

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

In re Namenda Indirect Purchaser Antitrust Litigation, No. 1:15-6549-CM

THE CLAIM FILING DEADLINE IS FEBRUARY 3, 2023.

**NOTICE OF INDIRECT PURCHASER CLASS ACTION SETTLEMENT**

**If You Purchased, Paid for, or Provided Reimbursement for the Alzheimer’s Disease Drug Namenda XR, or Namenda IR and its AB-rated generic forms, between April 14, 2010 through December 31, 2017, You Could Get Money from Class Action Settlements.**

*A Federal Court authorized this Notice. This is not a solicitation from a lawyer.*

PLEASE READ THIS ENTIRE NOTICE CAREFULLY. A UNITED STATES FEDERAL COURT AUTHORIZED THIS NOTICE. YOUR RIGHTS MAY BE AFFECTED BY THE PROCEEDINGS IN THIS ACTION. THIS NOTICE ADVISES YOU OF YOUR RIGHTS AND OPTIONS WITH RESPECT TO THIS ACTION.

- A settlement has been reached in a class action lawsuit pending in the United States District Court for the Southern District of New York against Actavis, plc and its wholly owned subsidiary Forest Laboratories, LLC (jointly, “Actavis”), the manufacturer of Namenda; and Merz GmbH & Co. KgaA, Merz Pharmaceuticals GmbH, and Merz Pharma GmbH & Co. KgaA (collectively, “Merz”), the patent holder of Namenda (collectively with “Actavis” they are the “Brand Defendants”) about the price third-party payors paid for Namenda. The lawsuit claims that the Brand Defendants engaged in a monopolization scheme that kept generic versions of Namenda off the market and made Namenda prices higher than they otherwise would have been. The Brand Defendants deny these claims.
- A settlement fund of \$54,400,000.00 with the Brand Defendants (the “Brand Defendants Settlement”) has been established to pay Third-Party Payors (TPPs) and any attorneys’ fees, costs, expenses, incentive award ordered by the Court, and notice and settlement administration costs. Individual consumers are NOT included as part of the Brand Defendants Settlement.
- You may be able to recover money from the Brand Defendants Settlement if you purchased, paid for, and/or reimbursed all or part of the cost of Namenda in certain states (defined below) during the period from June 1, 2012 through December 31, 2017 (or, in Rhode Island, July 15, 2013 through December 31, 2017).
- Cash settlements were previously reached with Barr Pharmaceuticals, Inc., Cobalt Laboratories, Inc., Teva Pharmaceutical Industries, Ltd., and Teva Pharmaceuticals USA, Inc. (collectively, “Teva”), Dr. Reddy’s Laboratories Ltd. and Dr. Reddy’s Laboratories, Inc. (jointly, “Dr. Reddy’s”)<sup>1</sup>, Wockhardt

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<sup>1</sup> The Dr. Reddy’s Settlement Agreement provides in part “The Settling Parties agree that if the Court certifies a class based on the Plaintiff’s pending motion for class certification (or for any purpose other than for settlement), then the class definition applicable to the Settling Defendants will be modified to include all people and entities encompassed within either the above definition or in the definition certified by the Court.” By earlier notice, the Third-Party Payors (“Brand Defendants”) class was certified.

Limited and Wockhardt USA LLC (jointly, “Wockhardt”), , Amneal Pharmaceuticals, LLC, and Sun Pharmaceutical Industries Ltd., and Upsher-Smith Laboratories, LLC (collectively, “Amneal/Sun/Upsher-Smith” and with Teva, Dr. Reddy’s, and Wockhardt, collectively, the “Generic Defendants”). These settlements (the “Generic Defendants Settlement”), which include both consumers and TPPs, provide for aggregate cash payments of \$2,038,000.

- You may be able to recover money from the Generic Defendants Settlement if you purchased, paid for, and/or reimbursed all or part of the cost of Namenda in the United States and its territories during the period from April 14, 2010 through December 31, 2017 (the estimated date the anticompetitive effects of Generic Defendants’ unlawful conduct ceased) (or, in Rhode Island, July 15, 2013, through December 31, 2017).
- No one is claiming that Namenda is unsafe.

**A Summary of Your Rights and Choices:  
Your Legal Rights Are Affected Even If You Do Not Act.**

<b>YOUR LEGAL RIGHTS AND OPTIONS AND DEADLINES FOR YOU TO ACT</b>		
<b>Action</b>	<b>Explanation</b>	<b>Deadline</b>
File a claim	This is the only way you may receive money from either settlement.	February 3, 2023
Exclude yourself (consumer only) from the Generic Defendants Settlement	ONLY consumers may ask to be excluded from the Generic Defendants Settlement. If you do so, you will not receive any benefit from the Generic Defendants Settlement, but you retain your right to sue the Generic Defendants on your own. However, your claims might be barred by the applicable statute of limitations.  TPPs CANNOT exclude themselves as the time to do so has passed.	February 3, 2023
Object to the settlements	Write to the Court and explain what you do not like about the settlements.	February 3, 2023
Attend the hearing	Ask to speak in Court about the fairness of the settlements.	February 3, 2023
Do nothing	Receive no payment. Give up rights to be part of any other lawsuit that asserts claims related to the allegations or claims against the Generic Defendants in this case.	

**THESE RIGHTS AND OPTIONS AND THE DEADLINES TO EXERCISE THEM ARE EXPLAINED IN THIS NOTICE.**

*This lawsuit does not claim that any brand Namenda product or generic memantine hydrochloride is unsafe.*

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**BASIC INFORMATION**

**1. Why is there Notice?**

A Court authorized this Notice because you have a right to know about the proposed settlements of this class action lawsuit and about all your options before the Court decides whether to give final approval to the settlements. This notice explains the lawsuit, the settlements, and your legal rights.

The U.S. District Court for the Southern District of New York (the “Court”) is overseeing this case. The case is known as *In re Namenda Indirect Purchaser Antitrust Litigation*, Case No. 15-6549-CM. The person who sued is called the “Plaintiff.” The Defendants are Actavis, Forest, and Merz, a.k.a., the Brand Defendants, and the Generic Defendants are Teva, Dr. Reddy’s, Upsher-Smith/Amneal/Sun, and Wockhardt.

**2. What is the lawsuit about?**

Plaintiff alleges that Brand Defendants and Generic Defendants (collectively, the “Defendants”) violated state antitrust, consumer protection and deceptive trade practices laws, and engaged in inequitable conduct by participating in an unlawful scheme to delay and impede the market entry of less expensive, generic versions of Namenda IR. Specifically, the Plaintiff alleges that the Defendants entered into unlawful non-competition agreements, or horizontal market allocation agreements, with prospective generic competitors, whereby Defendants agreed to pay the generic competitors in exchange for the generic competitors agreeing to delay selling their generic version of Namenda IR. Plaintiff alleges that it and other members of the Classes (defined

below) were injured by being overcharged because of Defendants' conduct and overpaid on their purchases of Namenda IR, Namenda XR, and generic Namenda IR.

The operative Complaint in this Action is posted on the website and contains all of the allegations and claims asserted against the Defendants.

Defendants deny all these allegations but have agreed to settle the lawsuit to avoid the cost, delay, and uncertainty of litigation. The Court or a jury has not decided which side is right.

**3. Why is this lawsuit a class action?**

In a class action, one or more persons or entities called a class representative sue on behalf of other people or entities with similar claims. In this case, the class representative is Sergeants Benevolent Association Health & Welfare Fund. The class representative and the entities on whose behalf it has sued together constitute the class. All of the people or entities who have claims similar to the class representative are members of the class, except for those who excluded or exclude themselves from the class.

**4. What do the settlements provide?**

The Brand Defendants Settlement provides that the Brand Defendants will pay \$54,400,000.00 into a settlement fund to pay TPPs and any attorneys' fees, costs, expenses, incentive award ordered by the Court, and notice and settlement administration costs.

The Generic Defendants Settlement provides that the Generic Defendants will pay \$2,038,000.00 into a settlement fund to pay consumers and TPPs and any attorneys' fees, costs, expenses, incentive award ordered by the Court, and notice and settlement administration costs. The allocable portion of the Generic Defendants' settlement is substantially less than the expenses (expert witness fees, etc.) that Class Counsel have incurred from the start of the litigation to the last Generic Defendants Settlement date (July 31, 2020) in connection with the continuing prosecution of this matter on behalf of members of the Generic Defendants Class and members of the Brand Defendants Class and the cost to disseminate notice to the class. Therefore, due to the additional costs of notice, and related notice administration and claims administration, the amount allocated to the Generic Defendants Settlement may not warrant distribution to the Generic Defendants Class, and instead would pour over into the Third-Party Payor Pool (defined in the Plan of Allocation) and shall be used to pay Qualifying Claims made against that Pool.

Each settlement provides a release of all claims by members of the Classes. This means that if you remain in the classes you cannot sue the Defendants in another lawsuit relating to the claims in this lawsuit. Complete details of the settlements, including full release language, can be found in the settlement agreements which are available at [www.InReNamendaIndirectAntitrustLitigation.com](http://www.InReNamendaIndirectAntitrustLitigation.com).

**DETERMINING IF YOU ARE A MEMBER OF THE CLASS**

**5. How do I know if I am a member of one or both of the Classes?**

The class in the settlement with the Brand Defendants (the "Brand Defendants Class") includes the following:

All Third-Party Payors who indirectly purchased, and/or paid, and/or provided reimbursement for, some or all of the purchase price for branded Namenda IR 5 or 10 mg tablets, their AB-rated generic equivalents, and/or Namenda XR capsules, other than for resale in Alabama, Arizona, California, D.C., Florida, Hawaii, Idaho, Illinois, Iowa, Kansas, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Oregon, Rhode Island (for purchases after July 15, 2013), South Dakota, Tennessee, Utah, Vermont, West Virginia, and Wisconsin, for consumption by themselves, or their members, employees, insureds, participants, or beneficiaries, from June 1, 2012 through December 31, 2017.

The following persons or entities are excluded from the Brand Defendants Class: (a) Defendants and Defendants' parents, subsidiaries and affiliates; (b) fully-insured health care plans (*i.e.*, health care plans that purchased insurance from another third-party payor covering 100% of the insureds' prescription drug benefits on behalf of the Plan's members and beneficiaries); (c) all federal or state governmental entities, excluding

cities, towns or municipalities with self-funded prescription drug plans; (d) Pharmacy Benefit Managers (“PBMs”); and (e) all judges presiding in this case, their chambers staff, and any members of their immediate families, and all counsel of record.

**Also excluded from the Class are Third Party Payors that previously submitted valid requests for exclusion.**

The class in the settlement with the Generic Defendants (the “Generic Defendants Class”) includes the following:

All persons or entities in the United States and its territories who indirectly purchased, paid, and/or provided reimbursement for some or all of the purchase price for branded Namenda IR 5 or 10 mg tablets, or Namenda XR capsules, for consumption by themselves, their families, or their members, employees, insureds, participants, or beneficiaries, other than for resale, at any time during the period from April 14, 2010 through the date that the anticompetitive effects of Generic Defendants’ unlawful conduct ceases. The settlement with Teva also includes the AB-rated generic equivalents of Namenda IR 5 or 10 mg tablets.

The following persons or entities are excluded from the Class: (a) the Generic Defendants and their respective subsidiaries and affiliates; (b) fully insured health care plans (*i.e.*, health care plans that purchased insurance from a third-party payer covering 100% of a plan’s reimbursement obligation to its members); (c) all persons or entities that purchased branded Namenda IR 5 or 10 mg tablets or Namenda XR capsules for purposes of resale or directly from a Defendant; (d) insured individuals covered by plans imposing a flat dollar co-pay that was the same dollar amount for generic as for brand drug purchases; (e) pharmacy benefit managers without capitation contracts; (f) all judges presiding in this case and all counsel of record; and (g) all federal or state governmental entities, excluding cities, towns or municipalities with self-funded prescription drug plans.

**Also excluded from the Class are Third Party Payors that previously submitted valid requests for exclusion.**

## YOUR OPTIONS AS A MEMBER OF ONE OR BOTH CLASSES

### 6. What are my options as a member of one or both Classes?

If you are a consumer, you can choose to do nothing, file a claim, object, or exclude yourself from the Generic Defendants Settlement. Consumers are not included in the Brand Defendants Settlement.

If you are a TPP, you can choose to do nothing, file a claim, or object to the Generic Defendants Settlement and/or the Brand Defendants Settlement. You cannot exclude yourself from the Brand Defendants Settlement.

## HOW TO GET A PAYMENT

### 7. What do I need to do to get a payment?

To be eligible to receive a payment if the Court approves the settlements, you must complete and submit a valid Claim Form. Claim Forms should be mailed to the address below and must be postmarked by **February 3, 2023**. You can get a Claim Form at [www.InReNamendaIndirectAntitrustLitigation.com](http://www.InReNamendaIndirectAntitrustLitigation.com) or by calling 1-877-266-8807 or writing to the address below and requesting a Claim Form.

*In re Namenda Indirect Purchaser Antitrust Litigation*  
c/o A.B. Data, Ltd.  
P.O. Box 173021  
Milwaukee, WI 53217

You may also submit a completed Claim Form online at [www.InReNamendaIndirectAntitrustLitigation.com](http://www.InReNamendaIndirectAntitrustLitigation.com). If you submit a Claim Form online, you must do so by **February 3, 2023**.

If the Notice and Claims Administrator rejects or reduces your claim and you believe the rejection or reduction is in error, you may contact the Notice and Claims Administrator to request further review. If the dispute

concerning your claim cannot be resolved by the Notice and Claims Administrator and Class Counsel, you may request that the Court review your claim.

## OBJECTING TO THE SETTLEMENTS

### 8. May I comment on or object to the settlements?

Yes. If you are a member of the Brand Defendants Class or Generic Defendants Class (together, the “Classes”) and you did not request to exclude yourself, you may comment on or object to any aspect of the settlements, including the fairness of the settlements, the Plan of Allocation, and/or Class Counsel’s requests for attorneys’ fees, expenses, and class representative’s incentive award.

### 9. How do I comment on or object to the settlements?

To comment on or object to the settlements, you (or your lawyer if you have one) must send a written comment or objection to the Court and the counsel identified below. You must send your comment or objection on or before **February 3, 2023**. Your written comment or objection can include any supporting materials, papers, or briefs that you want the Court to consider. Your written comment or objection must include:

- Your name, address, telephone number, and an explanation of your objection;
- The case name and number: *In re Namenda Indirect Purchaser Antitrust Litigation*, No. 1:15-cv-06549; and
- Documentation demonstrating that you are a member of the one of the Classes and/or this statement, followed by your signature: “I declare under penalty of perjury under the laws of the United States of America that [insert your name] is a member of the Class.”

You must file your comment or objection with the Court (mailing address immediately below) and mail copies to the counsels’ addresses below, and it must be postmarked by **February 3, 2023**.

Court	Class Counsel	Defense Counsel
Clerk Attention: Case No. 1:15-cv-06549 United States District Court Southern District of New York 500 Pearl Street New York, NY 10007	Marvin A. Miller Lori A. Fanning <b>MILLER LAW LLC</b> 145 S. Wells Street, Floor 18 Chicago, IL 60606	James F. Hurst <b>KIRKLAND &amp; ELLIS LLC</b> 300 N. LaSalle Street Chicago, IL 60654  John Roberti <b>COHEN &amp; GRESSER LLP</b> 2001 Pennsylvania Ave., NW Suite 300 Washington, D.C. 20006

Any lawyer representing a member of one of the Classes for the purpose of making comments or objections must also file a Notice of Appearance with the Court using the Court’s Case Management/Electronic Case Files (CM/ECF) system.

You may file a claim even if you object to, or comment on, the settlements. Whether or not you object, you must still file a claim by the deadline in Question 7 above to receive money from the settlements.

## EXCLUDING YOURSELF FROM THE CLASSES

### 10. How do consumers exclude themselves from the Generic Defendants Class?

Consumers who want to be excluded from the Generic Defendants Class must submit a written request for exclusion to the Notice and Claims Administrator. Your request for exclusion must include: (1) your full name,

current mailing address, and telephone number; (2) the name of this case, *In re Namenda Indirect Purchaser Antitrust Litigation*, No. 1:15-cv-06549; and (3) a statement that you are a member of the Generic Defendants Class and wish to be excluded from the Class.

Exclusion requests must be mailed to the Notice and Claims Administrator at the address below and **POSTMARKED** no later than **February 3, 2023**.

*In re Namenda Indirect Purchaser Antitrust Litigation*  
EXCLUSIONS  
P.O. Box 173001  
Milwaukee, WI 53217

A separate exclusion request must be submitted by each consumer electing to be excluded from the Generic Defendants Class. Any consumer included in the Generic Defendants Class that does not submit a valid request for exclusion providing all necessary information will be bound by the orders of the Court and outcome of the case.

**11. How do TPPs exclude themselves from the Generic Defendants and/or Brand Defendants Classes?**

TPPs were previously provided an opportunity to request exclusion from the Classes in this lawsuit. The deadline to request exclusion expired on May 28, 2021. Therefore, TPPs cannot request exclusion.

**12. What is the legal significance of excluding myself?**

If you exclude yourself, you will not be legally bound by the orders of the Court or Judgment in the Generic Defendants Settlement. You may be able to sue the Generic Defendants in the future.

**13. If I don't exclude myself, can I sue later?**

No. Unless you exclude yourself, you give up the right to sue the Generic Defendants separately from this class action, individually or on a class basis, for the claims being resolved by this lawsuit. Remember, the exclusion deadline is **February 3, 2023**.

**IF YOU DO NOTHING**

**14. What happens if I do nothing at all?**

If you do nothing, you will not receive any payment from the settlements. If you are a member of one of the Classes, you will be bound by all orders of the Court. If you are a consumer member of the Generic Defendants Class, and you do not exclude yourself, you will not be able to file a lawsuit or be part of any other lawsuit asserting claims against the Generic Defendants concerning or relating to the claims and factual allegations that were or could have been raised in this action.

**THE LAWYERS REPRESENTING YOU**

**15. As a member of the Classes, do I have a lawyer representing my interests in this class action and the settlements?**

Yes. The Court has appointed lawyers to represent you and other members of the Classes. These lawyers are called Class Counsel.

**CLASS COUNSEL**

Marvin A. Miller  
Lori A. Fanning  
**MILLER LAW LLC**  
145 S. Wells Street, Floor 18  
Chicago, IL 60606

Peter Safirstein  
**SAFIRSTEIN LAW LLC**  
45 N. Broad Street  
Suite 100  
Ridgewood, NJ 07450

**16. How will the lawyers be compensated? Will the named Plaintiff receive an incentive award?**

Class Counsel may seek up to 33 1/3% of the total of the settlement fund (\$56,438,000) for attorneys' fees, plus reimbursement of expenses of \$5,900,000, and an incentive award of \$100,000 for the named class representative.

**17. When and where will the Court decide whether to approve the settlements?**

The Court will hold a Final Approval Hearing at 10:00 a.m. EDT on March 13, 2023, at the United States District Court for the Southern District of New York, located at 500 Pearl Street, Courtroom 24A, New York, NY 10007. The hearing may be moved to a different date or time without additional notice, so it is a good idea to check at [www.InReNamendaIndirectAntitrustLitigation.com](http://www.InReNamendaIndirectAntitrustLitigation.com) for updates. At this hearing, the Court will consider whether the settlements are fair, reasonable, and adequate. The Court will also consider any request by Class Counsel for attorneys' fees and expenses and for the incentive award for the class representative. If there are objections, the Court will consider them at that time. After the hearing, the Court will decide whether to approve the settlements. We do not know how long these decisions will take.

**18. Should I get my own lawyer?**

You do not need to hire your own lawyer, but if you hire a lawyer to speak for you or appear in Court, your lawyer must file a Notice of Appearance. If you hire your own lawyer, it will be your responsibility to pay for that lawyer.

**GETTING MORE INFORMATION**

**19. Where do I get more information?**

This Notice contains a summary of the relevant court papers. Complete copies of public pleadings, Court rulings, and other filings are available for review and copying at the Clerk's office. The address is U.S. District Court, Southern District of New York, Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, New York, NY 10007-1312, Chief Judge Colleen McMahon of the United States District Court for the Southern District of New York is overseeing the class action.

Additional information about the class action and proposed settlements is available on the case website at [www.InReNamendaIndirectAntitrustLitigation.com](http://www.InReNamendaIndirectAntitrustLitigation.com), or you can call the Notice and Claims Administrator toll-free at 1-877-266-8807.

***Do not contact the Court or Judge McMahon.***

**For more information, call the Notice and Claims Administrator at 1-877-266-8807, or go to  
[www.InReNamendaIndirectAntitrustLitigation.com](http://www.InReNamendaIndirectAntitrustLitigation.com).**

DATED: DECEMBER 5, 2022

BY ORDER OF THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK