

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE: NATIONAL PRESCRIPTION)	MDL 2804
OPIATE LITIGATION)	
)	Case No. 1:17-md-2804-DAP
This document relates to:)	
)	Judge Dan Aaron Polster
<i>County of Webb v. Purdue Pharma, L.P. et al.</i>)	
Case No. 1:18-op-45175-DAP (N.D. Ohio))	
)	
<i>Employer-Teamsters Local Nos. 175 & 505</i>)	
<i>Health & Welfare Fund, et al. v. Purdue</i>)	
<i>Pharma L.P., et al.</i>)	
Case No. 1:18-op-45446-DAP (N.D. Ohio))	

MOTION FOR LEAVE TO FILE
JOINT MOTION FOR PRELIMINARY INJUNCTIVE RELIEF

Plaintiffs County of Webb, Texas, Employer-Teamsters Local Nos. 175 & 505 Health & Welfare Fund, and Employer-Teamsters Local Nos. 175 & 505 Retiree Health & Welfare Fund (collectively, “Plaintiffs), by and through their undersigned attorneys, respectively request leave to file a Joint Motion for Preliminary Injunctive Relief. In support, Plaintiffs state as follows:

1. While MDL settlement discussions continue, procedural corrections by manufacturers and wholesalers are contemplated and a few cases are prepared for bellwether trials, prescription opioids continue to flow into our communities and Americans continue to die at the rate of over 134 people every day.¹

2. One mechanism to address the urgency of abating the opioid epidemic has been hiding in plain sight for months.

¹ See NIH, *Overdose Death Rates*, NATIONAL INSTITUTE ON DRUG ABUSE, <https://www.drugabuse.gov/related-topics/trends-statistics/overdose-death-rates> (estimating more than 49,000 opioid related deaths in 2017).

3. Plaintiffs herein have named the nation’s three largest pharmacy benefit managers (“PBMs”) as defendants in their lawsuits – Caremark, Express Scripts and OptumRx. Collectively, these PBMs manage prescription drug benefits for nearly 90% of the U.S. population.² These companies, through their prescription drug formularies, act as gatekeepers to the flow of opioids into our communities. With a few basic adjustments to their formularies (known as “edits” in the PBM parlance), these companies can help this Honorable Court move towards its stated objective:

[M]y objective is to do something meaningful to abate this crisis and to do it in 2018 . . . I’m confident we can do something to dramatically reduce the number of opioids that are being disseminated, manufactured, and distributed. Just dramatically reduce the quantity, and make sure that the pills that are manufactured and distributed go to the right people and no one else, and that there be an effective system in place to monitor the delivery and distribution, and if there's a problem, to immediately address it and to make sure that those pills are prescribed only when there's an appropriate diagnosis, and that we get some amount of money for treatment. Because sadly, every day more and more people are being addicted, and they need treatment.³

4. To achieve the objective stated above, Plaintiffs seek an injunction directing the nation’s three largest PBMS to immediately adjust their formularies to impose restrictions on opioids consistent with the March 2016 *CDC Guideline for Prescribing Opioids For Chronic Pain – United States, 2016* (“CDC Guideline”), consistent with the PBMs’ own statements of support for the CDC Guideline, and reflective of all current medical literature regarding the dangerous and addictive nature of these drugs.

5. The injunctive relief is focused on the PBMs’ express acknowledgements that their power in the marketplace uniquely positions them to control the flow of opioids, opioid reversal agents, and opioid addiction treatment medications, and their present failure to leverage that power

² NATIONAL COMMUNITY PHARMACISTS ASSOCIATION, *PBM Resources*, <http://www.ncpanet.org/advocacy/the-tools/pbm-resources> (last visited Aug. 28, 2018).

³ Transcript of Proceedings at p. 5, ll. 4-13 (Jan. 9, 2018) (ECF No. 71)

to full effect. Despite the unique position of PBMs, despite their acknowledgement of the epidemic, and despite their articulated commitment to drug safety and the CDC Guideline, the PBMs are still not doing all they can to halt the improper dispensing of opioids and expand access to treatments for opioid overdose and addiction.

6. Without this relief, the flow of opioids into our communities will continue and Americans will continue to become addicted and to die opioid-related deaths.

7. Section 6(g) of Case Management Order One, ECF Doc. 232 (hereinafter “CMO-1”) precludes the filing of non-authorized motions before the Court absent further Order of this Court or express agreement of the parties and necessitates this request for leave.

8. Plaintiffs specifically request relief from Section 6(g) of CMO-1 and permission to file the attached Joint Motion for Preliminary Injunctive Relief, Memorandum of Law in support, Declaration of Joanne Cicala dated September 14, 2018 and proposed form of Order.

WHEREFORE, Plaintiffs respectfully request this Honorable Court grant Plaintiffs’ Motion for Leave to File the attached Joint Motion for Preliminary Injunctive Relief.

[signature page follows]

Date: September 14, 2018

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on September 14, 2018, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the attorneys of record at their e-mail addresses on file with the Court.

/s/ Joanne Cicala _____
Joanne Cicala