

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

IN RE: NATIONAL PRESCRIPTION) CASE NO.: 1:17-MD-02804
OPIATE LITIGATION)
) JUDGE DAN A. POLSTER
)
) MAGISTRATE JUDGE DAVID A. RUIZ
)
)
) **UNITED STATES OF AMERICA**
) **DRUG ENFORCEMENT**
) **ADMINISTRATION'S STATUS**
) **REPORT**

Pursuant to the Court's February 2, 2018 Order, the United States Drug Enforcement Administration ("DEA") submits the following report to apprise the Court of the parties' discussions regarding the ARCOS database.

On February 22, 2018, counsel for the parties met with representatives from DEA, the Department of Justice, and the United States Attorney's Office in compliance with this Court's order "directing the MDL Plaintiffs and the DEA to meet to see if they can reach agreement on what part of the ARCOS/DADS database the DEA will produce." (ECF No. 112, 2-2-18 Order.)

Given the confidential and proprietary nature of the business information that is reported to ARCOS and law enforcement and Privacy Act concerns, the DEA first explained that any agreement to provide ARCOS disclosures would need to be subject to a sufficient protective order. Assuming the parties could negotiate such an order and that the Court were to issue it, the DEA then explained that it was willing to provide the Plaintiffs with ARCOS data consistent with (and in some cases more expansive than) the disclosures it has made to other requestors, such as state Attorneys General. Specifically, upon receiving authorization under 28 U.S.C. § 16.21 *et seq.*, the DEA said it would provide: (1) an alphabetical list of all manufacturers in

each state who comprised 95% or more of the market share for manufacturing oxycodone, hydrocodone, hydromorphone, and fentanyl tablets, including combination products to enable the Plaintiffs to identify additional parties to join as defendants; and (2) an Excel spreadsheet of data exported from the ARCOS database for each state and Puerto Rico with de-identified transaction data from January 1, 2012 through December 31, 2013. With respect to the Excel spreadsheets, the DEA specifically proposed replacing the name of each buyer and seller with a unique numerical identifier for each state. Doing this, DEA explained, would protect registrants' privacy interests and law-enforcement-sensitive information but still allow Plaintiffs to access and analyze a wealth of valuable information, including the date of each transaction, the buyer's unique identifier, the seller's unique identifier, the state where the substances were sent, and the first three numbers of the zip code where substances were sent. Moreover, the DEA explained that it would be willing to consider additional information requests consistent with its *Touhy* regulations and subject to the same protective order to identify the buyers or sellers associated with specific numerical identifiers if the Plaintiffs were able to identify buyers or sellers associated with concerning transactions. Lastly, the DEA also indicated that if an agreement could be reached on the scope of disclosure, it agreed to the concept of a secure data-transfer protocol proposed by Plaintiffs' counsel in his letter dated February 13, 2018.

The parties were unable to reach an agreement because Plaintiffs desire production of the ARCOS database in its native format from January 1, 2006 through January 1, 2015, notwithstanding the attendant security, privacy, law-enforcement sensitive, and business proprietary concerns with doing so. Plaintiffs also would not agree that any production of ARCOS data should be covered by a protective order, but rather acknowledged that any

produced data eventually would reach Plaintiffs' clients, state and local governmental entities, and the news media.

Respectfully submitted,

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Acting Under Authority Conferred by 28 U.S.C. § 515

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CERTIFICATE OF SERVICE

I certify that, on February 23, 2018, I filed the foregoing Status Report electronically. The Court's electronic filing system will send notice of this filing to all parties. Parties may access this filing through the Court's system.

/s/ James R. Bennett II
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