

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION**

IN RE: ABILIFY (ARIPIPRAZOLE)
PRODUCTS LIABILITY LITIGATION

Case No. 3:16md2734

Judge M. Casey Rodgers
Magistrate Judge Gary Jones

This Document Relates to All Cases

COMMON BENEFIT FUND ORDER NO. 6

As stated in the Court's February 25, 2019 Order, the Parties in this litigation have reached a settlement and entered into a Confidential Master Settlement Agreement ("Agreement"). The administration of the settlement is currently ongoing.

Given the current status of the litigation and settlement, the Court finds it appropriate to establish a process for the submission and review of Common Benefit Applications seeking compensation and reimbursement for services performed and expenses incurred by Participating Counsel.

This Order specifically incorporates by reference herein Common Benefit Orders No. 1, No. 2, No. 3, No. 4, and No. 5. Capitalized terms used herein are as defined in a) this Order, b) the Court's prior Common Benefit Orders, and c) the Agreement.

I. Confirmation of Appointment of Special Master and CPA

In Common Benefit Fund Order No. 1, the Court appointed Ellen Reisman as Common Benefit Special Master (“Special Master”) and Randy Sansom, CPA, to, *inter alia*, establish and manage a Common Benefit Fund to pay litigation expenses for the common benefit, to monitor Participating Firms’ periodic submission of hours reflecting common benefit work, and to provide periodic reports to the Court. To facilitate an efficient and equitable process for the application and evaluation of requests for common benefit fees or expenses, the Court directs Ellen Reisman and Randy Sansom to perform those services set forth in this Order.

First, the Special Master and CPA, in consultation with the Plaintiffs’ Fees and Common Benefit Fund Committee (“PFFC”)¹, continue to be responsible for reviewing and approving payment of common benefit litigation expenses from the Common Benefit Fund (hereinafter “Litigation Fund”), as set forth in CBO No. 2.

Second, as set forth in the Court’s Order Establishing the MDL 2734 Qualified Settlement Fund and Appointing Claims Administrators, a portion of the Settlement Fund was deposited into the Abilify Common Fund, LLC and those funds are permitted to be used only for fair and reasonable administrative expenses

¹ The Court’s December 16, 2016 Order Appointing Leadership Counsel appointed Bryan Aylstock and Chris Hellums to the Plaintiffs’ Fees and Common Benefit Fund Committee.

until the Effective Date. Those funds have been deposited in a separate account (“Settlement Administration Account”) that is segregated from the Litigation Fund. Payment of reasonable fees and expenses associated with implementation of the settlement shall follow a similar payment process as that set forth for common benefit expenses in CBO No. 2, as follows: Invoices from the Claims Administrator (Brown Greer LLP), Claims Administrator for Review of Extraordinary Damages Claims (Gentle Turner Sexton & Harbison, LLC) or any other vendor retained to assist with the implementation and administration of the settlement shall be submitted to the Special Master, CPA, and PFFC by the 20th calendar day of each month. If the invoice is determined to reflect reasonable settlement administration fees and expenses, the CPA, with approval of the Special Master and PFFC, will make payment from the Settlement Administration Account on or before the 15th day of the following month.

The CPA continues to be responsible for the investment and management of the Litigation Fund, the Settlement Administration Account, as well as the Abilify Fee and Expense Fund as described in CBO No. 5.

II. Common Benefit Application Process

Completed Common Benefit Applications shall be submitted to the Special Master by email at AbilifyCB@rkgattorneys.com no later than 45 days after the entry of this Order. Only Participating Counsel, as defined in Common Benefit

Order No. 1 (“CBO 1”), are eligible to receive common benefit attorneys’ fees or costs.

Upon firms’ submission of Common Benefit Applications to the Special Master, the Special Master shall review each Application and confer with the CPA and PFFC. During her review, the Special Master may request additional information from and consult as necessary with Co-Lead Counsel or any other Counsel holding an appointed leadership position. The Special Master may request Participating Counsel provide additional information, detail, or documentation to support their firm’s Application and to assist with her review.

The Special Master shall provide each firm seeking common benefit fees or expenses the opportunity to be heard regarding the firm’s entitlement to common benefit fees. At the time of submission of the Common Benefit Application, each firm may elect to present orally the reasons, grounds, and explanations for their entitlement to common benefit fees and reimbursement of expenses to the Special Master. Meetings for such presentations shall be held on the dates and times set by the Special Master and may be either in person or by telephone. Whether in person or by phone, each presentation shall be conducted in the presence of a court reporter. The transcript will be for the Court’s utilization as necessary and directed by the Court. Up to two firm representatives may appear for such meetings and

they should be prepared to respond to any questions or concerns raised by the Special Master during their presentation.

The Special Master will be responsible for reviewing and evaluating all Common Benefit Applications and recommending an allocation of awards of attorneys' fees and costs. The Special Master shall perform this evaluation in consultation with the PFFC, Co-Lead Counsel, and the CPA. Upon completion of her review and evaluation, the Special Master shall provide to the Court a Report and Recommendation setting forth her recommended reimbursement of costs and apportionment of attorneys' fees for common benefit work.

III. Common Benefit Application

The Common Benefit Application shall consist of: a) Participating Counsel self-auditing their firms' time and expense entries (as described below); b) a narrative setting forth the firm's qualitative contribution to the litigation (including biographies of attorneys who submitted hours) ("Narrative"); and c) an affidavit to be executed by a senior partner in the firm attesting to the truth and accuracy of the application and certifying compliance with the Court's Common Benefit Orders ("Affidavit"). The form of the Narrative and Affidavit are attached hereto as Exhibits A and B, respectively.

a. Participating Counsel Audit and Review of Hours and Expenses

Common Benefit Order No. 1 required plaintiffs' counsel seeking to recover common benefit fees to submit reports of their time and expense records every two months to the TimeLocker and ExpenseLocker systems. As a result, a significant amount of information regarding attorney hours and expenses has been submitted and is already available for review.

For each firm with Participating Counsel who submitted time and expense entries for common benefit consideration, the Special Master shall, within five (5) days of this Order, provide a spreadsheet of that firm's hours and expenses submitted to the TimeLocker and ExpenseLocker systems. Participating Counsel shall review and audit their firms' time and expense submissions to ensure that a) the entries are true and accurate; b) the entries are properly coded; c) the entries were for the common benefit; and d) the entries are compliant with all of the Court's Common Benefit Orders. Time entries may require clarification to provide sufficient detail to permit meaningful review. Participating Counsel may remove time and expenses entries during this review and audit process but no additional time or expense entries may be added.

b. Narrative of Qualitative Contribution

In addition to a firm's self-audit of time and expense entries, as part of the Common Benefit Application, firms with Participating Counsel shall complete

and submit a narrative describing the firm's qualitative contribution to this litigation and setting forth the reasons, grounds, and explanation for the firm's entitlement to common benefit fees. The Narrative shall be limited to ten (10) pages double-spaced. The Narrative should include a list of all employees/personnel who submitted time, whether those employees are/were full-time or contract employees, and the employee's title. To the extent contract attorneys were utilized, a copy of the contract with the vendor detailing rates shall be included. For each attorney who submitted time, the firm shall include a short, individual biography not to exceed one (1) page. The form of the Narrative to be submitted is attached as Exhibit A to this Order.

c. Common Benefit Application Affidavit

Each Common Benefit Application shall include an Affidavit, attached as Exhibit B to this Order. The Affidavit shall be executed by a senior partner at each firm holding an appointed leadership position for MDL 2734. To the extent a firm does not have a senior partner holding an appointed leadership position in this litigation, the Affidavit should be executed by a senior partner. The Affidavit shall certify that the firm's Participating Counsel reviewed their time and expense entries and that the firm's audited hours and expense entries are a) true and accurate; b) for the common benefit; and c) in compliance with all of the Court's

Common Benefit Orders. In addition, the Affidavit shall certify that the information in the firm's Narrative is true and accurate.

IV. Criteria for Common Benefit Application Review

The goal of a common benefit award is to reward and recognize counsel for the work that contributed to the common benefit of the litigation as a whole. This analysis is qualitative in nature because “not all types of work are created equal.” Some work, though less time consuming in hours spent, has a greater impact on the litigation. For example, hours spent drafting critical briefs or preparing for and taking depositions of key witnesses generally provide greater common benefit than hours reviewing and coding documents. Ultimately, the Special Master, after consultation with the PFFC, Co-Lead Counsel, and CPA, must evaluate and make a recommendation regarding the relative contributions that each attorney and firm provided to the overall outcome of the litigation. In conducting her review of Common Benefit Applications and in proposing a recommended allocation of common benefit fees and costs, the Special Master shall be guided by the following considerations:

1. The extent to which each firm made a substantial contribution to the outcome of the litigation;
2. The quality of each firm or attorney's work;
3. The consistency, quantum, duration, and intensity of each firm or attorney's commitment to the litigation;

4. The level of experience, reputation, and status of each attorney and firm, including partner participation by each firm;
5. Common benefit work performed in non-MDL jurisdictions to the extent it contributed to the outcome of the litigation and benefitted the MDL;
6. Membership and leadership positions within the MDL;
7. Whether counsel made significant contributions to the funding of the litigation and creation of the Common Benefit Fund;
8. Commitment to and efforts toward overall resolution of the litigation;
9. Whether Plaintiffs' Counsel propose an agreement regarding the allocation common benefit fees and expenses; and
10. Any other relevant factors as guided by governing fee jurisprudence.

Upon completion of her review, the Special Master shall file a Report and Recommendation setting forth the Special Master's recommended allocation of costs and fees to the Court for its consideration. Upon receipt of the Special Master's Report and Recommendation, the Court will conduct a *de novo* review before entering an order regarding the award and allocation of common benefit fees and expenses.

DONE and ORDERED, on this 5th day of June, 2019.

M. Casey Rodgers

M. CASEY RODGERS
UNITED STATES DISTRICT JUDGE

Exhibit A

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION**

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AFFIDAVIT OF [LAW FIRM]
IN SUPPORT OF COMMON BENEFIT APPLICATION

I, [name], hereby depose and declare as follows, under penalty of perjury:

1. I am a partner in the law firm of [firm name], located at [address].
2. I have reviewed the time submissions by my firm and attest that they are accurate, true, and correct. The time submissions by my firm comply in all material aspects with this Court's Common Benefit Order No. 1.
3. I have reviewed the expense submissions by my firm and attest that they are accurate, true, and correct. The expense submissions by my firm comply in all material aspects with this Court's Common Benefit Order No. 1.
4. I have reviewed the Narrative submission by my firm and attest that the statements made therein are accurate, true, and correct.

5. The Court may rely on the information submitted by my firm to the
Common Benefit Special Master.

I depose and state under penalty of perjury that the foregoing is true and
correct.

Executed this ____ day of _____, 2019 in [city, state].

[Attorney Name]

Subscribed and Sworn to me, in my presence, this ____ day of _____, 2019.

Notary Signature

State of _____

County/Parish of _____

(My commission expires: _____)

Exhibit B

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NARRATIVE OF [LAW FIRM]
IN SUPPORT OF COMMON BENEFIT APPLICATION

As stated in the Court's Common Benefit Order No. 6, this Narrative is intended to provide each firm seeking award of common benefit fees and expenses an opportunity to describe the firm's qualitative contribution to this multidistrict litigation. Each firm's Narrative submission shall be limited to ten (10) pages double-spaced.

1. Describe the consistency, quantum, duration, and intensity of your firm's commitment to the litigation.
2. Describe the level of experience, reputation, and status of each attorney in your firm who contributed to the litigation, including partner participation. Please attach to your firm's Application a short, individual biography (not to exceed one page) for each attorney from your firm who submitted time.
3. Identify members of your firm who held appointed leadership positions, and describe their membership, participation in, and contribution to the litigation

in those roles. Describe their level of involvement in and commitment to the MDL over the course of the litigation.

4. Describe your firm's leadership in and contribution to discovery, including oral argument, taking / defending depositions, presenting witness testimony, etc.
5. Describe your firm's leadership in and contribution to document review. If your firm engaged a vendor to provide contract attorney services to assist with document review, provide a copy of the vendor contract detailing billing rates.
6. Describe your firm's leadership in and contribution to legal and briefing matters, including legal research, motions practice, and brief writing.
7. Describe your firm's leadership in and contribution to science and expert matters.
8. Describe any activities your firm performed in preparation for, support of, or conduct of bellwether trials and describe how that work contributed to the common benefit.
9. Describe your firm's leadership in and contribution to settlement of the litigation, including settlement negotiations, drafting settlement documentation, and settlement administration.

10. Describe your firm's participation in ongoing activities, if any, for the common benefit and explain how those activities contribute to the benefit of the litigation as a whole.
11. If your firm was involved in litigation of Abilify claims prior to the formation of the MDL, describe the time and expense incurred during that time and explain how it contributed to the benefit of the litigation as a whole.
12. To the extent your firm participated in Abilify litigation in state court proceedings, describe the time and expense incurred pursuing state court litigation and explain how it contributed to the benefit of the litigation as a whole.
13. Describe the financial contribution your firm made to the funding of the litigation.
14. Please describe any other relevant factors which you believe should be considered by the Special Master and the Court.
15. Identify whether your firm would like an opportunity to present orally to the Special Master the reasons, grounds, and explanations for common benefit fees and reimbursement of expenses.