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**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

IN RE: BABY FOOD PRODUCTS  
LIABILITY LITIGATION

Case No. 24-MD-3101-JSC

MDL 3101

This document relates to:

Hon. Jacqueline Scott Corley

ALL ACTIONS

**PRETRIAL ORDER NO. 6**

**COMMON BENEFIT ORDER –  
PLAINTIFFS’ COUNSEL  
TIMEKEEPING AND EXPENSES  
PROTOCOL**

**I. APPLICATION AND SCOPE OF THE ORDER**

This Order is entered to provide standards and procedures 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. At the appropriate time, and by separate order, the Court anticipates establishing a mechanism for creating a Common Benefit Fund (CBF) and determining the appropriate holdback amount for contribution to that fund. Failure to follow the guidelines and procedure of this Order may mean that time and expenses incurred by counsel will not be reimbursable from the CBF or from any settlement fund approved by the Court.

**A. Governing Principles – The Common Benefit Doctrine**

The governing principles are derived 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 National 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 MGM Grand Hotel Fire Litigation*, 660 F.Supp. 522, 525- 29 (D. Nev. 1987); and *In re Air Crash Disaster at Florida Everglades on December 29, 1972*, 549 F.2d 1006, 1019-21 (5th Cir. 1977); see also Manual for Complex Litigation § 14.121.

1           **B. Case Management Protocols for Common Benefit Work**

2           The Court adopts the following protocol, which shall govern all Common Benefit Work  
3 and expenses in this action, including, among other issues: the exercise of billing judgment; the  
4 maintenance of contemporaneous time records; the periodic reporting of fees, expenses, and/or  
5 costs; staffing; and rules for attendance at court hearings. The recovery of any common benefit  
6 attorneys’ fees and cost reimbursements will be limited to “Participating Counsel.” “Participating  
7 Counsel” shall be defined as Co-Lead Counsel, the Plaintiffs’ Steering Committee (PSC) or other  
8 counsel authorized in writing (via email or letter) by Co-Lead Counsel to perform Common  
9 Benefit Work (along with attorneys and staff of their respective firms).

10           Participating Counsel shall be eligible to receive common benefit attorneys’ fees and  
11 reimbursement of costs and expenses only if the time expended, costs incurred, and activity in  
12 question were: (a) for the common benefit of MDL 3101 Plaintiffs; (b) submitted; (c) at the  
13 direction of an appropriately authorized by Co-Lead Counsel; and (d) reasonable in the  
14 determination of Co-Lead Counsel, any appointed CPA or other third party, and the Court or its  
15 designee. The Court may appoint a fee committee per subsequent order. Costs or expenses that fall  
16 within the limitations set forth herein shall not be deemed presumptively reasonable, and the Court  
17 retains its discretion to evaluate any costs or expenses submitted by counsel for reasonableness.

18           Any counsel who seek to recover Court-awarded common benefit attorneys’ fees and  
19 expenses in connection with this litigation, should the litigation result in any monetary award from  
20 which common benefit fees and expenses can be awarded, shall keep a record of their time and  
21 expenses as set forth below. Such counsel shall, by the 15th day of each month, submit a report of  
22 their time and expense records as noted above for the preceding monthly period in the attached  
23 format (see “Exhibit A”). For example, February 15 of a particular year is the deadline to submit  
24 common benefit time and expenses for January of that year. The first submission deadline is  
25 August 15, 2024, and that submission shall include all common benefit time and expenses  
26 incurred from January 4, 2024 (the date the original consolidation motion was filed with the  
27 Judicial Panel on Multidistrict Litigation) through July 31, 2024. Following that initial submission,  
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1 the deadline will remain the 15th day of each month. The submission shall be timely e-mailed  
2 each month to the Court's appointed Plaintiffs' Liaison Counsel: [MDL3101@WisnerBaum.com](mailto:MDL3101@WisnerBaum.com).

3 Although counsel should endeavor to submit all common benefit expenses incurred in a  
4 certain month in the submission made on the next month, the realities of third-party billing and  
5 credit card statement schedules may make such quick expense submission difficult. Firms may  
6 submit incurred expenses up to five months after they were incurred. Any expenses submitted  
7 more than five months after they were incurred must be accompanied by an explanation for the  
8 late submission. Plaintiffs' Co-Lead Counsel have the discretion to reject late-reported expenses.

9 The Court recognizes that substantial work was completed in this litigation prior to the  
10 creation of MDL 3101 and that some of that work may be utilized in MDL 3101 as Common  
11 Benefit Work. As such, the Court orders each firm that engaged in pre-MDL 3101 Common  
12 Benefit Work to submit a Declaration with its initial submission on August 15, 2024 that describes  
13 in sufficient detail the Common Benefit Work performed that it believes will be used in MDL  
14 3101. The Declaration shall be signed by the appointed leadership member, is limited to five (5)  
15 double spaced pages, and shall include a good faith estimate of time spent for the common benefit  
16 (to include the professionals involved in the Common Benefit Work) as well as common benefit  
17 expenses incurred with supporting receipts.

18 At an appropriate time, Co-Lead Counsel may decide to hire an independent third-party  
19 neutral to assist in the auditing of the common benefit submissions, if necessary. Such expense, if  
20 incurred, shall be considered a Shared Cost and paid from the Litigation Fund as set forth below.  
21 Any counsel submitting a common benefit time and/or expense submission for consideration  
22 pursuant to this Order agrees to the terms and conditions herein, including submitting to this  
23 Court's jurisdiction and agreeing that this Court has plenary authority regarding the award and  
24 allocation of common benefit attorneys' fees and expense reimbursements in this matter.

## 25 **II. COMMON BENEFIT WORK**

### 26 **A. Authorization for Compensable Common Benefit Work**

27 Authorized Common Benefit Work must be at the direction of and authorized by a Co-Lead  
28 counsel. Unless specifically and explicitly authorized in writing, no time spent on developing or

1 processing individual issues in any case for an individual client (plaintiff or claimant) will be  
2 considered or should be submitted, nor will time spent on any unauthorized work. Examples of  
3 compensable and non-compensable work include, but are not limited to:

- 4 1) **Depositions.** If not designated as one of the authorized questioners or otherwise  
5 authorized to prepare for or attend the deposition by a Co-Lead Counsel, your time  
6 and expenses related to a particular deposition shall not be considered Common  
7 Benefit Work.
- 8 2) **Periodic General MDL Leadership Conference Calls.** These calls may be held  
9 from time to time so that individual attorneys are kept up-to-date on the status of  
10 the litigation, and participation by merely listening to such calls is not Common  
11 Benefit Work in and of itself. Each attorney has an obligation to keep themselves  
12 informed about the litigation so that they can best represent their clients, and that is  
13 a reason to listen in on those calls. On the other hand, if you lead, or participate in  
14 the call by designation of a Co-Lead Counsel, then you are working for the  
15 common benefit consistent with your leadership responsibilities by keeping other  
16 lawyers and pro se plaintiffs informed and educated about the litigation, and  
17 therefore your time will be considered for common benefit.
- 18 3) **Periodic Status Conferences.** Regular status conferences are held so that the  
19 litigation continues to move forward and legal issues are resolved with the Court.  
20 Individual attorneys are free to attend any status conference held in open court in  
21 order to keep up-to-date on the status of the litigation and participation, but  
22 attending and listening to such conferences is not Common Benefit Work in and of  
23 itself. Each attorney has an obligation to keep themselves informed about the  
24 litigation so that they can best represent their clients. Mere attendance at a status  
25 conference will not be considered a common benefit expense or common benefit  
26 time. The attorneys designated by Co-Lead Counsel to address issues that will be  
27 raised at a given status conference or requested by Co-Lead Counsel to be present  
28 at a status conference are working for the common benefit and their time will be

1 considered for common benefit. Similarly, any attorney whose attendance at a  
2 status conference is specifically requested by the Judge for a matter of common  
3 benefit, in that case, may submit their time for evaluation as to whether such time  
4 shall be considered common benefit time. Any counsel submitting time or expense  
5 as common benefit related to attendance at status conference must state with  
6 particularity in their submission the role they played at that status conference.

- 7 4) **Committee Meetings or Calls.** During committee phone calls or other meetings  
8 there is a presumption that no more than two participants per firm will qualify for  
9 common benefit time, unless otherwise authorized by Co-Lead Counsel.
- 10 5) **Consolidated Pleadings and Briefs.** When authorized by Co-Lead Counsel, the  
11 following is considered Common Benefit Work: (i) factual and legal research and  
12 preparation of consolidated matters and related briefing; (ii) comments and  
13 suggestions regarding any consolidated briefings; and (iii) other briefing or  
14 presentation of argument before the Court regarding common legal issues (such as  
15 discovery disputes).
- 16 6) **Bellwethers.** When authorized by Co-Lead Counsel, the following is considered  
17 Common Benefit Work: (i) communication with clients for the purposes of  
18 identifying suitable bellwether candidates; (ii) factual and legal research necessary  
19 to select the appropriate bellwethers; and (iii) prosecution of the selected  
20 bellwether cases.
- 21 7) **Discovery and Document Review.** Only discovery and document review  
22 authorized by Co-Lead Counsel and assigned to an attorney or law firm will be  
23 considered Common Benefit Work. If a firm or attorney elects to review  
24 documents that have not been assigned to them by Co-Lead Counsel, that review  
25 may not be considered Common Benefit Work. Descriptions associated with  
26 document review should contain sufficient detail to allow those reviewing the time  
27 entry to generally ascertain what was reviewed. For example, indicating the  
28 custodian, search query, or number or type of documents reviewed is the kind of

1 description needed. Contract employees may not be utilized for common benefit  
2 document review without prior written consent of Co-Lead Counsel. Whenever  
3 possible, document review should be accompanied by transferable work product.

4 8) **Discovery Responses**. Only those attorneys designated by Co-Lead Counsel or  
5 their designees to review and summarize discovery requests served on Plaintiffs  
6 and prepare responses are working for the common benefit and will have their time  
7 be considered Common Benefit Work. Time spent reviewing discovery requests  
8 and preparing responses for the benefit of counsel's own clients is not considered  
9 Common Benefit Work, unless it is at Co-Lead Counsel's direction and for a  
10 bellwether case after the case is selected as a bellwether.

11 9) **Leadership Meetings or Calls**. Participating Counsel may submit common  
12 benefit time for participation in leadership communications and meetings that are  
13 germane to all members of the PSC and necessary to fulfill their Court-appointed  
14 obligations. During leadership phone calls or other meetings, there is a  
15 presumption that only the appointed leadership will qualify for common benefit  
16 time, unless otherwise authorized by Co-Lead Counsel.

17 10) **Expert-Related Work**. If Participating Counsel retains an expert without the  
18 knowledge and approval of Co-Lead Counsel and the expert committee, time and  
19 expenses attributable to that expert may not be approved as Common Benefit  
20 Work. Work with experts retained for the common benefit of Plaintiffs, on the  
21 other hand, shall be considered Common Benefit Work if performed with the  
22 authorization of Co-Lead Counsel and expert committee.

23 11) **Attendance at Seminars**. Except as approved by Co-Lead Counsel, attendance at  
24 seminars (e.g., American Association for Justice Section Meetings, Mass Torts  
25 Made Perfect, Harris Martin, and similar seminars and Continuing Legal Education  
26 programs) shall not qualify as Common Benefit Work, or the expenses pertaining  
27 thereto as Common Benefit Expenses. Although time spent attending PSC  
28 meetings at such seminars may be compensable, travel time and costs to and from

1 seminars are not compensable unless separately approved by Co-Lead Counsel.

2 12) **Review of Court Filings and Orders.** Each attorney has an obligation to keep  
3 themselves informed about the litigation so that they can best represent their  
4 clients, and review of pleadings and orders is part of that obligation. Only those  
5 attorneys designated by Co-Lead Counsel to review or summarize those pleadings  
6 or orders for the MDL are working for the common benefit and their time will be  
7 considered for common benefit. All other counsel are reviewing those pleadings  
8 and orders for their own benefit and the benefit of their own clients, and the review  
9 is not considered common benefit.

10 13) **Emails and Correspondence.** Except for the PSC members and their authorized  
11 attorneys and staff, time recorded for reviewing emails and other correspondence is  
12 not compensable Common Benefit Work unless germane to an assignment  
13 authorized by Co-Lead Counsel and performed by the attorney or party directly  
14 related to that assignment. For example, review of an email or other  
15 correspondence sent to dozens of attorneys to keep them informed on a matter on  
16 which they are not specifically working would not be compensable as Common  
17 Benefit Work.

18 14) **Other Non-Compensable Work.** The following types of work will not be  
19 compensated as Common Benefit Work: time not authorized by Co-Lead Counsel;  
20 unreasonably duplicative time; excessive amounts of time spent on a particular  
21 task; work performed by a person more senior than reasonably necessary for the  
22 task (which may not be compensated or may be compensated at a reduced rate);  
23 time spent on internal firm management; and time spent preparing and reviewing  
24 individual firm time and expense submissions or responding to questions  
25 concerning individual firm time and expenses submissions.  
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1           **B. Common Benefit Timekeeping Protocols**

2           All time must be accurately and contemporaneously maintained. Any counsel intending to  
3 seek payment of common benefit attorneys’ fees and reimbursement of common benefit costs and  
4 expenses shall keep contemporaneous billing records of time spent in connection with Common  
5 Benefit Work in this MDL, indicating with specificity the hours (in quarter-of-an-hour increments)  
6 along with a description of the particular activity (e.g., “conducted deposition of John Doe”).

7           Descriptions must bear sufficient detail to identify the precise task and how it relates to  
8 Common Benefit Work. Individuals identified in time descriptions must be described by at least  
9 their first initial and last name, not by initials. “John Doe” is preferred; “J. Doe” is acceptable; and  
10 “JD” is unacceptable. Each time entry must be submitted using the form attached as Exhibit A.  
11 Co-Lead Counsel will provide further guidance through memorandum to counsel as needed.

12           **III. COMMON BENEFIT EXPENSES PROTOCOL**

13           **A. Shared Costs**

14           “Shared Costs” are costs that will be paid out of the Litigation Fund administered by Co-  
15 Lead Counsel. Participating Counsel shall contribute to the Litigation Fund at times and in  
16 amounts sufficient to cover Plaintiffs’ Shared Costs. The timing and amount of each assessment  
17 will be determined by Co-Lead Counsel, and each assessment will be paid within 14 days as  
18 instructed by Co-Lead Counsel. Failure to pay assessments within 90 days of the written request  
19 will be grounds for Co-Lead counsel to seek relief from the court to include removal from the  
20 appointments made in previous Court orders or other common benefit assignments.

21           Shared Costs are costs incurred for the common benefit of Plaintiffs in this MDL as a  
22 whole. No client-related costs, save certain costs relating to cases selected as bellwether cases that  
23 will be for the common benefit (e.g., related to liability and causation), shall be considered Shared  
24 Costs, unless exceptional circumstances exist and are approved by later order of this Court. All  
25 Shared Costs must be approved by Co-Lead Counsel prior the cost being incurred. All costs that  
26 meet these requirements and fall under the following categories shall be considered Shared Costs  
27 and qualify for submission and payment directly from the Fund:

- 28           1) Court, filing, and service costs related to common issues;



- 1 2) Costs for transcripts of court hearings;
- 2 3) Court reporter and interpreter costs for depositions;
- 3 4) Document (both electronic and hard copy) depository creation, operation, staffing,
- 4 equipment, and administration;
- 5 5) Common benefit administrative expenses (e.g., expenses for courtroom equipment
- 6 or technology, service costs for court filings and discovery documents, costs related
- 7 to hosting Co-Lead Counsel and leadership meetings and conference calls);
- 8 6) Legal, tax, accountant, or financial institution fees relating to the Fund;
- 9 7) Expert witness and consultant fees and expenses for experts approved by Co-Lead
- 10 Counsel whose opinions and testimony would be for the common benefit;
- 11 8) Printing, copying, coding, and scanning related to the above (only out-of-house or
- 12 extraordinary firm costs);
- 13 9) Research by outside third-party vendors, consultants, and attorneys, approved by
- 14 Co-Lead Counsel;
- 15 10) Translation costs approved by Co-Lead Counsel;
- 16 11) Investigative services approved by Co-Lead Counsel; and
- 17 12) Reimbursements of assessments paid by Co-Lead Counsel or by a non-Lead
- 18 Counsel firm from whom an assessment was requested by Co-Lead Counsel in the
- 19 event no further litigation-related payments will be needed from the Fund.

20 Co-Lead Counsel shall prepare and be responsible for distributing reimbursement  
21 procedures and the forms associated therewith. Requests for payments from the Fund for common  
22 benefit expenses shall include sufficient information to permit Co-Lead Counsel and, as  
23 appropriate, a Certified Public Accountant to account properly for costs and to provide adequate  
24 detail to the Court if necessary.

25 **B. Held Costs**

26 “Held Costs” are those that will be carried by each attorney in this MDL and reimbursed as  
27 and when Co-Lead Counsel determines. Held Costs are those that are incurred for the common  
28 benefit of all Plaintiffs in this MDL but do not fall into the above Shared Costs categories. No

1 client-specific costs can be considered Held Costs, other than certain common benefit costs  
2 relating to future bellwether cases at the discretion of Co-Lead Counsel. Held Costs shall be  
3 recorded in accordance with the guidelines set forth herein and shall be subject to the travel and  
4 administrative limitations set forth in this Order.

5 **C. Travel Limitations**

6 Only reasonable expenses will be reimbursed. Except in unusual circumstances approved  
7 by Co-Lead Counsel, all travel reimbursements are subject to the following limitations:

- 8 1) **Airfare:** For routine domestic flights, only the price of a refundable, changeable,  
9 and convenient coach fare seat or its equivalent will be reimbursed. For  
10 international travel or transcontinental flights with a total duration exceeding four  
11 hours first class may be reimbursed at Co- Lead Counsel’s discretion. For red-eye  
12 flights, first class will be reimbursed. Private or charter travel will not be  
13 reimbursed except in unusual circumstances, as approved by Co-Lead Counsel.
- 14 2) **Hotels:** Reasonable hotel room charges for the average available room rate of a  
15 reasonable business hotel will be reimbursed. Unusually high hotel charges may be  
16 reviewed by Co-Lead Counsel and disallowed.
- 17 3) **Meals:** Meal expenses must be reasonable. Unusually large meal expenses may be  
18 reviewed by Co-Lead Counsel and disallowed.
- 19 4) **Cash Expenses:** Miscellaneous cash expenses for which receipts generally are not  
20 available (e.g., tips, luggage handling) will be reimbursed up to \$50.00 per trip, if  
21 the expenses are properly itemized.
- 22 5) **Automobile Rentals:** Automobile rentals must be reasonable for the date and  
23 location of the rental. Unusually high car rental charges may be reviewed by Co-  
24 Lead Counsel and disallowed.
- 25 6) **Mileage:** Mileage claims must be documented by stating origination point,  
26 destination, and total actual miles for each trip. The rate will be the maximum rate  
27 allowed by the Internal Revenue Service.

28 **D. Non-Travel Limitations**

- 1) **Long Distance, Conference Call, and Cellular Telephone Charges:** Common benefit long distance, conference call, and cellular telephone charges are to be reported at actual cost.
- 2) **Shipping, Overnight, Courier, and Delivery Charges:** All claimed common benefit shipping, overnight, courier, or delivery expenses must be documented with bills showing the sender, origin of the package, recipient, and destination of the package. Such charges are to be reported at actual cost.
- 3) **Postage Charges:** Common benefit postage charges are to be reported at actual cost.
- 4) **Telefax Charges:** Common benefit fax charges shall not exceed \$0.25 per page.
- 5) **In-House Photocopy:** The maximum charge for common benefit in-house copies is \$0.15 per page.
- 6) **Computerized Research – Lexis, Westlaw, or Bloomberg:** Claims for Lexis, Westlaw, Bloomberg, or other computerized legal research expenses should be in the actual amount charged to the firm and appropriately allocated for these research services.

#### **E. Expense Reporting Protocol**

Participating Counsel shall submit common benefit expenses as set forth in Exhibit A. No entry should contain more than one category of expense when practical, and no entry should have more than one expense category code assigned to it. If, on the same day, one person incurs two expenses that fall into two different categories, there should be two separate entries for that person for that date, each with the appropriate expense description and category code.

Similarly, when practical, no listed expense entry should include expenses incurred by more than one person. If multiple people incur the same expense for the same category, generally there should be a separate entry for each person, unless a single person paid the expense for multiple people. Every expense entry should be as detailed and specific as reasonably practical. Descriptions such as “Filing and Service Fees,” “Service of Process,” “Plane Ticket,” “Investigation Fees,” “Hearing Transcript,” and “Deposition Services” are not sufficient. Every

1 entry must describe the task for which the expense was incurred in enough detail to reasonably  
2 identify what the expense was, who incurred it, why it was incurred, and how it related to  
3 Common Benefit Work. For example: What was filed and on behalf of whom? Who was served  
4 with what document and on behalf of whom? What hearing transcript was requested and for what  
5 purpose? For whom was the plane ticket purchased, for air travel from where to where, on what  
6 dates of travel? (The same goes for hotels, taxis, car services, tips, meals, and any other travel-  
7 related expenses.) Expense entries without sufficient detail may be rejected at Co-Lead Counsel’s  
8 discretion.

9 Attorneys shall provide receipts for all expenses. This does not mean that receipts are to be  
10 provided “upon request”—it means each firm must provide receipts monthly along with their  
11 expense submissions, in PDF form, not hard copy. Credit card receipts (not the monthly  
12 statements) are an appropriate form of verification. Hotel costs must be proven with the full hotel  
13 invoice. Description of expenses on an invoice not claimed in this action may be redacted. All  
14 time and expense submissions shall be reviewed and certified by the Participating Counsel  
15 attesting to the accuracy of the submissions and attesting that they believe in good faith that all  
16 claimed time and expenses are compensable under this Order.

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**IT IS SO ORDERED.**

Dated: June 21, 2024

  
JACQUELINE SCOTT CORLEY  
United States District Judge