

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

IN RE: NATIONAL PRESCRIPTION )  
OPIATE LITIGATION ) MDL 2804  
)  
APPLIES TO: ) Case No. 1:17-md-2804  
)  
*County of Summit, Ohio et al. v. Purdue* ) Judge Dan Aaron Polster  
*Pharma L.P. et al.,* )  
Case No. 1:18-cv-45090 ) ORDER  
)

This case is before the Court on Distributor Defendants’ Motion for Leave to File Motion to Certify Questions of Law to the Ohio Supreme Court. **Doc. #: 1088**. The Distributor Defendants seek certification of questions of law raised in their motion to dismiss the *Summit County* complaint, Doc. #: 491, ruled on by Magistrate Judge Ruiz in a Report and Recommendation issued on the October 5, 2018 (“R&R”), Doc. #: 1025, and now raised before the district court in the Distributors’ Objections to the R&R, Doc. #: 1079. For the following reasons, the Motion for Leave is **DENIED**.

“The decision whether or not to utilize a certification procedure lies within the sound discretion of the district court.” *City of Columbus, Ohio v. Hotels.com, LP*, 693 F.3d 642, 654 (6th Cir. 2012) (quoting *Pennington v. State Farm Mut. Auto. Ins. Co.*, 553 F.3d 447, 449-50 (6th Cir. 2009)). “Certification is most appropriate when the question is new and state law is unsettled,” but “federal courts generally will not trouble our sister state courts every time an arguably unsettled question of state law comes across our desks.” *Id.* “The appropriate time to seek certification of a state-law issue is before a District Court resolves the issue, not after receiving an unfavorable

ruling.” *Local 219 Plumbing & Pipefitting Indus. Pension Fund v. Buck Consultants, LLC*, 311 Fed. App’x. 827, 831 (6th Cir. 2009). Further, “certification is not favored when the moving party chose the federal forum.” *Shaheen v. Yonts*, 394 F. App’x 224, 233 (6th Cir. 2010) (citing *Cantwell v. University of Mass.*, 551 F.2d 879 (1st Cir.1977)). “The court should be slow to honor a request for certification from a party who chose to invoke federal jurisdiction.” *Local 219*, 311 F. App’x at 832 (citing 17A Arthur R. Miller, Edward H. Cooper, Vikram David Amar, *Federal Practice & Procedure* § 4248 (2008)).

Distributor Defendants filed their Motion to Dismiss the *Summit County* Complaint on May 25, 2018. Doc. #: 491. The parties filed Objections to the R&Rs on November 2, 2018. Yet, as Defendants’ present Motion makes clear, Defendants had identified these questions of law at least as early as the filing of their Motion to Dismiss the *Summit County* Complaint. Only now, after receiving an unfavorable result in Magistrate Judge Ruiz’s R&R, do Distributor Defendants seek certification of these questions. *See* Doc. #: 1088 at 1. (“The attached Motion seeks certification of questions of law *raised* in Distributors’ motion to dismiss the *Summit County* Complaint.”) (emphasis added). The Distributor Defendants could have moved to have these questions certified to the Ohio Supreme Court at any point during the intervening five months, but instead waited until after this Court had invested enormous amounts of judicial resources into reviewing Defendants’ Motions to Dismiss. For these reasons the Court finds the Distributor Defendants’ present Motion untimely.

Additionally, Distributor Defendants have actively sought a federal forum, and are responsible for the removal of many of the over 1300 cases in this MDL. In fact, the *Summit County* case was originally brought in state court, and although it was removed by Manufacturer

Defendants, Distributor Defendants did not object to its removal. *See* Case No. 1:18-op-45090, Doc. #: 1.

Therefore, for the reasons stated, Distributor Defendants' Motion for Leave to File Motion to Certify Questions of Law to the Ohio Supreme Court, Doc. #: 1088, is **DENIED**.

**IT IS SO ORDERED.**

*/s/ Dan Aaron Polster November 13, 2018*  
**DAN AARON POLSTER**  
**UNITED STATES DISTRICT JUDGE**