

Correct the name or address of the Claimant below ONLY if different from above OR if there is no preprinted name and address above. Otherwise, leave blank.

Claimant's Name: _____

Street Address 1: _____

Street Address 2: _____

City: _____ State: ___ ___ Zip: ___ ___ ___ ___ ___

[1] On July 1, 2014, in a series of transactions, Forest Laboratories, Inc. became a limited liability company named Forest Laboratories, LLC. Subsequently, on January 1, 2018, Forest Laboratories, LLC was merged with and into Allergan Sales, LLC, a Delaware limited liability company. As a result of these corporate consolidations, Forest Laboratories, Inc. and Forest Laboratories, LLC are predecessors in interest to Allergan Sales, LLC.

* 6 2 6 9 *

* C F W *

* 0 1 2 3 4 5 6 7 8 9 *

Person overseeing the claims process for Claimant (who can be contacted if there are questions regarding this claim):

First Name: _____ MI: _____ Last Name: _____

Daytime Phone Number: (___ ___ ___) ___ ___ ___ - ___ ___ ___ ___ Email Address: _____

PART II: CLASS MEMBER'S QUALIFYING PURCHASES OF NAMENDA IR, GENERIC NAMENDA IR, AND NAMENDA XR

A. The Claims Administrator, in conjunction with the direct purchaser plaintiffs' economic expert, has calculated each Class member's qualifying direct purchases of brand Namenda IR (immediate-release memantine hydrochloride), brand Namenda XR (extended-release memantine hydrochloride), and/or generic Namenda IR (generic immediate-release memantine hydrochloride) and, based upon that net purchase volume (i.e., purchases net of returns), has provided an initial estimate of each Class member's *pro rata* share of the Net Settlement Fund, based on the allocation methodology approved by the Court. The initial estimate is based upon Namenda IR, Namenda XR, and generic Namenda IR purchase data produced in this Action. If and when the Claims Administrator learns of assignments of rights to participate in this litigation, the *pro rata* calculations may change. In addition, your *pro rata* calculation may change as a result of the total number of claims received and/or other information submitted during the claims administration process. To repeat, the initial estimate is subject to change.

Each Class member should verify the accuracy of the total net purchase volumes listed below. **If you agree that the total net purchase volumes computed for your company are accurate, you should sign the last page of this Proof of Claim and Release Form and mail it to the Claims Administrator postmarked no later than August 8, 2020.** If you verify the accuracy of the total net purchase volumes listed below, you will not be required to produce any purchase data as part of the claims administration process, but you will be waiving the right to challenge or appeal the Claims Administrator's determination regarding your *pro rata* distribution amount on the basis that the distribution amount would have been different had it been calculated using your own purchase records. **If you believe the total net purchase volumes listed for your company below are not accurate, you may submit purchase records, in electronic format as described in Part II.B below; any such data must be mailed to the Claims Administrator postmarked no later than August 8, 2020.**

If you are filing a claim based on an assignment, you will have to submit documentation of your right to assert a claim with respect to those claimed purchases along with data showing the volume of purchases covered by your assignment.

In order to have a valid claim, you must be a member of the certified Direct Purchaser Class or have an assignment of rights from a Direct Purchaser Class member allowing you to recover as an assignee of a Class member. The certified Direct Purchaser Class (or "Class") is defined as follows:

> All persons or entities in the United States and its territories who purchased branded Namenda IR 5 or 10 mg tablets, and/or generic Namenda IR 5 or 10 mg tablets (including an authorized generic), and/or branded Namenda XR capsules, directly from Forest or its successors in interest, Actavis and Allergan, and/or from any generic manufacturer at any time during the period from June 2012 until September 30, 2015.

The following were excluded from the Class of direct purchasers: all Defendants and their officers, directors, management, employees, subsidiaries, or affiliates, and all federal governmental entities.

The Court-approved Plan of Allocation provides, for claimants with valid claims, that each Claimant's allocated share of the Net Settlement Fund will be set in proportion to each Claimant's weighted combined total of (a) its net unit direct purchases of brand Namenda IR for the period June 1, 2012 through June 30, 2017, after deducting any returns; (b) its net unit direct purchases of brand Namenda XR for the period from when Namenda XR was launched on June 4, 2013 through June 30, 2017, after deducting any returns; and (c) its net unit direct purchases of generic Namenda IR (immediate release memantine hydrochloride) for the period when generic Namenda IR launched on July 11, 2015 through September 30, 2015, after deducting any returns, made directly from a generic Namenda IR manufacturer. The relevant generic manufacturers of generic Namenda IR are Actavis, Amneal, Dr. Reddy's, Lupin, Mylan, and Sun. Those who purchased only generic Namenda IR will receive comparatively less than those who purchased branded Namenda IR and/or XR, as alleged overcharge damages on units of generic Namenda IR alone were substantially lower than alleged overcharges on purchases of branded Namenda IR and XR.

Allocations to Claimants whose right to an allocation arises by virtue of an assignment(s) from a Class member(s) would be determined in this same fashion. In these cases, the volumes of brand and generic purchases used to determine the allocation would be the volumes assigned to the Claimant by an otherwise eligible Class member(s) (and the assignor Class member's brand and generic purchase volumes would be reduced by the same amount).

***Please note that related documents, including the Plan of Allocation and the Court's Order approving the Plan of Allocation, are available at* https://bergermontague.com/cases/namenda-direct-purchaser-antitrust-lawsuit/ or https://garwingerstein.com/settlements/namenda-direct-purchaser-litigation/.** This summary of the Plan of Allocation is only a summary and is not meant to alter the terms of the Court-approved Plan of Allocation. Claimants should refer to the Plan of Allocation for further details of how the allocation will work.

INITIAL ESTIMATE OF YOUR PURCHASE VOLUMES AND *PRO RATA* SHARE OF THE NET SETTLEMENT FUND
According to the direct purchaser plaintiffs' economic expert's analysis of the data produced in this Action, Your net qualifying volumes of brand Namenda IR, brand Namenda XR, and/or generic Namenda IR purchases are as follows: Tablets of Brand Namenda IR (5 or 10 mg) purchased directly from Defendants from June 1, 2012 through June 30, 2017, after deducting any returns. Capsules of Brand Namenda XR (7, 14, 21, or 28 mg) purchased directly from Defendants from June 4, 2013 through June 30, 2017, after deducting any returns. Tablets of Generic Namenda IR (5 or 10 mg) purchased directly from any generic Namenda IR manufacturer from July 11, 2015 through September 30, 2015, after deducting any returns. *Note that these estimates do not account for any assignments of rights you may have entered into.* The National Drug Codes (NDCs) associated with the products and strengths at issue here are set forth in Exhibit A to this Proof of Claim and Release Form.
Based on the purchase volumes set forth above and the Court-approved Plan of Allocation, the initial estimate of your *pro rata* share of the Net Settlement Fund is: **This estimate is subject to change** based upon several factors, including but not limited to: (1) the level of participation by Class members in the Settlement; (2) Claimants submitting additional documentation to support their total net purchase volume being different from that calculated by the Claims Administrator; and (3) submission of assignments of rights agreements that affect who can participate in the Settlement. **If you accept and verify that the above figures for your net direct brand and generic Namenda purchases are correct, please check here:** ☐

B. To the extent that you do not elect to rely upon the calculation of net purchase volumes determined by the Claims Administrator set forth above in Part II.A, please identify all **direct** purchases of (a) brand Namenda IR tablets, 5 or 10 mg, from June 1, 2012 through June 30, 2017, after deducting any returns; (b) brand Namenda XR capsules, 7, 14, 21, or 28 mg, from June 4, 2013 through June 30, 2017, after deducting any returns; and (c) generic Namenda IR (immediate release memantine hydrochloride) tablets, 5 or 10 mg, from a generic manufacturer from July 11, 2015 through September 30, 2015, after deducting any returns, by providing the information below in electronic format. Note that the relevant generic manufacturers are Actavis, Amneal, Dr. Reddy's, Lupin, Mylan and Sun. The Claims Administrator may require additional information.

Date of Purchase[2]	**Supplier**	**NDC**[3]	**Transaction Type**[4]	**Purchase Volume (# of Tablets / Capsules)**

* 0 1 2 3 4 5 6 7 8 9 *

C. Assignments.

Please check here if you are filing this claim based on an assignment: ☐

If you are submitting a claim pursuant to an assignment, please identify with particularity that assignment here. Please also attach documentation in support of such assignment, including the assignment agreement and data showing your qualifying purchases that are covered by any such assignment of: (a) brand Namenda IR 5 or 10 mg tablets from **June 1, 2012 through June 30, 2017**; (b) brand Namenda XR 7, 14, 21, or 28 mg capsules from **June 4, 2013 through June 30, 2017**; and/or (c) generic Namenda IR (immediate release memantine hydrochloride) 5 or 10 mg tablets from **July 11, 2015 through September 30, 2015**, after deducting any returns. Please note that the Settlement Administrator may require additional information and documents for any claim made based on an assignment. Also please note that your claim, including the documentation and data submitted therewith, may be shared with your assignor as part of the Claims Administration process. By submitting a claim by virtue of an assignment, you are agreeing that such data and documentation may be shared with your assignor.

PART III: SUBMISSION TO JURISDICTION OF THE COURT

By signing below, you are agreeing to submit to the exclusive jurisdiction of the United States District Court for Southern District of New York with respect to any suit, action, proceeding or dispute arising out of or relating to *In re Namenda Direct Purchaser Antitrust Litigation*, Civil Action No. 1:15-cv-07488-CM-RWL (S.D.N.Y.) ("this Action"), claims administration in this Action, the claim you or any other entity is making as a Class member or assignee thereof in this Action, and/or the Release set forth below.

PART IV: RELEASES

A. By signing below, you hereby confirm that you and your respective past, present, and future parents, subsidiaries, associates, affiliates, officers, directors, employees, insurers, general or limited partners, divisions, agents, attorneys, servants, trustees, joint ventures, heirs, executors, administrators, representatives (and the parents' subsidiaries' and affiliates' past and present officers, directors, employees, agents, attorneys, servants, and representatives), and their predecessors, successors, heirs, executors, administrators, and representatives (collectively, the "Releasors"), hereby release and forever discharge, and covenant not to sue, Defendants and their past, present, and future parents, subsidiaries, divisions, affiliates, joint ventures, stockholders, officers, directors, management, supervisory boards, insurers, general or limited partners, employees, agents, attorneys, servants, representatives (and the parents', subsidiaries', and affiliates' past, present, and future officers, directors, employees, agents, attorneys, servants, and representatives), and the predecessors, successors, heirs, executors, administrators and representatives of each of the foregoing (collectively, the "Releasees") from all manner of claims, debts, obligations, demands, actions, suits, causes of action, damages whenever incurred, liabilities of any nature whatsoever, including costs, expenses, penalties and attorneys' fees, under federal or state laws, whether known or unknown, foreseen or unforeseen, suspected or unsuspected, contingent or non-contingent, in law or equity, that arise out of or relate, in whole or in part in any manner, to: (a) the subject matter of or acts, omissions, or other conduct alleged in the complaint in the Direct Purchaser Class Action, or any prior complaints or subsequent amended complaints filed in the Direct Purchaser Class Action; (b) the subject matter of pretrial proceedings in the Direct Purchaser Class Action; and/or (c) all claims concerning alleged delay or impairment in the marketing, sale, manufacture, pricing, or purchase of, or the enforcement of intellectual property related to, Namenda IR, Namenda XR, or their generic equivalents that could have been asserted in the Direct Purchaser Class Action, including but not limited to claims of reverse payments, product hop, and unlawful patent term extension of U.S. Patent No. 5,061,703, sham patent listings, and sham patent litigations prior to December 20, 2019 (collectively, this entire paragraph the "Released Claims").

This release is not intended to release anyone other than the Releasees, is not on behalf of anyone other than the Releasors, and does not affect the claims of the proposed endpayor class or any claims relating to indirect purchases of brand or generic Namenda IR or Namenda XR, nor is it intended to release any actual or potential claims described in Paragraph 13 of the Settlement Agreement (described in subsection C below).

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[2] Please use standard date formats, such as MM/DD/YYYY.

[3] Please use standard 11-digit National Drug Code in the format NNNNN-NNNN-NN.

[4] Please use either invoice purchases or returns.

B. In addition, with respect to the claims that are the subject of paragraph 11 of the Settlement Agreement, by signing below you hereby confirm that you expressly waive, release and forever discharge any and all provisions, rights, and/or benefits conferred by § 1542 of the California Civil Code, which reads:

> Section 1542. General Release; extent. A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor;

or by any law of any state or territory of the United States, or principle of common law, which is similar, comparable or equivalent to § 1542 of the California Civil Code. Each Releasor may hereafter discover facts other than or different from those which he, she or it knows or believes to be true with respect to the claims that are the subject matter of paragraph 11 of the Settlement Agreement. Nonetheless, each Releasor hereby expressly waives and fully, finally and forever settles, and releases, any known or unknown, foreseen or unforeseen, suspected or unsuspected, asserted or unasserted, contingent or non-contingent claim that is the subject matter of Paragraph 11 of the Settlement Agreement, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts. Each Plaintiff and member of the Direct Purchaser Class also hereby expressly waives and fully, finally and forever settles, releases, and discharges any and all claims that are the subject matter of paragraph 11 of the Settlement Agreement that it may have against any Releasees under § 17200, et seq., of the California Business and Professions Code or any similar comparable or equivalent provision of the law of any other state or territory of the United States or other jurisdiction.

C. The intent of the Settlement Agreement is to effect a complete and total resolution of this Action to the extent of the claims of the Direct Purchaser Plaintiff Class that were or could have been asserted relating to the allegations in this Action, but is not intended to release any claims (1) arising in the ordinary course of business between Releasors and the Releasees arising under Article 2 of the Uniform Commercial Code (pertaining to sales), the laws of negligence or product liability or implied warranty, breach of contract, breach of express warranty, or personal injury; or (2) other claims unrelated to Namenda IR, Namenda XR, or their generic equivalents.

PART V: VERIFICATION/RELEASE

I declare under penalty of perjury under the laws of the United States of America that the foregoing information provided by the undersigned is true and correct and that this proof of claim and release was

executed this _____, day of _____, 2020 in _____ _____
(Day) (Month) (City) (State, Country)

Sign your name here: _____

Type/Print your name here: _____

Type/ Print your company name here: _____

Capacity of person signing, e.g., President, Partner: _____

RETURN YOUR COMPLETED PROOF OF CLAIM AND RELEASE AND RETURN TO:

In re Namenda Direct Purchaser Antitrust Litigation
c/o Rust Consulting - 6269
P.O. Box 44
Minneapolis, MN 55440-0044

Questions? Contact the Claims Administrator at (612) 359 - 2848.

Remember, your signed Proof of Claim and Release must be mailed and postmarked by August 8, 2020.

Exhibit A: Relevant NDCs of Brand Namenda IR, Brand Namenda XR, and Generic Namenda IR

Brand Namenda IR (5 or 10 mg) NDCs during the relevant time period, June 1, 2012 through June 30, 2017
00456320014
00456320560
00456320563
00456321060
00456321063

Brand Namenda XR (7, 14, 21, or 28 mg) NDCs during the relevant time period, June 4, 2013 through June 30, 2017
00456340029
00456340733
00456341433
00456341463
00456341490
00456342133
00456342833
00456342863
00456342890

Generic Namenda IR (5 or 10 mg) NDCs during the relevant time period, July 11, 2015 through September 30, 2015
00378110391
00378110491
00591387044
00591387060
00591387544
00591387560
00591390087
42292000506
42292000606
47335032186
47335032213
47335032286
53746016930
53746017360
55111059660
55111059705
55111059760
68180022907
68180023007