

**NOTICE OF CERTIFIED LITIGATION CLASS ACTION**

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.

**This class certification Notice provides class members with a deadline of May 28, 2021, to exclude themselves from the Third-Party Payor (“TPP”) Class.**

At this time, there is no claim form, plan of distribution, or Class Counsel fees or expenses to be addressed.

**If you purchased branded Namenda IR, and/or branded Namenda XR, or generic Namenda IR, indirectly, a class action lawsuit may affect your rights.**

*This Notice is being provided by Order of the U.S. District Court.  
It is not a solicitation from a lawyer. You are not being sued.*

A class action lawsuit is pending in the United States District Court for the Southern District of New York (“the Court”) involving Namenda XR, Namenda IR, and its generic equivalents against the following Defendants: Actavis, plc and its wholly owned subsidiary Forest Laboratories, LLC (jointly, “Actavis”); and Merz GmbH & Co. KgaA, Merz Pharmaceuticals GmbH, and Merz Pharma GmbH & Co. KgaA (collectively, “Merz”) (collectively with “Actavis” they are the “Brand Defendants”); and Barr Pharmaceuticals, Inc., Teva Pharmaceutical Industries, Ltd., and Teva Pharmaceuticals USA, Inc. (jointly, “Teva”); Cobalt Laboratories, Inc.; Dr. Reddy’s Laboratories Ltd. and/or Dr. Reddy’s Laboratories, Inc. (jointly, “Dr. Reddy’s”); Upsher-Smith Laboratories, Inc.; Amneal Pharmaceuticals, LLC; Sun India Pharmaceuticals Industries, Ltd.; and Wockhardt Limited and Wockhardt USA LLC (jointly, “Wockhardt”) (collectively, “Settling Generic Manufacturer Defendants”). Plaintiff in the lawsuit, Sergeants Benevolent Association Health & Welfare Fund, claims that Defendants harmed competition and violated state antitrust, consumer protection, and unjust enrichment laws in certain U.S. states. Plaintiff alleges that Defendants unlawfully delayed the availability of allegedly less-expensive generic versions of Namenda IR and that Defendants’ conduct caused consumers and third-party payors to pay too much for branded Namenda IR, generic Namenda IR, and branded Namenda XR in the states (defined below). Defendants deny any wrongdoing.

Cash settlements have been reached with Barr Pharmaceuticals, Inc., Teva Pharmaceutical Industries, Ltd., and Teva Pharmaceuticals USA, Inc. (jointly, “Teva”), and Cobalt Laboratories, Inc., collectively, in the sum of \$98,000; Dr. Reddy’s Laboratories Ltd. and/or Dr. Reddy’s Laboratories, Inc. (jointly, “Dr. Reddy’s”), collectively, in the sum of \$400,000; Upsher-Smith Laboratories, Inc., Amneal Pharmaceuticals, LLC, and Sun India Pharmaceuticals Industries, Ltd., collectively, in the sum of \$1,200,000; and Wockhardt Limited and Wockhardt USA LLC (jointly, “Wockhardt”), collectively, in the sum of \$340,000. Those settlements, which include End-Payor Consumers and members of the TPP class, provide for aggregate cash payments of \$2,038,000, which is substantially less than the expenses (expert witness fees, etc.) that class counsel have incurred to date in connection with the continuing prosecution of this matter on behalf of the class and the cost to disseminate notice to the class. Therefore, while the Court preliminarily approved those settlements, the Court deferred notice to the Class of those settlements. If each of those settlements or the aggregate of those settlements are the only recovery that the class receives in this litigation, then: (1) class counsel will request that the funds be used to reimburse them for their expenses; and (2) if the Court does not approve such a request, the settlement amount may not warrant distribution to the class, due the costs of notice and claims administration. Notice regarding the Generic Manufacturer Defendants settlements and your options in those settlements will occur at a later date. HOWEVER, AS A THIRD-PARTY PAYOR MEMBER OF THE CERTIFIED TPP CLASS, THIS WILL BE THE ONLY OPPORTUNITY YOU WILL HAVE TO EXCLUDE YOURSELF FROM THE TPP CLASS. The lawsuit will continue against the Actavis, Forest, and Merz, a.k.a., the Brand Defendants.

On February 11, 2021, the Court determined that this case may proceed as a class action with respect to the TPPs. That class certification decision does not allow the case to proceed as a class action with respect to consumers. However, the consumers are included in the settlements achieved with the Generic Manufacturer Defendants. Those settlements will be the subject of a separate notice. Your legal rights and options are explained below.

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

**YOUR LEGAL RIGHTS AND OPTIONS IN THIS LAWSUIT**

This Notice (the “Class Certification Notice”) provides notice that the Court certified the following TPP Class:

**CERTIFIED TPP CLASS**

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 branded 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.

Excluded from the proposed Class are: (a) Defendants and Defendants’ parents, subsidiaries and affiliates; (b) fully-insured health care plans (*i.e.*, health 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.

| <b>YOUR LEGAL RIGHTS AND OPTIONS REGARDING THIS TPP CLASS</b> |   |
|---|---|
| <b>EXCLUDE YOURSELF FROM THE CLASS</b>                        | <p>If you wish to exclude yourself from the TPP Class, you must submit a written request by May 28, 2021. If you exclude yourself, you will not be bound by future decisions of the Court, including any determinations at trial. You will not be able to participate in any future class settlements or judgments which may include an award of monetary damages.</p>  |
| <b>DO NOTHING</b>   | <p>You are automatically part of the TPP Class if you fit the TPP Class description. By remaining in the TPP Class, you will receive the benefit of any determinations against the Defendants on the issues to be tried in this Action, and you will be bound by any determinations for the Defendants on the issues to be tried in this Action. In other words, you will be bound by rulings that the Defendants violated the state antitrust and consumer protection laws, or that the Defendants did not violate the state antitrust and consumer protection laws. The TPP Class will not receive any monetary recovery as a result of the class certification order. If the matter is decided in favor of the TPP Class at trial, or if there is a resolution of the matter, then a class member may only recover monetary damages from the Defendants if it does not request exclusion from the Class.</p> <p>Give up rights to be part of any other lawsuit that asserts claims related to the allegations or claims against the Defendants in this case.</p> |

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

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**BASIC INFORMATION ABOUT THE LAWSUIT AND THE CERTIFIED TPP CLASS**

**1. Why did I get this Notice?**

This Notice is given pursuant to Rule 23 of the Federal Rules of Civil Procedure and an Order of the United States District Court for the Southern District of New York (the “Court”). It is not junk mail, an advertisement, or a solicitation from a lawyer. You have not been sued. The purpose of the Notice is to inform you of the certified TPP Class in this class action lawsuit.

You are receiving this Notice because records indicate that you may be a member of the TPP Class.

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

Plaintiff alleges that Defendants violated state antitrust and 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 Indirect Purchaser Class 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 its generic version of Namenda IR. The lawsuit also includes allegations directed toward a so-called “hard switch product hop” to compel purchasers to switch to Defendants’ extended-release version of Namenda (Namenda XR), before less expensive generic versions of Namenda IR became available; however, the Court did not certify the “hard switch” claim for class action treatment, so the Indirect Purchaser Plaintiff is pursuing that claim only for itself, not on behalf of any other indirect purchaser of Namenda. Indirect Purchaser Class Plaintiff alleges that it 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 in the states.

Plaintiff alleges that it and the TPP 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 Plaintiff’s

Second Amended Class Action Complaint filed December 17, 2019 (the “Complaint”), is available at [www.InreNamendaIndirectAntitrustLitigation.com](http://www.InreNamendaIndirectAntitrustLitigation.com).

Defendants deny all these allegations, including that any TPP Class member is entitled to damages or other relief. Defendants also deny that their conduct violated any applicable law or regulation.

THIS NOTICE IS NOT AN EXPRESSION OF ANY OPINION BY THE COURT AS TO THE MERITS OF PLAINTIFF’S CLAIMS AGAINST ANY DEFENDANT OR THE DEFENSES ASSERTED BY ANY DEFENDANT.

The class action is known as *In re Namenda Indirect Purchaser Antitrust Litigation*, Civil Action No. 1:15-cv-06549-CM-RWL (S.D.N.Y.). 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 Representative is Sergeants Benevolent Association Health and Welfare Fund. The Class Representative and the entities on whose behalf it has sued together constitute the “Class.”

The companies that have been sued are called the “Defendants.” In this case, the Defendants are Actavis, plc and its wholly owned subsidiary Forest Laboratories, LLC (jointly, “Actavis”); and Merz GmbH & Co. KgaA, Merz Pharmaceuticals GmbH, Merz Pharma GmbH & Co. KgaA (jointly, “Merz”) (collectively, “Brand Defendants”); and Barr Pharmaceuticals, Inc., Teva Pharmaceutical Industries, Ltd., and Teva Pharmaceuticals USA, Inc. (jointly, “Teva”); Cobalt Laboratories, Inc.; Dr. Reddy’s Laboratories Ltd. and/or Dr. Reddy’s Laboratories, Inc. (jointly, “Dr. Reddy’s”); Upsher-Smith Laboratories, Inc.; Amneal Pharmaceuticals, LLC; Sun India Pharmaceuticals Industries, Ltd.; and Wockhardt Limited and Wockhardt USA LLC (jointly, “Wockhardt”) (collectively, “Settling Generic Manufacturer Defendants”). 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 February 11, 2021, determined that the Lawsuit between Third-Party Payor Class Plaintiff and Defendants can proceed as a class action. A copy of the Court’s order may be found at [www.InreNamendaIndirectAntitrustLitigation.com](http://www.InreNamendaIndirectAntitrustLitigation.com).

## DETERMINING IF YOU ARE A MEMBER OF THE CLASS

### 4. **I am a Third-Party Payor that has purchased, paid, and/or provided reimbursement for brand Namenda IR, and/or generic Namenda IR, and/or brand Namenda XR; how do I know if I am a member of the Class?**

You may be a member of the TPP Class if, during the period from June 1, 2012 through December 31, 2017 (the “Class Period”), if as a Third-Party Payor, you indirectly purchased, paid and/or provided reimbursement for, some or all of the purchase price for branded Namenda IR 5 or 10 mg tablets, generic Namenda, and/or branded Namenda XR, 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 yourselves, or your members, employees, insureds, participants, or beneficiaries.

Third-Party Payors are entities (besides the patient or the health care provider) that provide reimbursement for health care expenses, like prescription drug benefits. They include entities such as health insurance companies, and self-insured health and welfare plans that make payments from their own funds, and other health benefit providers and entities with self-funded plans that contract with a health insurer or administrator to administer their prescription drug benefits. Third-Party Payors include such private entities that may provide prescription drug benefits for current or former public employees and/or public benefits programs, but only to the extent that such a private entity purchased brand Namenda IR, generic Namenda IR, and/or brand Namenda XR for consumption by its members, employees, insureds, participants, or beneficiaries.

- As a Third-Party Payor, you are **NOT** a member of the TPP Class if you are among any of the following:
  - (a) Defendants and Defendants’ parents, subsidiaries, and affiliates;

- (b) fully-insured health care plans (*i.e.*, health 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.

## YOUR OPTIONS AS A MEMBER OF THE CLASS

### 5. **What are my options as a member of the Class?**

If you are a member of the certified TPP Class, you can choose to do nothing, or exclude yourself from the certified TPP Class.

### 6. **How do Third-Party Payors exclude themselves from the TPP Class?**

Third-Party Payors that want to be excluded from the TPP Class must submit a written request for exclusion to the Notice Administrator. Your request for exclusion must include: (1) the entity name, address, and IRS EIN; (2) the name and title of the entity representative; (3) the name of this case, *In re Namenda Indirect Purchaser Antitrust Litigation*, No. 1:15-cv-06549; (4) a statement, signed by an authorized representative, that you are a member of the Class and wish to be excluded from the Class; and (5) data sufficient to establish your entity's relevant brand Namenda IR, memantine hydrochloride (generic Namenda IR), and/or brand Namenda XR indirect purchases or reimbursements for the period June 1, 2012 through December 31, 2017, 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.

Exclusion requests must be mailed to the Notice Administrator at the address below and **POSTMARKED** no later than **May 28, 2021**:

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

A separate exclusion request must be submitted by each Third-Party Payor electing to be excluded from the TPP Class. Any Third-Party Payor included in the 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.

Any Third-Party Payor that wants to opt out other entities which the Third-Party Payor represents (*e.g.*, welfare funds or employers for whom the Third-Party Payor acts as an Administrative Services Organization) must include for each such entity all of the information noted in items 1 – 5 above. In addition, for each such entity, the Third-Party Payor must provide a Declaration from an authorized representative of the entity, substantially in the form noted below and executed specifically in connection with this litigation, attesting to the Third-Party Payor’s authority to opt the entity’s claims out of the TPP Class. The Third-Party Payor must mail this information to the Notice Administrator at the address below and it must be **POSTMARKED** no later than **May 28, 2021**.

|  |
|--|
| <p>Date<br/> Declarant Entity Name<br/> Declarant Entity Address<br/> Declarant Entity Telephone Number</p> <p>Declarant Entity EIN</p> <p>Dear Notice Administrator:</p> <p>I am [Name and Title of Officer or Employee of Declarant Entity Requesting Exclusion]. [Declarant Entity] has authorized [Third Party Payor] to request exclusion from the Namenda TPP Class on [Declarant Entity’s] behalf in the case of <i>In re Namenda Indirect Purchaser Antitrust Litigation</i>, 1-15-cv-06549 (S.D.N.Y.).</p> <p>[Declarant Entity] hereby acknowledges that, as a result of this authorization and opting out, [Declarant Entity] will not receive any future proceeds of the Namenda TPP Class, should any exist.</p> <p>This request relates to the exclusion from the TPP Class only.<br/> I do so declare under penalty of perjury.</p> <p>_____<br/> Name of Officer or Employee<br/> Title of Officer or Employee</p> <p>_____<br/> Date Signed</p> |
|--|

**7. 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 TPP Class. You may be able to sue the Defendants in the future.

**8. If I don’t exclude myself, can I sue later?**

No. Unless you exclude yourself, you give up the right to sue the Defendants for the TPP Class claims. You must exclude yourself from the TPP Class to be able to bring your own, separate lawsuit(s) against the Defendants. Remember, the exclusion deadline is **May 28, 2021**.

**IF YOU DO NOTHING**

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

If you do nothing, and you are a member of the TPP Class, you will be bound by all orders of the Court and the Judgment entered in favor of or against the TPP Class. Unless you exclude yourself, you will not be able to file a lawsuit or be part of any other lawsuit asserting claims against the Defendants concerning or relating to the claims and factual allegations that were or could have been raised in this action.

**THE LAWYERS REPRESENTING YOU**

**10. As a member of the TPP Class, do I have a lawyer representing my interests in this class action and the Settlement?**

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

| <b>COUNSEL FOR THE CLASS</b>   |  |
|--|--|
| <p>Marvin A. Miller<br/>Lori A. Fanning<br/><b>MILLER LAW LLC</b><br/>115 South LaSalle Street, Suite 2910<br/>Chicago, IL 60603</p> | <p>Peter Safirstein<br/>Elizabeth Metcalf<br/><b>SAFIRSTEIN METCALF LLP</b><br/>1345 Avenue of the Americas, 2<sup>nd</sup> Floor<br/>New York, NY 10105</p> |

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

At this time, Class Counsel are not seeking attorneys' fees, reimbursement of expenses, or an incentive award for the named Class Representative. This Notice concerns only the TPP Class.

**12. 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**

**13. 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 Settlement is available on the case website at [www.InreNamendaIndirectAntitrustLitigation.com](http://www.InreNamendaIndirectAntitrustLitigation.com), or you can call the Notice Administrator toll-free at 1-877-266-8807.

*Do not contact the Court or Judge McMahon.*

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

DATED: APRIL 13, 2021

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