

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

IN RE RESTASIS (CYCLOSPORINE
OPHTHALMIC EMULSION) ANTITRUST
LITIGATION

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

THIS DOCUMENT APPLIES TO:

ALL END-PAYOR PLAINTIFF CLASS
ACTIONS

**[PROPOSED] ORDER GRANTING END-PAYOR CLASS COUNSEL'S MOTION
FOR ATTORNEYS' FEES, EXPENSES, AND SERVICE AWARDS**

Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, the Court hereby orders as follows:

WHEREAS, this matter having come before the Court by way of End-Payor Class Counsel's Motion for Attorneys' Fees, Expenses, and Service Awards ("Motion");

WHEREAS, the notice provided to the End-Payor Class stated that "Class Counsel will request an award from the Court for attorneys' fees not to exceed one-third of the total amount of the Settlement Fund plus any accrued interest, plus reimbursement for the costs and expenses they advanced in litigating the case not to exceed \$5,250,000. . . . Class Counsel will also request a service award of up to \$20,000 to be paid to each of the Class Representatives who worked on behalf of the entire Class to achieve the results of the Settlement";

WHEREAS, Class Counsel seek the payment of (1) attorneys' fees in the amount of \$10,000,000, *i.e.* one-third of the settlement fund; (2) expenses in the amount of \$4,635,684, and (3) a \$20,000 service award for each of the named class representatives; and

WHEREAS, claims administration is ongoing and Class Counsel will seek the payment of additional costs from the settlement fund related to ongoing costs of settlement administration. A.B. Data—the Court-appointed notice administrator—has estimated that such future costs will total approximately \$250,000.

THEREFORE, the Court **GRANTS** the motion and **ORDERS** as follows:

I. Attorneys' Fees

1. To determine the reasonableness of a fee, district courts have discretion to apply either the lodestar method or the percentage-of-recovery method. *City of Birmingham Ret. & Relief Sys. v. Davis*, 806 F. App'x 17, 18 (2d Cir. 2020); *Goldberger v. Integrated Res., Inc.*, 209

F.3d 43, 50 (2d Cir. 2000). Under either method, Class Counsel’s requested fee award of \$10,000,000 is reasonable.

2. Each of the factors set forth in *Goldberger*—(a) the time and labor expended by counsel; (b) the magnitude and complexity of the litigation; (c) the risk of the litigation; (d) the quality of the representation; (e) the requested fee in relation to the recovery under the settlement; and (f) public policy—favors the requested fee. Class Counsel litigated this case on a contingent basis for four years. The litigation was complex, and major events in the litigation—motions to discuss, discovery, class certification, and summary judgment—were heavily contested. Class Counsel ably represented the End-Payor Class at each step of the litigation.

3. In addition, Class Counsel’s lodestar in this litigation—which is based on the number of hours incurred and hourly rates that the Court finds reasonable—was over nineteen million dollars. The requested fee would provide Class Counsel approximately 52% of their lodestar. This significant negative multiplier “militates very in favor of the reasonableness of the fee request, particularly in light of the fact that courts generally grant fees with positive multipliers to reflect the complexity and risks undertaken by class counsel.” *Guevoura Fund Ltd. v. Sillerman*, No. 1:15-CV-07192-CM, 2019 WL 6889901, at *18 (S.D.N.Y. Dec. 18, 2019).

4. The Court therefore authorizes the payment of \$10,000,000 for attorneys’ fees from the settlement fund. Co-Lead Counsel shall allocate attorneys’ fees among Class Counsel in their sole discretion.

II. Expenses

5. Class Counsel seeks the payment of \$4,635,684.00 in litigation-related expenses. The requested expenses include (1) \$3,689,345.86 in the payment of shared expenses (such as

for experts), (2) \$450,160.28 in costs incurred by individual firms, and (3) \$496,177.86 in costs incurred by A.B. Data for settlement and claims administration.

6. The expenses include costs related to expert witnesses, pharmaceutical industry data, legal research, document hosting, deposition transcripts, travel, and other litigation-related items. Plaintiffs retained experts in a wide range of subject matters, for example, and those experts authored detailed reports, sat for depositions, and certain experts appeared at the class certification evidentiary hearing. The Court finds that the requested expenses are reasonable in light of the complexity and scope of this litigation and authorizes the payment of \$4,635,684.00 for litigation expenses from the settlement fund.

7. Upon completion of claims processing, Class Counsel shall submit to the Court a request for the authorization of a final, additional payment to the claims administrator for work done to finalize the processing of claims and the distribution of settlement proceeds to class members.

III. Service Awards

8. Class Counsel also request that the Court approve the payment of \$20,000 service awards to each of the ten named Class Representatives (\$200,000 total). The awards are reasonable in light of the work Class Representatives undertook to represent the interests of the End-Payor Class. Among other things, the Class Representatives kept apprised of the status of the litigation, produced documents, responded to interrogatories, prepared and sat for depositions, and consulted with Class Counsel regarding the litigation and settlement. The court authorizes the payment of \$20,000 in service awards to each of the Class Representatives from the settlement fund.

The Clerk is directed to enter this Order and judgment.

SO ORDERED this ___ day of ___, 2022.

THE HONORABLE NINA GERSHON
UNITED STATES DISTRICT JUDGE