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April 26, 2019

**VIA ECF**

Hon. Dan Aaron Polster,  
United States District Judge  
Carl B. Stokes United States Court House  
801 West Superior Avenue, Courtroom 18B  
Cleveland, OH 44113-1837

RE: IN RE: NATIONAL PRESCRIPTION OPIATE LITIGATION, MDL No. 2804 – Letter to Correct the Record Narrowly in Response to Manufacturer Defendants’ Response to Track One Plaintiffs’ Objection to Discovery Ruling No. 19 Regarding Dr. Portenoy (Docket no. 1572)

Dear Judge Polster:

I am lead counsel for Dr. Russell Portenoy. While keeping the scope of this letter brief narrow, and without commenting on the substance of the arguments raised by Defendants or Plaintiffs, I feel compelled to correct the record regarding the status of the Stay as to Physician Defendants (Docket no. 407) entered by this Court on May 9, 2018.

As stated in part by Defendants, Physician Defendants requested and this Court granted “a stay of the deadlines in the Multi-District Litigation based on their ongoing discussions with Plaintiffs about a potential resolution and to preserve their limited resources while these discussions continue.” Order Regarding Stay as to Physician Defendants, dated May 18, 2018. In their pleading, Defendants imply that the stay was not necessary at that time because “a settlement had already been reached,” and further state that the stay “was put in place under the false pretense of allowing Dr. Portenoy to engage in ‘discussions about a potential resolution’ even though he had already settled with Plaintiffs.” See Defs.’ Resp. at 4, 7, 9 (Docket no. 1572).

This is not so. While Dr. Portenoy entered into an agreement with certain plaintiffs’ firms with cases pending in the MDL on March 5, 2018, he was then and remains a named defendant who has been served in multiple cases pending in the MDL. Discussions regarding “potential resolution” with those firms in those cases are still “ongoing.” Further, as previously stated, because Dr. Portenoy lacks insurance or indemnity, in the absence of this stay, Dr. Portenoy would almost certainly have been forced to file for bankruptcy protection. Therefore, not only was the stay necessary in May 2018 when this Court entered it, but it remains necessary today and was not entered under a “false pretense” of any sort.

If this Court or any counsel has any questions or would like to discuss this issue, please do not hesitate to let me know.

Hon. Dan Aaron Polster  
April 26, 2019  
Page 2

Most respectfully yours,

/s/ S. Amy Spencer

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