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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

IN RE: XYREM (SODIUM OXYBATE)  
ANTITRUST LITIGATION

Case No. 3:20-md-02966-RS-SVK

**[PROPOSED] ORDER GRANTING  
MOTION FOR ENTRY OF A SET-  
ASIDE ORDER**

THIS DOCUMENT APPLIES TO:  
ALL CLASS ACTIONS

1           Having reviewed Co-Lead Counsel’s Motion for Entry of a Set-Aside Order and any  
2 oppositions, the Court hereby **GRANTS** the motion and **ORDERS** as follows:

3           1.       In the event a person or entity that opts out of the Damages Class or Settlement  
4 Class (an “opt-out plaintiff”) obtains a settlement or judgment related to claims arising from  
5 Defendants’ alleged efforts to delay the introduction of generic Xyrem, Defendants shall establish  
6 and thereafter maintain an insured escrow account entitled “Xyrem Class Fee and Expense  
7 Account”;

8           2.       For any settlement or judgment obtained by such an opt-out plaintiff, Defendants  
9 shall set aside and place into the Xyrem Class Fee and Expense Account 12.5% of the total  
10 monetary value of such settlement or judgment;

11          3.       No amounts shall be paid from the Xyrem Class Fee and Expense Account unless  
12 and until approved by the Court;

13          4.       The set-aside funds shall be available, at the Court’s discretion, to pay attorneys’  
14 fees and expenses incurred by Class Counsel for their common benefit work, subject to a showing  
15 by Class Counsel of entitlement to such payments;

16          5.       The common benefit work eligible for compensation from the Xyrem Class Fee  
17 and Expense Account includes the work billed pursuant to the Court’s February 22, 2021 Order  
18 Appointing Interim Co-Lead Class Counsel and Plaintiffs’ Steering Committee Pursuant to Rule  
19 23(g) (ECF No. 59);

20          6.       Class Counsel and counsel for the opt-out plaintiff shall meet and confer and  
21 attempt in good faith to agree on an appropriate allocation of the set-aside funds. If counsel reach  
22 agreement, they shall report to the Court and seek Court approval of the agreed-upon allocation.  
23 If no agreement is reached, Class Counsel shall file with the Court within 14 days of reaching  
24 impasse an application for compensation supported by a showing of relevant common benefit  
25 work performed and expenses incurred. Any opposition(s) may be filed within 14 days of the  
26 filing of the initial application, with any replies due no more than 7 days later;

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1           7.       Any set-aside funds not paid to Class Counsel for common benefit work shall be  
2 remitted *pro rata* to the opt-out plaintiffs from whose settlements or judgments the set-aside  
3 funds were withheld;

4           8.       Subject to the following paragraph, this Order shall apply to all actions included in  
5 this multidistrict litigation or otherwise transferred to this Court that assert claims that are the  
6 same or substantially similar to those asserted by Class Plaintiffs in this multidistrict litigation  
7 and shall continue to apply after any remand of such actions;

8           9.       United HealthCare Services, Inc., Humana Inc., Molina Healthcare, Inc., and  
9 Health Care Service Corporation, Inc., shall not be considered an “opt-out plaintiffs” for purposes  
10 of this Order, shall not be subject to the terms of this Order, and their counsel shall not be entitled  
11 to compensation pursuant to this Order;

12          10.       The scope of this Order is without prejudice to Class Plaintiffs’ right to seek the  
13 payment of fees and expenses from settlements or judgments in untransferred federal cases or  
14 state cases; and

15          11.       Nothing in this Order shall prevent Class Counsel from applying for and receiving  
16 an award of attorneys’ fees and expenses for any recovery or other relief obtained on behalf of the  
17 Damages Class, Injunctive Relief Class, or Settlement Class.

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19 **IT IS SO ORDERED.**

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21 Dated: \_\_\_\_\_, 2023

22 \_\_\_\_\_  
23 HONORABLE RICHARD SEEBORG  
24 Chief United States District Judge