UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

In re Restasis (Cyclosporine Ophthalmic Emulsion) Antitrust Litigation

Case No. 18-md-2819 (NG) (LB)

Si desea recibir esta notificación en español, llámenos al 866-742-4955

PROOF OF CLAIM AND RELEASE

Your claim must be postmarked by: December 14, 2020

Notice ID Number:

INTRODUCTION

On October 7, 2020, the Court in the above-entitled action (the "Action") approved a $51.25 million Settlement reached between the direct purchaser plaintiffs and Allergan, Inc. ("Allergan"). The notice of class action Settlement dated June 12, 2020, which was previously mailed and emailed to you, summarizes both the litigation and terms of the Settlement. The purpose of this Proof of Claim Form and Release is to ensure that you are able to participate in the distribution of the Settlement funds from the Settlement, net of attorneys' fees, service awards to class representatives, and other costs awarded by the Court (the "Net Settlement Fund").

In order for the Claims Administrator to make the proper calculation of your *pro rata* share of the Net Settlement Fund, please either (a) verify the accuracy of the net purchase volumes listed in Part II.A of this Proof of Claim and Release Form that are derived from purchase data produced in this Action or (b) submit the data required in Part II.B of this Proof of Claim and Release Form.

PART I: CLAIMANT IDENTIFICATION

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

Employer Tax Identification Number: _____

Claimant Name & Address:

Please make any changes or corrections below:

_____

_____

_____

_____

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

First Name: _____ MI: _____ Last Name: _____

Phone Number: (__ __ __) __ __ __ - __ __ __ __

Email Address: _____

PART II: CLASS MEMBER'S QUALIFYING PURCHASES OF RESTASIS

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

You should verify the accuracy of the total net purchase volumes listed below. **If you agree that the total net purchase volumes computed for your company are accurate, you should sign the last page of this Proof of Claim and Release Form and mail it to the Claims Administrator postmarked no later than December 14, 2020.** If you verify the accuracy of the total net purchase volumes listed below, you will not be required to produce any purchase data as part of the claims administration process, but you are waiving the right to challenge or appeal the Claims Administrator's determination regarding your pro rata distribution amount on the basis that the distribution amount would have been different had it been calculated using your own purchase records. **If you believe the total net purchase volumes listed for your company below are not accurate, you may submit purchase records, in electronic format as described in Part II.B below; any such data must be mailed to the Claims Administrator postmarked no later than December 14, 2020.**

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

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

> All persons who or entities which purchased Restasis in the United States or its territories and possessions directly from Allergan at any time after May 2014 through and including February 16, 2020 (the "Class Period").

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

The following entities, in their own capacity or as assignees, who filed separate but coordinated actions against Defendant were also excluded from the Class: CVS Pharmacy, Inc., Rite Aid Corporation, Rite Aid Hdqtrs. Corp., Walgreen Co., The Kroger Co., Albertsons Companies, Inc., and HEB Grocery Company L.P.

The Court-approved Plan of Allocation provides, for Claimants with valid claims, that each Claimant's allocated share of the Net Settlement Fund will be set in proportion to each Claimant's combined total unit purchases of Restasis made directly from Allergan from June 1, 2014 through March 31, 2019 (net of returns and assignments). The unit of measure is a 30-day supply of Restasis, which may consist of either two packages of 30 single-use vials, one package of 60 single-use vials, or a single bottle of Restasis MultiDose. For purchases of Restasis Multidose, the applicable time period is March 28, 2017 through March 31, 2019.

Allocations to Claimants whose right to an allocation arises by virtue of an assignment(s) from a Class member(s) would be determined in this same fashion. In these cases, the volumes of Restasis purchases

used to determine the allocation would be the volumes assigned to the Claimant by an otherwise eligible Class member(s) (and the assignor Class member's Restasis purchase volumes would be reduced by the same amount).

Please note that related documents, including the Plan of Allocation and the Court's Order approving the Plan of Allocation, are available at http://www.restasisantitrustsettlement.com. This summary of the Plan of Allocation is only a summary and is not meant to alter the terms of the Court-approved Plan of Allocation. Claimants should refer to the Plan of Allocation for further details of how the allocation will work.

INITIAL ESTIMATE OF YOUR PURCHASE VOLUMES AND *PRO RATA* SHARE OF THE NET SETTLEMENT FUND

According to the direct purchaser plaintiffs' economic expert's analysis of the data produced in the Action, your net qualifying volumes of Restasis purchases are as follows:

Units of single-use vials of Restasis purchased directly from Allergan from June 1, 2014 through March 31, 2019 (net of returns and known assignments).

_____ packages of 30 single-use vials (NDC 00023-9163-30)

_____ packages of 60 single-use vials (NDC 00023-9163-60)

Units of Restasis MultiDose bottles purchased directly from Allergan from March 28, 2017[1] through March 31, 2019 (net of returns and known assignments).

_____ bottles (NDC 00023-5301-05)

Note that these estimates do not account for all assignments of rights you may have entered into.

The National Drug Codes (NDCs) associated with the products and strengths at issue here are set forth in Exhibit A to this Proof of Claim and Release Form.

Based on the purchase volumes set forth above and the Court-approved Plan of Allocation, the initial estimate of your *pro rata* share of the Net Settlement Fund is:

This estimate is subject to change based upon several factors, including but not limited to: (1) the level of participation by Class members in the Settlement; (2) Claimants submitting additional documentation to support their total net purchase volume being different from that calculated by the Claims Administrator; and (3) submission of assignments of rights agreements that affect who can participate in the Settlement.

If you accept and verify that the above figures for your net unit purchases of Restasis are correct, please check here: ☐

B. To the extent that you do not elect to rely upon the calculation of net purchase volumes determined by the Claims Administrator set forth above in Part II.A, please identify all purchases of Restasis from Allergan from June 1, 2014 through March 31, 2019 (net of returns and known assignments) by providing the information below in electronic format. The Claims Administrator may require additional information.

[1] Restasis MultiDose became available in the United States market starting in March 2017.

Date of Purchase (MM/DD/YYYY)	**Supplier (Purchased From)**	**NDC (#####-####-##)**	**Transaction Type (Purchase or Return)**	**Purchase Volume (# of packages/ bottles)**

C. <u>Assignments</u>

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

<u>If you are submitting a claim pursuant to an assignment</u>, please identify with particularity that assignment here. Please also attach documentation in support of such assignment, including the assignment agreement and data showing your qualifying purchases that are covered by any such assignment of: (a) packages of 30 single-use vials of Restasis (NDC 00023-9163-30) purchased from June 1, 2014 through March 31, 2019 (net of returns); (b) packages of 60 single-use vials of Restasis (NDC 00023-9163-60) purchased from June 1, 2014 through March 31, 2019 (net of returns); and (c) Restasis MultiDose bottles (NDC 00023-5301-05) purchased from March 28, 2017 through March 31, 2019 (net of returns). Please note that the Claims Administrator may require additional information and documents for any claim made based on an assignment. Also please note that your claim, including the documentation and data submitted therewith, may be shared with your assignor as part of the Claims Administration process. By submitting a claim by virtue of an assignment, you are agreeing that such data and documentation, and calculations based on such data and documentation, may be shared with your assignor.

PART III: SUBMISSION TO JURISDICTION OF THE COURT

By signing below, you agree to submit to the exclusive jurisdiction of the United States District Court for the Eastern District of New York with respect to any suit, action, proceeding or dispute arising out of or relating to *In re Restasis (Cyclosporine Ophthalmic Emulsion) Antitrust Litigation*, No. 18-md-2819-NG-LB (the "Action"), claims administration in the Action, the claim you or any other entity is making as a Class member or assignee thereof in the Action, and/or the Releases set forth below.

PART IV: RELEASES

A. By signing below, you hereby agree that you and your respective past, present, and future parents, subsidiaries, associates, affiliates, officers, directors, employees, insurers, general or limited partners, divisions, agents, attorneys, servants, trustees, joint ventures, heirs, executors, administrators, representatives, assignees (and the parents' subsidiaries' and affiliates' past and present officers, directors, employees, agents, attorneys, servants, and representatives and assignees), and your predecessors, successors, heirs, executors, administrators, and representatives (collectively, the "Direct Purchaser Class Releasors"), release and forever discharge, and covenant not to sue, Defendant and its 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, assignees (and the parents', subsidiaries', and affiliates' past, present, and future officers, directors, employees, agents, attorneys, servants, and representatives, and assignees), and the predecessors, successors, heirs, executors, administrators and representatives of each of the foregoing (collectively, the "Defendant Releasees") from and with respect to all manner of claims, debts, obligations, demands, actions, suits, causes of action, damages whenever incurred, and 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 all acts, omissions, or other conduct alleged in the first amended consolidated class action complaint dated February 11, 2019, and/or the complaint and jury demand of Meijer, Inc. and Meijer Distribution, Inc. dated May 1, 2019, in the Action related to Restasis or its generic equivalents, (b) the subject matter of any prior complaints or subsequent amended complaints related to Restasis or its generic equivalents filed in the Direct Purchaser Class Action; (c) the subject matter of pretrial proceedings related to Restasis or its generic equivalents in the Direct Purchaser Class Action; and/or (d) all claims concerning alleged delay or impairment in the marketing, sale, manufacture, pricing, or purchase of, or the enforcement of intellectual property related to Restasis or its generic equivalents that could reasonably have been known and/or asserted in the Direct Purchaser Class Action, including but not limited to claims of Walker Process Fraud, sham Orange Book patent listings, sham citizen petitions, transactions with the Saint Regis Mohawk Tribe, or agreements between Allergan and potential manufacturers of generic Restasis resolving patent infringement litigation prior to February 16, 2020 (collectively, this entire paragraph, the "Released Claims").

For the avoidance of doubt, Released Claims includes any and all future claims or damages that may be alleged by any Direct Purchaser Class Member which arise out of or relate to such Class Member's future purchases of Restasis or its generic equivalent and which relate to the subject matter described in subparagraphs (a)-(d), above. Released Claims do not include any future claims or damages arising from acts, omission, or other conduct committed by Defendant on or after February 16, 2020.

B. In addition, with respect to the claims that are the subject matter of Paragraph 12 of the Settlement Agreement, each Direct Purchaser Class Releasor hereby expressly waives and releases, as of November

9, 2020, 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;

and 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 12 of the Settlement Agreement. Nonetheless, as of November 9, 2020, 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 12 of the Settlement Agreement, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts. Each Direct Purchaser Class Releasor also hereby expressly waives and fully, finally, and forever settles, releases, and discharges any and all claims that are the subject matter of Paragraph 12(a) of the Settlement Agreement that it may have against any Defendant Releasees under § 17200, et seq., of the California Business and Professions Code or any similar comparable or equivalent provision of the law of any other state or territory of the United States or other jurisdiction.

C. The releases set forth above effect a complete and total resolution of the Direct Purchaser Class Actions to the extent of the claims of the Direct Purchaser Class that were or could have been asserted relating to the allegations in this Action, but they are 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) arising out of or in any way relating to any alleged horizontal price-fixing agreement between Allergan (as a generic manufacturer) and other manufactures of generic pharmaceutical products, including claims alleged in *In re Generic Pharmaceuticals Pricing Antitrust Litig*., MDL No. 2724, 16-MD-2724 (E.D. Pa.); and/or (3) other claims unrelated specifically to Restasis.

D. The Settlement Agreement may be pleaded as a full and complete defense to any action that may be instituted, prosecuted, or attempted by any Direct Purchaser Class Member with respect to any of the Released Claims. The parties agree that for any such action, the Court or any court of competent jurisdiction may enter an injunction restraining prosecution of such proceeding.

PART V: VERIFICATION/RELEASE

I declare under penalty of perjury under the laws of the United States of America that the foregoing information provided by the undersigned is true and correct and that this proof of claim and release was executed this _____, day of _____, 2020 in _____, _____
(Day) (Month) (City) (State/Country)

Sign your name here: _____

Type/print your name here: _____

Type/print your company name here: _____

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

RETURN YOUR COMPLETED PROOF OF CLAIM AND RELEASE AND RETURN BY MAIL OR EMAIL TO:

MAILING ADDRESS:

In re Restasis (Cyclosporine Ophthalmic Emulsion) Antitrust Litigation
c/o RG/2 Claims Administration
P.O. Box 59479
Philadelphia, PA 19102-9479

EMAIL:

restasisDPPsettlement@rg2claims.com

Questions? Contact the Claims Administrator at the above email or toll-free at (866) 742-4955

Remember, your signed Proof of Claim and Release must be mailed and postmarked by December 14, 2020.

Exhibit A: Relevant NDCs of Restasis

NDCs for Restasis (single-use vials) during the relevant time period (June 1, 2014 through March 31, 2019)
00023-9163-30
00023-9163-60

NDCs for Restasis MultiDose during the relevant time period (March 28, 2017 through March 31, 2019)
00023-5301-05