

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

**IN RE: NATIONAL PRESCRIPTION
OPIATE LITIGATION**

This document relates to:

Broward County, Florida v. Purdue Pharma L.P., et al., Case No. 18-OP-45332 (N.D. Ohio);

Cabell County Commission, West Virginia v. AmerisourceBergen Drug Corp., et al., Case No. 17-OP-45053 (N.D. Ohio);

City of Cleveland v. AmerisourceBergen Drug Corp., et al., Case No. 18-OP-45132 (N.D. Ohio);

County of Monroe, Michigan v. Purdue Pharma L.P., et al., Case No. 18-OP-45158 (N.D. Ohio);

The City of Chicago, Illinois v. Purdue Pharma L.P., Case No. 17-OP-45169 (N.D. Ohio);

The County of Cuyahoga v. Purdue Pharma L.P., et al., Case No. 17-OP-45004 (N.D. Ohio); and

The County of Summit, Ohio., et al., v. Purdue Pharma L.P., et al., Case No. 18-OP-45090 (N.D. Ohio).

MDL No. 2804

Case No. 1:17-md-2804

Judge Dan Aaron Polster

**PLAINTIFFS' MOTION TO STRIKE AND
AMENDED MOTION FOR LEAVE TO
FILE AMENDED COMPLAINTS UNDER
SEAL**

Plaintiffs move to Strike Plaintiffs' Motion for Leave to file Amended Complaints Under Seal (ECF Doc. 253) and the corresponding Order granting said Motion (ECF Doc. 257) due to a clerical error.¹ Plaintiffs file this Amended Motion for Leave to File Amended Complaints Under Seal.

INTRODUCTION

Pursuant to the Court's Case Management Order One, ECF Doc. 232 (hereinafter "CMO One") and as advised by the Special Masters, Plaintiffs seek leave to file Amended Complaints in the above-listed cases under seal on Wednesday, April 25, 2018. Plaintiffs file this Amended Motion and Proposed Order (attached as Exhibit A) to ensure compliance with the following Orders:

1. CMO One;
2. Protective Order Re: DEA's ARCOS/DADS Database, ECF Doc. 167 (hereinafter "ARCOS Protective Order"); and
3. Amended Agreed Confidentiality Order, filed in *City of Chicago v. Purdue Pharma L.P.*, Case No. 14-CV-04361, ECF Doc. 487 (N.D. Ill.) (hereinafter "City of Chicago Confidentiality Order"), attached as Exhibit B.

Local Rule 5.2 states: "No document will be accepted for filing under seal unless a statute, court rule, or prior court order authorizes the filing of sealed documents." Loc. R. 5.2.

On March 6, 2018, the Court issued a Protective Order regarding the "ARCOS Data," and stated:

¹ The correct Order from the *City of Chicago v. Purdue Pharma L.P.*, Case No. 14-CV-04361, (N.D. Ill.) that relates to protected information contained within the Amended Complaints is the Amended Agreed Confidentiality Order (Case No. 14-CV-04361, ECF. **Doc 487** (N.D. Ill.)), not the Agreed Qualified Protective Order For Protected Health Information (Case No. 14-CV-04361, ECF. **Doc 386** (N.D. Ill.)).

If contained in a pleading, motion, or other document filed with this Court, any Designated Information must be marked with the applicable confidentiality designation, designated as “Subject to Protective Order,” and filed under seal with prior Court authorization. Only the portions of the filed document containing Designated Information are subject to being filed under seal, and a party shall file both a redacted version for the public docket and an unredacted version for sealing.

ARCOS Protective Order, at ¶ 8.

In CMO One, the Court stated that, “all documents, including ESI, that were previously produced by any Defendant in *City of Chicago v. Purdue Pharma L.P.*, Case No. 14-CV-04361 (N.D. Ill.), shall be deemed produced to all Plaintiffs in MDL 2804” CMO One, at ¶ (9)(k)(i). The Court also ordered in CMO One that:

Unless and until other arrangements are made by this Court regarding these specific materials, and in the interests of expediting discovery, Plaintiffs in MDL 2804 will be subject to any pre-existing Protective Orders or confidentiality agreements governing this material. As such, at this time, review by Plaintiffs and their experts of discovery that has been produced in other cases and which is deemed produced in this MDL is subject to any Protective Orders or confidentiality agreements entered in those cases. The entry of a Protective Order in this MDL proceeding, however, will supersede any pre-existing Protective Order.

CMO One, at ¶ (9)(k)(iv).

ANALYSIS

The Plaintiffs in the above-listed cases respectfully request leave to file their Amended Complaints under seal in order to comply with CMO One, the ARCOS Protective Order, and the City of Chicago Confidentiality Order. The Amended Complaints will contain information that is subject to said Orders. Specifically, the Amended Complaints will contain:

- (1) Information designated CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER by the ARCOS Protective Order; and
- (2) Excerpts from documents produced in *The City of Chicago, Illinois v. Purdue Pharma L.P.*, Case No. 14-CV-04361 (N.D. Ill.), which are subject to the City of Chicago Confidentiality Order, which binds Plaintiffs in MDL 2804 pursuant to CMO One.

As suggested by the Special Masters and in accordance with CMO One and the ARCOS Protective Order, Plaintiffs request leave to file Amended Complaints under seal in the following seven (7) cases:

1. *Broward County, Florida v. Purdue Pharma L.P., et al.*, Case No. 18-OP-45332 (N.D. Ohio);
2. *Cabell County Commission, West Virginia v. AmerisourceBergen Drug Corp., et al.*, Case No. 17-OP-45053 (N.D. Ohio);
3. *City of Cleveland v. AmerisourceBergen Drug Corp., et al.*, Case No. 18-OP-45132 (N.D. Ohio);
4. *County of Monroe, Michigan v. Purdue Pharma L.P., et al.*, Case No. 18-OP-45158 (N.D. Ohio);
5. *The City of Chicago, Illinois v. Purdue Pharma L.P.*, Case No. 17-OP-45169 (N.D. Ohio);
6. *The County of Cuyahoga v. Purdue Pharma L.P., et al.*, Case No. 17-OP-45004 (N.D. Ohio); and
7. *The County of Summit, Ohio., et al., v. Purdue Pharma L.P., et al.*, Case No. 18-OP-45090 (N.D. Ohio).

Following a meet and confer with Defendants regarding any disputes about what information should be kept confidential, Plaintiffs will file redacted versions of said Amended Complaints in the public record. Plaintiffs respectfully request the option to proceed in this manner so there are no inadvertent disclosures of Defendants' confidential information or information subject to the ARCOS Protective Order or the City of Chicago Confidentiality Order.

WHEREFORE, Plaintiffs respectfully request the Honorable Court to grant Plaintiffs' Motion to Strike and Amended Motion for Leave to File Amended Complaints Under Seal.

Dated April 25, 2018

Respectfully submitted,

s/Peter H. Weinberger

Peter H. Weinberger (0022076)

SPANGENBERG SHIBLEY & LIBER LLP

1001 Lakeside Avenue East, Suite 1700

Cleveland, OH 44114

(216) 696-3232

(216) 696-3924 (FAX)

pweinberger@spanglaw.com

Plaintiffs' Co-Liaison Counsel

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25th day of April 2018, I electronically filed the foregoing with the Clerk of Court by using the CM/ECF System. Copies will be served upon counsel of record by, and may be obtained through, the Court CM/ECF Systems.

s/Peter H. Weinberger

Peter H. Weinberger

Plaintiffs' Co-Liaison Counsel