

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:

All Direct Purchaser Class Actions:

FWK Holdings, LLC v. Allergan, Inc., 18-cv-00677 (E.D.N.Y.);

Rochester Drug Co-Operative, Inc. v. Allergan, Inc., 18-cv-00970 (E.D.N.Y.);

KPH Healthcare Services, Inc. a/k/a Kinney Drugs, Inc., v. Allergan, Inc., No. 18-cv-00974 (E.D.N.Y.); and

Meijer, Inc. and Meijer Distribution, Inc. v. Allergan, Inc., 19-cv-02563 (E.D.N.Y).

**DIRECT PURCHASER CLASS PLAINTIFFS' MOTION FOR
REIMBURSEMENT OF EXPENSES, AN AWARD OF ATTORNEYS' FEES, AND
SERVICE AWARDS FOR THE CLASS REPRESENTATIVES**

Pursuant to Rule 23(h) of the Federal Rules of Civil Procedure, direct purchaser class plaintiffs Rochester Drug Co-Operative, Inc. ("RDC"), KPH Healthcare Services a/k/a Kinney Drugs, Inc. ("KPH"), Meijer, Inc. and Meijer Distribution, Inc. (together "Meijer"), and the proposed class, along with Class Counsel—Hagens Berman Sobol Shapiro LLP; Faruqi & Faruqi LLP; Berger & Montague PC; Taus, Cebulash & Landau, LLP; Radice Law Firm, P.C.; Kaplan Fox & Kilsheimer LLP; Sperling & Slater, P.C.; Capshaw DeRieux, LLP; Nussbaum Law Group, P.C., Roberts Law Firm, P.A.; and NastLaw LLC—respectfully move for entry of an order:

1. Approving Class Counsel's request for reimbursement of their reasonable litigation expenses, totaling \$1,948,635.05;

2. Awarding Class Counsel a fee award of one-third of the net settlement amount (one-third of \$51.25 million settlement minus the requested litigation expenses), totaling \$16,433,788.32, plus interest on that amount that may accrue prior to distribution; and
3. Approving service awards of \$150,000 to each of class plaintiffs and proposed representatives FWK, RDC, and KPH and a service award of \$75,000 to class plaintiff and proposed representative Meijer (for a total of \$525,000) in recognition of their participation in this case and the time and effort they expended on behalf of the proposed class.

Expenses. Class Counsel asks to be reimbursed for expenses incurred litigating the case, including expenses associated with experts, depositions, and document hosting. While we tried to be efficient, such expenses are unavoidable in a case of this complexity and subject matter.

Attorneys' Fees. Class Counsel's one-third fee request (net of expenses) aligns with awards that courts in this circuit and elsewhere regularly approve in similar direct purchaser pharmaceutical antitrust actions. A lodestar cross check confirms the reasonableness of the award sought: the requested fee reflects a multiplier of just under 1.0.

Service Awards. Class Counsel also seek service awards for the four proposed class representatives. Each reviewed the case before filing suit. Each actively participated in the litigation by sitting for depositions, producing documents, helping oppose multiple motions to compel (many casting unfounded aspersions), staying apprised of developments in the case, and overseeing all major decisions. The requested awards are appropriate given the unusually significant efforts the class representatives undertook and the unique risks they faced.

In support of this motion, in addition to the accompanying memorandum of law, Class Counsel submit three things. First, the Declaration of Interim Lead/Liaison Class Counsel Kristen A. Johnson describes in detail the work Class Counsel undertook from inception through settlement. Second, attached as exhibits to the Johnson Declaration are individual declarations from each firm comprising Class Counsel summarizing that firm's involvement, the hours expended by each professional at that firm and his or her hourly rates, the firm's total lodestar, the firm's out-of-pocket expenses by category, and any contributions the firm made to the joint litigation fund used to pay case-related expenses. We are also separately submitting all Class Counsel's detailed hourly time entries for *in camera* review. Third, Class Counsel submits the declaration of the Honorable David R. Herndon, who reviewed all time detail reports to ensure all time reported was compensable under this Court's Fees Protocol, that each entry was specific enough for review, and that the description and time spent seemed appropriate.

A proposed order granting this relief will be submitted to the Court as part of the direct purchasers' materials in support of their motion for final approval of the settlement and entry of final judgment.

Dated: July 10, 2020

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Kristen A. Johnson, hereby certify that I caused a copy of the foregoing to be filed electronically via the Court's CM/ECF system. Those attorneys who are registered CM/ECF users may access these filings, and notice of these filings will be sent to those parties by operation of the CM/ECF system.

Dated: July 10, 2020

/s/ Kristen A. Johnson

Kristen A. Johnson