

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

IN RE: ALLERGAN BIOCELL TEXTURED  
BREAST IMPLANT PRODUCTS  
LIABILITY LITIGATION

THIS DOCUMENT RELATES TO:  
ALL ACTIONS

Case No. 2:19-md-02921 (BRM)(ESK)  
MDL No. 2921

JUDGE BRIAN R. MARTINOTTI  
JUDGE EDWARD S. KIEL

**CASE MANAGEMENT ORDER NO. 24**  
(Establishing Common Benefit Fee and Expense Funds)

**I. Scope of Order**

This Order is entered to provide for the fair and equitable sharing among plaintiffs, and their counsel, of the burden of services performed and expenses incurred by attorneys acting for the common benefit of all plaintiffs in this complex litigation.

**A. Governing Principles and the Common Benefit Doctrine**

The governing principles flow from the United States Supreme Court's common benefit doctrine as established in *Trustees v. Greenough*, 105 U.S. 527 (1881); refined in, *inter alia*, *Central Railroad & Banking Co. v. Pettus*, 113 U.S. 116 (1884); *Sprague v. Ticonic Nat'l Bank*, 307 U.S. 161 (1939); *Mills v. Electric Auto-Lite Co.*, 396 U.S. 375 (1970); *Boeing Co. v. Van Gemert*, 444 U.S. 472 (1980); and approved and implemented in the MDL context, in, *inter alia*, *In re Air Crash Disaster at Florida Everglades on December 29, 1972*, 549 F.2d 1006, 1019- 21 (5th Cir. 1977); and *In re MGM Grand Hotel Fire Litigation*, 660 F. Supp. 522, 525-29 (D. Nev. 1987). Common benefit work product includes all work performed to benefit all plaintiffs, including pretrial matters, discovery, trial preparation, settlement processes, and all other work that advances this litigation to conclusion.

**B. Application of This Order**

This Order applies to all cases pending, as well as to any case later filed in, transferred to, or removed to this Court, and treated as part of the coordinated proceeding known as *In re Allergan BIOCELL Textured Implants Products Liability Litigation*, MDL 2921 (“MDL”). This Order also applies to: (1) each attorney who represents a plaintiff with a case pending in or later filed in, transferred to, or removed to this Court, no matter if the plaintiff’s attorney signs the “Participation Agreement” attached as Exhibit A, and even if the attorney also has cases outside the MDL (filed or unfiled) (“the MDL Plaintiffs’ Counsel”); and (2) each attorney who represents only plaintiffs with cases filed in state court who elects to sign the Participation Agreement (“the Participating Non-MDL Plaintiffs’ Counsel”) (together with the MDL Plaintiffs’ Counsel, “Participating Counsel”).

**C. Participation Agreement (Exhibit A)**

Exhibit A, attached and incorporated here, is a voluntary Participation Agreement between: (1) the Plaintiffs’ Steering Committee (“PSC”) and other plaintiffs’ attorneys who perform common benefit work in the MDL; and (2) plaintiffs’ attorneys with cases solely in state court who elect to sign the Participation Agreement. The Participation Agreement is a private and cooperative agreement between plaintiffs’ attorneys only; and not defendants or defendants’ counsel. All plaintiffs’ attorneys who currently have cases pending in any state court and who want to become a Participating Counsel shall, within 45 days of this Order, execute the Participation Agreement. Any plaintiffs’ attorney who does not yet have an Allergan BIOCELL case filed in any federal or state court and who wants to become a Participating Counsel shall execute the Participation Agreement within 45 days of the date their first case is filed in any state court if that lawyer intends to voluntarily become a Participating Counsel at the fee and expense percentages

set forth below. Failure to execute a Participation Agreement reflecting that an attorney will be a Participating Counsel within the time frame outlined in this paragraph will result in higher percentages for common benefit assessment resulting from such later participation, absent good cause or special circumstances. More specifically, and as explained in the Participation Agreement, the higher fee percentage for failure to execute a Participation Agreement reflecting that an attorney will be a Participating Counsel within the time frame set forth in this paragraph shall increase by double. For example, a 5% fee assessment will increase to 10%; a 9% fee assessment will increase to 18%, *etc.*

Participating Counsel shall have a right to receive or access all the common benefit work product performed by the PSC. Counsel who choose not to execute the Participation Agreement are not entitled to receive common benefit work product and may be subject to an increased assessment on all Allergan cases in which they have a fee interest if they receive common benefit work product or otherwise benefit by the work performed by the PSC and Participating Counsel.

The Court recognizes the jurisdictional rights and obligations of the state courts to conduct their state court litigation as they so determine and that the state court litigations may include counsel who are Participating Counsel. The Participation Agreement and this Order shall not be cited by a Party to the Participation Agreement in any other court in support of a position that adversely impacts the jurisdictional rights and obligations of the state courts and state court Participating Counsel.

## **II. Common Benefit Expenses**

### **A. Qualified Expenses Eligible for Reimbursement**

To be eligible for reimbursement of common benefit expenses, those expenses must meet the requirements of this section and the limitations set forth in the Participation Agreement.

Specifically, said expenses must be: (a) for the common benefit; (b) appropriately authorized by Co-Lead Counsel (as defined in footnote 1 in the Participation Agreement); (c) timely submitted within the defined limitations set forth in this Order; and (d) verified by a partner or shareholder in the submitting firm or by a member of the PSC if said member is not a partner or shareholder in the submitting firm.

Time and expense submissions are to be made on the 15<sup>th</sup> of each month (or the following Monday if the 15<sup>th</sup> falls on a weekend), beginning on October 15, 2020. Each submission must contain all time and expenses incurred during the calendar month before the submission date (e.g., the October 15, 2020 submission should include all time and expenses incurred during the month of September 2020). The Court acknowledges that Co-Lead Counsel have already been collecting time and expenses and therefore should have already received all time and expenses incurred before the date of this Order. All time and expense submissions must come with contemporaneous records and verified by a partner or shareholder in the submitting firm or by a member of the PSC if said member is not a partner or shareholder in the submitting firm. In addition, each firm that makes a common benefit time and/or cost submission for a given month shall also need to submit a summary (no more than 2 or 3 sentences) summarizing the contribution that each time keeper from that law firm made toward the common benefit and advancement of the litigation. Submissions of time and expense made after the 15<sup>th</sup> day of the month (or the following Monday if the 15<sup>th</sup> falls on a weekend) following the month in which the time or expense were incurred may be rejected. Only time and expense incurred after the entry of CMO No. 4 by this Court appointing Plaintiffs' Leadership on February 25, 2020 shall be submitted and considered for common benefit consideration, except: (a) time and expense incurred by those appointed to the PSC by Judge Martinotti before the entry of CMO #4 to comply with prior

CMOs entered in this MDL; and (b) time approved by Co-Lead Counsel upon its later review that was incurred and supported the development of the Consolidated Class Action Complaint and the Master PI Complaint that were filed on May 26, 2020 (*e.g.*, time spent interviewing and vetting plaintiffs for those complaints).

Moreover, only that time and those expenses incurred for the common benefit of all cases, consistent with the terms of this Order, shall be considered for common benefit reimbursement at the end of the litigation. To facilitate the appropriate monitoring of time and expenses in this litigation, each firm must submit detailed monthly time and expenses in a format authorized by Plaintiffs' Co-Lead Counsel. All time should be reported at regular billing rates in effect during the month for which you are reporting. Time spent reviewing and coding documents will be capped at a rate decided by Plaintiffs' Co-Lead Counsel, and time billed for simply reviewing emails or finished work product prepared by others, in the judgment of Plaintiffs' Co-Lead Counsel, will not be allowed as common benefit time. Time must be submitted in .10 of-an-hour increments.

Each attorney has an obligation to keep themselves informed about the litigation so that they can best represent their clients, and review of group emails, pleadings, orders, and discovery responses, is part of that obligation. Only Plaintiffs' Co-Lead Counsel, Liaison Counsel, and Committee Co-Chairs are working for the common benefit in reviewing such materials. The Court considers that all other counsel are reviewing such materials for their own benefit and/or that of their clients, and the review is not considered common benefit. Nothing in this paragraph, however, precludes lawyers for submitting for common benefit time for reviewing pleadings, orders, and discovery responses germane to specific tasks they have been assigned by Plaintiffs' Co-Lead Counsel.

Plaintiffs' Co-Lead Counsel are directed by the Court not to assign work to lawyers or law firms that are not current with their time and expense reports or assessments. To ensure compliance with this Order, Plaintiffs' Co-Lead Counsel are directed to retain a Certified Public Accountant ("CPA") to help compile and review all submissions and provide reports to Plaintiffs' Co-Lead Counsel, who shall submit them to the Court on March 1 and September 1 of each calendar year throughout this litigation. These reports will include both time and expenses, and will summarize the compliance and reporting, with back-up detail, for all firms. The Court will allow these reports to be submitted by Plaintiffs' Liaison Counsel to the Court on a confidential basis, as if submitted under seal.

**B. Shared and Held Common Benefit Expenses**

**1. Shared Costs**

Shared Costs are costs incurred for the common benefit of all plaintiffs. Shared Costs are costs that will be paid out of a separate "Allergan Textured Breast Implant Litigation Fund" established and administered by Berger Montague PC, Plaintiffs' Co-Lead Counsel, and funded by all members of the PSC and others as determined by Plaintiffs' Co-Lead Counsel. All Shared Costs must be approved by Plaintiffs' Co-Lead Counsel before payment. Shared Costs include: (a) certain filing and service costs; (b) deposition, court reporter, and video technician costs for non-case specific depositions; (c) costs necessary for creation of a document depository, the operation and administration of the depository, and any equipment required for the depository; (d) Plaintiffs' Co-Lead Counsel and Liaison Counsel administrative matters (*e.g.*, expenses for equipment, technology, courier services, telecopier, electronic service, photocopy and printing, secretarial/temporary staff, *etc.*); (e) PSC group administration matters such as PSC or PEC meetings; (f) accountant fees; (g) generic expert witness and consultant fees and expenses; (h)

Plaintiffs' Co-Lead Counsel and Liaison Counsel printing, copying, coding, scanning (out of house or extraordinary firm cost); (i) research or consulting by outside third-party vendors/consultants/attorneys; (j) translation costs; (k) bank or financial institution charges; (l) certain investigative services, (m) special master and/or mediator charges; and (n) such other costs that Plaintiffs' Co-Lead Counsel and Liaison Counsel agree are common benefit-related costs.

## **2. Held Costs**

Held Costs are those that will be carried by each Participating Counsel in MDL 2921, including, without limitation, PSC members. Held Costs are those that do not fall into any of the above categories of shared costs but are incurred for the benefit all plaintiffs. For example, travel costs incurred by a firm for travel to undertake common benefit work shall be Held Costs. Held Costs can also include unreimbursed, but authorized, shared costs. No specific client-related costs shall be considered Held Costs, unless the case is determined by Plaintiffs' Co-Lead Counsel and Liaison Counsel to be a "common benefit case," *e.g.*, certain bellwether cases as determined by Plaintiffs' Co-Lead Counsel and Liaison Counsel.

### **C. Authorization and Submission**

The Participation Agreement sets forth the guidelines for authorizing and submitting expenses for the common benefit which shall be followed.

### **D. Expenses Limitations**

#### **1. Travel Limitations**

Except in extraordinary circumstances approved *in advance* by Plaintiffs' Co-Lead Counsel, all travel reimbursements are subject to the following limitations:

- i. Air Travel: Only the price of a coach seat for a reasonable itinerary will be reimbursed. Business/First Class Airfare will *not* be fully reimbursed, except for international flights or domestic flights where the actual in air travel time is four (4) hours or more, both of which require prior approval by Plaintiffs Co-Lead Counsel to be considered for reimbursement. Use of a private aircraft will not be reimbursed. If Business/First Class Airfare is used on domestic flights, then the difference between the Business/First Class Airfare and the coach airfare must be shown on the travel reimbursement form, and only the coach fare will be reimbursed.
- ii. Hotel: Hotel room charges for the average available room rate of a business hotel, including the Hyatt, Westin, and Marriott hotels, in the city in which the stay occurred will be reimbursed. Luxury hotels will not be fully reimbursed but will be reimbursed at the average available rate of a business hotel.
- iii. Meals: Meal expenses must be reasonable.
- iv. Cash Expenses: Miscellaneous cash expenses for which receipts generally are unavailable (tips, luggage handling, *etc.*) will be reimbursed up to \$25.00 per trip, as long as the expenses are properly itemized and a receipt created and attested to.
- v. Rental Automobiles: Luxury automobile rentals will not be fully reimbursed. If luxury automobiles are selected, the difference between the luxury and non-luxury vehicle rates must be shown on the travel reimbursement form, and only the non-luxury rate may be claimed, unless such larger sized vehicle is needed to accommodate several counsel who must be listed.
- vi. Mileage: Mileage claims must be documented by stating origination point, destination, total actual miles for each trip, and the rate per mile paid by the member's firm. The maximum allowable rate will be the maximum rate allowed by the IRS (currently 58 cents per mile).

## 2. Non-Travel Limitations



- i. Shipping, Courier, and Delivery Charges: All claimed expenses must be documented with bills showing the sender, origin of the package, recipient, and destination of the package.
- ii. Postage Charges: A contemporaneous postage log or other supporting documentation must be maintained and submitted. Postage charges are to be reported at actual cost.
- iii. Telefax Charges: Contemporaneous records should be maintained and submitted showing faxes sent and received. The perfax charge shall not exceed \$1.00 per page.
- iv. In-House Photocopy: A contemporaneous photocopy log or other supporting documentation must be maintained and submitted. The maximum copy charge is 15¢ per page.
- v. Computerized Research – Lexis/Westlaw: Claims for Lexis or Westlaw, and other computerized legal research expenses must be in the exact amount charged to or allocated by the firm for these research services.

#### **E. Verification**

The forms detailing expenses shall be certified by a partner or shareholder in the submitting firm or by a member of the PSC if said member is not a partner or shareholder in the submitting firm. Attorneys shall keep receipts for all expenses. Credit card receipts are an appropriate form of verification if accompanied by a declaration from counsel that work was performed and paid for the common benefit.

### **III. Common Benefit Work**

#### **A. Qualified Common Benefit Work Eligible for Reimbursement**

Only Participating Counsel are eligible for reimbursement for time and efforts expended for the common benefit. Participating Counsel shall be eligible for reimbursement for time and efforts expended for common benefit work if said time and efforts are: (a) for the common benefit; (b) appropriately authorized (as described in footnote 1 of the Participation Agreement);

(c) timely submitted; (d) verified by a partner or shareholder in the submitting firm or by a member of the PSC if said member is not a partner or shareholder in the submitting firm; and (e) approved following review by Plaintiffs' Co-Lead Counsel, which may occur at any time, and is not waived by failing to review when such lodestar is submitted. Common benefit work shall only be performed by employees of the law firm submitting time/expenses and time/expenses by contract attorneys will not be compensated/reimbursed without *prior* approval from Plaintiffs' Co-Lead Counsel. Not all common benefit hours billed/submitted are equal. There is no guaranty that all of the time submitted by any firm will be compensated and the hourly rate for the work that is compensated is not guaranteed. Plaintiffs' Co-Lead Counsel may evaluate and place caps on hourly rates that are submitted. Moreover, if counsel is a member of the PSC and fails to timely submit capital contributions as may be requested by Plaintiffs' Co-Lead Counsel at any time during the litigation, such counsel and members of his/her firm shall not be allowed to submit common benefit time or expenses for reimbursement.

**B. Compensable Common Benefit Work Defined**

As the litigation progresses and common benefit work product continues to be generated, Plaintiffs' Co-Lead Counsel and the appointed Co-Chairs of the committees established by Co-Lead Counsel (specifically, the ESI/Discovery Committee; the Experts/Science Committee; the Law & Briefing Committee; and the Class Action Committee), may assign Participating Counsel with common benefit work; common benefit work shall include only work specifically assigned. Examples of common benefit work include, but are not limited to, maintenance of the document review database; review and document coding; expert retention and development authorized by Co-Lead Counsel and/or Co-Chairs of the Science and Expert Committee; preparing for and conducting authorized

depositions of Defendants, third-party witnesses, and experts; activities associated with preparing or motion practice regarding the Consolidated Class Action Complaint and Master PI Complaint filed; and activities associated with preparation for trial and the trial of any cases designated as “common benefit trials” by Plaintiffs’ Co-Lead Counsel. Only common benefit work performed by an employee of the law firm assigned the task will be compensated; work performed by contract lawyers will not be compensated without prior approval from Plaintiffs’ Co-Lead Counsel.

**C. Authorization and Time Keeping**

All time must be authorized and accurately and contemporaneously maintained. Time shall be kept according to these guidelines as explained in the Participation Agreement and approved by Plaintiffs’ Co-Lead Counsel.

**IV. Plaintiffs’ Litigation Fee and Expense Funds**

**A. Establishing the Fee and Expense Funds**

Plaintiffs’ Co-Lead Counsel is directed to establish two interest-bearing accounts at Huntington Bank to receive and disburse funds as provided in this Order. The first fund shall be designated the “Allergan BIOCELL Fee Fund” and the second fund shall be designated the “Allergan Textured Breast Implant Litigation Fund” for expenses (collectively, these two funds are the “Funds”).

This Court appoints Mark Wagner, Controller, of Berger Montague PC to serve as Escrow Agent over the Funds and to keep detailed records of all deposits and withdrawals and to prepare tax returns and other tax filings in connection with the Funds. Berger Montague PC shall submit quarterly detailed bills to Plaintiffs’ Co-Lead Counsel. Upon approval by

Plaintiffs' Co-Lead Counsel, bills for expenses as set forth above shall be paid from the Allergan Textured Breast Implant Litigation Fund and shall be considered a Shared Cost.

**B. Payments into the Fee and Expense Funds**

**1. General Standards**

All plaintiffs and their attorneys who are subject to this Order and who agree to settle, compromise, dismiss, or reduce the amount of a claim or, with or without trial, recover a judgment for monetary damages or other monetary relief, including, without limitation, such compensatory and punitive damages, with respect to Allergan BIOCELL claims are subject to an assessment of the gross monetary recovery, as provided here.

**2. Class Action Recovery**

The assessments provided in this section below do not apply to claims resolved via a class action settlement governed by and approved pursuant to Fed. R. Civ. P. 23. In the event that there is a class action settlement fund established through a Fed. R. Civ. P. 23 class action, Plaintiffs' Co-Lead Counsel, Liaison Counsel, and Adam Slater shall have the authority to allocate any Court-approved attorneys' fees and expenses, following the submission of a joint and collective motion for attorneys' fees and expenses, among law firms or attorneys who worked on the class action, based on their review of the lodestars and applicable expenses submitted by such firms.

**3. Cases Outside the Scope of MDL 2921**

The assessments provided in this section do not apply to cases alleging solely injuries from Allergan BIOCELL Textured Breast Implants solely outside the scope of MDL 2921.

**4. Gross Monetary Recovery**

Gross monetary recovery includes any and all amounts paid to plaintiffs' counsel by Defendants through a settlement or pursuant to a judgment. In measuring the "gross monetary recovery," the parties are to (a) exclude court costs that are to be paid by the defendant; (b) include any payments to be made by the defendant on an intervention asserted by third-parties, such as to physicians, hospitals, or other healthcare providers in subrogation related to treatment of a plaintiff, and any governmental liens or obligations (*e.g.*, Medicare/Medicaid); and (c) include the present value of any fixed and certain payments to be made in the future. The assessment shall apply to all the cases of the plaintiffs' attorneys who are subject to this Order, whether as sole counsel or co-counsel, including cases pending in the MDL, pending in state courts, unfiled, or tolled.

#### **5. Assessment Amount**

Each Participating Case in which a judgment is entered or in which a resolution is reached with a signed settlement agreement shall be assessed for common benefit work and costs as follows on the gross monetary recovery:

- a) If Judgment is entered or resolution reached before March 1, 2021 in any action in which the compensated injuries relate to Breast Implant Associated Anaplastic Large Cell Lymphoma; the explant of recalled Allergan Textured Breast Implants or Tissue Expanders; or medical monitoring for those who have not yet had their recalled Allergan Textured Breast Implants or Tissue Expanders explanted: eight percent (8%) of gross monetary recovery for common benefit work; plus two percent (2%) of gross monetary recovery for common benefit expenses.
- b) If Judgment is entered or resolution reached on or after March 1, 2021 in any action in which the compensated injuries relate to Breast Implant Associated Anaplastic Large Cell Lymphoma; the explant of recalled Allergan Textured Breast Implants or Tissue Expanders; or medical monitoring for those who have not yet had their recalled Allergan Textured Breast Implants or Tissue Expanders explanted: nine (9%) percent of gross monetary recovery for common benefit work; plus three (3%) percent of gross monetary recovery for common benefit expenses.
- c) Plaintiffs' Co-Lead Counsel and the PSC reserve their rights to seek a common benefit assessment on cases resolved before the date of this Order in any action in

which the compensated injuries relate to Breast Implant Associated Anaplastic Large Cell Lymphoma; the explant of recalled Allergan Textured Breast Implants or Tissue Expanders; or medical monitoring for those who have not yet had their recalled Allergan Textured Breast Implants or Tissue Expanders explanted; three (3%) percent of gross monetary recovery for common benefit work; plus two (2%) percent of gross monetary recovery for common benefit expenses. Defendants reserve their right to object to a retroactive assessment.

The cost hold back portion shall be allocated to pay and/or reimburse the expenses that have been and/or will be incurred at the direction and written authorization by Plaintiffs' Co-Lead Counsel for the common benefit of Plaintiffs in MDL 2921. The common benefit work assessment shall be allocated to pay and/or reimburse fees for legal services that have been and/or will be provided by attorneys acting at the direction and written authorization by Plaintiffs' Co-Lead Counsel for the common benefit of Plaintiffs in MDL 2921.

All expenses and legal services shall be at the direction of and written authorization by Plaintiffs' Co-Lead Counsel in order to be considered for reimbursement from these funds. Plaintiffs' Co-Lead Counsel and the PSC may apply to the Court for an additional common benefit assessment, against all Participating Cases that are pending at the time of such an application, including if additional funds are needed for reimbursement of the expenses that have been and/or will be incurred at the direction of Co-Lead Counsel for the common benefit of Plaintiffs in MDL 2921, which shall be granted upon a showing of good cause.

## **6. Reporting Obligations**

Plaintiffs' Co-Lead Counsel shall provide to Defendants' Counsel, Melissa Geist of Reed Smith, the following two lists quarterly beginning on December 15, 2020: (a) a list of all lawyers and law firms who have filed an Allergan BIOCELL case that is pending in MDL 2921 (the "MDL Counsel List") and (b) a list of all lawyers who have executed the Participation Agreement that is Exhibit A hereto who do not have an Allergan case pending in MDL 2921

(“Non-MDL Participating Counsel List”). These same lists shall be made available to all plaintiffs’ counsel with cases in this MDL, as well as any other plaintiffs’ counsel who signs the Participation Agreement, upon request. If there is a dispute over whether a case should be on the lists, Plaintiffs’ Co-Lead Counsel shall seek to resolve the matter with the particular plaintiff’s counsel informally, and if that is unsuccessful, upon motion to the Court.

Within 14 days of receipt of these two lists from Plaintiffs’ Co-Lead Counsel, Defendants’ Counsel shall provide to Plaintiffs’ Co-Lead Counsel a list of all lawyers who appear as counsel of record on a complaint in any Allergan BIOCELL case in any court in the United States (state or federal) who do not appear on either the MDL Counsel List or the Non-MDL Participating Counsel List. The parties’ reporting obligations shall continue quarterly until the conclusion of this MDL.

#### **7. Obligations to Pay Common Benefit Assessments**

For cases subject to an assessment (*i.e.*, any case in which the counsel of record also has appeared as a counsel of record in any case pending in MDL 2921, or any case for a lawyer without any MDL case in which Plaintiffs’ Co-Lead Counsel has informed Defendants that the plaintiff’s lawyer has signed the Participation Agreement, in accordance with the procedure set forth above), Defendants are directed to withhold an assessment from any and all amounts paid to plaintiffs and their counsel and to pay the assessment directly into the Funds as a credit against the settlement or judgment. The parties will work cooperatively to develop a mechanism and process by which to ensure that the assessment that is to be withheld by Defendants according to this Order, for each individual case, has been deposited into the Funds before dismissal of any case can be effectuated. If for any reason the assessment is not or has not been so withheld,

the plaintiff and his or her counsel are jointly responsible for paying the assessment into the applicable Fund promptly.

To preserve the confidentiality of settlement amounts, if any, Defendants may pay any such assessments on an aggregate basis for each quarter. To the extent confidentiality agreements apply, then details of any individual settlement agreement, individual settlement amount, and/or amounts deposited into escrow by any particular Defendant shall be confidential and shall not be disclosed to anyone, including Plaintiffs' Co-Lead Counsel, any member of the PSC, any Plaintiff's counsel, or the Court, unless the Court requests that it receive that information, in which case the report shall be provided only to the Court and only *in camera* (i.e., not publicly filed and not available to any counsel). Quarterly statements shall, however, be provided to Plaintiffs' Co-Lead Counsel and Plaintiffs' Liaison Counsel (and, if the Court so orders, to the Court) showing only the aggregate of the quarterly deposits from all Defendants, disbursements, interest earned, financial institution charges, if any, and current balance. Within thirty (30) days after the end of the first quarter in which any Defendant has paid any assessment into the Funds, Defendant shall meet and confer with Plaintiffs' Co-Lead Counsel regarding whether the parties should employ some mechanism to ensure the accuracy of the list of lawyers who are or were subject to an assessment.

## **V. Distributions**

### **A. Court Approval**

The amounts deposited into the Allergan BIOCELL Fee Fund and the Allergan Textured Breast Implant Litigation Fund (for expenses) shall be available for distribution to Participating Counsel who have performed professional services or incurred expenses for the common benefit. No amounts will be disbursed without review and approval by the Court, or such other



mechanism as the Court may order. Specifically, such sums shall be distributed only upon Order of this Court. This Court retains jurisdiction over any common benefit award or distribution.

**B. Application for Distribution**

Each Participating Counsel who does common benefit work has the right to present their claim(s) for compensation and/or reimbursement before any distribution approved by this Court. Any Counsel who does not sign the Participation Agreement shall not be eligible to receive common benefit payments for any work performed or expenses incurred.

Plaintiffs' Co-Lead Counsel, Liaison Counsel and Adam Slater (for purposes of this section, the "Common Benefit Fee Committee") shall, at the appropriate time, make recommendations to this Court for distributions to Participating Counsel who have performed common benefit work and/or incurred common benefit expenses. In the event there is not unanimous agreement among the Common Benefit Fee Committee, each shall have one vote, which shall bear the same weight. A decision about the recommendation to the Court by the Common Benefit Fee Committee need only be made by a majority of votes. The Common Benefit Fee Committee shall determine on its own the most fair and efficient manner by which to evaluate all time and expense submissions in making its recommendation to this Court. This Court will give due consideration to the recommendation of the Common Benefit Fee Committee in making its ruling on the award of common benefit fees and common benefit cost reimbursement.

**SO ORDERED.**

Dated this 6 day of December, 2021

*/s/ Brian R. Martinotti*  
**BRIAN R. MARTINOTTI**  
**UNITED STATES DISTRICT JUDGE**

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

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IN RE: ALLERGAN BIOCELL TEXTURED	:	Case No. 2:19-md-02921 (BRM) (ESK)
BREAST IMPLANT PRODUCTS LIABILITY	:	MDL No. 2921
LITIGATION	:	
	:	JUDGE BRIAN R. MARTINOTTI
THIS DOCUMENT RELATES TO ALL CASES	:	JUDGE EDWARD S. KIEL

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**EXHIBIT A TO CMO NO. 24  
(Common Benefit Participation Agreement)**

**THIS AGREEMENT** is made this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_, by and between the Plaintiffs’ Leadership Group appointed by the United States District Court for the District of New Jersey in MDL 2921 and \_\_\_\_\_.

**Executing the Agreement**] (“Participating Counsel”).

**WHEREAS**, in Case Management Order No. 4, the United States District Court for the District of New Jersey appointed lawyers from various law firms to serve as Co-Lead Counsel, Liaison Counsel, as members of a Plaintiffs’ Executive Committee (“PEC”), and as members of a Plaintiffs’ Steering Committee (“PSC”) (collectively, the “Plaintiffs’ Leadership Group”), to facilitate the conduct of pretrial proceedings in MDL 2921 relating to the use, marketing, sales, and recall of Allergan BIOCELL Textured Breast Implants and Tissue Expanders (“Recalled Products”); and

**WHEREAS**, the Plaintiffs’ Leadership Group, along with other attorneys working for the common benefit of plaintiffs, have developed and are developing work product that will be valuable in all proceedings in federal and state courts, and benefit all plaintiffs alleging injury caused by use of the Recalled Products within the scope of MDL 2921 (“Common Benefit Work

Product”); and

**WHEREAS**, Participating Counsel is desirous of acquiring the Common Benefit Work Product and establishing an amicable, working relationship with the Plaintiffs’ Leadership Group for the mutual benefit of their clients;

**NOW, THEREFORE**, in consideration of the covenants and promises contained herein, and intending to be legally bound hereby, the parties agree as follows:

**I. SCOPE OF AGREEMENT**

**A. Purpose**

This Participation Agreement (“Agreement”) is a private cooperative agreement between plaintiffs’ attorneys to share Common Benefit Work Product pursuant to Case Management Order No. 24, the Order Establishing Common Benefit Fee and Expense Fund (“Common Benefit Order”) and this Participation Agreement. Any plaintiffs’ attorney who executes this Agreement or who is otherwise bound to this Agreement by the Common Benefit Order (“Participating Counsel”) is entitled to receive the Common Benefit Work Product created by those attorneys who have also executed, or have been deemed to have executed, the Participation Agreement, regardless of the venue in which the attorney’s cases are pending.

**B. Rights and Obligations of Participating Counsel**

Participating Counsel shall be provided access to the Common Benefit Work Product, including access to the document depository. Participating Counsel agree that all Allergan BIOCELL cases and/or claims in which Participating Counsel has a fee interest, including unfiled cases, tolled cases, and/or cases filed in state and/or federal court, are subject to the terms of this Participation Agreement. Participating Counsel shall produce a list that correctly sets forth the name of each client represented by them and/or in which they have an interest in the attorney fee,

regardless of what that interest is, who has filed a civil action arising from the use, marketing, and/or sale of the Recalled Products for injuries within the scope of this MDL 2921. Such list shall include the court and docket number of each such case. Participating Counsel shall also produce a list that contains the name of each client represented by them and/or in which they have an interest in the attorney fee, regardless of what that interest is, who has not yet filed a civil action. Participating Counsel shall supplement the lists each quarter and provide the lists to Plaintiffs' Co-Lead Counsel and Liaison Counsel. The initial list shall be provided within fifteen (15) days of signing this Agreement and must be supplemented every ninety (90) days thereafter.

## **II. AGREEMENT TO PAY AN ASSESSMENT ON GROSS RECOVERY**

Subject to the terms of this Agreement and the terms of the Common Benefit Order, all plaintiffs and their attorneys who agree to settle, compromise, dismiss, or reduce the amount of a claim, or with or without a trial, recover a judgment for monetary damages or other monetary relief, including, without limitation, compensatory and/or punitive damages, for any Recalled Product claims, are subject to an assessment of the Gross Monetary Recovery, as specifically set forth in the Common Benefit Order, which is incorporated as if fully set forth here. This assessment represents a holdback. *See In re Zyprexa Prods. Liab. Litig.*, 267 F. Supp. 2d 256 (E.D.N.Y. 2006). The failure of any counsel who is not automatically bound to pay the common benefit assessment by virtue of having a fee interest in a case that is part of the MDL, to execute a Participation Agreement indicating that an attorney will be a Participating Counsel within the time frame set forth in the Common Benefit Order, will result in higher percentages for common benefit assessment as a result of such later participation. More specifically, the higher fee percentage for failure to execute a Participation Agreement indicating that an attorney will be a Participating

Counsel within the time frame set forth in the Common Benefit Order, shall increase by double. For example, a 5% fee assessment will increase to 10%; a 7% fee assessment will increase to 14%.

The Participation Agreement is a private and cooperative agreement between plaintiffs' attorneys only; and not defendants or defendants' counsel. All plaintiffs' attorneys who currently have cases pending in any state court and who want to become a Participating Counsel shall, within forty-five (45) days of this Order, execute the Participation Agreement. Any plaintiffs' attorney who does not yet have an Allergan case filed in any federal or state court and who wants to become a Participating Counsel shall execute the Participation Agreement within forty-five (45) days of the date their first case is filed in any state court, if that lawyer intends to voluntarily become a Participating Counsel at the fee and expense percentages set forth herein.

Further, it is encouraged that all Plaintiffs' attorneys who are part of MDL 2921, execute this Agreement so they are aware of both obligations and benefits of the Common Benefit Order.

**1) Gross Monetary Recovery Defined**

As set forth in the Common Benefit Order, the term "Gross Monetary Recovery" includes all amounts paid to plaintiffs' and/or their counsel by defendant(s) through a settlement or pursuant to a judgment. In measuring the Gross Monetary Recovery, the parties are to (a) exclude court costs that are to be paid by the Defendant(s); (b) include any payments to be made by the Defendant(s) on an intervention asserted by third-parties, such as to physicians, hospitals, or other healthcare providers in subrogation related to treatment of a plaintiff, and any governmental liens or obligations (*e.g.*, Medicare/Medicaid); and (c) include the present value of any fixed and certain payments to be made in the future.

## **2) Covered Cases**

The assessment amount set forth in the incorporated Common Benefit Order shall apply to all cases pending or later filed in, transferred to, or removed to MDL 2921, regardless of whether the plaintiff's attorney is either Participating or Non-Participating Counsel. In addition, pursuant to the terms of the Common Benefit Order, the assessment amount shall apply to all cases in which counsel who have a filed case in MDL 2921 have a fee interest, regardless of the size of that fee interest. Counsel who sign this Participation Agreement further agree that the assessment shall apply to all unfiled cases, tolled cases, and/or cases filed in state court in which they have a fee interest, regardless of the size of that fee interest.

Non-Participating Counsel who have no fee interest in any case in MDL 2921 are not required to pay an assessment on state court cases or on unfiled cases. However, non-MDL Plaintiffs' Counsel as defined in the Common Benefit Order, Section I(B), who do not sign the Participation Agreement are not entitled to receive Common Benefit Work Product, and may be subject to an increased assessment on all Allergan cases/claims in which they have a fee interest if they receive any Common Benefit Work Product or otherwise benefit from the work product created by Plaintiffs' Leadership Group and other Participating Counsel working with the MDL. Non-Participating Counsel shall not be eligible to receive Common Benefit payments for any work performed or expenses incurred.

## **3) Attorneys' Fee Lien**

With respect to each client represented in connection with Allergan Recalled Productrelated claims that are filed or pending in any federal or state court, are unfiled, or are subject to a tolling agreement, consistent with the Common Benefit Order, each Participating Counsel shall agree to have Defendants deposit or cause to be deposited in the "Allergan

BIOCELL Fee Fund” and the “Allergan Textured Breast Implant Litigation Fund” for expenses (together, the “Funds”), as applicable, that have been established at Huntington Bank by Plaintiffs’ Co-Lead Counsel in the MDL, a percentage of the Gross Monetary Recovery recovered by each such client that is equal to the assessment amount pursuant to the Common Benefit Order. In the event that Defendants do not deposit the assessed percentage into the Funds, Plaintiffs and Plaintiff’s Participating Counsel shall deposit or cause to be deposited in the Funds a percentage of the Gross Monetary Recovery recovered by each such client that is equal to the assessment amount pursuant to the Common Benefit Order. Participating Counsel, on behalf of themselves, their affiliated counsel, and their clients, hereby grant and convey to Plaintiffs’ Leadership Group a lien upon and/or a security interest in any fee (a) generated as a result of any recovery by any client who they represent in connection with any Allergan Recalled Product-induced injury within the scope of MDL 2921 and (b) they have any interest in, to the full extent permitted by law, to secure payment in accordance with the provisions of this Agreement. Participating Counsel will undertake all actions and execute all documents that are reasonably necessary to effectuate and/or perfect this lien and/or security interest.

#### **4) Attorney-Client Contracts**

Both the Plaintiffs’ Leadership Group and Participating Counsel recognize the importance of individual cases and the relationship between case-specific clients and their attorneys. Regardless of the type of settlement or conclusion eventually made in either state or federal cases, Plaintiffs’ Leadership Group will recommend to the MDL Court that appropriate consideration will be given to individual case contracts between attorneys and their clients.

### **III. COMMON BENEFIT EXPENSES**

#### **A. Qualified Expenses Eligible for Reimbursement**

To be eligible for reimbursement of common benefit expenses, said expenses must be: (a) for the common benefit; (b) appropriately authorized and timely submitted; (c) within the defined limitations set forth in this Participation Agreement and the Common Benefit Order; and (d) verified by a partner or shareholder in the submitting law firm or by a member of Plaintiffs' Co-Lead Counsel if said member is not a partner or shareholder in the submitting firm.

#### **B. Authorization and Submission of Expenses**

Participating Counsel must submit expenses consistent with the Common Benefit Order. Expenses incurred on matters common to all claimants in MDL 2921 and that had prior authorization from Plaintiffs' Co-Lead Counsel or those individuals appointed by Plaintiffs' Co-Lead Counsel to serve as the Chair or Co-Chair of a committee may be submitted for reimbursement.

#### **C. Verification**

The forms detailing expenses (that are approved by Plaintiffs' Co-Lead Counsel) shall be certified by a senior partner in each firm, and such certification should attest to the accuracy of the submissions. Attorneys shall keep receipts for all expenses. Credit card receipts are an appropriate form of verification if accompanied by a declaration from counsel that work was performed and paid for the common benefit.

Expense records shall be electronically submitted to Plaintiffs' Co-Lead Counsel monthly using the requested form. The untimely submission of such records will result in a waiver of reimbursement for said expenses. Unsubstantiated expenses or that that do not comply with the Common Benefit Order may be disallowed by Plaintiffs' Co-Lead Counsel upon review.



#### **IV. COMMON BENEFIT WORK**

##### **A. Common Benefit Work Eligible for Reimbursement**

To be eligible for reimbursement, time expended must meet the requirements in the Common Benefit Order. Moreover, if counsel is a member of the PSC and fails to timely submit capital contributions requested by Plaintiffs' Co-Lead Counsel during this litigation, such counsel and members of his/her firm shall not be allowed to submit common benefit time or expenses for reimbursement, and may also be subject to being removed from the PSC, as set forth in the Common Benefit Order. Plaintiffs' Co-Lead Counsel have been directed to bring to the Court's attention any member of the PSC who is more than forty-five (45) days late in paying their assessment, and if so, the Court will remove them permanently from the PSC.

##### **B. Counsel Involved**

Participating Counsel are prohibited from sharing Common Benefit Work Product with Non-Participating Counsel, as defined herein. Counsel eligible to perform common benefit work includes Plaintiffs' Co-Lead Counsel, Liaison Counsel, members of the PEC and PSC, and other Participating Counsel.

##### **C. Authorization**

Time spent on matters common to all claimants in the MDL must be assigned by Plaintiffs' Co-Lead Counsel or those individuals appointed by Co-Lead Counsel to serve as the Chair or Co-Chair of a committee, to be eligible for consideration as common benefit time. No time spent on developing or processing individual issues in any case for an individual personal injury claimant will be considered or should be submitted; nor should time spent on unauthorized work be submitted for consideration. To facilitate the appropriate monitoring of time and expenses in this litigation, each firm must submit detailed monthly time and expenses in a format

authorized by Plaintiffs' Co-Lead Counsel. All time should be reported at regular billing rates in effect during the month for which you are reporting. Time spent reviewing and coding documents will be capped at a rate decided by Plaintiffs' Co-Lead Counsel, and time billed for simply reviewing emails, pleadings, orders, discovery responses, or finished work product prepared by others, in the judgment of Plaintiffs' Co-Lead Counsel, will not be allowed as common benefit time. Time must be submitted in .10 of-an-hour increments. Plaintiffs' Co-Lead Counsel have been directed by the Court not to assign work to lawyers or law firms that are not current with their time and expense reports or assessments. To ensure compliance, the Court has directed Plaintiffs' Co-Lead Counsel to retain a Certified Public Accountant ("CPA") to assist in compiling and reviewing all submissions and providing reports to Plaintiffs' Co-Lead Counsel, who shall submit them to the Court on March 1 and September 1 of each calendar year during this litigation. These reports will include both time and expenses, and will summarize the compliance and reporting, with back-up detail, for all lawyers and law firms. The Court will allow these reports to be submitted by Plaintiffs' Liaison Counsel to the Court on a confidential basis, as if submitted under seal.

**(1) Examples of Authorized and Unauthorized Work:**

- a. Depositions of corporate witnesses: Any attorney not designated as one of the authorized questioners or otherwise authorized by Plaintiffs' Co-Lead Counsel to attend a deposition on behalf of the PSC shall not be eligible to submit time or expenses for preparing for or attending such deposition, as such attendance is deemed to be on behalf of that attorney's individual clients. Additionally, while the counsel appointed as one of the authorized questioners

may use other lawyers and/or staff in his/her firm to prepare for the deposition in the event that he/she elects to bring other people from his/her firm to attend the deposition, only the time and expenses for the appointed questioner and one other person from his/her firm shall be considered for common benefit, the time and travel of all other people from his/her firm should not be submitted and will not be considered for common benefit reimbursement or fees;

- b. Periodic PSC, MDL, or Full-Committee Conference Calls and Meetings: Such calls and meetings are held so that individual attorneys are kept up-to-date on the status of the litigation, therefore participation by listening to such calls is not common benefit work. Each attorney has an obligation to stay informed about the litigation so that they can best represent their clients, and that is a reason to participate in such calls and meetings. Only the attorneys designated by Plaintiffs' Co-Lead Counsel to run those calls are working for the common benefit by keeping other lawyers informed and educated about the case, and only their time will be considered common benefit time. Nothing in this paragraph shall be construed to prevent members of the PSC from submitting common benefit time for participation in PSC communications that are germane to all members of the PSC and are necessary to fulfill their PSC obligations;

- c. Periodic Status Conferences: Periodic status conferences are held so that the litigation continues to move forward and legal issues are resolved with the Court. Unless the Court deems otherwise, individual attorneys are free to attend any public status conference held in open court to keep up-to-date on the status of the litigation, but participation by attending and listening to such conferences is not common benefit work. Each attorney has an obligation to stay informed about the litigation so that they can best represent their clients. Mere attendance at a status conference will not be considered a common benefit expense or common benefit time, nor shall participation in such status conferences via telephone be considered common benefit time. The attorneys designated by Plaintiffs' Co-Lead Counsel to address issues to be raised at a given status conference or requested by Co-Lead Counsel to be present at a status conference are working for the common benefit and their time will be considered common benefit time;
- d. Identification and Work Up of Experts: Participating Attorneys are encouraged to identify experts in consultation with the Co-Chairs of the Science and Expert Committee. If a Participating Attorney travels to and retains an expert without the knowledge and approval of the Co-Lead Counsel or the Co-Chairs of the Science and Expert Committee, the MDL may not need or use that expert, and the

associated time and expense may not be considered common benefit expenses/work, and therefore may not be compensable;

- e. Attendance at Seminars: Attendance at a seminar that has as an agenda item the Allergan litigation is not common benefit work or a common benefit expense;
- f. Document Review: In the MDL, only document review work specifically assigned to an attorney and authorized by Plaintiffs' Co-Lead Counsel will be considered common benefit work. If an attorney elects to review documents that have not been assigned to that attorney by Plaintiffs' Co-Lead Counsel, that review is not considered common benefit work;
- g. Review of Email, Pleadings and Orders: Each attorney has an obligation to stay informed about the litigation so that they can best represent their clients, and review of pleadings and orders is part of that obligation. Reading emails to stay informed of the litigation is not common benefit time. Only those attorneys designated by Plaintiffs' Co-Lead Counsel to review and summarize pleadings or orders for the MDL are working for the common benefit. All other counsel are reviewing those pleadings and orders for their own benefit and the benefit of their own clients, and the review is not considered common benefit work. Nothing in this paragraph shall be construed to prevent members of the PSC from submitting common benefit time for reviewing pleadings and orders germane

to their assignments from Plaintiffs' Co-Lead Counsel or Committee Co-Chairs;

- h. Review of Discovery Responses: Each attorney has an obligation to stay informed about the litigation so that they can best represent their clients, and that is a reason to review discovery responses served in this litigation. Only those attorneys designated by Plaintiffs' Co-Lead Counsel or Committee Co-Chairs who review and summarize discovery responses for the MDL are working for the common benefit. All other counsel are reviewing those discovery responses for their own benefit and the benefit of their own clients, and the review is not considered common benefit work;
- i. Bellwether Trials: While the work-up of individual cases is not considered common benefit work, in the event that a case is selected as part of an approved bellwether trial process in the MDL or a cooperating state court jurisdiction, the time and expenses in trying the case (including work performed as part of the approved bellwether process) may be considered common benefit work at the discretion of Plaintiffs' Co-Lead Counsel to the extent it complies with the other provisions of this Order and Participation Agreement;
- j. Duplicative Billing and Unnecessary Timekeepers: Having multiple attorneys within one firm bill for duplicative work, or

submitting the time of timekeepers who have very few hours overall on the litigation, will be a fact considered by Plaintiffs' Co-Lead Counsel and Liaison Counsel and may not be compensated and should not be submitted. While law firms are free to staff cases as they deem appropriate, the MDL will not compensate any law firm for duplicative or unnecessary billing. This paragraph is not intended to prevent, by way of example, having one lawyer create the first draft of a brief and another lawyer review and edit the brief, nor does this paragraph prevent having multiple attorneys within one firm assist the questioning attorney get ready for a deposition. Law firms are free to have more lawyers participate but should not submit the duplicative or unnecessary time.

**D. Time Keeping and Submission of Time Records**

All time must be accurately and contemporaneously maintained. Participating Counsel shall keep a daily record of time spent in connection with common benefit work on this litigation, indicating with specificity the hours, location, and particular activity (such as "conducted deposition of John Doe"). Time entries that are not sufficiently detailed may not be considered for common benefit payments. All common benefit work time for each firm shall be maintained in tenth-of-an-hour increments. Time submissions will be audited by the CPA retained by Plaintiffs' Co-Lead Counsel.

These guidelines are intended for all activities performed and expenses incurred by Participating Counsel in MDL 2921:

1. All time submissions must be incurred only for work authorized under this Participation Agreement;
2. All time submissions must be made on the forms provided by Plaintiffs' Co-Lead Counsel;
3. Time and expense submissions are to be made on the 15th of each month, as instructed by Plaintiffs' Co-Lead Counsel. Each submission should contain all time and expenses incurred during the calendar month prior to the submission date. All time and expense submissions should be accompanied by contemporaneous records and verified by a partner or shareholder in the submitting firm or by a member of Plaintiffs' Co-Lead Counsel if said member is not a partner or shareholder in the submitting firm. Late submissions of time and expenses may be rejected. Only time and expenses incurred after the entry of CMO No. 4 by this Court appointing Plaintiffs' Leadership on February 25, 2020 shall be submitted and considered for common benefit consideration, except: (a) time and expense incurred by those appointed to the PSC by Judge Martinotti before the entry of CMO #4 to comply with prior CMOs entered in this MDL by Judge Martinotti or Judge Kiel; and (b) time approved by Co-Lead Counsel upon its later review that was incurred and played a substantial role in the development of the Consolidated Class Action Complaint and the Master PI Complaint that were filed on May 26, 2020 (*e.g.*, time spent interviewing and vetting plaintiffs for those complaints).
4. All time submissions must be electronically sent in the designated form to the attention of Plaintiffs' Co-Lead Counsel as instructed.



5. Failure to provide submissions timely shall result in a waiver of attorneys' fees and expenses claimed for the time period that is the subject of the submission. Failure to submit time and expense records **in electronic (searchable) format** on the Excel forms approved by Plaintiffs' Co-Lead Counsel, or any other method approved by Plaintiffs' Co-Lead Counsel, will result in a notice of deficiency, after which the submitting firm shall have fourteen (14) days to cure the deficient submission. Absent prior approval from Plaintiffs' Co-Lead Counsel or special circumstances, failure to cure the deficiency within that two-week period shall result in (a) that month's submission being rejected; and (b) the submitting firm waiving compensation for the time and expenses submitted that month. Upon a determination by Plaintiffs' Co-Lead Counsel that a Participating Law Firm repeatedly fails to comply with the requirement to timely submit time and expense records in the required format, that Participating Law Firm will be barred from performing future common benefit work.
6. Time spent compiling the data for the time and expense submissions is not considered common benefit time.
7. Common benefit work shall only be performed by employees of the law firm submitting time and/or expenses, unless prior written consent of Co-Lead Counsel is obtained. Absent prior written consent of Co-Lead Counsel, time and/or expenses by contract attorneys will not be compensated or reimbursed.
8. The undersigned Participating Counsel understands, acknowledges and agrees that there is no guaranty that all of the time submitted by his or her law firm will be compensated and that the hourly rate for the work that is compensated is not

guaranteed (*e.g.*, that the Common Benefit Fee Committee may award different hourly rates for different work and for the same work performed by different attorneys or law firms). The undersigned also understands, acknowledges, and agrees that all hours are not going to be viewed equally and awarded at the same rate (*e.g.*, document review time and deposition/trial time may not be treated and awarded at the same rate).

**E. Distribution of Fees**

1. No Individual Right to the Funds: No party or attorney has any individual right to any common benefit funds except to the extent directed by Order of the MDL Court. Common benefit funds do not and will not constitute the property of any party or attorney or be subject to garnishment or attachment for the debts of any party or attorney except when and as directed by Court order. These limitations do not preclude a party or attorney from transferring, assigning, or creating a security interest in potential disbursements from the funds if permitted by applicable state laws and if subject to the conditions and contingencies of this Agreement.

2. Court Approval: The amounts deposited in the Allergan BIOCELL Fee Fund shall be available for distribution to attorneys who have performed professional services or incurred expenses for the common benefit. The MDL Court retains jurisdiction over any common benefit award. The undersigned Participating Counsel, on behalf of themselves, their affiliated counsel, and their clients, hereby consents to the jurisdiction of the MDL Court in connection with any common benefit award. Each Participating Counsel who does common benefit work has the right to present their claim(s) for compensation and reimbursement before any recommendation to the Court. It is expected that due consideration of payment of common benefit fees and expenses

will be given to the recommendation of Plaintiffs' Common Benefit Fee Committee by the MDL Court.

I \_\_\_\_\_, hereby represent to the Plaintiffs' Leadership Group that I have the authority to execute this Agreement on behalf of my law firm and have the authority to bind my law firm to the terms of this Agreement.

**Choose One:**

I \_\_\_\_\_, hereby certify that my law firm is a MDL Plaintiffs' Counsel as defined in the Common Benefit Order, and is subject to an assessment for fees and costs as outlined herein.

I \_\_\_\_\_, hereby certify that my law firm is a participating non-MDL Plaintiffs' Counsel as defined in the Common Benefit Order, and is an early participant and is subject to an assessment for fees and costs as outlined herein.

I \_\_\_\_\_, hereby certify that my law firm is a is a participating non-MDL Plaintiffs' Counsel as defined in the Common Benefit Order, and is a late participant and is subject to a double assessment as outlined herein.