

**IMPORTANT LEGAL MATERIALS**



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 20, 2019, is available for your review at [www.bergermontague.com](http://www.bergermontague.com) and [www.garwingerstein.com](http://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 May 27, 2020, at 10:00 a.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**

<b>WHEN YOU RECEIVE A CLAIM FORM, PROMPTLY COMPLETE AND RETURN IT</b>	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.
<b>OBJECT TO THE SETTLEMENT</b>	If you object to all or any part of the proposed settlement, write to the Court about why you object to the proposed settlement.
<b>GETTING MORE INFORMATION</b>	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 3-4

1. Why did I get this notice?
2. What is this lawsuit about?
3. Why is this lawsuit a class action?
4. Has the Court identified Class Claims, Issues, or Defenses?
5. Why is there a settlement with Defendants?

WHO IS IN THE CLASS AND SETTLEMENT..... PAGE 4

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

THE SETTLEMENT BENEFITS - WHAT YOU GET .....PAGE 4-5

7. What does the settlement with Defendants provide?
8. How much will my payment be?
9. How can I get a payment?
10. When would I get my payment?

THE LAWYERS REPRESENTING YOU ..... PAGE 5

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 6

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

THE COURT’S FAIRNESS HEARING .....PAGE 6-7

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 7

18. What happens if I do nothing at all?

GETTING MORE INFORMATION..... PAGE 7

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](http://www.bergermontague.com) and [www.garwingerstein.com](http://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 begin 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](http://www.bergermontague.com) and [www.garwingerstein.com](http://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:

- 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;
- 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;
- Whether the challenged conduct caused antitrust injury-in-fact to the Class, in the form of overcharges; and
- 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](http://www.bergermontague.com) and [www.garwingerstein.com](http://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](http://www.bergermontague.com) and [www.garwingerstein.com](http://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](http://www.bergermontague.com) and [www.garwingerstein.com](http://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 March 13, 2020 on [www.bergermontague.com](http://www.bergermontague.com) and [www.garwingerstein.com](http://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 March 13, 2020. 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 March 30, 2020.**

## 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 10:00 a.m. on May 27, 2020, 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 March 30, 2020, 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](http://www.bergermontague.com) or [www.garwingerstein.com](http://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](http://www.bergermontague.com) and [www.garwingerstein.com](http://www.garwingerstein.com).

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

DATE: February 12, 2020

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

