

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

IN RE NAMENDA DIRECT PURCHASER ANTITRUST LITIGATION	Case No. 1:15-cv-07488-CM-RWL
THIS DOCUMENT RELATES TO: All Direct Purchaser Actions	

**DECLARATION OF BRUCE E. GERSTEIN IN SUPPORT OF DIRECT
PURCHASER CLASS PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL
OF PROPOSED SETTLEMENT, APPROVAL OF THE FORM AND MANNER OF
NOTICE TO THE CLASS AND PROPOSED SCHEDULE
FOR A FAIRNESS HEARING**

I, Bruce E. Gerstein, hereby declare as follows:

I am a member of the bar of the State of New York and am admitted to practice before this Court. I am Co-Lead Counsel for the Direct Purchaser Class and a Managing Partner at Garwin Gerstein & Fisher LLP. I submit this declaration in support of Direct Purchaser Class Plaintiffs' Motion for Preliminary Approval.

1. Attached as Exhibit 1 hereto is a true and correct copy of the Settlement Agreement made and entered into on December 20, 2019 by and between Forest Laboratories, LLC; Forest Laboratories, Inc.; Forest Laboratories Holdings, Ltd.; Actavis plc; and J M Smith Corporation (d/b/a Smith Drug Company) and Rochester Drug Co-Operative, Inc., individually and on behalf of the Direct Purchaser Class.

2. Attached as Exhibit 2 hereto is a true and correct copy of Direct Purchaser Class Plaintiffs' [Proposed] Plan of Allocation for the Direct Purchaser Class.

3. Attached as Exhibit 3 hereto is a true and correct copy of Dr. Russell L. Lamb's Declaration Related to Proposed Settlement Allocation Plan, dated December 17, 2019.

I hereby declare under the penalty of perjury that the foregoing is true and correct and that this declaration was executed in New York, New York on December 24, 2019.

Dated: December 24, 2019

Respectfully submitted:

/s/ Bruce E. Gerstein

Bruce E. Gerstein
Garwin Gerstein & Fisher LLP
88 Pine Street, 10th Floor
New York, NY 10005
(212) 398-0055
bgerstein@garwingerstein.com

CERTIFICATE OF SERVICE

I hereby certify that on December 24, 2019, I caused the above to be filed by CM/ECF system.

Respectfully submitted,

/s/ Bruce E. Gerstein
Bruce E. Gerstein

EXHIBIT 1

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

**IN RE NAMENDA DIRECT PURCHASER
ANTITRUST LITIGATION**

Case No. 15-CV-7488-CM-RWL

SETTLEMENT AGREEMENT

This Settlement Agreement is made and entered into on December 20, 2019, by and between Forest Laboratories, LLC; Forest Laboratories, Inc.;¹ Forest Laboratories Holdings, Ltd.; and Actavis plc (collectively, “Forest” or “Defendants”), by and through their counsel Wilkinson Walsh + Eskovitz LLP and White & Case LLP, and J M Smith Corporation (d/b/a Smith Drug Company) (“Smith Drug”) and Rochester Drug Co-Operative, Inc. (“RDC”) (collectively, “Plaintiffs”), individually and on behalf of the direct purchaser class (as defined in Paragraph 1 below, the “Direct Purchaser Class” or “Class”), by and through Garwin Gerstein & Fisher LLP and Berger Montague PC, in their capacity as co-lead counsel for the Direct Purchaser Class (“Plaintiffs’ Counsel”) in the above-captioned litigation. This Settlement Agreement is intended to, and upon occurrence of the Effective Date will, fully, finally, and forever resolve, compromise, discharge, and settle the claims of the Direct Purchaser Class in the above-captioned litigation, subject to the terms and conditions set forth herein.

WHEREAS, Plaintiffs each filed lawsuits alleging that Defendants entered into one or more agreements in restraint of trade in violation of the Sherman Act, 15 U.S.C. § 1, with respect

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.

to memantine hydrochloride, a drug approved by the FDA for the treatment of Alzheimer's Disease; and maintained and enhanced their monopoly power with respect to memantine hydrochloride through an unlawful "hard switch product hop," in violation of the Sherman Act, 15 U.S.C. § 2;

WHEREAS, Plaintiffs' claims were consolidated under the caption *In re Namenda Direct Purchaser Antitrust Litigation*, No. 15-cv-7488-CM-RWL, before the United States District Court for the Southern District of New York (the "Court") as a putative class action on behalf of the Direct Purchaser Class, as defined in Paragraph 1 below (the "Direct Purchaser Class Action" or the "Action");

WHEREAS, the Court denied Defendants' motions to dismiss including denying the motion to dismiss based on statute of limitations, denied Defendants' motion for summary judgment, certified a class for purposes of litigation, and set the case for trial beginning October 28, 2019;

WHEREAS, Defendants deny each and every one of Plaintiffs' allegations, have not conceded or admitted any liability or that Plaintiffs' claims timely were filed within the applicable statutes of limitations, have not conceded or admitted the propriety of certification of any class in this Action for any purposes other than settlement, have not conceded or admitted the validity of any assignments under which any Plaintiffs pursue claims in the Action or the propriety or pursuing claims based on partial assignments, have not conceded or admitted that any conduct challenged by Plaintiffs caused any damage whatsoever, and have asserted a number of defenses to Plaintiffs' claims;

WHEREAS, Plaintiffs and Defendants agree that this Settlement Agreement shall not be deemed or construed to be an admission or evidence of any violation of any statute or law or of

any liability or wrongdoing by any Defendant, or of the truth of any of the claims or allegations alleged in the Direct Purchaser Class Action or a waiver of any defenses thereto;

WHEREAS, Plaintiffs' Counsel have concluded, after extensive discovery and investigation of the facts and after fully preparing for trial, and after carefully considering the circumstances of the Direct Purchaser Class Action, including the claims asserted in this action, and the possible and asserted legal and factual defenses thereto, that it would be in the best interests of the Direct Purchaser Class to enter into this Settlement Agreement in order to avoid the uncertainties of litigation, particularly complex litigation such as this, and to assure a benefit to the Direct Purchaser Class and further, that Plaintiffs' Counsel consider the Settlement set forth in this Settlement Agreement to be fair, reasonable, and adequate within the meaning of Fed. R. Civ. P. 23 and in the best interests of the Direct Purchaser Class;

WHEREAS, Defendants have concluded, despite their belief that they are not liable for the claims asserted and that they have good defenses thereto, that it would be in their respective best interests to enter into this Settlement Agreement to avoid the uncertainties and additional costs of further litigation and to finally put to rest all claims relating to the Action;

WHEREAS, Plaintiffs' Counsel, on behalf of themselves and the proposed Direct Purchaser Class, on the one hand, and counsel for Defendants on the other, have engaged in arm's-length settlement negotiations, including with the assistance of several different mediators, and have reached this Settlement Agreement, subject to Court approval, which embodies all of the terms and conditions of the settlement between Plaintiffs, both individually and on behalf of the Direct Purchaser Class, and Defendants; and

NOW THEREFORE, it is agreed by the undersigned, on behalf of Plaintiffs and the Direct Purchaser Class, on the one hand, and Defendants, on the other, that the Direct Purchaser

Class Action and all claims of Plaintiffs and the Direct Purchaser Class be settled, compromised and dismissed with prejudice as to Defendants (and, except as hereinafter provided, without costs as to Plaintiffs, the Direct Purchaser Class, or Defendants), subject to Court approval, on the following terms and conditions:

1. **Direct Purchaser Class.** The Court has previously certified the following class (“Direct Purchaser Class” or “Class”), which Defendants shall support for purposes of this settlement only:

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. Excluded from the Class are Defendants and their officers, directors, management, employees, subsidiaries, or affiliates, and all federal governmental entities.

2. **Reasonable Best Efforts to Effectuate This Settlement.** Counsel for the Plaintiffs and Defendants agree to recommend approval of this Settlement Agreement to the Court and to undertake their reasonable best efforts, including undertaking all actions contemplated by and steps necessary to effectuate this Settlement Agreement, to carry out the terms of this Settlement Agreement and to secure the prompt, complete, and final dismissal with prejudice of all claims in the Direct Purchaser Class Action. This includes Defendants serving notice on those entities required to receive notice pursuant to 28 U.S.C. § 1715.

3. **Motion for Preliminary Approval of the Settlement.** Plaintiffs shall submit to the Court—and Defendants shall support—a motion (the “Motion”) requesting entry of an order preliminarily approving the settlement, and authorizing dissemination of notice to the Direct Purchaser Class (the “Preliminary Approval Order”) substantially in the form of Exhibit A hereto. The Motion shall:

a. request preliminary approval of the Settlement set forth in this Settlement Agreement as fair, reasonable, and adequate within the meaning of Fed. R. Civ. P. 23, and in the best interests of the Direct Purchaser Class;

b. request a stay of all proceedings against Defendants in the Direct Purchaser Class Action, except those proceedings provided for or required by this Settlement Agreement;

c. seek approval for notice to the Class by means of direct first-class United States mail notice in the form substantially in the form attached hereto as Exhibit B; and

d. include a proposed form of order, which includes such provisions as are typical in such orders, including a finding that the proposed plan of notice complies with Rule 23 and the requirements of due process, and a provision that if final approval of the settlement is not obtained, the settlement is null and void and the parties will revert to their positions *ex ante* without prejudice to their rights, claims, or defenses.

4. **Motion for Final Approval and Entry of Final Judgment.** If the Court preliminarily approves this Settlement Agreement, Plaintiffs shall submit—and Defendants shall support—a motion for final approval by the Court of this Settlement Agreement (“Final Approval Motion”) after notice has been disseminated to the Class pursuant to the Preliminary Approval Order. The Final Approval Motion shall be submitted to the Court within twenty-one (21) days after the Court-ordered deadline by which members of the Class may object to the Settlement, and shall seek entry of an order and final judgment (“Final Approval Order”) substantially in the form attached hereto as Exhibit C:

a. finding this Settlement Agreement and its terms to be a fair, reasonable, and adequate settlement as to Plaintiffs and the Direct Purchaser Class within the meaning of Rule 23 of the Federal Rules of Civil Procedure and directing its consummation pursuant to its terms;

- b. finding that all members of the Class (“Class Members”) shall be bound by this Settlement Agreement, including the release provisions and covenant not to sue set forth in this Settlement Agreement;
- c. finding that notice given constitutes due, adequate, and sufficient notice and meets the requirements of due process and the Federal Rules of Civil Procedure;
- d. incorporating the release set forth in Paragraphs 11 and 12 of this Settlement Agreement, and forever barring the Releasors from asserting any Released Claims against any of the Releasees as defined below;
- e. providing for the payment of reasonable attorneys’ fees and reimbursement of expenses solely from the Settlement Fund;
- f. providing for payment solely from the Settlement Fund of service awards in the amount of \$150,000 each to the named plaintiffs Smith Drug and RDC, in addition to whatever monies each may receive from the Settlement Fund pursuant to a Court-approved plan of allocation;
- g. directing that the Direct Purchaser Class Action be dismissed with prejudice as to Defendants and, except as provided for herein, without costs or attorney’s fees recoverable under 15 U.S.C. § 15(a);
- h. retaining exclusive jurisdiction over the Settlement and the Settlement Agreement, including the administration and consummation of the Settlement; and
- i. directing that the judgment of dismissal with prejudice of all Direct Purchaser Class claims against Defendants shall be final and appealable pursuant to Fed. R. Civ. P. 54(b), there being no just reason for delay.

5. **Finality of Settlement.** This Settlement Agreement shall become final upon the occurrence of all of the following (the “Effective Date”):

- a. The Settlement is not terminated pursuant to Paragraph 14 below;
- b. The Settlement and this Settlement Agreement are approved by the Court as required by Rule 23(e) of the Federal Rules of Civil Procedure;
- c. The Court enters the Final Approval Order, entering a final judgment of dismissal with prejudice against Plaintiffs and the Class Members; and
- d. The time for appeal from the Court’s signing of the Final Approval Order has expired or, if the Final Approval Order is appealed, it has been resolved by agreement and withdrawn by the appealing party, or it has been affirmed by the court of last resort to which an appeal of such Final Approval Order may be taken.

6. **Settlement Payment.** Within fifteen (15) days after the latter of the entry of the Preliminary Approval Order or receipt of wire transfer instructions from Plaintiffs’ Counsel, Defendant shall pay seven hundred and fifty million dollars (\$750,000,000.00) (the “Settlement Amount”) to the designated account (the “Settlement Fund”), which shall be held in escrow (the “Escrow Account”) subject to the terms and conditions of the escrow agreement attached hereto as Exhibit D (the “Escrow Agreement”), and in accordance with the provisions of Paragraphs 7, 15, and 18 below. Defendants shall not pay any additional amount at any time, whether for wire transfer fees or bank fees of any kind associated with the wire transfer of funds, interest, notice, administration, costs, attorneys’ fees, or otherwise, into the Escrow Account. The total consideration that Defendants will pay for this Settlement shall be the Settlement Amount only.

7. **The Settlement Fund.**

- a. Before the Court issues the Final Approval Order, disbursements for expenses associated with providing notice of the Settlement to the Class, expenses associated with

administering the Settlement, and any payments and expenses incurred in connection with taxation matters relating to the Settlement and this Settlement Agreement (collectively, “Administration Expenses”) may be made from the Settlement Fund. In the event the Agreement is disapproved, terminated, or otherwise fails to become effective, all Administration Expenses shall be borne by Plaintiffs’ Counsel and Administration Expenses made by the Settlement Fund shall be refunded to Defendants. Court approval shall not be required for disbursements or distributions of Administration Expenses for amounts (in the aggregate) of less than \$25,000. Otherwise, no disbursement from or distribution of the Settlement Fund shall be made without prior approval of the Court.

b. At all times prior to the Effective Date, the Settlement Fund shall be invested as set forth in Paragraph 3(b) of the Escrow Agreement, in instruments backed by the full faith and credit of the United States Government or fully insured by the United States Government or an agency thereof, including a U.S. Treasury Money Market Fund or a bank account insured by the Federal Deposit Insurance Corporation (“FDIC”) up to the guaranteed FDIC limit. After the Effective Date, the Settlement Fund shall be invested pursuant to Paragraph 3(b) of the Escrow Agreement as directed in writing by Plaintiffs’ Counsel. All interest and dividends earned on the Settlement Fund shall become and remain part of the Settlement Fund. Any losses on the Settlement Fund shall be borne by the Settlement Fund and shall not be recoverable from Defendants. Defendants shall have no liability, obligation, or responsibility of any kind in connection with the investment, disbursement, or other oversight of the Settlement Fund.

c. After the Effective Date, the Settlement Fund shall be distributed in accordance with the Court-approved plan for such distribution. After making the payment described in Paragraph 6 above, Defendants shall have no responsibility whatsoever for the allocation or

distribution of the Settlement Fund and shall not be responsible for any disputes relating to the amount, allocation, or distribution of any fees, costs or awards. Further, after making the payment described in Paragraph 6 above, Defendants shall not be liable for any additional payments to the Direct Purchaser Class or Plaintiffs' Counsel pursuant to this Settlement Agreement.

d. Plaintiffs and counsel for the Class shall be reimbursed and indemnified solely out of the Settlement Fund for all expenses. Defendants shall not be liable for any costs, attorneys' fees, other fees, or expenses of any of Plaintiffs' or the Direct Purchaser Class's respective attorneys, experts, advisors, agents, or representatives, but all such costs, fees, and expenses as approved by the Court shall be paid out of the Settlement Fund.

e. To the extent that there is any ambiguity or inconsistency concerning disbursements when this Settlement Agreement and the Escrow Agreement are read together, the terms of this Settlement Agreement shall control.

8. **No Injunctive Relief.** This Settlement Agreement does not include any provisions for injunctive relief.

9. **Full Satisfaction; Limitation of Interest and Liability.** Class Members shall look solely to the Settlement Fund for settlement and satisfaction against Defendants of all claims that are released hereunder. Except as provided by order of the Court, no Class Member shall have any interest in the Settlement Fund or any portion thereof.

10. **Attorneys' Fees, Expenses and Costs.**

a. Plaintiffs' Counsel intend to seek, solely from the Settlement Fund, attorneys' fees of up to one-third of the Settlement Fund (including any interest accrued thereon but net of any reasonable costs and expenses incurred that are reimbursed and net of any service awards to the named Plaintiffs), the reimbursement of reasonable costs and expenses incurred in the

prosecution of the Action, and service awards to the named Plaintiffs (“Fee and Expense Award”). Plaintiffs’ Counsel shall file a motion for approval of the Fee and Expense Award (“Motion for Fee and Expense Award”) after the Court has granted preliminary approval to the Settlement but sufficiently before the Court’s final fairness hearing on the Settlement, and Defendants agree to take no position with respect to the Motion for Fee and Expense Award, or on any other application by Plaintiffs’ Counsel for fees and/or expenses to be paid only from the Settlement Fund as may be necessary to effectuate this Settlement Agreement. Defendants also agree not to oppose any request by Plaintiffs’ Counsel that the Court order that any Fee and Expense Award be disbursed only to the Court-appointed co-lead counsel for the Class for allocation among the various counsel to the Class that have participated in this litigation. The various counsel for the Class, including Plaintiffs’ Counsel, shall be reimbursed and paid solely out of the Settlement Fund for all such fees and expenses. In no event shall any Fee and Expense Award be paid before the Effective Date. Plaintiffs, Class Members, and their respective counsel, shall not seek payment of any attorneys’ fees, expenses, costs, or service awards from Defendants in this action, or in any other action related to the released claims set forth in Paragraphs 11 and 12 hereof, from any source other than the Settlement Fund.

b. The procedures for and the allowance or disallowance by the Court of the application by Plaintiffs’ Counsel for attorneys’ fees, costs and expenses to be paid out of the Settlement Fund are not part of this Agreement, and are to be considered by the Court separately from the Court’s consideration of the fairness, reasonableness, and adequacy of the settlement. Notwithstanding any right of termination in Paragraph 14, any order or proceeding relating to the fee and expense application, or any appeal from any such order, shall not operate to terminate or cancel this Agreement, provide a basis to terminate or cancel this Agreement, affect or delay the

finality of the judgment approving settlement, or affect or delay the payment of the Fee and Expense Award as provided in Paragraph 10(a).

c. If the Court's award of such fees and expenses is vacated, reversed, or reduced subsequent to the disbursement of any Fee and Expense Award, Plaintiffs' Counsel shall within ten (10) business days after receiving written notice from the Court or from Defendants of such vacatur, reversal, or reduction, make a refund to the Escrow Account in the amount of such vacatur, reversal, or reduction with interest, and further provided that if the Settlement Agreement is terminated pursuant to Paragraph 14 below, Plaintiffs' Counsel shall within ten (10) business days after giving notice to or receiving notice from Defendants of such termination, make a refund to the Escrow Account in the amount of any such Fee and Expense Award with interest. The interest rate applicable to any refund made to the Escrow Account pursuant to this Paragraph shall be the same interest rate earned by the Settlement Fund during the period between the disbursement of any Fee and Expense Award and any refund required by this Paragraph.

11. Releases and Covenants. Upon the occurrence of the Effective Date and in consideration of payment of the Settlement Amount specified in Paragraph 6 above, Plaintiffs and all Class Members, whether or not they object to the Settlement and whether or not they make a claim upon or participate in the Settlement Fund, on behalf of themselves and their 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 “Releasers”), 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 pre-trial 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 the date hereof (collectively, this entire paragraph the “Released Claims”).

This Settlement Agreement is not intended to release anyone other than the Releasees, is not on behalf of anyone other than the Releasers, and does not affect the claims of the proposed end-payor class, nor is it intended to release any actual or potential claims described in Paragraph 13.

12. **Additional Release.** In addition, with respect to the claims that are the subject matter of Paragraph 11, each Releasor hereby expressly waives and releases, upon the Settlement Agreement becoming final, 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. Nonetheless, upon the Effective Date 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, 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 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.

13. **Reservation of Claims.** The intent of this Settlement 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.

14. Termination.

a. Defendants and Plaintiffs shall have the option to terminate the Settlement and have their Settlement Payment refunded if the Court declines to grant final approval to the Direct Purchaser Class Settlement. If for any reason the Settlement does not become final in accordance with the terms of Paragraph 5 of this Settlement Agreement, then (i) this Settlement Agreement shall be of no force or effect; (ii) all funds paid by Defendants into the Settlement Fund, plus interest (net of any taxes paid on such interest) shall be returned to Defendants as set forth in Paragraph 15 and Paragraph 7; (iii) any release pursuant to Paragraphs 11 and 12 above shall be of no force or effect; and (iv) the parties agree, subject to the Court's approval, that litigation of the Direct Purchaser Class Action by Plaintiffs and the Direct Purchaser Class will resume, in a reasonable manner and on a reasonable timetable to be approved by the Court.

b. For the avoidance of doubt, any order of the Court that (i) narrows or does not approve the scope of the release and covenant not to sue contemplated by this settlement, (ii) purports to impose additional material obligations on Defendants, or (iii) declines to enter a final judgment that meets the minimum requirements set forth in Paragraph 4 of this Agreement, or any order on review or appeal that would have the foregoing effects, except as otherwise agreed to in writing by Defendants and Plaintiffs, constitutes a failure to grant final approval of

this Agreement and confers on Defendants and Plaintiffs the right to terminate provided by this Paragraph.

c. A modification or reversal on appeal of any amount of the Fee and Expense Award shall not be deemed a modification of all or a part of the terms of this Settlement Agreement or such Final Approval Order and shall not give rise to any right of termination.

15. **Reimbursement of the Settlement Fund Upon Termination.** If this Settlement Agreement is terminated pursuant to the provisions of Paragraph 14 above, the Escrow Agent shall return the Settlement Fund—including any Fee and Expense Award paid to Plaintiffs' Counsel (the "Net Settlement Fund")—to Defendants. Subject only to expiration of any time deposit investment(s) not to exceed ninety (90) days, the Escrow Agent shall disburse the Net Settlement Fund to Defendants in accordance with this Paragraph within fifteen (15) business days after receipt of either (i) written notice signed by Defendants' counsel stating that this Settlement Fund has been terminated, or (ii) any order of the Court so directing. Any remaining portion of the Net Settlement Fund invested in time deposits not to exceed ninety (90) days shall be disbursed within ten (10) days after the expiration of such investments. If the Settlement Agreement is terminated pursuant to Paragraph 14 above, any obligations pursuant to this Settlement Agreement (other than disbursement of the Net Settlement Fund to Defendants as set forth above) shall cease immediately and the releases set forth in Paragraphs 11 and 12 shall be null and void.

16. **Additional Reimbursement Provision.** Two entities (Cochran Wholesale Pharmacy and QK Healthcare) with very small claims, fit within the Class definition but were inadvertently omitted from the prior list of Class members. They will be sent notice and be permitted to submit a claim. In the event either seeks and is permitted by the Court to opt out of

the Class, the Settlement Amount shall be reduced by an amount equal to their individual (or combined) allocation percentage as calculated by Dr. Russell Lamb under the Plan of Allocation, multiplied by the Settlement Amount, plus a proportionate share of interest, with the amount of such reduction being refunded to Defendants within 15 business days of such Court-approved opt out(s) being received by the Claims Administrator.

17. **Preservation of Rights.** The parties hereto agree that this Settlement Agreement, whether it becomes final or not, and any and all negotiations, documents and discussions associated with it shall be without prejudice to the rights of any party (except to the extent provided herein), shall not be deemed or construed to be an admission or evidence of any violation of any statute or law (or lack thereof), of any liability or wrongdoing by Defendants (or lack thereof), or of the truth (or lack thereof) of any of the claims or allegations contained in the Complaint or any other pleading or document, and evidence thereof shall not be discoverable or used directly or indirectly, in any way (other than to effectuate or enforce the terms of this Settlement Agreement). The parties expressly reserve all of their rights if the Settlement does not become final in accordance with the terms of this Settlement Agreement.

18. **Taxes.**

a. The parties intend that any taxes due as a result of income earned by the Settlement Fund will be paid from the Settlement Fund. Plaintiffs' Counsel shall be solely responsible for directing the Escrow Agent to file all informational and other tax returns necessary to report any taxable and/or net taxable income earned by the Settlement Fund. Further, Plaintiffs' Counsel shall be solely responsible for directing the Escrow Agent to make any tax payments, including interest and penalties due, on income earned by the Settlement Fund. Plaintiffs' Counsel shall be entitled to direct the Escrow Agent to pay from the Escrow

Account customary and reasonable tax expenses, including professional fees and expenses incurred in connection with carrying out the Escrow Agent's or tax preparer's responsibilities as set forth in this Paragraph. Defendants shall have no responsibility to make any tax filings related to the Settlement, this Settlement Agreement, or the Settlement Fund, and shall have no responsibility to pay taxes on any income earned by the Settlement Fund, or to pay taxes with respect thereto unless the settlement is not consummated and the Settlement Fund or the Net Settlement Fund is returned to Defendants. Other than as specifically set forth herein, Defendants shall have no responsibility for the payment of taxes or tax-related expenses. If, for any reason, for any period of time, Defendants are required to pay taxes on income earned by the Settlement Fund, the Escrow Agent shall, upon written instructions from Defendants with notice to Plaintiffs' Counsel, timely pay to Defendants sufficient monies from the Settlement Fund to enable it to pay all taxes (state, federal, or other) on income earned by the Settlement Fund.

b. For the purpose of § 468B of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, the "Administrator" of the Escrow Account shall be the Claims Administrator, who shall timely and properly file or cause to be filed on a timely basis, all tax returns necessary or advisable with respect to the Escrow Account (including without limitation all income tax returns, all informational returns, and all returns described in Treas. Reg. § 1.468B-2(1)).

c. The parties to this Settlement Agreement and their counsel shall treat, and shall cause the Escrow Agent to treat, the Settlement Fund as being at all times a "qualified settlement fund" within the meaning of Treas. Reg. § 1.468B-1. The parties, their counsel, and the Escrow Agent agree that they will not ask the Court to take any action inconsistent with the treatment of the Escrow Accounts in this manner. In addition, the Escrow Agent and, as required, the parties

shall timely make such elections as necessary or advisable to carry out the provisions of this Paragraph, including the “relation-back election” (as defined in Treas. Reg. § 1.468B-1(j)) back to the earliest permitted date. Such elections shall be made in compliance with the procedures and requirements contained in such regulations. It shall be the responsibility of the Escrow Agent to timely and properly prepare and deliver the necessary documentation for signature by all necessary parties and thereafter to cause the appropriate filing to occur. All provisions of this Settlement Agreement shall be interpreted in a manner that is consistent with the Escrow Accounts being a “qualified settlement fund” within the meaning of Treas. Reg. § 1.468B-1.

19. **Binding Effect.** This Settlement Agreement shall be binding upon, and inure to the benefit of, the parties hereto and to the Releasees. Without limiting the generality of the foregoing, each and every covenant and agreement herein by the Plaintiffs and their counsel shall be binding upon all Class Members.

20. **Integrated Agreement.** This Settlement Agreement, together with the schedules and exhibits hereto and the documents incorporated herein by reference, contains an entire, complete, and integrated statement of each and every term and provision agreed to by and among the parties hereto with respect to the transactions contemplated by this Agreement, and supersedes all prior agreements or understandings, whether written or oral, between or among any of the parties hereto with respect to the subject matter hereof. This Settlement Agreement shall not be modified in any respect except by a writing executed by all of the parties hereto.

21. **Independent Settlement.** This Settlement of the Direct Purchaser Class Action is not conditioned on approval by any other direct purchaser or settlement of any other case. This Settlement of the Direct Purchaser Class Action is not conditioned on the disposition of the claims of the end-payor class.

22. **Headings.** The headings used in this Settlement Agreement are intended for the convenience of the reader only and shall not affect the meaning or interpretation of this Settlement Agreement.

23. **No Party is the Drafter.** None of the parties hereto shall be considered to be the drafter of this Settlement Agreement or any provision hereof for the purpose of any statute, case law or rule of interpretation or construction that would or might cause any provision to be construed against the drafter hereof.

24. **Choice of Law.** All terms of this Settlement Agreement shall be governed by federal common law.

25. **Consent to Jurisdiction.** Defendants and each Class Member hereby irrevocably submit to the exclusive jurisdiction of the United States District Court for the District of Southern District of New York for any suit, action, proceeding, or dispute arising out of or relating to this Settlement Agreement or the applicability of this Settlement Agreement, including, without limitation, any suit, action, proceeding, or dispute relating to the release provisions herein. Nothing in this paragraph shall prohibit (a) the assertion in any forum in which a claim is brought that any release herein is a defense, in whole or in part, to such claim or (b) in the event that such a defense is asserted in such forum, the determination of its merits in that forum.

26. **Representations and Warranties.** Each party hereto represents and warrants to each other party hereto that it has the requisite authority (or in the case of natural persons, the legal capacity) to execute, deliver, and perform this Settlement Agreement and to consummate the transactions contemplated hereby.

27. No Admission. Nothing in this Settlement Agreement, nor in any document related to this Settlement Agreement, nor anything contained herein or therein or contemplated hereby or thereby, nor any proceedings undertaken in accordance with the terms set forth in the Settlement Agreement or herein, shall be construed as an admission or concession in any action or proceeding of any kind whatsoever, civil, criminal or otherwise, before any court, administrative agency, regulatory body, or any other body or authority, present or future, by Defendants, including, without limitation, that Defendants have engaged in any conduct or practices that violate any antitrust statute or other law.

28. Notice. Notice to Defendants pursuant to this Settlement Agreement shall be sent by United States mail and electronic mail to:

Beth A. Wilkinson
WILKINSON WALSH + ESKOVITZ LLP
2001 M Street, NW, 10th Floor
Washington, DC 20036
Tel: (202) 847-4000
bwilkinson@wilkinsonwalsh.com

J. Mark Gidley
WHITE & CASE LLP
701 Thirteenth Street NW
Washington, DC 20005
Tel: (202) 626-3600
mgidley@whitecase.com

Notice to the Plaintiffs pursuant to this Settlement Agreement shall be sent by United States mail and electronic mail to Plaintiffs' Counsel:

Bruce E. Gerstein
GARWIN GERSTEIN & FISHER LLP
88 Pine Street, 10th Floor
New York, NY 10005
Tel: (212) 398-0055
bgerstein@garwingerstein.com


David F. Sorensen
BERGER MONTAGUE PC

1818 Market Street, Suite 3600
Philadelphia, PA 19103
Tel: (215) 875-3000
dsorensen@bm.net

Any of the parties may, from time to time, change the address to which such notices, requests, consents, directives, or communications are to be delivered, by giving the other parties prior written notice of the changed address, in the manner hereinabove provided, ten (10) calendar days before the change is effective.

29. Execution in Counterparts. This Settlement Agreement may be executed in counterparts, and a facsimile or .pdf signature shall be deemed an original signature for purposes of executing this Settlement Agreement.

IN WITNESS WHEREOF, the parties hereto through their fully authorized representatives have agreed to this Settlement Agreement as of the date first herein above written.

By: 
Beth A. Wilkinson
WILKINSON WALSH + ESKOVITZ LLP
2001 M Street, NW, 10th Floor
Washington, DC 20036
Tel: (202) 847-4000
bwilkinson@wilkinsonwalsh.com

By: _____
J. Mark Gidley
WHITE & CASE LLP
701 Thirteenth Street NW
Washington, DC 20005
Tel: (202) 626-3600
mgidley@whitecase.com

Counsel for Defendants

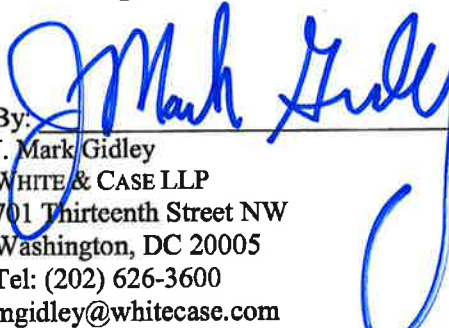
By: 
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Co-Lead Counsel for Plaintiffs and the Class

IN WITNESS WHEREOF, the parties hereto through their fully authorized representatives have agreed to this Settlement Agreement as of the date first herein above written.

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By: 
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Counsel for Defendants

By: 
Bruce E. Gerstein
GARWIN GERSTEIN & FISHER LLP
88 Pine Street, 10th Floor
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By: 
David F. Sorensen
BERGER MONTAGUE PC
1818 Market Street, Suite 3600
Philadelphia, PA 19103
Tel: (215) 875-3000
dsorensen@bm.net

Co-Lead Counsel for Plaintiffs and the Class

EXHIBIT A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE NAMENDA DIRECT PURCHASER ANTITRUST LITIGATION	Case No. 1:15-cv-07488-CM-RWL
THIS DOCUMENT RELATES TO: All Direct Purchaser Actions	

**[PROPOSED] ORDER GRANTING DIRECT PURCHASER CLASS PLAINTIFFS'
MOTION FOR PRELIMINARY APPROVAL OF PROPOSED SETTLEMENT,
APPROVAL OF THE FORM AND MANNER OF NOTICE TO THE CLASS AND
PROPOSED SCHEDULE FOR A FAIRNESS HEARING**

Upon review and consideration of Direct Purchaser Plaintiffs' Motion for Preliminary Approval of Proposed Settlement, Approval of the Form and Manner of Notice to the Class, and Proposed Schedule for a Fairness Hearing, the exhibits thereto, and any hearing thereon, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said motion is GRANTED as follows:

Jurisdiction

1. This Court has jurisdiction over each of the named plaintiffs, J M Smith Corp. (d/b/a Smith Drug Co.) ("Smith Drug"), and Rochester Drug Co-Operative, Inc. ("RDC") (collectively, "Plaintiffs"), individually and on behalf of the certified class in this action (defined below); and Forest Laboratories, LLC; Forest Laboratories, Inc.;¹ Forest Laboratories Holdings Ltd.; and Actavis plc (collectively, "Defendants"), and jurisdiction over the litigation to which Plaintiffs and Defendants are parties.

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.

2. This Order hereby incorporates by reference the definitions in the Settlement Agreement among Defendants, Plaintiffs, and the Class, and all capitalized terms used and not otherwise defined herein shall have the meanings set forth in the Settlement Agreement.

3. On August 2, 2018, this Court certified the following class (the “Class”):

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 “Class”). Excluded from the Class are the Defendants and their officers, directors, management, employees, subsidiaries, or affiliates, and all federal governmental entities.

4. The Court has appointed Smith Drug and RDC as representatives of the Class (the “Class Representatives”). The Court has also appointed Berger Montague PC and Garwin Gerstein & Fisher LLP as counsel for class (“Class Counsel”) pursuant to Fed. R. Civ. P. 23(g).

Preliminary Approval of the Proposed Settlement

5. A court may finally approve a class action settlement if it is “fair, adequate, and reasonable, and not a product of collusion.” *Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.*, 396 F.3d 96, 116 (2d Cir. 2005) (internal quotation marks omitted). “Preliminary approval,” however, “requires only an initial evaluation of the fairness of the proposed settlement on the basis of written submissions and an informal presentation by the settling parties.” *Tiro v. Pub. House Investments, LLC*, No. 11 CIV. 7679 CM, 2013 WL 2254551, at *1 (S.D.N.Y. May 22, 2013) (McMahon, J.) (internal quotation marks omitted). A “presumption of fairness, adequacy, and reasonableness may attach to a class settlement reached in arm’s-length negotiations between experienced, capable counsel after meaningful discovery.” *Wal-Mart*, 396 F.3d at 116 (quoting

Manual for Complex Litigation, Third, § 30.42 (1995)). The proposed settlement satisfies this standard.

6. The Court finds that the proposed settlement, which includes a cash payment of \$750,000,000 (Seven-Hundred and Fifty Million dollars) by Defendants into an escrow account for the benefit of the Class (the “Settlement Fund”) in exchange for, *inter alia*, dismissal of the litigation between Plaintiffs and Defendants with prejudice and releases of claims filed or that could have been filed against Defendants by Plaintiffs, as set forth in the Settlement Agreement, was arrived at by arm’s-length negotiations by highly experienced counsel after three mediations, four years of litigation, and on the eve of trial, falls within the range of possibly approvable settlements. The proposed settlement is therefore hereby preliminarily approved, subject to further consideration at the Fairness Hearing provided for below.

Approval of the Plan of Notice to the Class

7. Members of the Class have previously been given notice of the pendency of the litigation and the opportunity to exclude themselves from the Class. *See* ECF No. 679. No Class Member availed itself of that opportunity. *Id.* The proposed form of notice, which informs Class Members of the proposed Settlement thereof (annexed as Exhibit B to the Settlement Agreement (the “Notice”)) satisfies the requirements of Rule 23(e) and due process, is otherwise fair and reasonable, and therefore is approved. Class Counsel shall cause the Notice substantially in the form attached to the Settlement Agreement to be disseminated within 15 days of this Order via first-class mail to the last known address of each member of the Class.

8. The Court finds that because the prior notice of class certification, disseminated by first class mail to all members of the Class on or about December 14, 2018, satisfied the requirements of Fed. R. Civ. P. 23(c)(2)(B) and due process, and because the prior notice of class

certification provided an opt-out period that closed on February 20, 2019, there is no need for an additional opt-out period pursuant to Fed. R. Civ. P. 23(e)(4). See *Denney v. Deutsche Bank AG*, 443 F.3d 253, 270-71 (2d Cir. 2006) (courts are under “no obligation” to afford class members second opportunity for exclusion); *Wal-Mart*, 396 F.3d at 114-15 (rejecting argument that class members should have been granted “the opportunity to opt out after the settlement notice was issued” because the member “was required to opt out at the class notice stage if it did not wish to be bound by the Settlement.”); *Seijas v. Republic of Argentina*, No. 04-CV-1085 (TPG), 2017 WL 1511352, at *7 (S.D.N.Y. Apr. 27, 2017) (no second exclusion period warranted where “the opt-out notice for each class was well-designed, thoroughly circulated, and adequate. The content of the notices was sufficiently detailed to inform class members that their rights were at issue and to provide them an opportunity to learn the full extent of this litigation.”).

9. Plaintiffs report that two very small purchasers of generic Namenda IR (Cochran Wholesale Pharmacy and QK Healthcare) who fit within the Class definition, were inadvertently omitted from the list of class members. Plaintiffs are directed to send notices of the proposed settlement to these entities. Plaintiffs also report that DMS Pharmaceutical Group (“DMS”) was included as a class member, but upon further review of data, Plaintiffs advise that DMS does not qualify as a class member. Plaintiffs are directed to send separate notice to DMS advising it of Class Counsel’s determination that DMS does not qualify as a class member, the basis for such determination, and advising that DMS may contest such determination by making a submission to the Court on or before _____, the same date that objections to the Settlement are due.

10. Pursuant to the Class Action Fairness Act of 2005 (“CAFA”) Defendants shall serve notices as required under 28 U.S.C. § 1715 no later than 10 (ten) days from the date

Plaintiffs file the Settlement Agreement and Motion for Preliminary Approval with the Court. Defendants shall contemporaneously provide Class Counsel with copies of any such notices.

11. Members of the Class may object to the Settlement no later than _____ (45 days from the dissemination of the Notice). Class Counsel or their designee shall monitor and record any and all objections that are received.

12. The Court appoints Rust Consulting to serve as claims administrator and to assist Class Counsel in disseminating the Notice. All expenses incurred by the claims administrator must be reasonable, are subject to Court approval other than as provided for in the Settlement Agreement, and shall be payable solely from the Settlement Fund.

13. The Court appoints First State Trust Company for the purpose of administering the escrow account holding the Settlement Fund. All expenses incurred by the Escrow Agent must be reasonable, are subject to Court approval other than as provided for in the Settlement Agreement, and shall be payable solely from the Settlement Fund. A copy of the Escrow Agreement executed by First State Trust Company and counsel is annexed as Exhibit D to the Settlement Agreement.

Final Fairness Hearing

14. A hearing on final approval (the "Fairness Hearing") shall be held before this Court at 10:00 AM on _____ **[insert date certain 90 days from service of CAFA notice]**, at Courtroom 24A of the United States District Court for the Southern District of New York, 500 Pearl Street, New York, New York 10007. At the Fairness Hearing, the Court will consider, *inter alia*: (a) the fairness, reasonableness and adequacy of the Settlement and whether the Settlement should be finally approved; (b) whether the Court should approve the proposed plan of distribution of the Settlement Fund among Class members; (c) whether the Court should

approve awards of attorneys' fees and reimbursement of expenses to Class Counsel; (d) whether incentive awards should be awarded to the Named Plaintiffs; and (e) whether entry of a Final Judgment and Order terminating the litigation between Plaintiffs and Defendants should be entered. The Fairness Hearing may be rescheduled or continued; in this event, the Court will furnish all counsel with appropriate notice. Class Counsel shall be responsible for communicating any such notice promptly to the Class by posting a conspicuous notice on the following website of Class Counsel: www.garwingerstein.com; and www.bergermontague.com.

15. Class members who wish to: (a) object with respect to the proposed Settlement; and/or (b) wish to appear in person at the Fairness Hearing, must first send an Objection and, if intending to appear, a Notice of Intention to Appear, along with a Summary Statement outlining the position(s) to be asserted and the grounds therefore together with copies of any supporting papers or briefs, via first class mail, postage prepaid, to the Clerk of the United States District Court for the Southern District of New York, 500 Pearl Street, New York, New York 10007, with copies to the following counsel:

On Behalf of Plaintiffs and the Class:

Bruce E. Gerstein, Esq.
GARWIN GERSTEIN & FISHER, LLP
88 Pine Street, 10th Floor
New York, NY 10005
Tel.: (212) 398-0055
Fax: (212) 764-6620

David F. Sorensen
BERGER MONTAGUE PC
1818 Market Street – Suite 3600
Philadelphia, PA 19103
Tel.: (215) 875-3000
Fax: (215) 875-4604

Co-Lead Counsel for Plaintiffs and the Class

On Behalf of Defendants:

Beth A. Wilkinson, Esq.
WILKINSON, WALSH + ESKOVITZ LLP
2001 M Street N.W., 10th Floor
Washington, DC 20036
Tel: (202) 847-4000

J. Mark Gidley
WHITE & CASE LLP
701 Thirteenth Street NW
Washington, DC 20005
Tel: (202) 626-3600

Fax: (202) 847-4005

Fax: (202) 639-9355

Counsel for Defendants

To be valid, any such Objection and/or Notice of Intention to Appear and Summary statement must be postmarked no later than _____ (45 days from the date of mailing of the Notice). Except as herein provided, no person or entity shall be entitled to contest the terms of the proposed Settlement. All persons and entities who fail to file an Objection and/or Notice of Intention to Appear as well as a Summary Statement as provided above shall be deemed to have waived any such objections by appeal, collateral attack or otherwise and will not be heard at the Fairness Hearing.

16. All briefs and materials in support of the application for an award of attorneys' fees and reimbursement of expenses, and incentive awards for the Named Plaintiffs, shall be filed with the Court by _____ (14 days prior to the expiration of the deadline for Class members to object to the Settlement and/or attorney's fees, expenses and incentive awards).

17. All briefs and materials in support of the final approval of the settlement and the entry of Final Judgment proposed by the parties to the Settlement Agreement shall be filed with the Court by _____ (21 days after the expiration of the deadline for Class members to object to the Settlement and/or attorney's fees, expenses and incentive awards).

18. All proceedings in the action between Plaintiffs and Defendants are hereby stayed until such time as the Court renders a final decision regarding the approval of the Settlement and, if the Court approves the Settlement, enters Final Judgment and dismisses such actions with prejudice.

19. Neither this Order, nor the Settlement Agreement, nor any other Settlement-related document, nor anything contained herein or therein or contemplated hereby or thereby, nor any proceedings undertaken in accordance with the terms set forth in the Settlement Agreement or herein or in any other Settlement-related document, shall constitute, be construed as or be deemed to be evidence of or an admission or concession in any action or proceeding of any kind whatsoever, civil, criminal or otherwise, before any court, administrative agency, regulatory body or any other body or authority, present or future, by Defendants including, without limitation, that Defendants have engaged in any conduct or practices that violate any antitrust statute or other law.

SO ORDERED this ____ day of _____, 20__

The Honorable Colleen McMahon
Chief United States District Judge

EXHIBIT B

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

If you bought branded Namenda IR, branded Namenda XR, or generic Namenda IR directly from a manufacturer you could get a payment from a class action settlement.

A federal court authorized this notice. It is not a solicitation from a lawyer.

- The purpose of this notice is to alert you about a proposed settlement relating to a Class Action Lawsuit (the “Lawsuit”) brought by Direct Purchasers of branded Namenda IR (immediate release memantine hydrochloride), branded Namenda XR (extended release memantine hydrochloride), and/or generic Namenda IR (generic immediate release memantine hydrochloride) (“Direct Purchaser Class Plaintiffs”). The lawsuit asserts that Forest Laboratories, LLC, Forest Laboratories, Inc., Forest Laboratories Holdings Ltd., and Actavis plc (“Forest” or “Defendants”) violated antitrust laws relating to the sale of these prescription pharmaceuticals. Defendants have denied any wrongdoing.
- The Court previously determined that the Lawsuit between Direct Purchaser Class Plaintiffs and Defendants can be a class action because it meets the requirements of Federal Rule of Civil Procedure 23, which governs class actions in federal courts. The class (hereinafter, the “Direct Purchaser Class” or the “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. Excluded from the Class are Defendants and their officers, directors, management, employees, subsidiaries, or affiliates, and all federal governmental entities.

- The Court has preliminarily approved the proposed settlement between the Direct Purchaser Class and Defendants. The proposed settlement will provide for the payment of \$750,000,000.00 (seven hundred and fifty million dollars and no/100) in cash into an escrow account (the “Settlement Fund”) for allocation to the members of the Class after payment of Direct Purchaser Class Counsel’s attorneys’ fees, costs, and incentive awards to the Class Representatives out of the Settlement Fund, as approved by the Court. The full text of the proposed settlement (“Settlement Agreement”), which is dated December __, 2019, is available for your review at www.bergermontague.com and www.garwingerstein.com.
- The Court has scheduled a hearing on Final Approval of the proposed settlement, the plan for allocating the Settlement Fund to members of the Class (summarized in Question 8 below), and Class Counsel’s request for reimbursement of costs and payment of attorneys’ fees out of the Settlement Fund. That hearing is scheduled for _____, 20__, at __:__ .m., before Chief Judge Colleen McMahon of the U.S. District Court for the Southern District of New York,

in Courtroom 24A of the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, New York, NY 10007-1312.

- Your legal rights are affected whether you act or do not act, so please read this notice carefully.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
WHEN YOU RECEIVE A CLAIM FORM, PROMPTLY COMPLETE AND RETURN IT	You do not need to do anything now to retain your right to seek a share of the proposed settlement. If the Court decides to give the proposed settlement Final Approval and you are a Class Member, then you will need to complete, sign and return a Claim Form (which will be mailed to you) to obtain a share of the proposed settlement.
OBJECT TO THE SETTLEMENT	If you object to all or any part of the proposed settlement, write to the Court about why you object to the proposed settlement.
GETTING MORE INFORMATION	If you would like to obtain more information about the proposed settlement, you can send questions to the lawyers identified in this notice and/or ask to attend the hearing at which the Court will evaluate the proposed settlement.

- These rights and options – **and the deadlines to exercise them** – are explained in this notice.
- The Court in charge of this case still has to decide whether to give Final Approval to the proposed settlement with Defendants.

BASIC INFORMATION.....PAGE __

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3. Why is this lawsuit a class action?
4. Has the Court identified Class Claims, Issues, or Defenses?
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THE SETTLEMENT BENEFITS - WHAT YOU GETPAGE __

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THE LAWYERS REPRESENTING YOUPAGE __

11. Do I have a lawyer in this case?

- 12. Should I get my own lawyer?
- 13. How will the lawyers be paid?

OBJECTING TO THE SETTLEMENT..... PAGE __

- 14. How do I tell the Court that I do not like the settlement with Defendants?

THE COURT’S FAIRNESS HEARING PAGE __

- 15. When and where will the Court decide whether to approve the settlement with Defendants?
- 16. Do I have to come to the hearing?
- 17. May I speak at the hearing?

IF YOU DO NOTHING PAGE __

- 18. What happens if I do nothing at all?

GETTING MORE INFORMATION PAGE __

- 19. How do I get more information?

BASIC INFORMATION

1. Why did I get this notice?

You received this notice because according to sales records obtained by Direct Purchaser Class Plaintiffs, you may have purchased Namenda IR, Namenda XR, and/or generic Namenda IR directly from Forest or its successors in interest, Actavis or Allergan, and/or from any generic manufacturer at some point between June 2012 until September 30, 2015. A prior notice about the Lawsuit and the Court’s decision to certify a class was mailed on or about December 14, 2018. This second notice is being sent to you because a settlement has been reached in the Lawsuit.

2. What is this lawsuit about?

The Direct Purchaser Class Plaintiffs allege that Defendants violated federal antitrust laws by engaging in an unlawful scheme to delay and impede the market entry of less expensive, generic versions of Namenda IR. Specifically, the Direct Purchaser Class Plaintiffs allege that Defendants entered into unlawful, non-competition agreements, or horizontal market allocation agreements, with a prospective generic competitor, whereby Defendants agreed to pay the generic competitor, in exchange for the generic competitor agreeing to delay selling its generic version of Namenda IR. The Direct Purchaser Plaintiffs further allege that Defendants then engaged in a “hard switch product hop” to compel purchasers to switch to Defendants’ extended release version of Namenda, called Namenda XR, before less expensive generic versions of Namenda IR became available. Direct Purchaser Class Plaintiffs allege that they and other members of the Class were injured by being overcharged because of Defendants’ conduct and overpaid on their purchases of Namenda IR, Namenda XR, and generic Namenda IR. A copy of the Direct Purchaser Class Plaintiffs’ First Amended Class Action Complaint filed October 14, 2015 (the “Complaint”) is available at www.bergermontague.com and www.garwingerstein.com.

Defendants deny all these allegations, including that any Class member is entitled to damages or other relief. Defendants also respond that none of their conduct violated any

applicable law or regulation. The settlement between Direct Purchaser Class Plaintiffs and Defendants is not an admission of wrongdoing by any Defendant. A trial was scheduled to be on October 28, 2019, but the parties reached a settlement and no trial has occurred.

Following full investigation of relevant facts, and preparation for trial, and following extensive negotiations utilizing more than one independent mediator including former United States District Court Judge Faith S. Hochberg, the class representatives of the Direct Purchaser Class, on behalf of the Class, entered into the Settlement Agreement with Defendants.

THIS NOTICE IS NOT AN EXPRESSION OF ANY OPINION BY THE COURT AS TO THE MERITS OF DIRECT PURCHASER CLASS PLAINTIFFS' CLAIMS AGAINST ANY DEFENDANT OR THE DEFENSES ASSERTED BY ANY DEFENDANT.

The class action is known as *In re Namenda Direct Purchaser Antitrust Litigation*, Civil Action No. 1:15-cv-07488-CM-RWL (S.D.N.Y.). Chief Judge Colleen McMahon of the United States District Court for the Southern District of New York is overseeing this class action.

3. Why is this lawsuit a class action?

In a class action, one or more entities called "Class Representatives" sue on behalf of other entities with similar claims. In this case, the Class Representatives are J M Smith Corporation d/b/a Smith Drug Company and Rochester Drug Co-Operative, Inc. ("RDC"). The Class Representatives and the entities on whose behalf they have sued together constitute the "Class" or "Class Members." They are also called the "Direct Purchaser Class Plaintiffs" or "Plaintiffs." Their attorneys are called "Plaintiffs' Counsel" or "Class Counsel."

The companies that have been sued are called the "Defendants." In this case, the Defendants are Forest Laboratories, LLC, Forest Laboratories, Inc., Forest Laboratories Holdings Ltd., and Actavis plc.

In a class action lawsuit, one court resolves the issues for everyone in the class, except for those class members who exclude themselves (i.e., "opt out") from the class. The Court, by order dated August 2, 2018, determined that the Lawsuit between Direct Purchaser Class Plaintiffs and Defendants can proceed as a class action. A copy of the Court's order may be found at www.bergermontague.com and www.garwingerstein.com.

Specifically, the Court found that:

- The number of Class members is so numerous that joining them all into one suit is impractical.
- Members of the Class share common legal or factual issues relating to the claims in this case.
- The claims of the Class Representatives are typical of the claims of the rest of the Class.
- The Class Representatives and the lawyers representing the Class will fairly and adequately protect the Class's interests.

- The common legal questions and facts predominate over questions affecting only individual members of the Class, and this class action will be more efficient than individual lawsuits.
- A class action is the superior method to resolve these claims.

4. Has the Court identified Class Claims, Issues, or Defenses?

The Court has identified the following classwide issues:

- (a) Whether the conduct challenged by the Class as anticompetitive in the Complaint constituted monopolization in violation of Section 2 of the Sherman Act, 15 U.S.C. § 2;
- (b) Whether the conduct challenged by the Class as anticompetitive in the Complaint constituted an agreement in restraint of trade in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1;
- (c) Whether the challenged conduct caused antitrust injury-in-fact to the Class, in the form of overcharges; and
- (d) The amount of overcharge damages, if any, owed to the Class in the aggregate under Section 4 of the Clayton Act, 15 U.S.C. § 4.

5. Why is there a settlement with Defendants?

The Direct Purchaser Class Plaintiffs and Defendants were preparing to go to trial beginning October 28, 2019, but they have now agreed to a proposed settlement. By settling, both the Direct Purchaser Class Plaintiffs and Defendants avoid the risks and uncertainties of trial and any subsequent appeal. The Class Representatives and Class Counsel believe that the proposed settlement is fair, adequate, and reasonable and in the best interests of the Class.

WHO IS IN THE CLASS AND SETTLEMENT

To see if you are in the Class, and if so, how you will be able to share in the Settlement Fund, you first have to decide if you are a Class Member.

6. Am I part of the Class and the settlement with Defendants ?

You are in the Class if you are a person or entity in the United States and its territories and possessions including the Commonwealth of Puerto Rico who directly purchased Namenda IR or Namenda XR or generic Namenda IR 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.

Excluded from the Class are Defendants and their officers, directors, management, employees, subsidiaries, and affiliates, and all federal governmental entities.

If you are not sure whether you are included, you may call or write to the lawyers in this case at the telephone numbers or addresses listed in Question 11 below.

THE SETTLEMENT BENEFITS—WHAT YOU GET

7. What does the settlement with Defendants provide?

Defendants have agreed to pay \$750,000,000.00 in cash into the Settlement Fund (which will include any interest that accrues). Direct Purchaser Class Plaintiffs' Counsel will apply to the Court for reimbursement of costs and expenses, incentive awards to the Class Representatives of \$150,000 each for Smith Drug and RDC for their services to the Class, and an award of attorneys' fees of up to one-third of the Settlement Fund, net of expenses and service awards approved by the Court, and a proportionate share of the interest, and payment for costs of administering the settlement from the fund. The remainder (the "Net Settlement Fund") will be divided among Class Members.

In exchange, the litigation between the Direct Purchaser Plaintiffs and Defendants will be dismissed with prejudice and Defendants will be released by Direct Purchaser Class Plaintiffs from certain claims. The full text of the Settlement Agreement and the release is available at www.bergermontague.com and www.garwingerstein.com.

8. How much will my payment be?

Your share of the Net Settlement Fund will depend on the amount of Namenda IR or Namenda XR you purchased directly from Defendants or their successors in interest, Actavis and Allergan, during the period from June 1, 2012 until June 30, 2017, and/or the amount of generic Namenda IR you purchased directly from any generic manufacturer at any time during the period from July 11, 2015 (when generic Namenda IR launched) until September 30, 2015. Generally, those who purchased more will get a higher recovery, and those who purchased branded Namenda IR and/or XR will get more than those who purchased only generic Namenda IR.

Your share of the Net Settlement Fund will also depend on the number of valid claim forms that Class Members submit. If less than 100% of the Class sends in a claim form, you could get a larger *pro rata* share. More detail is available in the Proposed Plan of Allocation, which is available at www.bergermontague.com and www.garwingerstein.com.

9. How can I get a payment?

If the Court gives Final Approval to the settlement, then you will receive a Claim Form in the mail by which you can request your *pro rata* share of the Settlement Fund. (See Question 8 above). You may be asked to verify the accuracy of the information in the Claim Form, and to sign and return the form according to the directions on the form. For instance, you may be requested to confirm that the Claim Form accurately reports the amount of your qualifying purchases of Namenda IR, Namenda XR, and/or generic Namenda IR, and, if you believe it does not, to supply data you believe to be correct.

10. When would I get my payment?

When you get your payment depends on several matters, including whether the Court decides to give Final Approval to the settlement.

When you get a payment depends on the timing of Final Approval and any appeal of that Final Approval. The Net Settlement Fund will be allocated to Class Members as soon as possible after Final Approval has been obtained for the proposed settlement. You will not be responsible for calculating the amount you may be entitled to receive. The Plan of Allocation is generally as follows: the allocation will be on a *pro rata* basis in proportion to how much qualifying branded Namenda IR, Namenda XR, and/or generic Namenda IR you purchased. 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. If the proposed settlement is given Final Approval, but there is an appeal of the Final Approval, the appeal could take several years to resolve. Any accrued interest on the Settlement Fund will be included, *pro rata*, in the amount paid to the Class Members. The Proposed Plan of Allocation is available at www.bergermontague.com and www.garwingerstein.com.

THE LAWYERS REPRESENTING YOU

11. Do I have a lawyer in this case?

The attorneys and law firms listed below have been appointed by the Court as Lead Class Counsel. Lead Class Counsel is experienced in handling similar cases against other companies. Lead Class Counsel are:

Bruce E. Gerstein, Esq.
GARWIN GERSTEIN & FISHER LLP
88 Pine Street, 10th Floor
New York, NY 10005
Tel.: 212-398-0055
Fax: 212-764-6620

David F. Sorensen
BERGER MONTAGUE PC
1818 Market Street – Suite 3600
Tel.: 215-875-3000
Fax: 215-875-4604

12. Should I get my own lawyer?

You do not need to hire your own lawyer because Lead Class Counsel are working on your behalf. However, if you wish to do so, you may retain your own lawyer at your own expense.

13. How will the lawyers be paid?

If the Court gives Final Approval to the settlement, then the Court will be asked to approve reimbursement to the lawyers for the costs and expenses they have paid, incentive awards to the Class Representatives for their services to the Class of \$150,000 each to Smith Drug

and to RDC, and a fee to the lawyers of up to one-third of the Settlement Fund (including accrued interest but net of expenses and service awards the Court approves). You will not have to pay these fees, costs and expenses, and service awards out of your own pocket. If the Court grants Class Counsel's requests, these amounts would be deducted from the Settlement Fund.

Any application by Class Counsel for an award of attorneys' fees, reimbursement of expenses and incentive awards to the Class Representatives will be filed with the Court and made available for download and/or viewing on or before _____, 20__ on www.bergermontague.com and www.garwingerstein.com, as well as at the office of the Clerk of Court for the United States District Court for the Southern District of New York, Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, New York, NY 10007-1312, during normal business hours.

OBJECTING TO THE SETTLEMENT

You can tell the Court that you do not agree with all or any part of the proposed settlement, and/or the application for attorneys' fees, costs, and expenses, and/or incentive awards to the Class Representatives.

14. How do I tell the Court that I do not like the settlement with Defendants ?

If you are a Class Member, you can object to all or any part of the proposed settlement if you do not like all or any part of it. You can give reasons why you think the Court should not approve it. You can also object to Class Counsel's application for attorneys' fees, costs and expenses and/or incentive awards to the Class Representatives, which will be filed with the Court and available for public viewing no later than _____, 20__. The Court will consider your views. To object, you must send a letter via first class U.S. mail saying that you object to the settlement in the Direct Purchaser Class Action in *In re Namenda Direct Purchaser Antitrust Litigation*, Civil Action No. 1:15-cv-07488-CM-RWL (S.D.N.Y.). Be sure to include your name, address, telephone number, your signature, and the reasons you object to the settlement. Mail the objection to the Clerk of the United States District Court for the Southern District of New York, Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, New York, NY 10007-1312, with copies to all of the following:

Bruce E. Gerstein, Esq.
GARWIN GERSTEIN & FISHER LLP
88 Pine Street, 10th Floor
New York, NY 10005
Tel.: 212-398-0055
Fax: 212-764-6620

David F. Sorensen
BERGER MONTAGUE PC
1818 Market Street – Suite 3600
Tel.: 215-875-3000
Fax: 215-875-4604

Beth A. Wilkinson
WILKINSON WALSH + ESKOVITZ LLP
2001 M Street, NW, 10th Floor
Washington, DC 20036
Tel: (202) 847-4000
Fax: (202) 847-4005

J. Mark Gidley
WHITE & CASE LLP
701 Thirteenth Street NW
Washington, DC 20005
Tel: (202) 626-3600
Fax: (202) 639-9355

Your objection **must be postmarked no later than** _____.

THE COURT'S FAIRNESS HEARING

The Court will hold a hearing to decide whether to give Final Approval to the settlement. You may attend and you may ask to speak, but you do not have to.

15. When and where will the Court decide whether to approve the settlement with Defendants?

The Court will hold a Fairness Hearing at ___ on _____, 20__, in Courtroom 24A in the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, New York, NY 10007-1312. At this hearing, the Court will consider whether the settlement is fair, reasonable and adequate. If there are objections, the Court will consider them. After the hearing, the Court will decide whether to give Final Approval to the settlement. We do not know how long the decision will take.

16. Do I have to come to the hearing?

No. Class Counsel will answer questions that the Court may have. But, you are welcome to come at your own expense. If you send an objection, you do not have to come to Court to talk about it. So long as you mail your written objection on time, the Court will consider it. You may also pay your own lawyer to attend, but it is not necessary. Moreover, attendance is not necessary to receive a *pro rata* share of the Net Settlement Fund.

17. May I speak at the hearing?

You may ask the Court for permission to speak at the Fairness Hearing. To do so, you must send a letter via first class U.S. mail saying that it is your "Notice of Intention to Appear in *In re Namenda Direct Purchaser Antitrust Litigation*, Civil Action No. 1:15-cv-07488-CM-RWL (S.D.N.Y.)." Be sure to include your name, address, telephone number, and your signature. Your Notice of Intention to Appear must be postmarked no later than _____, 20__, and must be sent to the Clerk of the Court, Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, New York, NY 10007-1312; and to Class Counsel and Defendants' counsel, at the addresses set forth in the response to Question 14. You cannot speak at the hearing if you do not send a notice of intention to appear.

IF YOU DO NOTHING

18. What happens if I do nothing at all?

If you are a Class Member and you do nothing, you will remain in the Class and be eligible to participate in the settlement as described in this notice, if the settlement is approved. However, you will need to complete, sign and return the Claim Form (once it is sent to you) in order to obtain a payment.

GETTING MORE INFORMATION

19. How do I get more information?

If you have questions about this case or want to get additional information, you may call or write to the lawyers listed in answer to Question 11 or visit the website www.bergermontague.com or www.garwingerstein.com. This notice is only a summary of the proposed settlement and is qualified in its entirety by the terms of the actual Settlement Agreement. A copy of the Settlement Agreement is on public file with the United States District Court for the Southern District of New York, Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, New York, NY 10007-1312 during normal business hours and is also available for download and/or viewing at www.bergermontague.com and www.garwingerstein.com.

PLEASE DO NOT WRITE OR CALL THE COURT OR THE CLERK'S OFFICE FOR INFORMATION.

DATE: _____, 20__

BY THE COURT

Honorable Colleen McMahon
Chief Judge, United States District Court
for the Southern District of New York

EXHIBIT C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

<p>IN RE NAMENDA DIRECT PURCHASER ANTITRUST LITIGATION</p> <p>THIS DOCUMENT RELATES TO: All Direct Purchaser Actions</p>	<p>Case No. 1:15-cv-07488-CM-RWL</p>
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**[PROPOSED] ORDER GRANTING FINAL JUDGMENT AND
ORDER OF DISMISSAL APPROVING DIRECT PURCHASER
CLASS SETTLEMENT AND DISMISSING DIRECT
PURCHASER CLASS CLAIMS**

Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, and in accordance with the terms of the Settlement Agreement dated December 20, 2019, between plaintiffs J M Smith Corp. d/b/a Smith Drug Co. (“Smith Drug”) and Rochester Drug Co-Operative, Inc. (“RDC”) (collectively, the “Class Representatives”), and on behalf of the Class defined below (together with the Class Representatives, the “Plaintiffs”), and defendants Forest Laboratories, LLC; Forest Laboratories, Inc.;¹ Forest Laboratories Holdings Ltd.; and Actavis plc (collectively, “Defendants”), it is hereby ORDERED, ADJUDGED AND DECREED as follows:

1. This Final Judgment and Order of Dismissal hereby incorporates by reference the definitions in the Settlement Agreement among Plaintiffs and Defendants, all capitalized terms used and not otherwise defined herein shall have the meanings set forth in the Settlement Agreement.

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.

2. On August 2, 2018, this Court certified the following class (the “Class”):

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. Excluded from the Class are the Defendants and their officers, directors, management, employees, subsidiaries, or affiliates, and all federal governmental entities.

3. The Court previously appointed the Class Representatives. The Court previously appointed Bruce E. Gerstein of Garwin Gerstein & Fisher, LLP and David F. Sorensen of Berger Montague PC as Co-Lead Counsel for the Class (“Class Counsel”). The Class Representatives and Class Counsel have fairly and adequately represented the interests of the Class and satisfied the requirements of Fed. R. Civ. P. 23(g).

4. The Court has jurisdiction over these actions, each of the parties, and all members of the Class for all manifestations of this case, including this Settlement.

5. The notice of settlement (substantially in the form presented to this Court as Exhibit B to the Settlement Agreement) (the “Notice”) directed to the members of the Class via First Class Mail, constituted the best notice practicable under the circumstances. In making this determination, the Court finds that the Notice provided for individual notice to all members of the Class who were identified through reasonable efforts. Pursuant to, and in accordance with, Rule 23 of the Federal Rules of Civil Procedure, the Court hereby finds that the Notice provided Class members due and adequate notice of the Settlement, the Settlement Agreement, these proceedings, and the rights of Class members to object to the Settlement.

6. Due and adequate notice of the proceedings having been given to the Class and a full opportunity having been offered to the Class to participate in the _____, 2020

Fairness Hearing, it is hereby determined that all Class members are bound by this Order and Final Judgment.

7. The Settlement of this Class Action was not the product of collusion between the Class Representatives and Defendants or their respective counsel, but rather was the result of *bona fide* and extensive arm's-length negotiations conducted in good faith between Class Counsel and counsel for Defendants, with the assistance of multiple mediators, including former United States District Court Judge Faith S. Hochberg.

8. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, this Court hereby approves the Settlement, and finds that the Settlement is, in all respects, fair, reasonable and adequate to Class members and in their best interests. Accordingly, the Settlement shall be consummated in accordance with the terms and provisions of the Settlement Agreement.

9. The Court hereby approves the Plan of Allocation of the Settlement Fund as proposed by Class Counsel (the "Plan of Allocation"), which was summarized in the Notice of Proposed Settlement and is attached to Plaintiffs' Motion for Final Approval of Settlement, and directs [Settlement Administrator], the firm retained by Class Counsel as the Claims Administrator, to distribute the net Settlement Fund as provided in the Plan of Allocation.

10. All claims against Defendants in *In re Namenda Direct Purchaser Antitrust Litigation*, Civil Action No. 1:15-cv-07488-CM-RWL (S.D.N.Y.) (the "Class Action") are hereby dismissed with prejudice, and without costs (other than as provided herein).

11. Upon the Settlement Agreement becoming final in accordance with paragraph 5 of the Settlement Agreement, 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") are and shall be unconditionally, fully, and finally released and forever discharged 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 Plaintiffs and all Class members, whether or not they make a claim upon or participate in the Settlement Fund, on behalf of themselves and their 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 "Releasers"), ever had, now has, or hereafter can, shall or may have, directly, representatively, derivatively or in any other capacity, arising out of or relating in any way 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 pre-trial 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 the date of the Settlement Agreement (collectively, this entire paragraph the "Released Claims").

12. In addition, Plaintiffs and each Class member, on behalf of themselves and all other Releasors, hereby expressly waive, release and forever discharge, upon the Settlement becoming final, 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 which are the subject matter of paragraph 11 of the Settlement Agreement, but each Releasor hereby expressly waives and fully, finally and forever settles, releases, and discharges, upon this Settlement becoming final, any known or unknown, foreseen or unforeseen, suspected or unsuspected, asserted or unasserted, contingent or non-contingent claim that would otherwise fall within the definition of Released Claims, 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 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.

13. As set forth in Paragraph 13 of the Settlement Agreement (with subheading “Reservation of Claims”), the releases set forth in Paragraphs 11 and 12 of the Settlement Agreement (and in Paragraphs 11 and 12 of this Order) shall not release any claims between Plaintiffs, members of the Class, the Releasors, and the Defendants and the Releasees (a) arising in the ordinary course of business between Releasors and Releasees 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 (b) other claims unrelated to Namenda IR, Namenda XR, or their generic equivalents.

14. Class Counsel have moved for an award of attorneys’ fees, reimbursement of expenses and incentive awards for the Class Representatives. Class Counsel request an award of attorneys’ fees of _____% of the Settlement amount (including the interest accrued thereon), reimbursement of the reasonable costs and expenses incurred in the prosecution of this action in the amount of \$ _____, and incentive awards totaling \$300,000 collectively for the two Class Representatives, and such motion has been on the docket and otherwise publicly available since _____, 20__.

15. Upon consideration of Class Counsel’s petition for fees, costs and expenses, Class Counsel are hereby awarded attorneys’ fees totaling _____ (representing _____% of the Settlement Fund) and costs and expenses totaling _____, together with a proportionate share of the interest thereon from the date the funds are deposited in the Settlement Escrow Account until payment of such attorneys’ fees, costs and expenses, at the rate earned by the Settlement Fund, to be paid solely from the Settlement Fund and only if and after the Settlement becomes final in accordance with paragraph 5 of the Settlement Agreement.

16. Upon consideration of Class Counsel's petition for incentive payments for Class Representatives, Smith Drug and RDC are each hereby awarded \$150,000, to be paid solely from the Settlement Fund and only if and after the Settlement becomes final in accordance with paragraph 5 of the Settlement Agreement. Class Counsel David F. Sorensen and Bruce E. Gerstein shall allocate and distribute such attorneys' fees, costs and expenses among the various Class Counsel which have participated in this litigation. The Releasees shall have no responsibility for, and no liability whatsoever with respect to, any payment or disbursement of attorneys' fees, expenses, costs or incentive awards among Class Counsel and/or Class Representatives, nor with respect to any allocation of attorneys' fees, expenses, costs or incentive awards to any other person or entity who may assert any claim thereto. The attorneys' fees, costs and expenses, and incentive awards authorized and approved by this Final Judgment and Order shall be paid to Berger Montague PC and Garwin Gerstein & Fisher LLP within five (5) business days after this Settlement becomes final pursuant to paragraph 5 of the Settlement Agreement or as soon thereafter as is practical and in accordance with the terms of the Settlement Agreement and the Escrow Agreement. The attorneys' fees, costs and expenses, and incentive award authorized and approved by this Final Judgment and Order shall constitute full and final satisfaction of any and all claims that Plaintiffs and any Class member, and their respective counsel, may have or assert for reimbursement of fees, costs, and expenses, and incentive awards, and Plaintiffs and members of the Class, and their respective counsel, shall not seek or demand payment of any fees and/or costs and/or expenses and/or incentive awards from Defendants other than from the Settlement Fund.

17. The Court retains exclusive jurisdiction over the Settlement and the Settlement Agreement as described therein, including the administration and consummation of the Settlement, and over this Final Judgment and Order.

18. The Court finds that this Final Judgment and Order adjudicates all of the claims, rights and liabilities of the parties to the Settlement Agreement (including the members of the Class), and is final and shall be immediately appealable. Neither this Order nor the Settlement Agreement nor any other Settlement-related document shall constitute any evidence, admission, or concession by Defendants or any other Releasee, in this or any other matter or proceeding of any kind whatsoever, civil, criminal or otherwise, before any court, administrative agency, regulatory body, or any other body or authority, present or future, nor shall either the Settlement Agreement, this Order, or any other Settlement-related document be offered in evidence or used for any other purpose in this or any other matter or proceeding except as may be necessary to consummate or enforce the Settlement Agreement, the terms of this Order, or if offered by any Releasee in responding to any action purporting to assert Released Claims, or if offered by any Releasor in asserting that a claim is not a Released Claim, including because such claim is covered by Paragraph 13 of the Settlement Agreement (“Reservation of Claims”).

SO ORDERED this ____ day of _____, 2020

The Honorable Colleen McMahon
Chief United States District Judge

EXHIBIT D

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE NAMENDA DIRECT PURCHASER ANTITRUST LITIGATION	Case No. 1:15-cv-07488-CM-RWL
THIS DOCUMENT RELATES TO: All Direct Purchaser Actions	

ESCROW AGREEMENT

1. This escrow agreement (the “Escrow Agreement”) by and among (a) Beth A. Wilkinson and J. Mark Gidley, acting on behalf Forest Laboratories, LLC; Forest Laboratories, Inc.;¹ Forest Laboratories Holdings Ltd.; and Actavis plc (Forest Laboratories, LLC; Forest Laboratories, Inc.;² Forest Laboratories Holdings Ltd.; and Actavis plc, collectively, “Defendants”); (b) David F. Sorensen and Bruce E. Gerstein, Direct Purchaser Class Plaintiffs’ Co-Lead Counsel, on behalf of Plaintiffs JM Smith Drug Co. (“Smith Drug”) and Rochester Drug Co-Operative, Inc. (“RDC”), and all members of the direct purchaser class of Namenda IR, Namenda XR, and generic immediate release memantine hydrochloride (collectively “Direct Purchaser Class Plaintiffs”), in *In re Namenda Direct Purchaser Antitrust Litig.*, 15-cv-07488 (S.D.N.Y) (the “Direct Purchaser Class Action”); and (c) First State Trust Company, as directed escrow agent (the “Directed Escrow Agent”) is entered into on December 20, 2019, in

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.

² 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.

connection with Settlement Agreement dated December 20, 2019 (the "Settlement Agreement"). Capitalized terms not defined herein shall have the meanings specified in the Settlement Agreement. Co-Lead Counsel (on behalf of Plaintiffs and the Direct Purchaser Class) and Defendants, by and through their respective counsel, have entered into their respective Settlement Agreement wherein they agreed, subject to the final approval of the Court in the Direct Purchaser Class Action (the "Court"), that the Direct Purchaser Class Action be dismissed with prejudice as to Defendants in exchange for payments by Defendants of the Settlement Fund, consisting of a total of \$750,000,000.00 (seven hundred fifty million dollars and no/100) in cash.

2. The Directed Escrow Agent was selected by Direct Purchaser Class Plaintiffs' Co-Lead Counsel, to which selection Defendants consented. The parties hereto are entering into this Escrow Agreement in order to effectuate certain of the terms of the Settlement Agreement. Beth A. Wilkinson of Wilkinson Walsh + Eskovitz LLP and J. Mark Gidley of White & Case ("Defendants' Counsel") are signing on behalf of Defendants, and David F. Sorensen of Berger Montague PC and Bruce E. Gerstein of Garwin Gerstein & Fisher LLP, Direct Purchaser Class Plaintiffs' Co-Lead Counsel, are signing on behalf of the Direct Purchaser Class Plaintiffs.

3. NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and considerations herein, the parties agree as follows:

(a) Pursuant to and in accordance with the Settlement Agreement, Defendants shall deposit with the Directed Escrow Agent the Settlement Fund Amount of \$750,000,000.00 (seven hundred fifty million dollars and no/100) in cash.

(b) The Directed Escrow Agent shall be directed to invest and reinvest the Settlement Fund in instruments backed by the full faith and credit of the United States

Government or fully insured by the United States Government or an agency thereof, including a U.S. Treasury Money Market Fund or a bank account insured by the Federal Deposit Insurance Corporation ("FDIC") up to the guaranteed FDIC limit, until the Settlement becomes final pursuant to paragraph 5 of the Settlement Agreement. Subsequent to the Settlement becoming final, the Settlement Fund shall be invested as directed in writing by Co-Lead Counsel for the Direct Purchaser Class Plaintiffs, David F. Sorensen, Esq. of Berger Montague PC, 1818 Market Street, Suite 3600, Philadelphia, PA 19103 and Bruce E. Gerstein, Esq., Garwin Gerstein & Fisher LLP, 88 Pine Street, 10th Floor, New York, NY 10005 ("Authorized Plaintiffs' Counsel"). The term of any such investment directed by Authorized Plaintiffs' Counsel shall not exceed ninety (90) days. All interest and dividends earned on the Settlement Fund shall become part of the Settlement Fund. Any losses on the Settlement Fund shall be borne by the Settlement Fund and shall not be recoverable from Defendants. Defendants shall have no liability, obligation, or responsibility of any kind in connection with the investment, disbursement, or other oversight of the Settlement Fund.

(c) Upon written authorization as described below in this paragraph, the Directed Escrow Agent may withdraw from the Settlement Fund disbursements sufficient for the Claims Administrator to pay costs associated with notice to the Direct Purchaser Class and taxes or estimated taxes payable by the Claims Administrator on behalf of the Settlement Fund and related expenses in accordance with paragraph 3(d)(4) herein, except that such withdrawals for notice to the Direct Purchaser Class and administration of the Settlement, before the Settlement becomes final, may not exceed twenty-five thousand dollars (\$25,000.00). Before the Settlement becomes final, the written authorization required by this paragraph shall be granted by Authorized Plaintiffs' Counsel consistent with paragraph 7(a) of the Settlement Agreement,

with copies to Defendants' Counsel. After the Settlement becomes final, the written authorization required by this paragraph shall be granted by Authorized Plaintiffs' Counsel alone. Authorized Plaintiffs' Counsel is authorized, after obtaining approval of Defendants' Counsel, to appoint an administrator (and any successors) for the Settlement Fund within the meaning of Treasury Regulation § 1.468B-2(k)(3) (the "Claims Administrator"). Authorized Plaintiffs' Counsel shall be responsible for assuring that the Claims Administrator qualifies as an "administrator" of the Settlement Fund within the meaning of Treasury Regulation Section 1.468B-2(k)(3) and is performing its duties hereunder. Defendants shall have no responsibility for any fees or the performance of the Claims Administrator.

(d) Provided the Court preliminarily approves the Settlement, the Claims Administrator shall, within thirty (30) days after the date thereof, take all steps necessary for qualifying the Settlement Fund as a "Qualified Settlement Fund" within the meaning of Section 1.468B-1 of the Treasury Regulations. These obligations include, without limitation, the following:

(1) The Claims Administrator will prepare a "Regulation Section 1.468B-3 Statement" pursuant to Treasury Regulation Section 1.468B-3(e) on behalf of Defendants and provide copies to Defendants' Counsel for review and approval.

(2) The Claims Administrator will prepare and attach to the Settlement Fund's first income tax return a "Regulation Section 1.468B-1 Relation Back Election" pursuant to Treasury Regulation Section 1.468B-1(j) for execution by Defendants and the Claims Administrator. The Claims Administrator will promptly forward a copy of the "Regulation Section 1.468B-1 Relation Back Election" to Defendants' Counsel within thirty (30) days after the date hereof.

(3) The Claims Administrator will timely prepare and file on behalf of the Settlement Fund (i) federal tax returns in accordance with Section 1.468B-2 of the Treasury Regulations and the other provisions of the Internal Revenue Code of 1986, as amended (the “Code”), and (ii) all necessary state, local and foreign tax returns.

(4) Notwithstanding any effort, or failure, of the Claims Administrator and the parties hereto to treat the Settlement Fund as a “Qualified Settlement Fund” within the meaning of Section 1.468B-1 of the Treasury Regulations effective as of the date hereof, any additional tax liability or penalties incurred by Defendants resulting from income earned by the Settlement Fund (or the receipt of any payment under this paragraph 3(d)(4)) shall be reimbursed from the Settlement Fund in the amount of such additional tax liability or penalties upon written request from Defendants to the Directed Escrow Agent. The Directed Escrow Agent shall withdraw from the Settlement Fund (i) at the request of the Claims Administrator, monies to pay all applicable federal, state, local and foreign taxes which the Settlement Fund owes or is estimated to owe, as well as related expenses, and (ii) monies to pay any reimbursements to Defendants as described in this subparagraph (4).

(e) The Directed Escrow Agent shall be paid the fees described in Exhibit A. The Annual Escrow Fees described in Exhibit A shall be paid for by UBS Financial Services Inc. and its affiliates (“UBS”). In addition, the Directed Escrow Agent shall be reimbursed for reasonable, out-of-pocket expenses, including attorneys’ fees arising from the Directed Escrow Agent’s management of the fund, telephone and facsimile transmission costs, postage (including express mail and overnight delivery charges), copying charges and the like. All such fees and expenses shall constitute a direct charge against the Settlement Fund.

The Directed Escrow Agent is authorized to, and may, disburse to itself, from the Settlement Fund, from time to time, the amount of reimbursement of out-of-pocket expenses due and payable hereunder. Prior to the Settlement becoming final, the Directed Escrow Agent shall notify, and obtain approval from, Authorized Plaintiffs' Counsel and Defendants' Counsel of any disbursement from the Settlement Fund to itself and provide copies of all related invoices and other statements. After the Settlement becomes final, such notification need be provided to, and approval obtained from, only Authorized Plaintiffs' Counsel. If there is any dispute as to entitlement to out-of-pocket expenses or attorneys' fees as described above, it will be submitted to the Court, which shall maintain continuing jurisdiction over the operation and effectuation of this Escrow Agreement and the escrowed funds.

(f) Upon authorization as described below in this paragraph, the Directed Escrow Agent may sell or present for redemption any investment described in paragraph 3(b) above, whenever it shall be necessary in order to provide funds to meet any payment required pursuant to this Escrow Agreement or the Settlement Agreement. Before the Settlement Agreement becomes final, the authorization required by this paragraph shall be granted by Authorized Plaintiffs' Counsel and Defendants' Counsel acting jointly. After the Settlement becomes final, the authorization required by this paragraph shall be granted by Authorized Plaintiffs' Counsel alone.

(g) Only upon the Settlement becoming final, may distributions (other than those contemplated herein to pay taxes and costs of notice and administration) be made as authorized by Court order. Upon the Settlement becoming final, Authorized Plaintiffs' Counsel shall have the authority to appoint a Successor Escrow Agent and direct that all funds be transferred to the Successor Escrow Agent, which Successor Escrow Agent shall not be one of

the Defendants or an affiliate of one of the Defendants. Upon the Settlement becoming final, the interest of Defendants in the Settlement Fund shall cease in its entirety. Upon final approval of the Settlement, Defendants shall be relieved of any responsibility for directing investments of the funds or disbursements from it, and shall have no liability whatsoever with respect to any investments, expenditures of the fund, taxes and/or tax filings, administrative costs or fees, all of which shall be the responsibility of Direct Purchaser Class Plaintiffs' Co-Lead Counsel.

(h) In the event the Directed Escrow Agent receives a notice from Defendants or Plaintiffs pursuant to paragraph 14 of the Settlement Agreement or a court order directing termination of the Settlement Fund, the Directed Escrow Agent shall, subject only to the expiration of any time deposit investment(s) not to exceed ninety (90) days, return the remaining Settlement Fund including all interest and dividends thereon to Defendants as soon as practicable after the Directed Escrow Agent receives notice from Defendants' Counsel or Plaintiffs' Counsel or the applicable court order but in no event later than fifteen (15) business days after receipt of such notice or court order. In the event of such termination, any amounts deducted from the Settlement Fund reflecting expenses referred to in ¶¶ 3(c), 3(d)(4), and 3(e) and Administration Expenses as set forth in Paragraph 7 of the Settlement Agreement shall be the responsibility of Direct Purchaser Class Plaintiffs' Co-Lead Counsel and shall be refunded to Defendants. The expiration of any time deposit investment(s) shall not delay the return of the balance of the Settlement Fund within the fifteen (15) business day period set forth herein and any portion of the Settlement Fund invested in time deposits not to exceed ninety (90) days shall be disbursed within ten (10) days after the expiration of such investments.

(i) The Directed Escrow Agent may rely upon any notice, certificate, instrument, request, paper or other documents reasonably believed by it to be genuine and to

have been made, sent or signed by counsel for the respective party or parties in accordance with this Escrow Agreement, and shall not be liable for any action taken or omitted by it, consistent with the terms hereof, in connection with the performance by it of its duties pursuant to the provisions of this Escrow Agreement, except for its own default, negligence or breach of the terms of this Escrow Agreement.

(j) The Directed Escrow Agent's acceptance and administration of the Settlement Fund shall constitute the submission of the Directed Escrow Agent to the jurisdiction of the Court in the above-described litigation for the purpose of carrying out this Escrow Agreement pursuant to the Settlement Agreement.

(k) The Directed Escrow Agent has been appointed in compliance with the Settlement Agreement and is subject to the orders of the Court.

(l) This Escrow Agreement shall be governed by and interpreted according to the substantive laws of the State of New York, without reference to choice-of-law principles.

(m) The Directed Escrow Agent is and shall be independent, provided that as parties hereto, Plaintiffs and Defendants shall be entitled to institute actions to compel or require performance by the Directed Escrow Agent of its obligations hereunder. The Directed Escrow Agent hereby agrees to submit to the jurisdiction and venue of the Court with respect to issues relating to the Settlement Fund for purposes of enforcement, clarification, or amendment of the provisions of this Escrow Agreement, and to comply with all directions given by that Court.

(n) The following authorizations, directions and acknowledgements are made by Plaintiffs through its authorized counsel.

1. Plaintiffs wish to engage UBS as the broker for this relationship and authorize Directed Escrow Agent to open an account with UBS to effectuate the

trading and investments for the Settlement Fund, to which engagement Defendants through their authorized counsel consent; and

2. Plaintiffs direct and authorize Directed Escrow Agent to enter into a UBS Client Relationship Agreement as agent for the Settlement Fund, to which Defendants through their authorized counsel consent; and

3. Plaintiffs and Defendants acknowledge that Directed Escrow Agent will be appointing UBS as sub-custodian with respect to the assets for the Settlement Fund; and

4. Plaintiffs and Defendants acknowledge that UBS will be directed to invest the settlement proceeds per the requirements of ¶ 3(b) as the brokerage agent; and any commissions and/or brokerage expenses will be disclosed on a per trade basis and will be within UBS firm guidelines and in accordance with account opening documentation.

(o) Upon sixty (60) days prior written notice to Authorized Plaintiffs' Counsel and, only if such prior written notice is sent prior to the Settlement becoming final, Defendants' Counsel, the Directed Escrow Agent may resign and be discharged from its duties and responsibilities under this Agreement for any reason, and shall promptly deposit the Escrow Amount (Redemption Value) with a successor escrow agent pursuant to and in accordance with written instructions from Authorized Plaintiffs' Counsel and, only if prior to the Settlement becoming final, Defendants' Counsel. If the Directed Escrow Agent is compelled to resign to comply with action by the government or self-regulating organizations (such as FINRA), the notice requirement set forth in this paragraph may be a reasonable time shorter than 60 days. If no successor escrow agent shall have been appointed by the effective date of the Directed

Escrow Agent's resignation, the Directed Escrow Agent's sole responsibility shall thereafter be to hold the Escrow Amount (Redemption Value), invested until receipt of designation of a successor escrow agent or the disbursement of the Escrow Amount (Redemption Value) in accordance with written instructions from Authorized Plaintiffs' Counsel and, only if prior to the Settlement becoming final, Defendants' Counsel; provided, however, that the Directed Escrow Agent may petition the Court to name a successor, or may deposit the Escrow Amount (Redemption Value) in the registry of the Court having general jurisdiction.

(p) The Directed Escrow Agent may be removed from this Escrow Agreement at any time and thereby become discharged from the obligations hereby created subsequent to the date of discharge, by notice in writing given to the Directed Escrow Agent not less than thirty (30) days before such removal is to take effect. Prior to the Settlement becoming final, such notice must be given by Authorized Plaintiffs' Counsel and Defendants' Counsel acting jointly; after the Settlement becomes final, such notice may be given by Authorized Plaintiffs' Counsel alone. Upon approval of the Court, and subject to arrangements being made for a replacement Escrow Agent as specified in the next sentence, the Directed Escrow Agent may terminate this Escrow Agreement, by notice in writing given to the undersigned counsel not less than thirty (30) days before such termination is to take effect, and thereby become discharged from the obligations hereby created subsequent to the date of termination. In the event that the Directed Escrow Agent is removed or terminates this Escrow Agreement, arrangements shall be made for a replacement Escrow Agent, who shall assume the Directed Escrow Agent's duties hereunder as of the date and time that the replacement is to take effect. Prior to the Settlement becoming Final, such arrangements must be made by Authorized Plaintiffs' Counsel and

Defendants' Counsel acting jointly; after the Settlement becomes final, such arrangements may be made by Authorized Plaintiffs' Counsel alone.

(q) Copies of all notices and correspondence sent pursuant to this Escrow Agreement shall be served by mail upon Authorized Plaintiffs' Counsel, Defendants' Counsel, and the Directed Escrow Agent. After the Settlement becomes final, such notices and correspondence need only be provided to Authorized Plaintiffs' Counsel.

(r) The Directed Escrow Agent shall, upon request as described below in this paragraph, advise counsel for the parties of any maturities, conversion privileges, and other matters of a like manner concerning the investments held in accordance with this Escrow Agreement. Before the Settlement becomes final, the request required by this paragraph shall be made by Authorized Plaintiffs' Counsel and Defendants' Counsel acting jointly. After the Settlement becomes final, the request required by this paragraph shall be made by Authorized Plaintiffs' Counsel alone.

(s) The Directed Escrow Agent shall, upon request as described below in this paragraph, furnish to undersigned counsel the monthly Escrow Account statements or confirmations of transactions. Before the Settlement becomes final, the request required by this paragraph shall be made by Authorized Plaintiffs' Counsel and Defendants' Counsel acting jointly. After the Settlement becomes final, the request required by this paragraph shall be made by Authorized Plaintiffs' Counsel alone.

(t) The parties reserve the right to modify this Escrow Agreement upon written agreement of all parties, subject to approval of the Court.

(u) The failure of any of the parties hereto to enforce any provision hereof on any occasion shall not be deemed to be a waiver of any preceding or succeeding breach of such provision or any other provision.

(v) The Directed Escrow Agent shall treat the fact of the Settlement and the Settlement Agreement referred to herein, as well as all facts or other information pertaining to the Settlement and the Settlement Agreement, as confidential and shall not disclose or use such information in any way other than as necessary to fulfill its role as Directed Escrow Agent and/or comply with any laws or regulations, including those of self-governing organizations, such as FINRA.


(w) This Escrow Agreement may be signed by all parties on separate copies, including by facsimile or other electronic means, and shall have full force and effect when all parties have signed one of the copies.

IN WITNESS WHEREOF, the undersigned have executed and delivered this Escrow

Agreement as of the date first written above.


By:  VP 12/20/19
First State Trust Company
1 Righter Pkwy #120
Wilmington, DE 19803

Directed Escrow Agent

By: 
Beth A. Wilkinson
WILKINSON WALSH + ESKOVITZ LLP
2001 M Street, NW, 10th Floor
Washington, DC 20036
Tel: (202) 847-4000
bwilkinson@wilkinsonwalsh.com

By: 
Bruce E. Gerstein
GARWIN GERSTEIN & FISHER LLP
88 Pine Street, 10th Floor
New York, NY 10005
Tel: (212) 398-0055
bgerstein@garwingerstein.com

By: _____
J. Mark Gidley
WHITE & CASE LLP
701 Thirteenth Street NW
Washington, DC 20005
Tel: (202) 626-3600
mgidley@whitecase.com

By: 
David F. Sorensen
BERGER MONTAGUE PC
1818 Market Street, Suite 3600
Philadelphia, PA 19103
Tel: (215) 875-3000
dsorensen@bm.net

Counsel for Defendants

Co-Lead Counsel for Plaintiffs and the Class

IN WITNESS WHEREOF, the undersigned have executed and delivered this Escrow Agreement as of the date first written above.

By:  VP 12/20/19
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1 Righter Pkwy #120
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Directed Escrow Agent

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2001 M Street, NW, 10th Floor
Washington, DC 20036
Tel: (202) 847-4000
bwilkinson@wilkinsonwalsh.com


By: J. Mark Gidley
WHITE & CASE LLP
701 Thirteenth Street NW
Washington, DC 20005
Tel: (202) 626-3600
mgidley@whitecase.com

Counsel for Defendants

By: 
Bruce E. Gerstein
GARWIN GERSTEIN & FISHER LLP
88 Pine Street, 10th Floor
New York, NY 10005
Tel: (212) 398-0055
bgerstein@garwingerstein.com


By: David F. Sorensen
BERGER MONTAGUE PC
1818 Market Street, Suite 3600
Philadelphia, PA 19103
Tel: (215) 875-3000
dsorensen@bm.net

Co-Lead Counsel for Plaintiffs and the Class

EXHIBIT A
TO
ESCROW AGREEMENT dated December 18, 2019

Escrow Agent Fees ¹	Rate
Annual Escrow Fee (charged and due quarterly)	[TBD per schedule below]
Escrow Value	Annual Fee
Up to \$100,000,000	\$20,000
\$100,000,001 - \$250,000,000	\$30,000
\$250,000,001 - \$500,000,000	\$40,000
\$500,000,001 - \$1,000,000,000	\$50,000
Over \$1,000,000,000	\$55,000

¹The annual escrow fee is charged and due quarterly upon acceptance of the escrow account.

Activity Fees	Per Item Charge
Disbursement Request	\$25
Per Outgoing US Wire (In addition to above)	\$15
Stop Payment Request	\$20

Other Services & Fees

- First State Trust Company ("FSTC") reserves the right to refer any or all escrow documents for legal review before execution. Legal fees (billed on an hourly basis) and expenses for this service will be billed to, and paid by, the customer. If appropriate and upon request by the customer, FSTC will provide advance estimates of these legal fees.
- Other extraordinary services, including tax preparation and filing, will be quoted separately based on the scope of the activity
- Out-of-Pocket expenses will pass through to the accounts, including, but not limited to, overnight mail, replacement tax forms, external legal or professional costs, and other extraordinary services for which compensation is not expressly stated.

Standard Disclosures

Fee Disclosure

The Department of Labor (DOL) issued new rules that require certain types of ERISA retirement plan service providers to disclose new fee information directly to plans. First State Trust Company (FSTC) has incorporated a new disclosure to provide details related to direct revenue paid to FSTC. FSTC maintains standard fee schedules for each service/product offered to clients which is executed at account opening. FSTC mails fee disclosure information annually to clients pertaining to indirect revenue which FSTC may collect based upon the investments of the trust account(s).

First State Trust Company provides a daily "sweep" process for the investment of cash assets in FSTC Accounts. Cash can be either invested in an Institutional Money Market fund managed by Northern Trust (NT) such as the NT Institutional US Government Select Portfolio or an Insured Deposit Program (IDP) provided by Total Bank Solutions (TBS) or both. FSTC will receive 0.06% on assets invested in the NT US Government Select Portfolio or 0.10% on assets invested in the IDP as part of a service fee and daily processing.

FSTC fees are either invoiced or directly charged to the accounts. The primary method is direct charge. If you have any questions regarding FSTC fees (direct or indirect), please contact your Trust Officer at 800.554.1364.

Disclosure Regarding Retention of Float

The Department of Labor field bulletin 2002-3 requires that service providers to plan clients, such as banks, broker dealers and record keepers, provide their clients with adequate information regarding float. Our policy of requiring the use of a sweep vehicle minimizes or eliminates the amount of float earned on un-invested cash contributed to the plan. Where FSTC provides

you with distribution services, an FSTC agent earns float on money set aside for payment of outstanding but uncashed benefit distribution checks, generally from the date on the face of the checks to participants until the date that either the recipient cashes the check or the check is cancelled and the underlying funds are returned to the trust. FSTC or its agent generally mails checks in advance of the date on the face of the checks, with the intention that the payees receive the checks by such date. The float rate of return is currently based upon and generally approximates the then applicable federal funds rate (a publicly available average rate of all federal funds transactions entered into by traders in the federal funds market on a given date). The federal funds rate is published in the business press. If, in the future, a different rate is more appropriate, FSTC will notify you of any changes. Additional information is available to you upon request. If you have any questions about the float, please contact your FSTC Trust Officer.

Mutual Fund Disclosure

Mutual funds are sold by prospectus. You may obtain a prospectus from your Financial Advisor or the fund company. Please read the prospectus and all other fund materials carefully before investing. Be advised that depending upon the share class, FSTC may collect a portion of the annual distribution (12b-1) and or service and service related fees from the fund company. All ETF trades placed through FSTC are subject to a transaction fee (presently \$.01 per share) that is paid to our ETF trading vendor and the fees are assessed directly against the respective trades.

EXHIBIT 2

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE NAMENDA DIRECT PURCHASER ANTITRUST LITIGATION	Case No. 1:15-cv-07488-CM-RWL
THIS DOCUMENT RELATES TO: All Direct Purchaser Actions	

**DIRECT PURCHASER CLASS PLAINTIFFS' [PROPOSED] PLAN OF
ALLOCATION FOR THE DIRECT PURCHASER CLASS**

Direct Purchaser Plaintiffs J M Smith Corp. (d/b/a Smith Drug Co.) and Rochester Drug Co-Operative, Inc. (collectively, "Plaintiffs"), on behalf of the previously certified Class,¹ hereby submit this proposed Plan of Allocation to allocate the \$750 million received in the settlement with Forest Laboratories, LLC, Actavis plc, Forest Laboratories, Inc., and Forest Laboratories Holdings Ltd. (collectively, "Defendants"), plus interest, and net of Court-approved attorneys' fees, Court-approved named plaintiff service awards, and Court-approved expenses, including settlement-related costs and expenses (the "Net Settlement Fund").

The proposed Plan of Allocation ("Allocation Plan") allocates the Net Settlement Fund based on each Class member's *pro rata* weighted share of combined brand and generic Namenda

¹ The Court previously certified the following Class:

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 "Class").

Excluded from the Class are the Defendants and their officers, directors, management, employees, subsidiaries, or affiliates, and all federal governmental entities.

In re Namenda Direct Purchaser Antitrust Litig., 331 F. Supp. 3d 152, 205 (S.D.N.Y. 2018) (filed at ECF No. 570).

IR (immediate-release memantine hydrochloride) and brand Namenda XR (extended-release memantine hydrochloride) unit purchases made directly from the Defendants and from any pharmaceutical manufacturer that sold generic Namenda IR.² This proposal is similar to allocation plans that have been approved in similar class actions brought by direct purchasers to recover overcharges arising from impaired generic competition.³

Plaintiffs' expert, economist Dr. Russell L. Lamb, can calculate each Class member's (and eventually, each Claimant's⁴) percentage share of the Net Settlement Fund using sales data

² As explained below, the relevant manufacturers of generic Namenda IR are Actavis, Amneal, Dr. Reddy's, Lupin, Mylan, and Sun. See Declaration of Russell L. Lamb, Ph.D. Related to Proposed Allocation Plan, dated December 17, 2019 ("Lamb Declaration") (filed herewith) at ¶ 5 n.10, ¶ 6.

³ See, e.g., *In re Solodyn (Minocycline Hydrochloride) Antitrust Litig.*, 1:14-md-02503-DJC, ECF Nos. 1163, 1179 (D. Mass.) (*pro rata* shares of settlement fund computed on basis of claimants' brand and generic purchases); *In re Lidoderm Antitrust Litig.*, 3:14-md-02521-WHO, ECF Nos. 1004-5, 1004-6, 1054 (N.D. Cal.) (*pro rata* shares of settlement fund computed on basis of claimants' brand and generic purchases); *In re Aggrenox Antitrust Litig.*, No. 14-md-02516, ECF Nos. 733-1, 739 (D. Conn.) (*pro rata* shares of settlement fund computed on basis of purchases); *King Drug of Florence, Inc. v. Cephalon, Inc.*, No. 06-1797, ECF Nos. 864-17, 870 (E.D. Pa.) (same); *In re Doryx Antitrust Litig. (Mylan Pharms., Inc. v. Warner Chilcott Public Ltd.)*, No. 12-cv-3824, ECF Nos. 452-3, 665 (E.D. Pa.); *In re Tricor Direct Purchaser Antitrust Litig.*, No. 05-340, ECF Nos. 536-1, 543 (D. Del.) (*pro rata* shares of settlement fund computed on basis of claimants' unit purchases in a product hop case).

⁴ A "Claimant" is any entity that timely submits a completed claim form. A Claimant's percentage share will be zero if that Claimant timely submits a claim form but that Claimant's claim is rejected because, for example, the Claimant did not purchase brand or generic Namenda IR and brand Namenda XR directly from a pharmaceutical manufacturer that sold brand and/or generic Namenda IR and brand Namenda XR during the Class period and does not have any valid assignment covering any such direct purchases. Allocations to Claimants whose right to settlement allocation arises by virtue of assignments from Class members 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 (and the assignor Class member's brand and generic purchase volumes would be reduced by the same amount). Lamb Declaration at ¶ 5 & n.11. As the Claim Form will make clear, data submitted by a Claimant who files a Claim Form based on an assignment may be shared with the Claimant's assignor Class member during the claims administration process.

for brand and generic Namenda IR and brand Namenda XR produced by Defendants and manufacturers of generic Namenda IR during discovery.⁵ Claimants will also have the option of submitting their own records or data showing their net unit purchases of brand Namenda IR and XR and generic Namenda IR (net of returns) during the relevant periods described below. Dr. Lamb will review any such submissions and confer with the Claims Administrator regarding the final calculations, which may include making any necessary and appropriate adjustments. *See* Lamb Declaration at ¶ 6.

Throughout this Allocation Plan, “purchases” refers to unit purchases of brand or generic Namenda IR and brand Namenda XR made directly from Defendants or directly from any manufacturer of generic Namenda IR during the relevant time periods, or purchases that are covered by a Claimant’s assignment from a direct purchaser of such purchases, during the relevant time periods. The unit of purchase is a pill (capsule or tablet). “Purchases” throughout refers to net unit purchases, *i.e.*, gross purchases net of any returns and net of any purchases for which the Claimant or Class member has assigned away its rights to recovery in this litigation. *Id.* ¶ 5 & n.11.

As explained more fully below, Claimants’ *pro rata* shares will be based only on purchases made directly from Defendants or a manufacturer of generic Namenda IR (or covered

⁵ *See* Lamb Declaration at ¶¶ 6-7. Dr. Lamb previously submitted two reports in this matter which addressed, among other issues, damages and class certification, and which the Court previously found supported class certification and were admissible and reliable under *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993). *See* Dr. Russell L. Lamb’s Amended Expert Report, dated Sept. 20, 2017 (filed at ECF No. 677-2) (“Lamb Report”) (damages calculations set forth in Section VI); Dr. Russell L. Lamb’s Amended Expert Reply Report, dated Nov. 9, 2017 (filed at ECF No. 677-3) (“Lamb Reply Report”) (damages discussed in Section IV); *In re Namenda Direct Purchaser Antitrust Litig.*, 331 F. Supp. 3d at 174-82, 216-20 (denying the Defendants’ motion to exclude Dr. Lamb’s testimony and certifying the Class).

by an assignment from a direct purchaser) during the relevant time periods. *See id.* ¶ 5 & n.11.

The proposed Allocation Plan is practical and efficient, using computerized sales data already obtained from Defendants and the generic Namenda IR manufacturers during discovery.⁶ It also is a reasonable way to allocate the Net Settlement Fund, and is fair to all members of the Class, including those Class members that bought brand Namenda IR, brand Namenda XR and/or those that bought generic Namenda IR.⁷

THE ALLOCATION PLAN

The Allocation Plan works as follows:

1.1 At the appropriate time and after receiving Court approval, the Claims Administrator, working with Dr. Lamb's firm Monument Economics Group, will provide a separate, individualized claim form (the "Claim Form") for each Class member. The Claim Form will expressly set forth the Class member's (a) total net brand Namenda IR unit purchases from June 1, 2012 through June 30, 2017, (b) total net brand Namenda XR unit purchases from when brand Namenda XR launched on June 4, 2013 through June 30, 2017, and (c) total net generic Namenda IR unit purchases made from when generic Namenda IR launched on July 11, 2015 through September 30, 2015. Dr. Lamb can calculate these figures using the sales data produced during discovery by Defendants and the manufacturers of generic Namenda IR.⁸ The Claim Form will request that the Class member verify the accuracy of the information contained in the Claim Form and will provide instructions for challenging any of the figures or

⁶ *See id.* ¶¶ 6-7.

⁷ *See id.* ¶ 7.

⁸ *See id.* ¶ 6 (explaining that these totals can be calculated from the sales data produced in this case, and that he has already performed preliminary calculations of each Class member's net purchases); *see also id.* ¶ 7.

computations contained in the Claim Form. If a Class member agrees that the information in the Claim Form is accurate, it will be asked to sign and return the Claim Form to the Claims Administrator.⁹ If a Class member believes that the information contained in its Claim Form is not accurate, that Class member may submit its own purchase data pursuant to the procedures described below.

1.2 The Claim Form will request the Claimant's full name and mailing address for correspondence regarding the distribution of the Net Settlement Fund, and the identity and contact information for the person responsible for overseeing the claims process for the Claimant. In addition, the Claim Form will include the release language contained in the settlement agreement with Defendants. Each Claimant will be required to execute the Claim Form in exchange for receiving any distribution from the Net Settlement Fund.

1.3 *Timeliness.* The submission of the Claim Form to the Claims Administrator (with any necessary supporting documentation if the Claimant disagrees with the information contained in its Claim Form) will be deemed timely if it is received or postmarked within 30 days of the date the Claim Forms were mailed. At Class Counsel's discretion, this deadline may be extended by up to 45 days without additional approval of the Court. Class Counsel may also seek further extensions of the deadline by order of the Court after any such initial extension.

⁹ In order to help the Claimant verify that the purchase totals contained in the Claim Form are accurate, the brand and generic Namenda IR and brand Namenda XR National Drug Codes ("NDCs") will be listed on the Claim Form. The NDCs are standard codes maintained by the FDA and used in the pharmaceutical industry to identify specific pharmaceutical products and allow Claimants to understand precisely what purchases are being considered for purposes of allocation.

2. Calculation of Weighted *Pro Rata* Shares of the Net Settlement Fund.

2.1 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 purchases of brand Namenda IR for the period June 1, 2012 through June 30, 2017¹⁰ made directly from Defendants; (b) its net unit purchases of brand Namenda XR for the period from when brand Namenda XR launched on June 4, 2013 through June 30, 2017¹¹ made directly from Defendants; and (c) its net unit purchases of generic Namenda IR for the period from when generic Namenda IR launched on July 11, 2015 through September 30, 2015¹² made directly from a generic Namenda IR manufacturer.¹³ The manufacturers that sold generic Namenda IR during this time period, July 11, 2015 through September 30, 2015, were Actavis, Amneal, Dr. Reddy's, Lupin, Mylan, and Sun.¹⁴ The Allocation Plan utilizes the weighted totals of each Claimant's purchases of brand

¹⁰ June 1, 2012 is the beginning of the Class period and the beginning of the damages period Dr. Lamb used in his prior reports for purposes of calculating the Class's aggregate damages based on brand Namenda purchases. *Id.* ¶ 4. June 30, 2017 is the end of the damages period Dr. Lamb used in his prior reports for purposes of calculating the Class's aggregate damages on brand Namenda IR purchases. *Id.* ¶¶ 4, 5 n.9; Lamb Report, at, *inter alia*, ¶¶ 125, 139, 146, 147 (damages on brand purchases calculated through June 2017).

¹¹ As noted above, June 4, 2013 was the first day on which brand Namenda XR was sold. June 30, 2017 is the end of the damages period Dr. Lamb used in his prior reports for purposes of calculating the Class's aggregate damages on brand Namenda XR purchases. Lamb Declaration at ¶ 4, ¶ 5 n.9; Lamb Report at, *inter alia*, ¶¶ 125, 139, 146, 147, 152 (brand Namenda XR launched in June 2013 and damages on brand purchases calculated through June 2017).

¹² July 11, 2015 is the first day on which generic Namenda IR was sold. Lamb Declaration at ¶ 4, ¶ 5 n.10; Lamb Report at ¶ 157 (actual generic Namenda IR entry was on July 11, 2015). September 30, 2015 is the end of the Class period and the end of the period for which Dr. Lamb has complete transaction data showing all direct purchases of generic Namenda IR. Lamb Declaration at ¶ 5 n.10.

¹³ Lamb Declaration at ¶¶ 5-6. Again, note that "unit purchases" is the number of pills (tablets or capsules purchased), net of returns, purchased directly from Defendants or a generic Namenda IR manufacturer.

¹⁴ *Id.* ¶ 3, ¶ 5 n.10. Dr. Lamb used generic Namenda IR sales data produced by Actavis, Amneal, Dr. Reddy's, Lupin, and Mylan in his damages calculations, but did not use data

Namenda IR, brand Namenda XR, and generic Namenda IR.¹⁵

2.2 The allocation computation will be based on the following information (whether from the data already produced in discovery or from submissions by Claimants): (a) each Claimant's net unit purchases of brand Namenda IR for the period from June 1, 2012 through June 30, 2017; (b) each Claimant's net unit purchases of brand Namenda XR for the period from June 4, 2013 through June 30, 2017; (c) each Claimant's net unit purchases of generic Namenda IR for the period from July 11, 2015 through September 30, 2015; (d) the combined total of net unit purchases of brand Namenda IR for the period from June 1, 2012 through June 30, 2017 made by all Claimants with valid, accepted Claim Forms; (e) the combined total of net unit purchases of brand Namenda XR for the period from June 4, 2013 through June 30, 2017 made by all Claimants with valid, accepted Claim Forms; and (f) the combined total of net unit purchases of generic Namenda IR for the period from July 11, 2015 through September 30, 2015 made by all Claimants with valid, accepted Claim Forms.

2.3 According to Dr. Lamb's prior damages calculations, 1.13% of the Class's aggregate damages were attributable to overcharges on the Class's purchases of generic Namenda IR; while 98.87% of the Class's aggregate damages were attributable to overcharges on the Class's purchases of brand Namenda IR and/or brand Namenda XR.¹⁶ Accordingly, the

produced by Sun in his damages calculations as the data produced by Sun did not include reliable pricing information. Lamb Declaration at ¶ 3 n.8; Lamb Report at ¶ 123 & n.239. However, as Dr. Lamb explains in the accompanying Lamb Declaration, he can use the produced Sun sales data to calculate the net units purchased by each Class member. Lamb Declaration at ¶ 3 n.8.

¹⁵ Lamb Declaration at ¶ 5.

¹⁶ *Id.* ¶ 3. As discussed below, Dr. Lamb's prior damages calculations were performed during litigation, and the Court held that Dr. Lamb's damages calculations supported class certification. *In re Namenda Direct Purchaser Antitrust Litig.*, 331 F. Supp. 3d at 216-20. According to Dr. Lamb's prior damages calculations, in the "No Reverse Payment Scenario" where, absent Defendants' alleged misconduct, generic Namenda IR would have launched June

Allocation Plan allocates 1.13% of the Net Settlement Fund to the Class's purchases of generic Namenda IR, and allocates 98.87% of the Net Settlement Fund to the Class's purchases of brand Namenda IR and/or brand Namenda XR.¹⁷ The different percentages reflect the fact that damages on brand purchases were calculated as the difference between the high brand price and the much lower generic price; while damages on generic purchases were calculated as the difference between the (already low) generic price and the even lower generic price that would have prevailed with earlier generic competition.¹⁸

2.4 To calculate the *pro rata* share for each Claimant of the Net Settlement Fund, the Claims Administrator, working with Dr. Lamb, will:

(a) Allocate 1.13% of the Net Settlement Fund to the Class's generic Namenda IR purchases, by dividing up this 1.13% *pro rata*, based on Claimant's unit purchases of generic Namenda IR. So, for example, if Claimant "X" purchased 100 units of generic Namenda IR and there were 1,000 total generic Namenda IR units purchased by all Claimants who submitted valid Claim Forms, then, based on its generic Namenda IR purchases, Claimant X would receive an allocation of 10% (100/1,000) of the 1.13% of the Net Settlement Fund allocated to generic Namenda IR purchases, or 0.113% (10%*1.13%) of the Net Settlement

1, 2012 (the beginning of the Class period), Class damages totaled \$6,930,602,447: \$78,353,141 of the Class damages were incurred on generic purchases ("Generic-Generic" damages) and \$6,852,249,306 of the Class damages were incurred on brand purchases ("Brand-Generic" damages). This means that 1.13% of total Class damages were incurred on generic purchases ($\$78,353,141 / \$6,930,602,447 = .0113$, or 1.13%), and 98.87% of total Class damages were incurred on brand purchases ($\$6,852,249,306 / \$6,930,602,447 = .9887$, or 98.87%). See Lamb Declaration at ¶ 3. See also Lamb Report at p. 83, Table 2 (listing the Class's "Brand-Generic", "Generic-Generic", and "Total" damages under the June 2012 entry date scenario, based on calculations using transaction-level data).

¹⁷ Lamb Declaration at ¶ 5.

¹⁸ *Id.* ¶ 3.

Fund.¹⁹

(b) Allocate 98.87% of the Net Settlement Fund to the Class’s purchases of brand Namenda IR and brand Namenda XR.²⁰ The damages calculations Dr. Lamb performed in his prior reports²¹ — which were held by the Court to satisfy *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993) and which were found to support class certification²² — reflect the fact that a single brand Namenda XR capsule constituted a single day of therapy (or “DOT”), and two Namenda IR tablets constituted a DOT (because brand Namenda IR and generic Namenda IR were typically taken twice a day). Thus, a Claimant’s purchases of brand Namenda XR and brand Namenda IR will be converted into DOT for purposes of allocating the 98.87% of the Net Settlement Fund that will be allocated based on brand purchases, just as brand Namenda IR and brand Namenda XR purchases were converted into DOT in Dr. Lamb’s prior damages calculations.²³ In effect, as a result of this conversion into DOT, in the allocation, a purchase of brand Namenda XR will be given double the weight of a Namenda IR purchase (and conversely, a brand Namenda IR purchase will be given half the

¹⁹ *Id.* ¶ 5(a).

²⁰ *Id.* ¶ 5(b).

²¹ *See* Lamb Report (damages calculations set forth in Section VI); Lamb Reply Report (damages discussed in Section IV).

²² *In re Namenda Direct Purchaser Antitrust Litig.*, 331 F. Supp. 3d at 174-82, 216-20.

²³ Lamb Declaration at ¶ 5(b). In Dr. Lamb’s prior damages calculations, conducted during the litigation, generic Namenda IR purchases were also converted into DOT. However, such a conversion of generic Namenda IR into DOT is unnecessary for purposes of allocating the 1.13% of the Net Settlement that will be distributed based on generic purchases because every Claimant’s *pro rata* share of the 1.13% of the Net Settlement Fund allocated based on generic Namenda IR purchases would be exactly the same irrespective of whether the generic Namenda IR purchases are multiplied by .5 to convert into DOT, and so this conversion need not be done for the Claimant’s generic Namenda IR purchases. *Id.* ¶ 5(b) n.12.

weight of a brand Namenda XR purchase).²⁴ So, for example, if Claimant “Z” purchased 200 units of brand Namenda IR and 100 units of brand Namenda XR, then Claimant Z purchased 200 DOT of Namenda (.5*200 units of Namenda IR plus 100 units of brand Namenda XR). If there were 1,000 total DOT of brand Namenda IR and XR purchased by all Claimants who submitted valid Claim Forms, then Claimant Z would get 20% (200/1,000) of the 98.87% of the Net Settlement Fund allocated to brand Namenda IR and brand Namenda XR purchases, or 19.77% (20%*98.87%) of the Net Settlement Fund.

(c) Each Claimant’s total *pro rata* share of the Net Settlement Fund will be the total of (i) any share it received as a result of its generic Namenda IR purchases (described in Section 2.4(a) above), and (ii) any share it received as a result of its brand Namenda IR and brand Namenda XR purchases (described in Section 2.4(b) above).²⁵ Using data produced in discovery, Dr. Lamb has already performed a preliminary computation of net brand and generic Namenda IR and brand Namenda XR purchases for each Class member, and can use these figures to calculate the percentage shares of the Net Settlement Fund due to each Class member.²⁶ Should any Class member fail to submit a claim or should any Claimant document and submit an alternative amount of purchases that is approved by the Claims Administrator (in consultation with Dr. Lamb and Class Counsel), the Claimant’s shares will be recalculated accordingly.²⁷

2.5 The final calculations of each Claimant’s *pro rata* share will then be applied to the Net Settlement Fund to determine each Claimant’s allocated share.

²⁴ *Id.* ¶ 5(b).

²⁵ *Id.* ¶ 5(c); *see also id.* ¶ 5(a)-(b).

²⁶ *See id.* ¶ 6.

²⁷ *See id.*

3. Processing of Claims.

3.1 All Claims will be reviewed and processed by the Claims Administrator, with assistance from Dr. Lamb and his staff at Monument Economics Group as required and appropriate.

3.2 *Acceptance and Rejection.* The Claims Administrator shall first determine whether a Claim Form received is timely, properly completed, and signed. If a Claim Form is incomplete, the Claims Administrator shall communicate with the Claimant via First Class Mail, email, or telephone regarding the deficiency. Claimants will then have 21 days from the date they are contacted by the Claims Administrator regarding the deficiency to cure any such deficiency. If any Claimant fails to correct the deficiency within this time, the claim may be rejected, and the Claimant shall be notified by letter stating the reason for rejection. The Claims Administrator will then review the Claim Form to determine whether the Claim Form will be accepted or rejected and, if the Claim Form is rejected, the Claimant shall be notified by letter stating the reason for rejection. Any Claimant whose Claim Form is rejected may seek review by the Court via the appeals process described in Section 7.2 below.

3.3 All late Claims Forms that are otherwise complete will be processed by the Claims Administrator but marked as “Late Approved Claims.” If Class Counsel conclude that, in their judgment, any such “Late Approved Claims” should ultimately not be accepted,²⁸ the Claimant will be so notified, and then may seek review by the Court via the appeals process described in Section 7.2 below.

3.4 *The Pro Rata Distribution Calculation.* The Claims Administrator, in

²⁸ Cf. *Kuehbeck v. Genesis Microchip Inc.*, No. C02-05344 JSW, 2007 WL 2382030, at *1 (N.D. Cal. Aug. 17, 2007) (authorizing distribution to timely filed claims and valid claims that were submitted late).

conjunction with Dr. Lamb, will be responsible for determining the total amount each Claimant will receive from the Net Settlement Fund. Once the Claims Administrator has determined which Claimants' claims are approved, the Claims Administrator will work with Dr. Lamb to calculate each Claimant's *pro rata* share of the Net Settlement Fund as determined by the calculation described above in Section 2.²⁹

4. Processing Challenged Claims.

4.1 The Claims Administrator, in conjunction with Dr. Lamb and Class Counsel, shall review any and all written challenges by Claimants to the determinations of the Claims Administrator. If upon review of a challenge and supporting documentation, the Claims Administrator decides to amend or modify its determination of the Claimants' net unit purchases, distribution amount, and or *pro rata* share of the Net Settlement Fund, it shall advise the Claimant who made the challenge. These determinations shall be final, subject to the appeals process described in Section 7.2 below.

4.2 Where the Claims Administrator determines that a challenge requires additional information or documentation, it will so advise the Claimant and provide that Claimant an opportunity to cure the deficiency within 25 days. If that Claimant fails to cure the deficiency within that time, the challenge may be rejected and the Claimant will be notified of the rejection of its challenge by mail, which notification shall be deemed final subject to any appeal and decision by the Court.

4.3 If the Claims Administrator concludes that it has enough information to properly evaluate a challenge and maintains that its initial determinations were correct, it will so inform the Claimant in writing, which notification shall be deemed final subject to any appeal

²⁹ See Lamb Declaration at ¶ 6; see also *id.* ¶ 5.

and decision by the Court.

5. Report to Court Regarding Distribution of Net Settlement Fund.

5.1 After the Claims Administrator reviews all submitted claims and works with Dr. Lamb to determine the amount each Claimant is entitled to receive from the Net Settlement Fund, the Claims Administrator will prepare a final report for the Court's review and approval. The report will explain the tasks and methodologies employed by the Claims Administrator in processing the claims and administering the Allocation Plan. It will also contain (a) a list of Class members or other Claimants (if any) who filed Claim Forms that were rejected and the reasons, (b) a list of any challenges to the estimated distribution amounts that were rejected and the reasons, and (c) the date any such Claimant whose challenge was rejected was informed by the Claims Administrator, for purposes of calculating the timeliness of any appeal using the procedures set forth below. Finally, the final report shall contain an accounting of the expenses associated with the Allocation Plan, including bills from Monument Economics Group and the Claims Administrator, any taxes that are due and owing, and any other fees or expenses associated with the settlement allocation process.

6. Payment to the Claimants.

6.1 Upon Court approval of the final report and declaration of the Claims Administrator, the Claims Administrator shall issue a check or wire payable to each Claimant who has submitted a complete and valid Claim Form.

6.2 It is anticipated that the entire Net Settlement Fund will be distributed in a single distribution. However, subject to further order of the Court, any monies from the Net Settlement Fund that remain unclaimed after the first distribution shall, if feasible, be distributed to Claimants in an additional distribution or distributions on the basis of the same calculations of

the Claimants' *pro rata* weighted combined total of brand and generic Namenda IR and brand Namenda XR purchases described above.

6.3 Insofar as the Net Settlement Fund includes residual funds after distribution or distributions as set forth in the preceding sections that cannot be economically distributed to the Claimants (because of the costs of distribution as compared to the amount remaining), Class Counsel shall make an application to the Court for such sums to be used to make *cy pres* payments for the benefit of members of the Class.

7. Resolution of Disputes.

7.1 In the event of any disputes between Claimants and the Claims Administrator on any subject (*e.g.*, timeliness, required completeness or documentation of a claim, or the calculation of the Claimant's unit purchases, share of the net settlement fund, and/or amount payable), the decision of the Claims Administrator shall be final, subject to the Claimant's right to seek review by the Court. In notifying a Claimant of the final rejection of a Claim or a challenge thereto, the Claims Administrator shall notify the Claimant of its right to seek such review.

7.2 Any such appeal by a Claimant must be submitted in writing to the Court, with copies to the Claims Administrator and Class Counsel, within 21 days of the Claims Administrator's final rejection notification to the Claimant.

Dated: December 24, 2019

David F. Sorensen
Daniel C. Simons
Ellen T. Noteware
Nicholas Urban
BERGER MONTAGUE PC

Respectfully Submitted:

/s/ Bruce E. Gerstein
Bruce E. Gerstein
Joseph Opper
Kimberly M. Hennings
Dan Litvin
GARWIN GERSTEIN & FISHER LLP

1818 Market Street, Suite 3600
Philadelphia, PA 19103
Tel: (215) 875-3000
Fax: (215) 875-4604
dsorensen@bm.net
dsimons@bm.net
enoteware@bm.net
nurban@bm.net

Peter Kohn
Joseph T. Lukens
FARUQI & FARUQI, LLP
1617 John F Kennedy Blvd., Suite 1550
Philadelphia, PA 19103
Tel: (215) 277-5770
Fax: (215) 277-5771
pkohn@faruqilaw.com
jlukens@faruqilaw.com

88 Pine Street, 10th Floor
New York, NY 10005
Tel: (212) 398-0055
Fax: (212) 764-6620
bgerstein@garwingerstein.com
jopper@garwingerstein.com
khennings@garwingerstein.com
dlitvin@garwingerstein.com

Susan Segura
David C. Raphael, Jr.
Erin R. Leger
SMITH SEGURA RAPHAEL & LEGER, LLP
221 Ansley Blvd.
Alexandria, LA 71303
Tel: (318) 445-4480
Fax: (318) 487-1741
ssegura@ssrllp.com
draphael@ssrllp.com
eleger@ssrllp.com

Stuart E. Des Roches
Andrew W. Kelly
ODOM & DES ROCHES, LLC
650 Poydras Street, Suite 2020
New Orleans, LA 70130
Tel: (504) 522-0077
Fax: (504) 522-0078
stuart@odrlaw.com
akelly@odrlaw.com

Russ Chorush
HEIM PAYNE & CHORUSH, LLP
1111 Bagby, Suite 2100
Houston, TX 77002
Tel: (713) 221-2000
Fax: (713) 221-2021
rchorush@hpcllp.com

Counsel for the Direct Purchaser Class Plaintiffs

EXHIBIT 3

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

HIGHLY CONFIDENTIAL: SUBJECT TO PROTECTIVE ORDER

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IN RE NAMENDA DIRECT PURCHASER)	Civil Action No. 1:15-CV-07488
ANTITRUST LITIGATION)	
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DECLARATION RELATED TO PROPOSED SETTLEMENT ALLOCATION PLAN

Dr. Russell L. Lamb
President
Monument Economics Group
1530 Wilson Blvd, Suite 560
Arlington, Virginia 22209

December 17, 2019

I. Introduction and Assignment

1. I listed my background and qualifications in an Expert Report (“Lamb Report”)¹ submitted in this matter on September 20, 2017. I also submitted an Expert Reply Report (“Lamb Reply Report”)² in this matter on November 9, 2017. I was also deposed by Counsel for Defendants on October 6, 2017.³ An updated copy of my C.V., including a list of the matters in which I have submitted expert testimony in the past four years, is attached to this Declaration as Appendix A. Monument Economics Group is being compensated for my work in this matter at my usual and customary rate of \$650 per hour.

2. I have been asked by Counsel for the direct purchaser Class⁴ (“Plaintiffs”) in this matter to develop a methodology that can be used to allocate the Net Settlement Fund⁵ to members of the Class who submit claims as part of the claims process in a timely manner (“Claimants”). I describe this methodology in detail below.

II. Relevant Background

3. As discussed above, I previously issued two expert reports in this matter that addressed, among other issues, class certification and the amount of aggregate Class damages. As relevant

¹ I filed an Expert Report in this matter on September 15, 2017, and an Amended Expert Report on September 20, 2017. Throughout the remainder of this Declaration, I refer to the Amended Expert Report as the “Lamb Report.”

² I filed an Expert Reply Report in this matter on October 25, 2017, and an Amended Expert Reply Report on November 9, 2017. Throughout the remainder of this Declaration, I refer to the Amended Expert Reply Report as the “Lamb Reply Report.”

³ Deposition of Russell Lamb, October 6, 2017 (hereafter “Lamb Deposition”).

⁴ The “Class” in this matter is defined as: “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.” See Lamb Report at ¶6. I understand that the Court certified the Class in this matter on August 2, 2018. See United States District Court Southern District of New York, *In Re Namenda Direct Purchaser Antitrust Litigation*, Memorandum Decisions and Order Denying Defendants’ Motion for Summary Judgment; Granting in Substantial Part and Denying in Part Defendants’ Daubert Motions to Exclude Opinions and Testimony of Plaintiffs’ Experts; and Granting Plaintiffs’ Motion for Class Certification, dated August 2, 2018 (hereafter “Class Certification Decision and Order”).

⁵ I understand that the “Net Settlement Fund” includes the \$750 million received in the settlement with Forest Laboratories, LLC, Actavis plc, Forest Laboratories, Inc., and Forest Laboratories Holdings Ltd. (collectively, “Defendants”), plus interest, and net of Court-approved attorneys’ fees, Court-approved named plaintiff service awards, and Court-approved expenses, including settlement-related costs and expenses.

to this Declaration, I previously calculated aggregate Class damages under the “No Reverse Payment Scenario,” which included generic Namenda IR entry on June 1, 2012, in the amount of \$6,930,602,447, as described in my prior Reports.⁶ \$78,353,141 of the aggregate Class damages (or 1.13 percent of the aggregate Class damages) were incurred on the Class’s generic Namenda IR purchases (that is, “Generic-Generic” Damages) and \$6,852,249,306 of the aggregate Class damages (or 98.87 percent of the aggregate Class damages) were incurred on the Class’s purchases of brand Namenda IR and brand Namenda XR.⁷ The different percentages reflect the fact that damages on brand purchases were calculated as the difference between the high brand price and the much lower generic price; while damages on generic purchases were calculated as the difference between the (already low) generic price and the even lower generic price that would have prevailed with earlier generic competition. These damages calculations utilized sales data produced by the Defendants for brand Namenda IR and brand Namenda XR and generic Namenda IR sales data produced by Actavis, Amneal, Dr. Reddy, Lupin, and Mylan, as well as IMS Health data.⁸

4. Several dates and time periods utilized in my prior damages calculations are relevant to the proposed allocation method. In my prior damages calculations, I measured “Brand-Generic” damages from June 1, 2012 through June 30, 2017. In addition, in the real world, generic

⁶ Lamb Report ¶141, Table 2. June 2012 is the start of the Class Period and, as I noted in the Lamb Report, I understand that Plaintiffs alleged that absent a settlement generic entry would have occurred as early as June 2012. Lamb Report ¶8.

⁷ Lamb Report ¶141, Table 2.

⁸ I received but did not use generic Namenda IR sales data produced by Sun because, as I previously explained, the quarterly aggregated sales data produced by Sun could not reliably be used to calculate prices across customers, and therefore, I excluded the Sun data from my damages analysis. See Lamb Report at ¶123, fns 7, 239. However, the Sun data contains information on the number of units sold by customer which is sufficient to allow me to incorporate these data into my methodology for Net Settlement Fund allocation, that is, I can use the produced Sun data to calculate the net unit purchases of generic Namenda IR made by each Class member directly from Sun. Upon further review of the Sun data, I identified two additional entities that purchased generic Namenda IR during the Class Period but which were not included previously in the Lamb Report, namely Cochran Wholesale Pharmacy and QK Healthcare. Both are very small purchasers and can be included in my methodology for Net Settlement Fund allocation. In addition, I note that my prior report listed DMS Pharmaceutical Group (“DMS”) as a Class member. Lamb Report at Figure 1. However, upon further review of the data, DMS does not qualify as a Class member because DMS’s first purchase of brand or generic Namenda IR or brand Namenda XR was after the end of the class period, that is, after September 30, 2015.

Namenda IR actually launched on July 11, 2015 and brand Namenda XR actually launched on June 4, 2013.

III. Methodology for Net Settlement Fund Allocation

5. The methodology I have developed for the purposes of allocating the Net Settlement Fund calculates each Claimant's share of the Net Settlement Fund, *pro rata*, based on the amount of direct purchases of 1) branded Namenda IR from June 1, 2012 through June 30, 2017;⁹ 2) branded Namenda XR from June 4, 2013 (when branded Namenda XR launched) through June 30, 2017; and 3) generic Namenda IR from July 11, 2015 (when generic Namenda IR launched) through September 30, 2015; as compared to the total purchases (by all Claimants who submit valid, accepted Claim Forms) of a) branded Namenda IR from June 1, 2012 through June 30, 2017; b) branded Namenda XR from June 4, 2013 through June 30, 2017; and c) generic Namenda IR from July 11, 2015 through September 30, 2015, respectively.¹⁰ For purposes of allocation, "purchases" throughout the allocation plan means the total units (capsules or pills) purchased, net of returns.¹¹ In particular, my methodology for *pro rata* allocation of the Net Settlement Fund to each Claimant is as follows:

- a) Allocation of damages based on generic purchases. Because, as discussed above, 1.13 percent of the Class damages were incurred on generic Namenda IR purchases, I have devised an allocation plan that will allocate 1.13 percent of the Net Settlement

⁹ As discussed above, June 1, 2012 is the beginning of the Class Period and the beginning of the damages period for Brand-Generic damages in the "No Reverse Payment Scenario" where, absent Defendants' alleged misconduct, generic Namenda IR would have launched June 1, 2012. Further, Defendant Forest produced transaction-level data through July 5, 2017 and, as I discussed in the Lamb Report, my damages analysis runs through June 30, 2017, that is, I calculated damages on brand Namenda IR and brand Namenda XR through June 30, 2017. See Lamb Report at ¶¶139-140.

¹⁰ September 30, 2015 is the end of the Class Period. Further, the period from generic launch on July 11, 2015 through September 30, 2015 is the period for which I have complete manufacturer sales data for generic Namenda IR produced by all manufacturers (Actavis, Amneal, Dr. Reddy's, Lupin, Mylan, and Sun).

¹¹ All of my prior damages calculations utilized Class purchases net of returns as well. In addition, I note that a Claimant's percentage share will be zero if that Claimant timely submits a claim form but that Claimant's claim is rejected because, for example, the Claimant did not purchase brand or generic Namenda IR and brand Namenda XR directly from a pharmaceutical manufacturer that sold brand and/or generic Namenda IR and brand Namenda XR during the Class period and does not have any valid assignment covering any such direct purchases. Allocations to Claimants whose right to settlement allocation arises by virtue of assignments from Class members would be determined in the same way that allocations will be calculated for Class members; 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 (and the assignor Class member's brand and generic purchase volumes would be reduced by the same amount).

Fund to the Class's generic Namenda IR purchases, by dividing up this 1.13 percent pro rata, based on each Claimant's unit purchases of generic Namenda IR. So, for example, if Claimant "X" purchased 100 units of generic Namenda IR and there were 1,000 total generic Namenda IR units purchased by all Claimants who submitted valid Claim Forms, then, based on its generic Namenda IR purchases, Claimant X would receive an allocation of 10 percent (100/1,000) of the 1.13 percent of the Net Settlement Fund allocated to generic Namenda IR purchases, or 0.113 percent (10%*1.13%) of the Net Settlement Fund.

- b) Allocation of damages based on brand Namenda IR and brand Namenda XR purchases. Because, as discussed above, 98.87 percent of the Class damages were incurred on brand Namenda IR and brand Namenda XR purchases, I have devised an allocation plan that will allocate 98.87 percent of the Net Settlement Fund to the Class's purchases of brand Namenda IR and brand Namenda XR. My prior damages calculations, set forth in the Lamb Report, reflect the fact that a single brand Namenda XR capsule constituted a single day of therapy (or "DOT"), and two Namenda IR tablets constituted a DOT (because brand Namenda IR and generic Namenda IR were typically taken twice a day). Thus, a Claimant's purchases will be converted into DOT for purposes of allocating the 98.87 percent of the Net Settlement Fund that will be allocated based on brand purchases, as was done in my damages calculations in the Lamb Report. In effect, as a result of this conversion into DOT, in the allocation, a purchase of brand Namenda XR will be given double the weight of a Namenda IR purchase (and conversely, a brand Namenda IR purchase will be given half the weight of a brand Namenda XR purchase). So, for example, if Claimant "Z" purchased 200 units of brand Namenda IR and 100 units of brand Namenda XR, then Claimant Z purchased 200 DOT of Namenda (.5*200 units of Namenda IR plus 100 units of brand Namenda XR). If there were 1,000 total DOT of brand Namenda IR and XR purchased by all Claimants who submitted valid Claim Forms, then Claimant Z would get 20 percent (200/1,000) of the 98.87 percent of the Net Settlement Fund

allocated to brand Namenda IR and brand Namenda XR purchases, or 19.77 percent (20%*98.87%) of the Net Settlement Fund.¹²

- c) Each Claimant's total pro rata share. Each Claimant's total pro rata share will be the sum of its share allocated on the basis of its brand purchases (if any) and the sum of its share allocated on the basis of its generic purchases (if any), as described in the preceding two subsections.

6. Using data produced by Forest and by the manufacturers who sold generic Namenda IR through September 30, 2015 (Actavis, Amneal, Dr. Reddy's, Lupin, Mylan, and Sun) as part of discovery in this matter, I have performed preliminary calculations of each Class member's purchases of brand and generic Namenda IR and brand Namenda XR during the relevant time period. These purchase totals can, and I understand will, be used to pre-populate the purchase totals in the Claim Forms mailed to Class members. In addition, I understand from Class Counsel that Claimants will have the option to submit their own purchase records as part of their claim, including any Claimants who file a Claim Form based on an assignment from a Class member. To the extent that any such submissions by Claimants differ from the sales data produced by Forest and generic manufacturers Actavis, Amneal, Dr. Reddy's, Lupin, Mylan, and Sun, I will analyze those submissions in conference with the claims administrator to finalize the calculations of the branded and generic Namenda DOT purchased by each Class member. In addition, my final calculations will assign pro rata shares only to those Claimants who submit valid, accepted Claim Forms (and will not assign pro rata shares of the Net Settlement Fund to, for example, a Class member that does not submit a Claim Form).

7. In my opinion, the methodology described above is reasonable and practical for the purposes of allocation of the Net Settlement Fund to Claimants. As I discussed, this methodology utilizes actual branded Namenda and generic Namenda sales data produced by Forest and all the generic manufacturers in the market from July 2015 through September 2015.

¹² I note that, in my damages calculations, I converted the generic Namenda IR purchases into DOT in the same manner described here with respect to brand Namenda IR and brand Namenda XR purchases. However, I do not need to do this conversion for purposes of allocation with respect to the Class member's generic Namenda IR purchases because the conversion is mathematically neutral—all Claimant's generic Namenda IR purchases would be multiplied by .5, and so all Claimant's pro rata share of 1.13 percent of the Net Settlement Fund allocated on the basis of the generic Namenda IR would be exactly the same irrespective of using DOT or net units.

Furthermore, this methodology accounts for the differences in relative overcharges on branded and generic Namenda purchases, and thus is fair to Class members who purchased branded Namenda and fair to Class members who purchased only generic Namenda IR.

I declare that the foregoing is true and correct to the best of my knowledge and belief.

A handwritten signature in black ink that reads "Russell L. Lamb, Ph.D." The signature is written in a cursive style with a large initial 'R' and a distinct 'L'.

Russell L. Lamb, Ph.D.

December 17, 2019

Appendix A



Russell Lamb, Ph.D.

President
Monument Economics Group
Phone: (703) 615-3474
Email: rlamb@megconsulting.com

Professional Summary

Russell Lamb is an expert in antitrust economics and has testified concerning antitrust liability, impact, and damages. He has an extensive background in applied econometrics and has developed econometric models to measure damages in a number of matters involving allegations of horizontal price fixing. He has provided expert testimony in State and Federal Courts in the United States and in Canada on a range of issues including class-certification and economic damages in antitrust, RICO and consumer fraud matters. In addition, he has provided expert advice to client attorneys at all levels of the litigation. Dr. Lamb has an extensive background in the analysis of domestic and international agricultural markets and has authored more than 50 articles in peer-reviewed economics journals, trade press, and major newspapers.

Dr. Lamb's work has been cited by courts in certifying classes in the United States and Canada. For example, in *In re Aftermarket Automotive Lighting Products Antitrust Litigation*, the court held that his analysis provided "a sufficient basis from which to conclude that Plaintiffs would adduce common proof concerning the effect of Defendants' alleged price-fixing conspiracy on prices class members paid." In certifying the Class in *In re: Titanium Dioxide Antitrust Litigation*, the Court said, "This Court finds that Dr. Lamb's regression analysis accurately reflects the characteristics of the titanium dioxide industry, and the facts in this case." In *In Re: Domestic Drywall Antitrust Litigation*, the Court cited extensively to Dr. Lamb's analysis in its decision to certify the Class: "Dr. Lamb's expert opinion fits the facts of the case, is relevant, and is therefore admissible to show classwide injury and measurable damages in support of Plaintiffs' Motion for Class Certification. [...]"

The Court [...] has thoroughly considered Dr. Lamb's opinion in its decision on the DPPs' Class Certification Motion." In the Canadian LCD Competition Act Class Action, the Court held that Dr. Lamb's analysis provided "evidence of a viable methodology for the determination of loss on a class-wide basis." In *In re: Puerto Rican Cabotage Litigation*, the Court held that "Dr. Lamb [had] set forth a reputable and workable model for determining damages as to individual class members." In certifying the class in *Clarke and Rebecca Wixon, et al. v. Wyndham Resort Development Corp., et al.*, the Court held that "Dr. Lamb [had] presented a plausible class-wide method of proof." In certifying the class in *Eugene Allan, et al., v. Realcomp II, Ltd., et al.*, the Court held that "the Plaintiffs have produced sufficient evidence that common proofs will yield a finding of class-wide damages that predominates over any specific individualized damages. The Lamb Report and Lamb Reply are sufficient to establish this fact." Furthermore, Dr. Lamb was the Indirect Purchaser Plaintiffs' expert in the *In re: Polyurethane Foam Antitrust Litigation* matter, which was certified by the Court in April 2014.

With regard to agricultural economics, Dr. Lamb has a particular expertise in agricultural markets and has undertaken extensive original research and econometric analysis on markets for agricultural commodities. His articles on agricultural economics have been published in peer-reviewed journals, trade press, and major newspapers. Dr. Lamb regularly presents at conferences on topics including the state of the U.S. Economy and farm policy.

Prior to co-founding Monument Economics Group, Dr. Lamb was a Senior Vice President at Nathan Associates Inc., where he directed the firm's litigation consulting practice nationally. Dr. Lamb previously served as a Principal at AACG in Arlington, VA, and as Managing Director and DC Office Head at Econ One Research. He earlier served as an Assistant Professor of Agricultural Economics and faculty member of the Graduate Group in Economics at North Carolina State University and as an Economist and Senior Economist in the Federal Reserve System of the United States, at the Federal Reserve Board and the Federal Reserve Bank of Kansas City.

Education

- Ph.D., Economics, University of Pennsylvania, 1994
- M.A., Economics, The University of Maryland, 1989
- B.A., Economics, The University of Tennessee, 1987

Expert Testimony Offered

2019 *GAËTAN ROY c. JTEKT Corporation & al. (Bearings/Roulements)*

- Cour Supérieure District de Québec
- Case No. 200-06-000159-130
- Expert Report, November 12, 2019
- Opinion concerning class certification issues
- Retained by Siskinds LLP, Sotos LLP

First Impressions Salon, Inc., et al., v. National Milk Producers Federation, et al.

- United States District Court for the Southern District of Illinois
- Case No. 3:13-cv-00454-NJR-SCW
- Expert Report, January 4, 2019
- Testified at deposition, February 13, 2019
- Expert Reply Report, May 3, 2019
- Testified at deposition, May 17, 2019
- Opinion concerning class certification and damages issues
- Retained by Barrett Law Group, NastLaw LLC, and Roberts Law Firm

Sheridan Chevrolet Cadillac Ltd., et al., v. JTEKT Corporation, et al.

- Ontario Superior Court of Justice
- Court File No. CV-13-478644-00CP
- Expert Report, January 2, 2019
- Opinion concerning class certification issues
- Retained by Sotos LLP

2018 *Sheridan Chevrolet Cadillac Ltd., et al., v. Hitachi Ltd., et al.*

- Ontario Superior Court of Justice
- Court File No. CV-14-506683-00CP
- Expert Report, October 4, 2018
- Opinion concerning class certification issues
- Retained by Sotos LLP

In Re Suboxone Direct Purchaser Antitrust Litigation

- United States District Court for the Eastern District of Pennsylvania
- Case No. 2:13-MD-02445-MSG
- Expert Report, September 18, 2018
- Testified at deposition, October 30, 2018
- Merits Expert Report, November 30, 2018
- Expert Rebuttal Report, January 11, 2019
- Testified at deposition, January 17, 2019
- Expert Merits Rebuttal Report, April 26, 2019
- Testified at deposition, June 12, 2019
- Opinion concerning class certification, merits, and damages issues

- Retained by Berger & Montague, P.C.; Garwin Gerstein & Fisher LLP; and Faruqi & Faruqi LLP

William Rushing, et al. v. Williams-Sonoma, Inc., et al.

- United States District Court Northern District of California, San Francisco Division
- Case No. 3:16-cv-01421-WHO
- Expert Report, July 25, 2018
- Opinion concerning class certification issues
- Retained by Rose Law Group, PC

The Hospital Authority of Metropolitan Government of Nashville and Davidson County, Tennessee, et al. v. Momenta Pharmaceuticals, Inc., et al.

- United States District Court Middle District of Tennessee Nashville Division
- Civil Action No. 15-cv-1100
- Testified at deposition, October 10, 2018
- Expert Report, June 22, 2018
- Expert Reply Report, September 21, 2018
- Testified at class certification hearing, May 13, 2019
- Declaration, May 21, 2019
- Expert Merits Report, May 24, 2019
- Declaration, June 18, 2019
- Expert Report, July 5, 2019
- Expert Supplemental Reply Report, July 5, 2019
- Testified at hearing, July 12, 2019
- Expert Merits Reply Report, July 29, 2019
- Testified at deposition, August 13, 2019
- Opinion concerning class certification and damages issues regarding indirect purchasers
- Retained by Lief Cabraser Heimann & Bernstein, LLP

2017 *Fady Samaha and Urlin Rent a Car Ltd. v. Yamashita Rubber Co., Ltd., et al.*

- Ontario Superior Court of Justice
- Court File No. CV-13-472262-00CP
- Expert Report, December 4, 2017
- Supplemental Report, July 13, 2018
- Opinion concerning class certification issues
- Retained by Siskinds LLP

In Re Lamictal Direct Purchaser Antitrust Litigation

- United States District Court New Jersey
- Case No. 12-95 -WHW-MCA
- Expert Report, November 6, 2017
- Revised Expert Reply Report, April 16, 2018
- Testified at deposition, June 6, 2018

- Opinion concerning class certification and damages issues
- Retained by Berger & Montague, P.C.

In Re Namenda Direct Purchaser Antitrust Litigation

- United States District Court Southern District of New York
- Case No. 1:15-CV- 07488
- Expert Report, September 15, 2017
- Amended Expert Report, September 20, 2017
- Expert Reply Report, October 25, 2017
- Amended Expert Reply Report November 9, 2017
- Testified at deposition, October 6, 2017
- Opinion concerning class certification and damages issues
- Retained by Berger & Montague, P.C.; and Garwin Gerstein & Fisher LLP

In Re Capacitors Antitrust Litigation

- United States District Court Northern District of California San Francisco Division
- Case No. 3:14-CV-03264 -JD
- Expert Declaration, February 24, 2017
- Expert Reply Declaration, April 28, 2017
- Testified at deposition, May 17, 2017
- Expert Trial Declaration, November 30, 2018
- Expert Trial Reply Declaration, April 19, 2019
- Testified at deposition, May 23, 2019
- Opinion concerning class certification issues regarding indirect purchasers
- Retained by Cotchett, Pitre & McCarthy, LLP

2016 *Deere Construction, LLC, v. Cemex Construction Materials Florida, LLC, et al.*

- United States District Court Southern District of Florida
- Case No. 15-24375-CIV-ALTONAGA/O'Sullivan
- Expert Report, September 14, 2016
- Testified at deposition, September 27, 2016
- Opinion concerning class certification issues
- Retained by Kozyak Tropin & Throckmorton, LLP; Harke Clasby & Bushman, LLP; and McCallum, Methvin & Terrell, P.C.

Luke Begonja v. Wyndham Vacation Resorts, Inc., et al. (Case No. 2015-CA-010943)

Gerrit Brouwer, Jr., et al. v. Wyndham Vacation Resorts, Inc., et al. (Case No. 2014-CA-008533)

Gary Gottschalk, et al. v. Wyndham Vacation Resorts, Inc., et al. (Case No. 2015-CA-001957)

Susan Hatzipetro, et al. v. Wyndham Vacation Resorts, Inc., et al. (Case No. 2014-CA-007996)

Shelly Keegan, et al. v. Wyndham Vacation Resorts, Inc., et al. (Case No. 2015-CA-001953)

Yvonne Klebba, et al. v. Wyndham Vacation Resorts, Inc., et al. (Case No. 2014-CA-008535)

Adriane McConville, et al. v. Wyndham Vacation Resorts, Inc., et al. (Case No. 2015-CA-001960)

Ernest W. Yeager Jr., et al. v. Wyndham Vacation Resorts, Inc., et al. (Case No. 2014-CA-008054)

- In the Circuit Court of the Ninth Judicial Circuit in and for Orange County, Florida
- Expert Report, September 14, 2016
- Testified at deposition, October 27-28, 2016
- Testified at deposition, March 2-3, 2017
- Expert Report, May 19, 2017
- Testified at deposition, August 29, 2017
- Opinion concerning damages issues
- Retained by Badham & Buck, LLC

In Re: Evanston Northwestern Healthcare Corporation Antitrust Litigation

- United States District Court for the Northern District of Illinois Eastern Division
- No. 07-C-4446
- Expert Report, July 28, 2016
- Expert Reply Report, January 25, 2017
- Testified at deposition, September 20, 2016
- Testified at deposition, February 22, 2017
- Opinion concerning damages issues
- Retained by Miller Law LLC

In Re: Ductile Iron Pipe Fittings (“DIPF”) Direct Purchaser Antitrust Litigation

- United States District Court for the District of New Jersey
- Civ. No. 12-711 (AET)(LHG)
- Declaration, May 27, 2016
- Reply Declaration, March 31, 2017
- Testified at deposition, July 8, 2016
- Opinion concerning class certification, merits, and damages issues
- Retained by Cohen Milstein Sellers & Toll PLLC; and Kaplan Fox & Kilsheimer LLP

Nestlé Purina Petcare Company v. Blue Buffalo Company, Ltd.

Blue Buffalo Company, Ltd. v. Nestlé Purina Petcare Company, et al.

Blue Buffalo Company, Ltd. v. Wilbur-Ellis Company, et al.

Diversified Ingredients, Inc. v. Wilbur-Ellis Company, et al.

Diversified Ingredients, Inc. v. Custom AG Commodities, LLC, et al.

- United States District Court for the Eastern District of Missouri Eastern Division
- Cause No.: 4:14-CV-00859 RWS
- Affidavit, March 17, 2016
- Opinion concerning pricing issues
- Retained by Lashly & Baer, P.C.

In Re: Cast Iron Soil Pipe and Fittings Antitrust Litigation

- United States District Court Eastern District of Tennessee at Chattanooga
- Case No.: 1:14-md-2508
- Declaration, March 4, 2016
- Testified at deposition, May 19, 2016
- Opinion concerning class certification and damages issues
- Retained by Cohen Milstein Sellers & Toll PLLC; Cera LLP; and Kaplan Fox & Kilsheimer LLP

Darren Ewert v. Denso Corporation, et al.

- Supreme Court of British Columbia
- Case No. S-135610
- Expert Report, February 12, 2016
- Expert Reply Report, January 5, 2017
- Opinion concerning class certification issues
- Retained by Camp Fiorante Matthews Mogerman

Serge Asselin v. Hitachi, LTD & al.

- Cour Supérieure Disctirct de Québec
- Case No. 200-06-000180-144
- Expert Report, February 11, 2016
- Opinion concerning class certification issues
- Retained by Siskinds LLP

2015 *Thomas Mervyn v. Atlas Van Lines, Inc., et al.*

- United States District Court Northern District of Illinois Eastern Division
- Case No. 1:13-CV-03587
- Expert Declaration, September 3, 2015
- Expert Report, February 4, 2016
- Opinion concerning data issues
- Opinion concerning damages issues
- Retained by Miller Law LLC

Thomas Mervyn v. Nelson Westerberg, Inc.

- United States District Court Northern District of Illinois Eastern Division
- Case No. 1:11-CV-06594
- Expert Report, July 27, 2015

- Opinion concerning damages issues
- Retained by Miller Law LLC

Lane's Gifts and Collectibles, LLC v. Microsoft Online, Inc.

- United States District Court Western District of Washington at Seattle
- No. 2:12-cv-01181-BJR
- Expert Report, March 23, 2015
- Testified at deposition, May 21, 2015
- Opinion concerning damages issues
- Retained by Nix, Patterson & Roach, L.L.P.; and Kessler Topaz Meltzer & Check, LLP

BlueCross BlueShield of Tennessee, Inc., et al. v. King Pharmaceuticals, Inc., et al.

- In the Circuit Court for Cocke County, Tennessee
- Civil Action No. 32941-II
- Expert Report, January 23, 2015
- Opinion concerning impact and damages issues
- Retained by Miller Law LLC

In Re: Domestic Drywall Antitrust Litigation

- United States District Court for the Eastern District of Pennsylvania
- MDL No. 2437 13-MD-2437
- Trial Expert Report, January 23, 2015
- Reply Expert Report, April 23, 2015
- Expert Report concerning class certification, August 3, 2016
- Expert Reply Report concerning class certification, January 9, 2017
- Affidavit, July 11, 2019
- Testified at deposition, February 25, 2015
- Testified at deposition, August 30, 2016
- Testified at deposition, February 17, 2017
- Testified at class certification hearing, April 27, 2017
- Expert Supplemental Report, July 31, 2017
- Opinion concerning merits issues regarding direct purchasers
- Opinion concerning class certification issues, impact and damages regarding direct purchasers
- Retained by Cohen Milstein Sellers & Toll PLLC; Berger & Montague, P.C.; and Spector Roseman Kodroff & Willis, P.C.

In Re: Processed Egg Products Antitrust Litigation

- United States District Court for the Eastern District of Pennsylvania
- MDL No. 2002
- Expert Declaration, January 22, 2015
- Expert Reply Declaration, April 3, 2015
- Testified at deposition, May 7, 2015
- Opinion concerning merits and damages issues regarding indirect purchasers

- Retained by Straus & Boies, LLP

2014 *In Re: Class 8 Transmission Indirect Purchaser Antitrust Litigation*

- United States District Court for the District of Delaware
- Civil Action No. 11-cv-00009 (SLR)
- Declaration, November 3, 2014
- Reply Declaration, March 6, 2015
- Trial Declaration, March 27, 2015
- Trial Reply Declaration, July 2, 2015
- Testified at deposition, December 17, 2014
- Testified at deposition, March 16, 2015
- Testified at class certification hearing, March 25, 2015
- Testified at deposition, May 1, 2015
- Opinion concerning class certification issues regarding indirect purchasers
- Opinion concerning merits and damages issues regarding indirect purchasers
- Retained by Glancy Binkow & Goldberg LLP

Mark S. Wallach, et al., v. Eaton Corporation, et al.

- United States District Court District of Delaware
- Civil Action No. 10-260-SLR
- Expert Report, November 3, 2014
- Expert Reply Report, March 6, 2015
- Trial Expert Report, March 27, 2015
- Trial Expert Reply Report, July 2, 2015
- Testified at deposition, December 16, 2014
- Testified at deposition, March 16, 2015
- Testified at class certification hearing, March 25, 2015
- Testified at deposition, May 1, 2015
- Opinion concerning class certification issues regarding direct purchasers
- Opinion concerning merits and damages issues regarding direct purchasers
- Retained by Cohen Milstein Sellers & Toll PLLC

Sheridan Chevrolet Cadillac Ltd., et al., v. Furukawa Electric Co. Ltd., et al.

Sheridan Chevrolet Cadillac Ltd., et al., v. Mitsubishi Electric Corporation, et al.

- Ontario Superior Court of Justice
- Court File Nos. CV-12-446737-00CP / CV-14-496994-00CP
- Expert Report, April 15, 2016
- Expert Report, October 14, 2014
- Opinion concerning class certification issues
- Retained by Siskinds LLP

Resco Products, Inc., v. Bosai Minerals Group Co., Ltd., et al.

- United States District Court for the Western District of Pennsylvania
- Civil Action No.: 2:06-cv-235-JFC

- Expert Report, September 24, 2008
- Expert Report, September 29, 2014
- Supplemental Expert Report, December 15, 2014
- Testified at deposition, February 13, 2015
- Opinion concerning damages
- Retained by Boies, Schiller & Flexner LLP

Fond Du Lac Bumper Exchange Inc., et al. v. Jui Li Enterprise Company Ltd. et al.

- United States District Court Eastern District of Wisconsin
- Case No.: 2:09-cv-00852-LA
- Affidavit, August 1, 2014
- Affidavit, November 4, 2014
- Declaration, April 24, 2015
- Expert Report, July 15, 2015
- Expert Reply Report, November 24, 2015
- Expert Surreply Report, January 15, 2016
- Expert Trial Report, August 18, 2016
- Expert Trial Reply Report, December 20, 2016
- Testified at deposition, October 1, 2015
- Testified at deposition, February 13, 2017
- Opinion concerning class certification and damages issues
- Opinion concerning Defendants' replacement data
- Opinion concerning Defendant and LKQ transaction-level data
- Opinion concerning merits and damages issues
- Retained by Stueve Siegel Hanson, LLP

Meredith Corporation, et al., v. SESAC, LLC, et al.

- United States District Court for the Southern District of New York
- 09 Civ. 9177 (PAE)
- Expert Report, July 10, 2014
- Opinion concerning class certification issues
- Retained by Weil, Gotshal & Manges LLP

Janet Skold, et al., v. Intel Corporation, et al.

- Superior Court of the State of California for the County of Santa Clara
- Case No. 1-05-CV-039231
- Expert Report, June 14, 2007
- Testified at deposition, August 31, 2007
- Testified at deposition, January 10, 2014
- Opinion concerning class certification issues
- Opinion concerning damages issues
- Retained by Girard Gibbs LLP

In Re: Polyurethane Foam Antitrust Litigation

- United States District Court Northern District of Ohio Western Division 8
- MDL No. 2196
- Declaration, June 11, 2013
- Reply Declaration, October 23, 2013
- Trial Declaration, March 18, 2014
- Reply Trial Declaration, June 30, 2014
- Testified at deposition, August 20, 2013
- Testified at deposition, November 20, 2013
- Testified at class certification hearing, January 15, 2014
- Testified at deposition, April 14, 2014
- Testified at deposition, July 14, 2014
- Opinion concerning class certification issues regarding indirect purchasers
- Opinion concerning merits and damages issues
- Retained by Miller Law LLC

Professional Experience

Economic Consulting Positions

Monument Economics Group, Oct. 11, 2016 - Present

Nathan Associates, Inc., Arlington, VA, *Senior Vice President*, Jan. 2013 – Sep. 20, 2016

Advanced Analytical Consulting Group, Inc., Washington, DC, *Principal*, Mar. 2011– Jan. 2013

Econ One Research, Inc., Washington, DC, *Managing Director and DC Office Head*, Jul. 2006 – Mar. 2011

- Opened and staffed the DC office; managed office affairs on a daily basis
- Retained as an expert witness for damages and class certification issues in antitrust, breach of contract, product liability and RICO cases; representative testimony includes determination of liability and damages in a case involving resale price maintenance in consumer products, class certification in a horizontal price-fixing case involving international travel in the airline industry, class certification in a consumer class action involving RICO claims in state court
- Industry pre-litigation analyses for consumer products, chemicals, and other industries

Navigant Consulting, Inc., Washington, DC, *Associate Director*, Feb. 2006 – Jul. 2006

- Case manager for damages analysis in asbestos litigation and personal injury claims

Nathan Associates, Inc., Arlington, VA, *Managing Economist*, Jul. 2004 – Feb. 2006

- Case manager for economic analysis of class certification and damages issues in antitrust and RICO cases involving the chemical, consumer products, and tobacco industries
- Retained as expert on damages for direct purchasers of NBR in the Crompton Global Settlement; submitted an Affidavit on damages and appeared before the Special Master for the Crompton Global Settlement (the Hon. Kenneth Feinberg)

Board Membership

- Board of Advisors, American Antitrust Institute, Washington, DC
- Department of Economics Advisory Council, University of Tennessee, Knoxville, Chairman, Spring 2006 – April 2011

Teaching Positions

- The George Washington University, Washington, DC, *Adjunct Assistant Professor of Economics*, Fall 2004 – present
- North Carolina State University (NCSU), *Assistant Professor* (Department of Agricultural and Resource Economics), Fall 1999 – Spring 2004
- The University of Pennsylvania, *Adjunct Instructor*, Summer 1990 – Spring 1994

Additional Teaching Experience

- The Wharton School Evening Division, Philadelphia, PA, summer 1993
- Rutgers University, Camden, NJ, summer 1993
- Philadelphia College of Textiles and Science, Philadelphia, PA, fall 1992
- The Pennsylvania State University, Media, PA, 1991
- St. Mary's College of Maryland, St. Mary's City, MD, summer 1989
- The University of Maryland University College, College Park, MD, 1988-1989

Courses Taught

- Managerial Economics for MBA students (George Washington University)
- Law and Economics (George Washington University)
- Intermediate Microeconomics – graduate level (George Washington University)
- Latin American Economic Development (George Washington University)
- International Trade: Theory and Policy (George Washington University)
- International Finance: Theory and Policy (George Washington University)
- Agricultural Production and Supply – Ph.D. field course (North Carolina State University)
- U.S. Agricultural Policy (North Carolina State University)

- Microfinance: Theory, Practice and Regulation (Superintendencia de Banca y Seguros)
- Statistical Analysis for Economics (University of Pennsylvania)
- Principles of Microeconomics (University of Maryland, St. Mary's College of Maryland)
- Principles of Macroeconomics (University of Pennsylvania, The Wharton School, Penn State University)
- Fundamentals of Micro/Macro Economics (University of Maryland)
- Environmental and Natural Resource Economics (Rutgers)

Federal Reserve Experience

Federal Reserve Bank of Kansas City, *Senior Economist* Jan. 1998 – Aug. 1999; *Economist*, Jan. – Dec. 1997

- Analysis of regional, macroeconomic developments in agriculture, and energy
- Research on public policy towards agriculture in the U.S., especially the impact of farm policy reform
- Briefings to the Bank president and outside groups on the regional economy, agriculture, agricultural trade

Board of Governors of the Federal Reserve System, *Economist*, Jun. 1994 – Dec. 1996

- Analysis of macroeconomic conditions, commodity markets, and prices (CPI, PPI, Core prices)
- Forecasting of agricultural output, prices, and income
- Briefings to the Board of Governors on agriculture and food-price developments

Other Consulting Experience

World Perspectives, Inc., 2003 - 2004

- Analysis of trade barriers for U.S. exports of feed ingredients, pet food ingredients, and food ingredients
- Analysis of the impact of a Free Trade Area of the Americas on U. S. soybean producers
- Analysis of the potential for U.S. Halal-certified meat exports to the Middle East

Womble Carlyle Sandridge & Rice, LLP, 2003 - 2004

- Provided expert testimony related to the estimation of business profitability Smith-Moore, 2002 - 2003
- Provided economic analysis of the U.S. Tobacco Program

Superintendencia de Banca y Seguros (Lima, Peru), 1998 - 2000

- Developed and taught a class on Microfinance issues (in English) to students enrolled in a training program for bank examiners; the program was sponsored by the Inter-American Development Bank.

World Bank, Africa Technical Department, 1992 – 1993

- Summarized and provided an overview of data available on African economic and social indicators

ACG-Afrique, January 1993

- Provided critical review of a study document outlining the impact of structural adjustment on African agriculture

Professional Organizations

- National Association for Business Economics
- American Economic Association

Papers, Publications, and Speeches

Papers Published in Refereed Journals

- “Government Regulation and Quality in the U.S. Beef Market,” (with Peyton Ferrier) *Food Policy*, Vol. 32, No. 1, February 2007, 84-97
- “Rent-seeking in U.S.-Mexican Avocado Trade,” *Cato Journal*, Vol. 26, No. 1, December 2006, 159-177
- “Consolidation in U.S. Agriculture and the Role of Public Policy,” *The ICFAI Journal of Agricultural Economics*, Vol. 1, 2004, 7-16
- “Fertilizer Use, Risk, and Off-farm Labor Markets in the Semi-Arid Tropics of India,” *American Journal of Agricultural Economics*, Vol. 85, No. 2, May 2003, 359-371
- “Inverse Productivity: Land Quality, Labor Markets, and Measurement Error,” *Journal of Development Economics*, Vol. 71, No. 1, June 2003, 71-95
- “A Market-Forces Policy for the New Farm Economy?” *Review of Agricultural Economics*, Vol. 24, No. 1, 1 March 2002, 15-30
- “Food Crops, Exports, and the Short-run Policy Response of Agriculture in Africa,” *Agricultural Economics*, Vol. 22, No. 3, April 2000, 271-298
- “FAIR Act Implications for Land Values in the Corn Belt,” (with Jason Henderson) *Review of Agricultural Economics*, Vol. 22, No. 1, Summer – Spring 2000, 102-119
- “Why are Estimates of Agricultural Supply Response So Variable?” (with Francis X. Diebold) *Journal of Econometrics*, Vol. 76, No. 1-2, January – February 1997, 367-373

Non-refereed Publications, Articles, and Editorials

- “The Predominance Requirement for Antitrust Class Actions – Can Relevant Market Analysis Help?” (with Jeffrey Leitzinger) American Bar Association – Section of Antitrust Law, *Economics Committee Newsletter*, Vol. 7, No. 1, Spring 2007, 17-22
- “Reform of U.S. Farm Policy in an Integrating World Economy,” *Developing Countries in the WTO System*, 2006
- “New Farm Economy,” *Regulation*, Winter 2003-2004, Cato Institute for Public Policy Research, 2003
- “What Road Will U.S. Economy Take in 2003?” *Southeast Farm Press*, 5 February 2003
- “Fast Track for the Tax Cuts,” guest editorial, *News and Observer*, 18 January 2003
- “The 2002 Farm Bill,” (with Blake Brown and Michele Marra) *NC State Economist*, November – December 2002
- “Economy-minded Tax Cuts: Bush's Reductions Provided the Boost to Lift U.S. From Recession,” guest editorial, *News and Observer*, 2 July 2002
- “Policy Only Effective if Farm Economy is Recognized,” special report to *Feedstuffs*, 5 June 2000
- “Aid During Crisis of Little Long-term Help to Farmers,” guest editorial, *Kansas City Star*, 23 August 1999
- “Survey of Agricultural Credit Conditions,” Federal Reserve Bank of Kansas City, *Regional Economic Digest*, various issues, 1997-1999
- “U.S. Agriculture at the Crossroads in 1999,” *Economic Review*, Federal Reserve Bank of Kansas City, Vol. 84, No. 1, 1999, 73-91
- “Can U.S. Oil Production Survive the 20th Century?” *Economic Review*, Federal Reserve Bank of Kansas City, Vol. 84, Quarter I, 1999
- “Will the Tenth District Catch the Asian Flu?” (with Ricardo Gazel) *Economic Review*, Federal Reserve Bank of Kansas City, Vol. 83, Quarter II, 1998, 9-26
- “From the Plains to the Plate: Can the Beef Industry Regain Market Share?” (with Michelle Beshear) *Economic Review*, Federal Reserve Bank of Kansas City, Vol. 83, Quarter IV, 1998, 49-66
- “U.S. Agriculture: Another Solid Year in 1998?” (with Mark Drabenstott) *Economic Review*, Federal Reserve Bank of Kansas City, Vol. 83, No. 1, Quarter I, 1998, 55-74
- “How Will the 1996 Farm Bill Affect the Outlook for District Farmland Values?” *Economic Review*, Federal Reserve Bank of Kansas City, Vol. 82, Quarter IV, 1997, 85-101
- “Food Prices and the Farm Sector,” monthly *Greenbook*, Federal Reserve Board of Governors, various issues 1994-1996

- “Hedge to Arrive Contracts,” Memo to the Board of Governors, Federal Reserve Board of Governors, 5 June 1996
- “Prices in the May Greenbook,” Federal Reserve Board of Governors, 19 May 1996
- “Prices in the March Greenbook,” Federal Reserve Board of Governors, 24 March 1996
- “Commodity Price Developments,” Weekly memo to the Board of Governors, Federal Reserve Board of Governors, August 1994 – December 1996

Conference Presentations

- “Class Action Developments,” panelist at the American Antitrust Institute’s 6th Annual Private Antitrust Enforcement Conference, Washington, DC: 4 December 2012
- “Consequences for Antitrust Thought and Practice,” presented at the American Antitrust Institute Invitational Symposium: Antitrust Challenge of Multi-Channel Distribution in the Internet Age, Washington, DC: 22 June 2011
- “The U.S. Economy in the Year Ahead,” presented at the Long Company Annual Conference, Chicago, IL: 11 September 2009 and 19 September 2008
- “The U.S. Economic Outlook,” presented at the Industry Outlook Conference, Chicago, IL: 17 October 2006 and 18 October 2005
- “How Will the Economy Impact Your Business?” presented at the Long Company Annual Conference, Las Vegas, NV: 14 August 2004
- “Focus on The Economy” presented at *Milling and Baking News* Annual Purchasing Managers’ Conference, Kansas City, MO: 14 June 2004, 10 June 2003 and 11 June 2002
- “The U.S. Economic Outlook and Agriculture,” presented at the Industry Outlook Conference, Chicago, IL: October 2003
- “The U.S. Economic Outlook and Agriculture,” presented at the Industry Outlook Conference, Breckenridge, CO: 7 April 2002
- “The U.S. Economic Outlook: The Cost of Terror,” presented at the Southern Agricultural Outlook Conference, Atlanta, GA: 24 September 2001
- “The Economy in Focus,” presented at *Milling and Baking News* annual purchasing managers’ conference, Kansas City, MO: 5 June 2001
- “The Great American Growth Machine,” presented at the Southern Agricultural Outlook Conference, Atlanta, GA: 27 September 2000
- “The Economy in Focus,” presented at *Milling and Baking News* annual purchasing managers’ conference, Kansas City, MO: 6 June 2000
- “The Outlook for the U.S. Pork Sector,” presented to the Industry Outlook Conference, Las Vegas, NV: 17 April 2000

- “The National Economic Outlook: The Road Ahead,” presented to the Food Industry Outlook Conference, Breckenridge, CO: 11 April 1999
- “Farm Policy for the New Millennium,” presented to Federal Reserve Bank of Kansas City, Division of Bank Supervision and Regulation, Bank Examiners’ Annual Training Conference, 7 January 1999
- “The Impact of the 1996 Farm Bill on Farmland Values,” (with Jason Henderson) first place poster presentation at the annual meetings of the American Agricultural Economics Association, Salt Lake City, UT: 4 August 1998
- “A Note on the Inverse Productivity Relationship,” presented at the annual meetings of the Western Economic Association International, Seattle, WA: July 1997
- “Off-farm Labor Supply and Fertilizer Use in the Semi-Arid Tropics of India,” presented at the annual meetings of the American Agricultural Economics Association, August 1995
- “Prices for Food-Away-From-Home and Core Inflation: Some Empirical Relationships,” (with James E. Kennedy) presented at the Federal Reserve System Committee on Agriculture, Richmond, VA: October 1995
- “Some Simple Dynamics of Farming,” presented at the annual meetings of the American Agricultural Economics Association, Orlando, FL: August 1993
- “Structural Adjustment and Food Security,” (with W. Graeme Donovan), presented at the annual meetings of the American Agricultural Economics Association, Orlando, FL: August 1993
- “Structural Adjustment and African Agricultural Supply Response to Exchange Rate and Price Movements,” (with W. Graeme Donovan), presented at the annual meetings of the Southern Agricultural Economics Association, Tulsa, OK: January 1993

Other Presentations

- Panelist, “Antitrust Class Actions – Where Are We? A 360 Degree Perspective,” NYSBA Annual Antitrust Law Section Meeting,” 30 January 2014
- Panelist, Retrospective on the Baby Products Litigation, ABA Section of Antitrust Law: Pricing Conduct Committee, 31 July 2013
- Panelist, Economic Forecasting Summit, Northern Indiana Workforce Investment Board, Inc., 29 March 2007
- “The Welfare Benefits of USDA Beef Quality Certification Programs” (with Peyton Ferrier), presentation memo, 2007
- “Reform of U.S. Farm Policy in an Integrating World Economy,” presented to the Cordell Hull Institute, Trade Policy Roundtable on Reform of U.S. Farm Policy and the WTO System, Washington, DC: 31 March 2006
- “The Case for a Market-forces Farm Policy in the U.S.” presented at the Cordell Hull Institute Trade Policy Roundtable, Washington DC: 26 May 2005

- “How Will the Economy Impact Your Business?” presented at the Apple Processors Association annual meeting, Homewood Resort, 20 June 2004
- “The U.S. and International Economic Outlook,” presented at the AgFirst Loan Officer’s Seminar, Atlanta, GA: 30-31 October 2002
- “Will the U.S. Economy Bounce or Crawl?” presented to the Eastern Bankruptcy Institute, North Myrtle Beach, SC: 1 June 2002
- “The U.S. Economic Outlook and Agriculture,” presented to the National Pork Producers Pork Action Group, Washington, DC: 10 April 2002
- “The U.S. Economic Outlook” presented to the Risk Management Associates, Raleigh, NC: 7 February 2002
- “The U.S. Economic Outlook: The Cost of Terror,” presented at the National Pork Producers Pork Action Group, Marco Island, FL: 14 November 2001
- “Consolidation in Agriculture and the Role of Public Policy,” paper presented to the Southern Extension Meetings, Williamsburg, VA: 13 June 2000
- “The New Farm Economy,” presented at the annual meetings of the National Association of County Agricultural Agents, Omaha, NE: 14 September 1999
- “Regional Economic Update,” presented to bankers in Kansas, Nebraska, Missouri, and Oklahoma as part of the Regulatory Update Seminar, Federal Reserve Bank of Kansas City, April 1999
- “The National Economic Outlook,” presented to Oklahoma State University Advanced Cattle Management Seminar, Stillwater, OK: 11 March 1999
- “Regional Economic Update,” presented to Thomas Hoenig, President, Federal Reserve Bank of Kansas City, 13 November 1998
- “Can the Tenth District Survive the Asian Flu?” The Federal Reserve Bank of Kansas City Economic Forums, nine presentations to bankers in Wyoming, Oklahoma, and New Mexico, 21 September – 21 October 1998
- “The Impact of Asian Economic Developments on Tenth District Agriculture,” presented to Thomas Hoenig, President, Federal Reserve Bank of Kansas City, 30 January 1998
- “The Outlook for the Nebraska Economy,” The Federal Reserve Bank of Kansas City: Nebraska Economic Forums, six presentations to bankers in Nebraska, 6-15 October 1997
- “Update on the Macroeconomy and Special Briefing on Forecast Performance at the Kansas City Fed,” presented to Thomas Hoenig, President, Federal Reserve Bank of Kansas City, 13 August 1997
- “Regional Economic Update,” presented to Thomas Hoenig, President, Federal Reserve Bank of Kansas City, 14 May 1997 and 21 March 1997
- “Producer Prices, Retail Sales, and Agricultural Commodity Markets,” presented to the Board of Governors of the Federal Reserve System, 15 July 1996

Referee Experience

Referee for the Following Academic Journals

- World Development, 1993
- Journal of Development Economics, 1994, 1995
- International Economic Review, 1995
- Journal of Human Resources, 1997
- Journal of Business and Economics Statistics, 1997
- American Journal of Agricultural Economics, 1999, 2001, 2002
- Agricultural Economics, 2000, 2001, 2004
- Agricultural Finance Review, 2000, 2004
- Review of Agricultural Economics, 2000, 2002, 2004
- Journal of Agricultural and Resource Economics, 2000, 2001, 2002
- Emerging Markets Review, 2001
- Contemporary Economic Policy, 2004

Fellowships, Honors, and Awards

Fellowships

- Departmental Fellowship, University of Pennsylvania, 1989-1990
- Dean's Fellowship, University of Pennsylvania, 1991-1992
- Graduate School Fellowship, University of Maryland, College Park, 1987-1989

Honor Societies and Professional Organizations

- Phi Eta Sigma National Honor Society
- Mortar Board National Honor Society
- Golden Key National Honor Society
- Vice President for Professional Activities, Delta Sigma Pi

Awards

- Top Graduate in Liberal Arts, University of Tennessee, Knoxville, Spring 1987
- Chancellor's Citation for Extraordinary Professional Promise, University of Tennessee, Knoxville
- Chancellor's Citation for Outstanding Academic Achievement, University of Tennessee, Knoxville
- First place poster presentation, American Agricultural Economics Association annual meetings, August 1998 (with Jason Henderson)

- Honorable mention, American Agricultural Economics Association, Essay for the 21st Century, 2001, “A Market Forces Policy for the New Farm Economy”
- Honorable mention, American Antitrust Institute Antitrust Enforcement Awards, Outstanding Antitrust Litigation Achievement in Economics (for work on *In Re Titanium Dioxide Antitrust Litigation matter*)
- American Antitrust Institute Antitrust Enforcement Awards, Outstanding Antitrust Litigation Achievement in Economics (for work on *In Re Domestic Drywall Antitrust Litigation matter*)

External Funding

- “Unmanufactured Flue-Cured Tobacco Exports and the Export Component of the Quota Formula.” \$13,890 NC Tobacco Foundation. With Blake Brown 2000 – 2001.

Professional Activities and Services

Graduate Student Advising

M.A. degree, North Carolina State University

- Joe Weinberg (Political Science)

Master of Economics, North Carolina State University

- William Pole (2000)
- Dwight Wilder (Chairman, 2002)
- Adrian Atkeson (2002)
- Sarah Spivey
- Li Zhang (Chairman, 2003)
- Nia Atmadja (2003)

Doctor of Philosophy, North Carolina State University

- William Deese (2003)
- Peyton Ferrier (Chairman, 2004)
- Yang Wang (2003)
- Bobby Huggett (2003)
- Syed Wadood (Chairman, 2004)
- Henry Kuo

Economic and Statistical Modeling Skills

- Experience with all major statistical software including SAS, STATA, LIMDEP and C++; applied econometric modeling skills in damage analysis of consumer industries, chemicals industries, and agricultural markets, correlation analysis for class certification.