

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

IN RE RESTASIS (CYCLOSPORINE  
OPHTHALMIC EMULSION) ANTITRUST  
LITIGATION

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

**PLAN OF ALLOCATION**

THIS DOCUMENT APPLIES TO:  
ALL END-PAYOR PLAINTIFF CLASS  
ACTIONS

On September 23, 2021, End-Payor Plaintiffs, individually and on behalf of the End-Payor Class, entered into a Settlement with Defendant Allergan, Inc. The relief provided for in the Settlement shall be distributed in accordance with this Plan of Allocation as described below.

**I. Definitions**

Except as defined below, capitalized terms in this Plan of Allocation shall have the same meaning as in the Settlement Agreement.

1. “Allocation Pool” means the Cash Consumer Pool, the Insured Consumer Pool, and the TPP Pool, defined below.
  - a. “Cash Consumer Pool” means 2.2% of the Net Settlement Fund. *See* Allocation Report of Dr. Richard Frank (“Frank Allocation Rpt.”), ¶ 2 (estimating percent of damages attributable to purchases made by consumers without insurance). Only Eligible Cash Consumer Claimants (defined below) shall be eligible to receive payments from the Cash Consumer Pool.
  - b. “Insured Consumer Pool” means 14.4% of the Net Settlement Fund. *See* Frank Allocation Rpt., ¶ 2 (estimating percent of damages attributable to purchases made by consumers with insurance). Only Eligible Insured Consumer Claimants (defined below) shall be eligible to receive payments from the Insured Consumer Pool.
  - c. “TPP Pool” means 83.4% of the Net Settlement Fund. Only Eligible TPP Claimants (defined below) shall be eligible to receive payments from the TPP Pool.
2. “Claimant” means any person or entity submitting a Proof of Claim.

3. “Consumer” means any Class Member who is a natural person (not a TPP), and includes living persons as well as the executors, heirs, administrators, trustees, or other authorized representatives of deceased persons.
4. “Eligible Cash Consumer Claimant” means an Eligible Claimant who is a Consumer and made purchases of Restasis without insurance.
5. “Eligible Claimant” means any member of the End-Payor Class who submits a Qualifying Claim.
6. “Eligible Insured Consumer Claimant” means an Eligible Claimant who is a Consumer and made purchases of Restasis with insurance.
7. “Eligible Purchases” means:
  - a. for Cash Consumers Claimant, the number of 30-vial, 60-vial, and multidose packages purchased in the Class States from May 1, 2015 through July 31, 2021, except for Arkansas purchases, for which the applicable period is May 1, 2015 through July 31, 2017;
  - b. for Insured Consumer Claimants, the number of prescriptions filled in the Class States from May 1, 2015 through July 31, 2021, except for Arkansas purchases, for which the applicable period is May 1, 2015 through July 31, 2017; and
  - c. for TPPs, the amount paid or reimbursed for purchases of Restasis and Restasis Multidose in the Class States from May 1, 2015 through July 31, 2021, except for Arkansas payments or reimbursements, for which the applicable period is May 1, 2015 through July 31, 2017.
8. “Eligible TPP Claimant” means an Eligible Claimant that is a TPP.
9. “Packages” means the sum of (1) the number of 30-vial Restasis packages purchased, (2) the number of 60-vial Restasis packages purchases multiplied by two, and (3) the number Restasis Multidose packages purchased.

10. “Proof of Claim” means the document(s) a Claimant must submit to the Notice and Claims Administrator to make a claim under the Settlement.
11. “Qualifying Claim” means a timely, complete, and valid Proof of Claim that is accepted by the Notice and Claims Administrator.
12. “TPP” means any Class Member that is an entity.

## **II. Initial Submission of Claims**

13. For Consumers, a Proof of Claim shall consist of a completed claim form in substantially the form as attached as Exhibit 4 to End-Payor Plaintiffs’ December 22, 2021 Letter to the Court. No additional documentation shall be required initially to submit a claim, although the Notice and Claims Administrator may ask for additional documentation as appropriate.
14. For TPPs, a Proof of Claim shall consist of a completed claim form in the form attached as Exhibit 5 to End-Payor Plaintiffs’ December 22, 2021 Letter to the Court, together with the supporting transaction data specified in the claim form if the amount of the claim exceeds \$100,000. For claims under that amount, no additional transaction data shall be required initially to submit a claim, although the Notice and Claims Administrator may ask for transaction data and additional documentation (e.g., invoices) as appropriate.
15. The Notice and Claims Administrator shall use names, addresses, and Employer Identification Numbers to identify potentially duplicative claims. If a claim is submitted both by a Class Member and by a different Claimant on behalf of that same Class Member, the claim shall only be paid one time. In such a situation, the Notice and Claims Administrator shall not authorize the claim made by the Claimant on behalf of the Class Member. Instead, the Notice and Claims Administrator shall authorize only the claim submitted by the Class Member on its own behalf and consider only that claim to be a Qualifying Claim.

**III. Identification of Qualifying Claims; General Rules of Allocation**

16. No Claimant shall be permitted to recover from any Allocation Pool unless that Claimant submits a Qualifying Claim.
17. If a Claimant or the persons or entities on whose behalf a Claimant is submitting a Proof of Claim is not a member of the End-Payor Class, then that Claimant or the persons or entities on whose behalf a Claimant is submitting a Proof of Claim shall not be entitled to recover from any Allocation Pool. Consumers and TPPs who exclude themselves from the End-Payor Class shall not be entitled to any payments under the Settlement.
18. Except as provided in paragraph 24 below, Qualifying Claims shall be paid only out of the Allocation Pool for which they are eligible (the Cash Consumer Pool if the Class Member whose purchases form the basis for the Qualifying Claim is a Consumer who purchased without insurance, the Insured Consumer Pool if the Class Member whose purchases form the basis for the Qualifying Claim is a Consumer who purchased with insurance, and the TPP Pool if the Class Member whose purchases form the basis for the Qualifying Claim is a TPP).

**IV. Distribution of Settlement Fund**

19. Each Allocation Pool shall be distributed to Eligible Claimants in that Allocation Pool on a *pro rata* basis, except as modified by paragraph 23 below, according to their Eligible Purchases.
20. To determine each Eligible Cash Consumer Claimant's *pro rata* share of the Cash Consumer Pool, the Notice and Claims Administrator shall multiply the total amount of the Cash Consumer Pool by a fraction for which (a) the numerator is

the dollar total of Eligible Purchases<sup>1</sup> by that Eligible Cash Consumer Claimant, and (b) the denominator is the sum dollar total of all Eligible Purchases by all Eligible Cash Consumer Claimants.

21. To determine each Eligible Insured Consumer Claimant's *pro rata* share of the Insured Consumer Pool, the Notice and Claims Administrator shall multiply the total claimed amount of the Insured Consumer Pool by a fraction for which (a) the numerator is the Eligible Purchases<sup>2</sup> by that Eligible Insured Consumer Claimant, and (b) the denominator is the sum total of all Eligible Purchases (by all Eligible Insured Consumer Claimants).
22. To determine each Eligible TPP Claimant's *pro rata* share of the TPP Pool, the Notice and Claims Administrator shall multiply the total amount of the TPP Pool by a fraction, for which (a) the numerator is the Eligible Purchases (*i.e.* amount paid) by that Eligible TPP Claimant, and (b) the denominator is the sum total of all Eligible Purchases (*i.e.* total amounts paid) by all Eligible TPP Claimants.
23. For administrative efficiency, each Eligible Claimant in each Allocation Pool will receive a minimum payment of \$15. Payments to Eligible Claimants in their pool who would otherwise receive less than \$15 on a straight pro-rata basis will be increased to \$15. The amounts paid to Eligible Claimants in their pool who would otherwise receive more than \$15 will be reduced on a pro-rata basis until all Eligible Claimants receive the minimum \$15 payment, or as close to \$15 as that Allocation Pool can provide given the number of Eligible Claimants. In no

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<sup>1</sup> The dollar total of Eligible Purchases for Cash Consumers is determined by multiplying the number of 30-vial, 60-vial, and multidose packages by their respective per-package overcharges as calculated by Dr. Richard Frank.

<sup>2</sup> Eligible Purchases for Insured Consumers are the number of prescriptions filled.

event will funds from one Allocation Pool be used to ensure that Eligible Claimants in a different Allocation Pool receive the minimum \$15 payment.

24. Amounts that would otherwise be distributed to Eligible Claimants pursuant to paragraphs 22-25 shall be distributed on a *pro rata* basis to the other Eligible Claimants within each Allocation Pool.
25. If the *pro rata* distribution of the funds in an Allocation Pool to Eligible Claimants within that pool as set forth in paragraphs 20-24 would result in Eligible Claimants in that pool receiving more than their collective single damages (as calculated according to paragraphs 3-4 of the Frank Allocation Report), then the amount initially allocated to that pool that is in excess of the pool's Eligible Claimants' collective single damages shall be allocated to the other pools (*pro rata* based on the relative size of the other pools) until those pools' Eligible Claimants have also received their single damages. Any remaining excess shall be divided between the pools with the Cash Consumer Pool receiving 2.2% of the excess, the Insured Consumer Pool receiving 14.4% of the excess, and the TPP Pool receiving 83.4% of the excess.
26. For purposes of paragraph 25, single damages shall be determined as follows:
  - a. Cash Consumers: the number of 30-vial, 60-vial, and multidose packages multiplied by the per-package overcharges as calculated by Dr. Frank.
  - b. Insured Consumers: the number of prescriptions multiplied by the per-package overcharges as calculated by Dr. Frank.
  - c. TPPs: the number of prescriptions multiplied by the per-package overcharges as calculated by Dr. Frank.

**V. Distribution of Unspent Funds**

27. If any distributable balance remains in the Net Settlement Fund by reason of uncashed checks or otherwise six months after the distribution of the Net

Settlement Fund, then—subject to paragraph 25—that balance shall be redistributed on a *pro rata* basis among those Eligible Claimants who have cashed their checks and who would receive at least \$15 from the redistribution, after payment of any additional costs or fees incurred in administering the Net Settlement Fund for the redistribution.

28. If (1) Class Counsel determines that a redistribution would be uneconomical or (2) six months after the redistribution any balance still remains in the Net Settlement Fund and Class Counsel determines that a further redistribution would be uneconomical, Class Counsel shall seek an order approving the contribution of the balance to one or more non-sectarian, not-for-profit, 501(c)(3) organizations. Any proposed recipient shall be independent of Class Counsel so that Class Counsel does not derive a direct or indirect benefit from the selection of such organization as the recipient of a charitable contribution. Any motion seeking approval of an order will detail the means by which the proposed recipient(s) were selected.

**VI. Administration**

29. All determinations under this Plan of Allocation shall be made by the Notice and Claims Administrator, subject to review by Class Counsel and approval by the Court.