

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

IN RE RESTASIS (CYCLOSPORINE OPHTHALMIC
EMULSION) ANTITRUST LITIGATION

18-MD-2819 (NG) (LB)

THIS DOCUMENT APPLIES TO:

ORDER

ALL END-PAYOR PLAINTIFF CLASS CASES

GERSHON, United States District Judge:

Having reviewed End-Payor Plaintiff Class Counsel’s Motion for Entry of a Set-Aside Order and any oppositions, the Court hereby grants the motion and orders as follows:

1. In the event a person or entity that opts out of the End-Payor Class (an “opt-out plaintiff”) obtains a settlement or judgment related to claims arising from Allergan’s alleged efforts to delay the introduction of generic Restasis, Allergan shall establish and thereafter maintain an insured escrow account entitled “Restasis End-Payor Class Fee and Expense Account”;
2. For any settlement or judgment obtained by such an opt-out plaintiff, Allergan shall set aside and place into the Restasis End-Payor Fee and Expense Account 12.5% of the total monetary value of such settlement or judgment;
3. No amounts shall be paid from the Restasis End-Payor Fee and Expense Account unless and until approved by the Court;
4. The set-aside funds shall be available, at the Court’s discretion, to pay attorneys’ fees and expenses incurred by EPP Class Counsel for their common benefit work, subject to a showing by EPP Class Counsel of entitlement to such payments;
5. The common benefit work eligible for compensation from the Restasis End-Payor Fee and Expense Account includes the work outlined in the Court’s April 4, 2018 Order

Consolidating the End-Payor Class Actions; Appointing Liaison/Lead Counsel and Executive Committee; and Appointing Interim Class Counsel Pursuant to Rule 23(g)(3) (ECF 52) and April 17, 2018, Order on Procedures and Guidelines for Class Plaintiffs' Counsel's Time and Expense Submissions (ECF 62);

6. EPP Class Counsel and counsel for the opt-out plaintiff shall meet and confer and attempt in good faith to agree on an appropriate allocation of the set-aside funds. If counsel reach agreement, they shall report to the Court and seek Court approval of the agreed-upon allocation. If no agreement is reached, EPP Class Counsel shall file with the Court within 14 days of reaching impasse an application for compensation supported by a showing of relevant common benefit work performed and expenses incurred. Any opposition(s) may be filed within 14 days of the filing of the initial application, with any replies due no more than 7 days later;
7. Any set-aside funds not paid to EPP Class Counsel for common benefit work shall be remitted pro rata to the opt-out plaintiffs from whose settlements or judgments the set-aside funds were withheld;
8. This Order shall apply to all actions included in this multidistrict litigation or otherwise transferred to this Court that assert claims on behalf of end-payors of Restasis that are the same or substantially similar to those asserted by End-Payor Plaintiffs in this multidistrict litigation, and shall continue to apply after any remand of such actions;
9. The scope of this Order is without prejudice to End-Payor Plaintiffs' right to seek a sequestration order against settlements or judgments in untransferred federal cases or state cases; and

