IN THE SUPREME COURT OF THE STATE OF NEVADA

TEVA PHARMACEUTICALS USA, INC., MCKESSON CORPORATION, AMERISOURCEBERGEN DRUG CORPORATION, CARDINAL HEALTH, INC., CARDINAL HEALTH 6 INC., CARDINAL HEALTH TECHNOLOGIES LLC, CARDINAL HEALTH 108 LLC d/b/a METRO MEDICAL SUPPLY, CEPHALON, INC., ENDO HEALTH SOLUTIONS INC., ENDO PHARMACEUTICALS INC., ALLERGAN USA, INC., ALLERGAN FINANCE, LLC f/k/a ACTAVIS, INC. f/k/a WATSON PHARMACEUTICALS, INC., WATSON LABORATORIES, INC., ACTAVIS PHARMA, INC. f/k/a WATSON PHARMA, INC., ACTAVIS LLC, and MALLINCKRODT, LLC,

Petitioners,

v.

SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, in and for the County of Washoe, and the HONORABLE BARRY L. BRESLOW, DISTRICT JUDGE,

Respondents,

and

CITY OF RENO,

Real Party in Interest.

Supreme Court Case No.

District Court Case No. CV18-01895

PETITIONERS' APPENDIX
VOLUME XVIII

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CHRONOLOGICAL INDEX TO PETITIONERS' APPENDIX

DATE	DOCUMENT	VOLUME	PAGE RANGE	
12/7/2017	Complaint and Demand for Jury Trial (Case No. A-17-765828-C)	I	PA00001	PA00050
5/15/2018	First Amended Complaint and Demand for Jury Trial (Case No. A-17-765828-C)	I	PA00051	PA00109
9/18/2018	Complaint (Case No. CV18-01895)	II	PA00110	PA00167
12/03/2018	First Amended Complaint (Case No. CV18-01895)	II	PA00168	PA00226
3/4/2019	Manufacturer Defendants' Joint Motion to Dismiss First Amended Complaint	III	PA00227	PA00264
3/5/2019	Distributors' Joint Motion to Dismiss First Amended Complaint	III	PA00265	PA00386
4/26/2019	City of Reno's Opposition to Manufacturer Defendants' Joint Motion to Dismiss and All Joinders Thereto	IV-V	PA00387	PA00709
4/26/2019	City of Reno's Opposition to Distributor Defendants' Joint Motion to Dismiss and All Joinders	VI-VII	PA00710	PA00958
5/28/2019	Reply in Support of Manufacturer Defendants' Joint Motion to Dismiss First Amended Complaint	VIII-IX	PA00959	PA01214
5/28/2019	Distributors' Joint Reply in Support of Motion to Dismiss First Amended Complaint	X	PA01215	PA01285

DATE	DOCUMENT	VOLUME	PAGE RANGE	
6/17/2019	Complaint (Case No. A-19-796755-B)	XI-XII	PA01286	PA01535
6/27/2019	First Amended Complaint (Case No. A-19-796755-B)	XIII-XV	PA01536	PA02049
7/3/2019	Order Directing Answer (Case No. 79002)	XVI	PA02050	PA02052
8/22/2019	Complaint (Case No. A-19-800695-B)	XVI	PA02053	PA02144
8/22/2019	Complaint (Case No. A-19-800697-B)	XVI	PA02145	PA02235
8/22/2019	Complaint (Case No. A-19-800699-B)	XVII	PA02236	PA02326
9/12/2019	Third Amended Complaint and Demand for Jury Trial (Case No. A-17-76828-C)	XVII	PA02327	PA02423
9/13/2019	City of Reno's Supplemental Briefing in Support of Oppositions to Defendants' Motions to Dismiss	XVIII	PA02424	PA02560
10/4/2019	Distributors' Response to Plaintiff's Supplemental Briefing re Motions to Dismiss	XVIII	PA02561	PA02566
10/4/2019	Manufacturer Defendants' Response to Plaintiff's Supplemental Briefing re Motions to Dismiss	XVIII	PA02567	PA02587
10/21/2019	Order Dismissing Petition (Case No. 79002)	XVIII	PA02588	PA02591

DATE	DOCUMENT	VOLUME	PAGE RANGE	
1/4/2020	City of Reno's Supplemental Briefing in Support of Oppositions to Distributors' Joint Motion to Dismiss	XVIII	PA02592	PA02602
1/7/2020	Transcript of Proceedings	XIX-XX	PA02603	PA02871
1/8/2020	Transcript of Proceedings	XXI	PA02872	PA03034
2/14/2020	Omnibus Order Granting In Part and Denying in Part Defendants' Motions to Dismiss; and Granting Leave to Amend	XXI	PA03035	PA03052

ALPHABETICAL INDEX TO PETITIONERS' APPENDIX

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4/26/2019	City of Reno's Opposition to Distributor Defendants' Joint Motion to Dismiss and All Joinders	VI-VII	PA00710	PA00958
4/26/2019	City of Reno's Opposition to Manufacturer Defendants' Joint Motion to Dismiss and All Joinders Thereto	IV-V	PA00387	PA00709
9/13/2019	City of Reno's Supplemental Briefing in Support of Oppositions to Defendants' Motions to Dismiss	XVIII	PA02424	PA02560
1/4/2020	City of Reno's Supplemental Briefing in Support of Oppositions to Distributors' Joint Motion to Dismiss	XVIII	PA02592	PA02602

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8/22/2019	Complaint (Case No. A-19-800697-B)	XVI	PA02145	PA02235
8/22/2019	Complaint (Case No. A-19-800699-B)	XVII	PA02236	PA02326
9/18/2018	Complaint (Case No. CV18-01895)	II	PA00110	PA00167
12/7/2017	Complaint and Demand for Jury Trial (Case No. A-17-765828-C)	I	PA00001	PA00050
3/5/2019	Distributors' Joint Motion to Dismiss First Amended Complaint	III	PA00265	PA00386
5/28/2019	Distributors' Joint Reply in Support of Motion to Dismiss First Amended Complaint	X	PA01215	PA01285
10/4/2019	Distributors' Response to Plaintiff's Supplemental Briefing re Motions to Dismiss	XVIII	PA02561	PA02566
6/27/2019	First Amended Complaint (Case No. A-19-796755-B)	XIII-XV	PA01536	PA02049
12/03/2018	First Amended Complaint (Case No. CV18-01895)	II	PA00168	PA00226
5/15/2018	First Amended Complaint and Demand for Jury Trial (Case No. A-17-765828-C)	I	PA00051	PA00109
3/4/2019	Manufacturer Defendants' Joint Motion to Dismiss First Amended Complaint	III	PA00227	PA00264

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9/12/2019	Third Amended Complaint and Demand for Jury Trial (Case No. A-17-76828-C)	XVII	PA02327	PA02423
1/7/2020	Transcript of Proceedings	XIX-XX	PA02603	PA02871
1/8/2020	Transcript of Proceedings	XXI	PA02872	PA03034

AFFIRMATION

Pursuant to NRS 239B.030, the undersigned does hereby affirm that Petitioners' Appendix Volume XVIII does not contain the social security number of any person.

Dated this 1st day of May, 2020.

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By: */s/Pat Lundvall*

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano LLP, and that on this 1st day of May, 2020, a copy of the foregoing Petitioners' Appendix Volume XVIII was electronically filed with the Clerk of the Court for the Nevada Supreme Court by using the Nevada Supreme Court's E-Filing system (Eflex) and served via U.S. Mail, postage prepaid, on the following individuals:

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In addition, in compliance with NRAP 21(a)(1) and Administrative Order 2020-05, a copy of this Petitioners' Appendix Volume XVIII was served upon the Honorable Barry Breslow, District Judge via electronic service and email to Christine.Kuhl@washoecourts.us.

By: /s/ Pat Lundvall
An Employee of McDonald Carano LLP

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EGLET ADAMS

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND FOR THE COUNTY OF WASHOE

CITY OF RENO,

Plaintiff,

vs.

PURDUE PHARMA, L.P., PURDUE PHARMA, INC.; THE PURDUE FREDERICK COMPANY, INC. D/B/A THE PURDUE FREDERICK COMPANY, INC.; PURDUE PHARMACEUTICALS, L.P.; TEVA PHARMACEUTICALS USA, INC.; MCKESSON CORPORATION; AMERISOURCEBERGEN DRUG CORPORATION; CARDINAL HEALTH, INC.; CARDINAL HEALTH 6 INC.; CARDINAL HEALTH TECHNOLOGIES

Case No.: CV18-01895
Dept. No.: 8

CITY OF RENO'S SUPPLEMENTAL BRIEFING IN SUPPORT OF OPPOSITIONS TO DEFENDANTS' MOTIONS TO DISMISS

LLC; CARDINAL HEALTH 108 LLC D/B/A METRO MEDICAL SUPPLY; DEPOMED, INC.; CEPHALON, INC.; JOHNSON & JOHNSON; JANSSEN PHARMACEUTICALS, INC.; JANSSEN PHARMACEUTICA, INC. N/K/A JANSSEN PHARMACEUTICALS, INC.; ORTHO-MCNEIL-JANSSEN PHARMACEUTICALS, INC. N/K/A JANSSEN PHARMACEUTICALS, INC.; ENDO HEALTH SOLUTIONS INC.; ENDO PHARMACEUTICALS, INC.; ALLERGAN USA, INC.; ALLERGAN FINANCE, LLC F/K/A ACTAVIS, INC. F/K/A WATSON PHARMACEUTICALS, INC.; WATSON LABORATORIES, INC.; ACTAVIS PHARMA, INC F/K/A WATSON PHARMA, INC.; ACTAVIS LLC; INSYS THERAPEUTICS, INC., MALLINCKRODT, LLC; MALLINCKRODT BRAND PHARMACEUTICALS INC.; AND MALLINCKRODT US HOLDINGS, INC.; ROBERT GENE RAND, M.D. AND RAND FAMILY CARE, LLC; DOES 1 THROUGH 100; ROE CORPORATIONS 1 THROUGH 100; AND ZOE PHARMACIES 1 THROUGH 100, INCLUSIVE,

Defendants.

Plaintiff, City of Reno, by and through the undersigned attorneys, hereby submits its Supplemental Briefing in Support of its Oppositions to Defendants' various Motions to Dismiss. This supplemental briefing is made and based upon the City's receipt of documents that were not available when the oppositions were filed in April 2019. These new documents were previously disclosed in the Opioid MDL (*In re National Prescription Opioids Litigation*, Case No. 17-MDL-2804 (N.D. Ohio)) but had been marked confidential or highly confidential by the defendants in that case and had been filed under seal. The documents only became available after the Sixth Circuit vacated certain protective orders and orders permitting the documents to be filed under seal.

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I. PREVIOUSLY CONCEALED DOCUMENTS WERE RELEASED TO THE PUBLIC

In the Opioid MDL, the parties stipulated to the terms of a protective order, which included a broad definition of "confidential" and "highly confidential." *See* **Exhibit "1,"** Opioid MDL Protective Order. The Opioid MDL Protective Order also provided a procedure in which the parties presumed anything marked "confidential" or "highly confidential" should be filed under seal if submitted to the Court. *Id.* It is the City's understanding that, throughout the course of litigation in the Opioid MDL, the defendants have marked the vast majority of their produced documents as "confidential" or "highly confidential." Thus, if any of those documents were submitted with a party's briefing, the briefing and exhibits were filed under seal and concealed from the public. Additionally, a separate protective order was entered in the Opioid MDL limiting the disclosure of the data from the Automated Reports and Consolidated Ordering System (ARCOS) to plaintiffs for limited purpose. *See* **Exhibit "2,"** *In re: National Prescription Opiate Litigation*, Case Nos. 18-3839, Opinion of the United States Court of Appeals for the Sixth Circuit, filed June 20, 2019, referencing Docket No. 1545. The ARCOS data details the acquisition/distribution transactional records involving controlled substances, including opioids.

A. The Sixth Circuit Opinion Regarding the ARCOS Protective Order and Documents Filed Under Seal or With Redactions in the Opioid MDL

Media outlets led by The Washington Post, intervened into the Opioid MDL seeking public disclosure of the ARCOS data as well as the documents that had been filed under seal in the Opioid MDL. After the Opioid MDL Judge [Polster] denied the motion to release the information, The Washington Post appealed to the Sixth Circuit. In a June 20, 2019 order from the Sixth Circuit, the Court found that Judge Polster failed to demonstrate there was "good cause" to keep the ARCOS data protected. *Id.* at p. 23. The Sixth Circuit recognized that district courts are afforded "substantial latitude" during the discovery process, but nevertheless found that the District Court in the Opioid MDL abused its discretion when it prevented the public disclosure of the ARCOS data. *Id.* at pg. 13. A good cause determination is made by "balance[ing] the interests in favor of disclosure against the interest in favor of nondisclosure." *Id.* Upon conducting this

balancing test, the Sixth Circuit found that the DEA's and defendants' concerns about the "risk of anticompetitive harm" was outweighed by the public's interest in access to the "invaluable, highly-specific information regarding historic patterns of opioid sales." *Id.* at pg. 17, 22-23.

Additionally, the Sixth Circuit reviewed numerous orders from Judge Polster permitting pleadings and other court documents to be filed under seal and with redactions. *Id.* at p. 23. Generally, "secrecy in the context of adjudication . . . generally impermissible due to the strong presumption in favor of openness of court records." *Id.* at p. 24 (internal quotations omitted). The presumption in favor of openness can only be overcome if there is a "compelling reason why certain documents or portions thereof should be sealed." *Id.* Ultimately, the Sixth Court concluded that the documents filed under seal in the Opioid MDL would help the public assess the merits of the judicial decisions in the opioid litigation and that the district court abused its discretion in permitting pleadings to be filed under seal. *Id.* at p. 25. Accordingly, the Sixth Circuit vacated "any district court orders to the extent they permit sealing or redacting of court records" and remanded to the district court to make a specific determination of the necessity of nondisclosure. *Id.*

In response to the Sixth Circuit's order, Judge Polster issued an Order on July 15, 2019 lifting the Protective Order on all ARCOS data for the years 2006 to 2012. *See* **Exhibit "3,"** Order Regarding Arcos Data Protective Order, *In re National Prescription Opiate Litigation*, Case No. 1:17-MD-2804 (N.D. Ohio July 15, 2019). Additionally, Judge Polster issued an Order providing an alternative procedure for filing documents under seal or with redactions. *See* **Exhibit "4,"** Order Amending Procedures Regarding Redactions and Filing of Briefs Under Seal, *In re National Prescription Opiate Litigation*, Case No. 1:17-MD-2804 (N.D. Ohio July 5, 2019).

As a result of the Sixth Circuit Order and subsequent orders issued by Judge Polster, the ARCOS data from 2006 through 2012 and thousands of pages of documents previously filed under seal were released to the public in July 2019, three (3) months after the City of Reno filed its oppositions to the Defendants' motions to dismiss in this case.

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B. Documents Released to the Public

On July 16, 2019, The Washington Post published an article titled "76 billion opioid pills: Newly released federal data unmasks the epidemic," detailing the information learned from the release of the ARCOS data following Judge Polster's Order the previous day. *See*, **Exhibit "5."** The article details the secrecy of the litigation leading up to the release of the data, which ranges from 2006 through 2012, revealing that six (6) companies distributed 75 percent of the pills during the relevant time period. *Id.* Three (3) of the companies are defendants in this case – McKesson Corp., Cardinal Health, and Amerisource Bergen. *Id.*

The Washington Post next published a shorter article titled "Five takeaways from the DEA's pain pill database," in which it provides a look at the key points of its prior article. *See* **Exhibit "6."** Among these five (5) takeaways are the fact that this ARCOS data has never before been released to the public, thus providing the public, for the first time, with a clear "road map to the opioid epidemic." *Id.* Another takeaway is that only a handful of companies manufactured and distributed most of the opioids. *Id.* Three companies: SpecGX (a Mallinckrodt subsidiary), Actavis Pharma, and Par Pharmaceutical (an Endo Pharmaceuticals subsidiary) manufactured 88 percent of the opioids. *Id.* Mallinkcrodt, Endo Pharmaceuticals, and Actavis Pharma are all Defendants in this case. Finally, and significantly, the Washington Post points out that some areas of the US were hit harder than others and identifies Nevada as the state with the fourth highest concentration of pills per person per year. *Id.*

Additionally, in an effort to shed light on the scope of the opioid epidemic and the "inner workings of the drug industry," The Washington Post took initiative to publish the newly unsealed documents from the Opioid MDL. *See* Horowitz, Sari, Scott Higham, Aaron C. Davis, Steven Rich, NEWLY UNSEALED EXHIBITS IN OPIOID CASE REVEAL INNER WORKINGS OF THE DRUG INDUSTRY, July 23, 2019, available at https://www.washingtonpost.com/investigations/newly-unsealed-exhibits-in-opioid-case-reveal-inner-workings-of-the-drug-industry/2019/07/23/acf3bf64-abe5-11e9-8e77-03b30bc29f64_story.html?noredirect=on, last

accessed on August 23, 2019.[1] These documents provide the parties with a look into the callous attitudes of Defendants towards the opioid epidemic, their knowledge of the epidemic, and the volume of pills being shipped the communities.

The documents previously shielded from the public and released by The Washington Post contain deposition transcripts, order forms, internal emails, and more. For example, Nathan Hartle, Vice President of Regulatory Affairs and Compliance for McKesson Corporation, a Defendant in this case, testified in the Opioid MDL:

> Q. Well, back to McKesson Corporation, which is you sitting in the chair today. Knowing what you know as the 30(b)(6) representative, the corporate designee, knowing about your past conduct, knowing about the past interactions with the DEA, I'm going to ask you again: Does McKesson Corporation accept partial responsibility for the societal costs of prescription drug abuse in America?
>
> Ms. Henn: Objection to form.
>
> The Witness: Again, you know, I - - we're part of the closed system, so we're responsible for preventing diversion.
>
> QUESTIONS BY MR. FARRELL:
> Q. So the answer is?
>
> Ms. Henn: Objection to form.
>
> The Witness: **Again, I think we're responsible for something.** I don't know what - - how you define all societal costs and - - I still believe it depends on different circumstances.
>
> QUESTIONS BY MR. FARRELL:
> Q. Sir, we're not going to parse out percentages.
> A. Yeah.
> Q. Let's just talk globally for McKesson Corporation. So I don't want to put words in your mouth because it's got to come out of your mouth. So the answer is yes or no.
>
> Ms. Henn: Objection to form.
>
> The Witness: **I would say yes**, partially.

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[1] Included within the article is a link to all of the unsealed documents, including those attached as exhibits here. The Washington Post, THE RECORDS REVEALED, July 25, 2019, available at https://www.washingtonpost.com/graphics/2019/investigations/opioid-drug-company-documents/, last accessed on August 23, 2019.

See **Exhibit "7,"** Relevant Portions of Nathan Hartle's Deposition dated July 31, 2018, at p. 15:14-21, 285:6-286:15 (emphasis added). Following this Deposition, Defendants marked Mr. Hartle's testimony as "Highly Confidential" in the Opioid MDL. *Id.* Because the deposition was marked "highly confidential," it was immediately placed under seal in the Opioid MDL, and the public did not have access to the testimony regarding McKesson taking partial responsibility for the opioid crisis. Stated another way, the public is not aware that McKesson, through their 30(b)(6) designee, has admitted that they are partially responsible for the societal costs of prescription drug abuse in America.

Purdue Pharma, another Defendant in this case, appears to have had a tracking system in which Steve Seid, of Purdue's National Accounts & Trade Relations would receive emails when an order exceeded average exception. The Defendants marked Mr. Seid's e-mails confidential and they were placed under seal despite the fact that they do not contain any trade secrets, proprietary information, or other data that would be considered confidential. Specifically looking at the documents, Mr. Seid received a notification on September 9, 2009 at 3:30 p.m., that a Smith Drug Company's 12-week order exceeded its average order by a startling **146.26%**. *See* **Exhibit "8,"** ValueTrak Email dated September 9, 2009.[2] It only took Mr. Seid thirty (30) minutes to approve the order. *Id.* On September 24, 2009, it took Mr. Seid ten (10) minutes to approve an order of Oxycontin 80 MG tablets that exceeded the distributor's average order size by **133.41%**. *See* **Exhibit "9,"** ValueTrak Email dated September 24, 2009.[3] Another document marked confidential by a Defendant and filed under seal in the Opioid MDL was an order from Cardinal Health for 1,152 units of Oxycontin 15 MG (manufactured by Purdue), which was flagged because it exceeded the normal twelve-week order average by **94.59%**. *See* **Exhibit "10,"** ValueTrak Email dated October 27, 2009.[4] Similarly, on October 1, 2009, McKesson Corp placed an order to Purdue for 14,256 units of Oxycontin 20 MG Tablets. *See* **Exhibit "11,"** ValueTrak Email dated October 1, 2009. McKesson's order was **76.10%** larger than its 12-Week average.

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[2] In dollar totals, the order increased from the average $179,508.70 to $442,063.92.
[3] The sale total increased from $66,844.23 to $156,022.56.
[4] The sale total increased from $150,444.96 to $292,757.76.

Id.[5] The email was sent at 4:15 p.m. and the order was approved **one minute later** at 4:16:42 p.m. *Id.* Each of these dramatically increased orders were accompanied by a dramatically increased profit to Purdue and each of these documents were concealed from the public, and the public had no idea how many opioid units were flooding their communities.

Another Defendant, Mallinckrodt knew it was flooding communities with opioids and that people were addicted. This is evidenced by the flippant and dismissive attitude of Mallinckrodt's managing speaking agents, from their internal emails, such as this exchange between Mallinckrodt's Vice President of purchasing, Steven Cochrane, and the National Account Manager, retail, Victor Borelli:

> **From:** Steven J. Cochrane
> **To:** Victor Borelli
> **Subject:** Re: Oxy 30
>
> Keep 'em comin'! Flyin' out of here. Its like people are addicted to these things or something. Oh, wait, people are . . .
>
> Thank you,
> Steve
>
> **From:** Victor Borelli
> **To:** Steven J. Cochrane
> **Subject:** Re: Oxy 30
>
> Just like Doritos
> Keep eating, we'll make more.
>
> Victor M. Borelli

See **Exhibit "12,"** January 27, 2009 Email exchange between Victor Borelli and Steven J. Cochrane.

Victor Borelli's sales strategy was clear to all who worked for him as seen in another email that was only recently released to the public:

---

[5] In dollar amount, this is the largest increase included in these emails as the average weekly sale increased from $2,628,685.81 to $4,629,208.32.

From: Rehkop, Brenda D.
To: Victor Borelli
Cc: Stewart, Cathy; Gregory, Connie J.
Subject: RE: Sunrise Wholesale

> Victor,
> . . .
> The 222 forms [submitted by Sunrise Wholesale] total $195,000. I have put the latest and largest order on hold (it is also waiting to be allocated) till I hear from you. Were you expecting Sunrise to place such a large order?? And do they really want **2520 bottles of Oxycodone HCL 30MG TABS USP**, 100 count each??
>
> Please advise ASAP.
> Thank you,
> Brenda Rehkop

From: Stewart, Cathy
To: Ratliff, Bill; Harper, Karen
Cc: Rehkop, Brenda D
Subject: FW: Sunrise Wholesale

> FYI . . . . . This is a new customer.

From: unknown.
To: Ratliff, Bill; Harper, Karen
Subject: FW: Sunrise Wholesale

> FYI – the customer service reps all state that Victor **will tell them anything** they want to hear just so he can get the sale . . . . . .

See **Exhibit "13,"** May 20, 2008 Internal Cardinal Health Email (emphasis added).

In May 2008, Victor Borelli, Mallinckrodt's National Account Manager for the retail division, sent the following email to Steven Cochrane, the Vice President of Purchasing:

> Okay, seriously for a second, I just got off a conference call and the Actavis oxy back orders are affecting everyone's orders. Can you do us both a favor and check your inventories on oxy 5, 15 mg & 30 mg. If you are low, order more. **If you are okay, order a little more**. Capesce?
> Call me in the morning to talk it through . . .

> **By the way, destroy this e mail** . . . Is that really possible? Oh well . . .
> Thanks,
> Victor Borelli

See **Exhibit "14,"** May 20, 2008 email exchange between Victor Borelli and Steve Cochrane (emphasis added).

Steve Cochrane replied:

> Understood Godfather. We did order 'extra' on the Oxycodones, but I'll get with Dave tomorrow and order more.

Id.

By marking these documents confidential, Defendants kept the public in the dark regarding Mallinckrodt's knowledge that people were addicted to these opioid drugs yet continued to ship large amounts into U.S. communities.

This is just a sample of the type of documents that only recently became available. Defendants have worked to keep all of these records confidential and out of the public eye for years.

II. RELEVANCE OF THE RELEASED DOCUMENTS TO THE CITY OF RENO'S OPPOSITIONS TO THE MOTIONS TO DISMISS

The City of Reno was not aware of these documents, or the thousands more, produced by The Washington Post until July 2019, well after it filed its complaint and its oppositions to the motions to dismiss. Defendants raised a number of issues in their motions to dismiss, including the argument that the City of Reno had a responsibility to plead its claims with particularity under NRCP 9(b).[6] The City of Reno opposes this argument wherever it is raised on the grounds that the City has not alleged a cause of action sounding in fraud and, thus, are not bound by the pleading requirements contained in NRCP 9(b). Additionally, the City maintains that it met the heightened pleading standard, to the extent this Court believes such

[6] This argument was raised in the Manufacturers' Joint Motion to Dismiss; Mallinckrodt's Joinder to the Manufacturers' Joint Motion to Dismiss; Assertio Therapeutics, Inc. fka Depomed, Inc.'s Motion to Dismiss; Endo Health Solution Inc. and Endo Pharmaceutical Inc.'s Motion to Dismiss; Teva Pharmaceuticals USA, Inc. and Cephalon, Inc.'s Motion to Dismiss; and Watson Laboratories, Inc., Actavis LLC, and Actavis Pharma, Inc.'s Motion to Dismiss.

particularized pleading was necessary.

Additionally, and relevant to this supplemental briefing, the City contends that, even if it was required to plead the facts with specificity, it was unable to do so because the facts of the fraudulent activity are in the defendants' possession. *See Rocker v. KPMG LLP*, 112 Nev. 1185, 1192, 148 P.3d 703, 707-708 (2006) (reversed on other grounds). *Rocker* recognized that, in certain cases, it is impossible for a plaintiff to meet the requirements of NRCP 9(b) because it does not have access to the facts necessary in order to prepare the pleading. *Id.* In such cases, so long as the plaintiff pleads specific facts giving rise to an inference of fraud, the plaintiff should have an opportunity to conduct discovery and amend the complaint to include particular facts where necessary. *Id.*

The events in the Opioid MDL regarding the ARCOS data and unsealing of records makes it clear that there are thousands, or millions, of documents that are within the possession of Defendants that have not been made public. Even where such documents were produced in other jurisdictions, they were subject to such stringent protective orders and sealing orders, that they were not accessible to anyone outside of the specific litigation. The City of Reno suspects that the documents published by The Washington Post are just a tiny fraction of what Defendants possess. There was no way the City of Reno could have included any of the information contained within those documents in its First Amended Complaint or in its oppositions to the Motions to Dismiss.

III. CONCLUSION

The City of Reno was not required to plead its First Amended Complaint with particularity under NRCP 9(b) because it has not alleged a cause of action sounding in fraud. Additionally, there are sufficient allegations int the First Amended Complaint to satisfy the heightened pleading standard, to the extent it was necessary. Finally, the City of Reno was, and is, unable to include the level of specificity Defendants argue is necessary because Defendants have engaged in a pattern and practice of concealing all of their documents from the public. The only way the City of Reno will be able to learn of such information will be through discovery. Thus, dismissal would be inappropriate under *Rocker*.

AFFIRMATION

The undersigned affirms that the preceding document does not contain personal information as described in WDCR 8.

DATED this 13th day of September 2019.

EGLET ADAMS

/s/ Robert T. Eglet, Esq.

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EGLET ADAMS

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of EGLET ADAMS, and that on September 13, 2019, I caused the foregoing document entitled **CITY OF RENO'S SUPPLEMENTAL 13BRIEFING IN SUPPORT OF OPPOSITIONS TO MOTIONS TO DISMISS** to be served upon those persons designated by the parties in the E-Service Master List for the above-referenced matter in the Second Judicial District Court eFiling System in accordance with the mandatory electronic service requirements of Administrative Order 14-2 and the Nevada Electronic Filing and Conversion Rules and by U.S. regular mail as follows:

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/s/ Crystal Garcia
An Employee of EGLET ADAMS

EGLET ADAMS

EGLET ADAMS

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EXHIBIT 1

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

IN RE: NATIONAL PRESCRIPTION OPIATE LITIGATION	**Case No.: 1:17-md-2804-DAP**
This document relates to:	**Honorable Dan Aaron Polster**
All Cases	

CASE MANAGEMENT ORDER NO. 2: PROTECTIVE ORDER

I. Scope of Order

1. Disclosure and discovery activity in this proceeding may involve production of confidential, proprietary, and/or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation would be warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter the following Stipulated Protective Order ("Protective Order" or "Order"). Unless otherwise noted, this Order is also subject to the Local Rules of this District and the Federal Rules of Civil Procedure on matters of procedure and calculation of time periods. Unless otherwise stated, all periods of time provided for in this Order are calculated as calendar days

2. This Protective Order shall govern all hard copy and electronic materials, the information contained therein, and all other information produced or disclosed during this proceeding, captioned as *In re: National Prescription Opiate Litigation* (MDL No. 2804), Case No. 1:17-CV-2804, which includes any related actions that have been or will be originally filed in this Court, transferred to this Court, or removed to this Court and assigned there ("the Litigation"). All materials produced or adduced in the course of

discovery, including all copies, excerpts, summaries, or compilations thereof, whether revealed in a document, deposition, other testimony, discovery response or otherwise, by any Party to this Litigation (the "Producing Party") to any other party or parties (the "Receiving Party"). This Protective Order is binding upon all the Parties to this Litigation, including their respective corporate parents, subsidiaries and affiliates and their respective attorneys, principals, agents, experts, consultants, representatives, directors, officers, and employees, and others as set forth in this Protective Order.

3. Third parties who so elect may avail themselves of, and agree to be bound by, the terms and conditions of this Protective Order and thereby become a Producing Party for purposes of this Protective Order.

4. The entry of this Protective Order does not preclude any party from seeking a further order of this Court pursuant to Federal Rule of Civil Procedure 26(c).

5. Nothing herein shall be construed to affect in any manner the admissibility at trial or any other court proceeding of any document, testimony, or other evidence.

6. This Protective Order does not confer blanket protection on all disclosures or responses to discovery and the protection it affords extends only to the specific information or items that are entitled to protection under the applicable legal principles for treatment as confidential.

II. Definitions

7. Party. "Party" means any of the parties in this Litigation at the time this Protective Order is entered, including officers and directors of such parties. If additional parties are added other than parents, subsidiaries or affiliates of current parties to this Litigation, then their ability to receive Confidential Information and/or Highly Confidential

Information as set forth in this Protective Order will be subject to them being bound, by agreement or Court Order, to this Protective Order.

8. Discovery Material. "Discovery Material" means any information, document, or tangible thing, response to discovery requests, deposition testimony or transcript, and any other similar materials, or portions thereof. To the extent that matter stored or recorded in the form of electronic or magnetic media (including information, files, databases, or programs stored on any digital or analog machine-readable device, computers, Internet sites, discs, networks, or tapes) ("Computerized Material") is produced by any Party in such form, the Producing Party may designate such matters as confidential by a designation of "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" on the media. Whenever any Party to whom Computerized Material designated as CONFIDENTIAL or HIGHLY CONFIDENTIAL is produced reduces such material to hardcopy form, that Party shall mark the hardcopy form with the corresponding "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" designation.

9. Competitor. Competitor means any company or individual, other than the Designating Party, engaged in the design; development; manufacture; regulatory review process; dispensing; marketing; distribution; creation, prosecution, pursuit, or other development of an interest in protecting intellectual property; and/or licensing of any product or services involving opioids; provided, however, that this section shall not be construed as limiting the disclosure of Discovery Material to an Expert in this Litigation, so long as the notice required under Paragraph 38 is provided to the Designating Party prior to any such disclosure where required, and so long as no Discovery Material produced by one Defendant is shown to any current employee or consultant of a different Defendant,

except as provided in Paragraphs 33 or 34.

10. Confidential Information. "Confidential Information" is defined herein as information that the Producing Party in good faith believes would be entitled to protection on a motion for a protective order pursuant to Fed. R. Civ. P. 26(c) on the basis that it constitutes, reflects, discloses, or contains information protected from disclosure by statute or that should be protected from disclosure as confidential personal information, medical or psychiatric information, personnel records, Confidential Protected Health Information, protected law enforcement materials (including investigative files, overdose records, narcane, coroner's records, court records, and prosecution files), research, technical, commercial or financial information that the Designating Party has maintained as confidential, or such other proprietary or sensitive business and commercial information that is not publicly available. Public records and other information or documents that are publicly available may not be designated as Confidential Information. In designating discovery materials as Confidential Information, the Producing Party shall do so in good faith consistent with the provisions of this Protective Order and rulings of the Court. Nothing herein shall be construed to allow for global designations of all documents as "Confidential."

11. Highly Confidential Information. "Highly Confidential Information" is defined herein as information which, if disclosed, disseminated, or used by or to a Competitor of the Producing Party or any other person not enumerated in Paragraphs 32 and 33, could reasonably result in possible antitrust violations or commercial, financial, or business harm. In designating discovery materials as Highly Confidential Information, the Producing Party shall do so in good faith consistent with the provisions of this Protective

Order and rulings of the Court. Nothing herein shall be construed to allow for global designations of all documents as "Highly Confidential."

12. Manufacturer Defendant: Manufacturer Defendant means any Defendant in this litigation that manufactures any Opioid Product for sale or distribution in the United States.

13. Distributor Defendant: Distributor Defendant means any Defendant in this litigation that distributes any Opioid Product in the United States other than a product they manufacture or license for manufacture.

14. Retail Defendant: Retail Defendant means any Defendant in this litigation that sells or distributes any Opioid Product directly to consumers in the United States.

15. Receiving Party. "Receiving Party" means a Party to this Litigation, and all employees, agents, and directors (other than Counsel) of the Party that receives Discovery Material from a Producing Party.

16. Producing Party. "Producing Party" means a Party to this Litigation, and all directors, employees, and agents (other than Counsel) of the Party or any third party that produces or otherwise makes available Discovery Material to a Receiving Party, subject to paragraph 3.

17. Protected Material. "Protected Material" means any Discovery Material, and any copies, abstracts, summaries, or information derived from such Discovery Material, and any notes or other records regarding the contents of such Discovery Material, that is designated as "Confidential" or "Highly Confidential" in accordance with this Protective Order.

18. Outside Counsel. "Outside Counsel" means any law firm or attorney who

represents any Party for purposes of this litigation.

19. In-House Counsel. "In-House Counsel" means attorney employees of any Party.

20. Counsel. "Counsel," without another qualifier, means Outside Counsel and In- House Counsel.

21. Independent Expert. "Independent Expert" means an expert and/or independent consultant formally retained, and/or employed to advise or to assist Counsel in the preparation and/or trial of this Litigation, and their staff who are not employed by a Party to whom it is reasonably necessary to disclose Confidential Information or Highly Confidential Information for the purpose of this Litigation.

22. This Litigation. "This Litigation" means all actions in MDL No. 2804, *In re: National Prescription Opiate Litigation* or hereafter subject to transfer to MDL No. 2804.

III. Designation and Redaction of Confidential Information

23. For each document produced by the Producing Party that contains or constitutes Confidential Information or Highly Confidential Information pursuant to this Protective Order, each page shall be marked "CONFIDENTIAL—SUBJECT TO PROTECTIVE ORDER", or "HIGHLY CONFIDENTIAL—SUBJECT TO PROTECTIVE ORDER" or comparable notices.

24. Specific discovery responses produced by the Producing Party shall, if appropriate, be designated as Confidential Information or Highly Confidential Information by marking the pages of the document that contain such information with the notation "CONFIDENTIAL—SUBJECT TO PROTECTIVE ORDER", or "HIGHLY CONFIDENTIAL—SUBJECT TO PROTECTIVE ORDER" or comparable notices.

25. Information disclosed through testimony at a deposition taken in connection with this Litigation may be designated as Confidential Information or Highly Confidential Information by designating the portions of the transcript in a letter to be served on the court reporter and opposing counsel within thirty (30) calendar days of the Producing Party's receipt of the certified transcript of a deposition. The court reporter will indicate the portions designated as Confidential or Highly Confidential and segregate them as appropriate. Designations of transcripts will apply to audio, video, or other recordings of the testimony. The court reporter shall clearly mark any transcript released prior to the expiration of the 30-day period as "HIGHLY CONFIDENTIAL—SUBJECT TO FURTHER CONFIDENTIALITY REVIEW." Such transcripts will be treated as Highly Confidential Information until the expiration of the 30-day period. If the Producing Party does not serve a designation letter within the 30-day period, then the entire transcript will be deemed not to contain Confidential Information or Highly Confidential Information and the "HIGHLY CONFIDENTIAL—SUBJECT TO FURTHER CONFIDENTIALITY REVIEW" legend shall be removed.

26. In accordance with this Protective Order, only the persons identified under Paragraphs 33 and 34, below, along with the witness and the witness's counsel may be present if any questions regarding Confidential Information or Highly Confidential are asked. This paragraph shall not be deemed to authorize disclosure of any document or information to any person to whom disclosure is prohibited under this Protective Order.

27. A Party in this Litigation may designate as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" any document, material, or other information produced by, or testimony given by, any other person or entity that the designating Party reasonably believes

qualifies as the designating Party's Confidential Information or Highly Confidential Information pursuant to this Protective Order. The Party claiming confidentiality shall designate the information as such within thirty (30) days of its receipt of such information. Any Party receiving information from a third party shall treat such information as Highly Confidential during this thirty (30) day period while all Parties have an opportunity to review the information and determine whether it should be designated as confidential. Any Party designating third party information as Confidential Information or Highly Confidential Information shall have the same rights as a Producing Party under this Protective Order with respect to such information.

28. This Protective Order shall not be construed to protect from production or to permit the "Confidential Information" or "Highly Confidential Information" designation of any document that (a) the party has not made reasonable efforts to keep confidential, or (b) is at the time of production or disclosure, or subsequently becomes, through no wrongful act on the part of the Receiving Party or the individual or individuals who caused the information to become public, generally available to the public through publication or otherwise.

29. In order to protect against unauthorized disclosure of Confidential Information and Highly Confidential Information, a Producing Party may redact certain Confidential or Highly Information from produced documents, materials or other things. The basis for any such redaction shall be stated in the Redaction field of the metadata produced pursuant to the Document Production Protocol or, in the event that such metadata is not technologically feasible, a log of the redactions. Specifically, the Producing Party may redact:

(i) Personal Identifying Information. The names, home addresses, personal email addresses, home telephone numbers, Social Security or tax identification numbers, and other private information protected by law of (a) current and former employees (other than employees' names and business contact information) and (b) individuals in clinical studies or adverse event reports whose identity is protected by law.

(ii) Privileged Information. Information protected from disclosure by the attorney-client privilege, work product doctrine, or other such legal privilege protecting information from discovery in this Litigation. The obligation to provide, and form of, privilege logs will be addressed by separate Order.

(iii) Third Party Confidential Information. If agreed to by the Parties or ordered by the Court under Paragraph 78, information that is protected pursuant to confidentiality agreements between Designating Parties and third parties, as long as the agreements require Designating Parties to redact such information in order to produce such documents in litigation.

30. To the extent any document, materials, or other things produced contain segregated, non-responsive Confidential or Highly Confidential Information concerning a Producing Party's non-opioid products (or, in the case of Plaintiffs, concerning programs, services, or agencies not at issue in this litigation), the Producing Party may redact that segregated, non-responsive, Confidential or Highly Confidential information except (a) that if a Producing Party's non-opioid product is mentioned in direct comparison to the Producing Party's opioid product, then the name and information about that product may not be redacted or (b) if the redaction of the name and information about the Producing Party's non-opioid product(s) would render the information pertaining to Producing Party's opioid product meaningless or would remove the context of the information about

Producing Party's opioid product, the name and information about the other product may not be redacted. Nothing in this paragraph shall restrict Plaintiffs' right and ability to request information about such other products nor restrict Defendants' right to object to or otherwise seek protection from the Court concerning any such request.

31. Pursuant to 21 C.F.R. §§ 314.430(e) & (f) and 20.63(f), the names of any person or persons reporting adverse experiences of patients and the names of any patients who were reported as experiencing adverse events that are not redacted shall be treated as confidential, regardless of whether the document containing such names is designated as CONFIDENTIAL INFORMATION. No such person shall be contacted, either directly or indirectly, based on the information so disclosed without the express written permission of the Producing Party.

IV. Access to Confidential and Highly Confidential Information

32. General. The Receiving Party and counsel for the Receiving Party shall not disclose or permit the disclosure of any Confidential or Highly Confidential Information to any third person or entity except as set forth in Paragraphs 33 and 34.

33. In the absence of written permission from the Producing Party or an order of the Court, any Confidential Information produced in accordance with the provisions of this Protective Order shall be used solely for purposes of this Litigation (except as provided by Paragraph 33.l) and its contents shall not be disclosed to any person unless that person falls within at least one of the following categories:

a. Outside Counsel and In-House Counsel, and the attorneys, paralegals, stenographic, and clerical staff employed by such counsel;

b. Vendor agents retained by the parties or counsel for the parties, provided

that the vendor agrees to be bound by this Protective Order and completes the certification contained in Exhibit A, Acknowledgment and Agreement to Be Bound;

c. Individual Parties;

d. Present or former officers, directors, and employees of a Party, provided that former officers, directors, or employees of the Designating Party may be shown documents prepared after the date of his or her departure only to the extent counsel for the Receiving Party determines in good faith that the employee's assistance is reasonably necessary to the conduct of this Litigation and provided that such persons have completed the certification contained in Exhibit A, Acknowledgment and Agreement to Be Bound. Nothing in this paragraph shall be deemed to permit the showing of one defendant's Confidential Information to an officer, director, or employee of another defendant, except to the extent otherwise authorized by this Order;

e. Stenographic employees and court reporters recording or transcribing testimony in this Litigation;

f. The Court, any Special Master appointed by the Court, and any members of their staffs to whom it is necessary to disclose the information;

g. Formally retained independent experts and/or consultants, provided that the recipient agrees to be bound by this Protective Order and completes the certification contained in Exhibit A, Acknowledgment and Agreement to Be Bound;

h. Any individual(s) who authored, prepared, or previously reviewed or received the information;

i. To the extent contemplated by Case Management Order One, dated April 11, 2018 (Dkt. No. 232), those liability insurance companies from which any Defendant has sought or may seek insurance coverage to (i) provide or reimburse for the defense of the Litigation and/or (ii) satisfy all or part of any liability in the Litigation.

j. State or federal law enforcement agencies, but only after such persons have completed the certification contained in Exhibit A, Acknowledgment and Agreement to Be Bound. Disclosure pursuant to this subparagraph will be made only after the Designating Party has been given ten (10) days' notice of the Receiving Party's intent to disclose, and a description of the materials the Receiving Party intends to disclose. If the Designating Party objects to disclosure, the Designating Party may request a meet and confer and may seek a protective order from the Court.

k. Plaintiff's counsel of record to any Plaintiff with a case pending in MDL 2804 shall be permitted to receive the Confidential Information of any Producing Party regardless of whether that attorney is counsel of record in any individual action against the Producing Party and there shall be no need for such counsel to execute such acknowledgement because such counsel is bound by the terms of this Protective Order;

l. Counsel for claimants in litigation pending outside this Litigation and arising from one or more Defendants' manufacture, marketing, sale, or distribution of opioid products for use in this or such other action in which the Producing Party is a Defendant in that litigation, provided that the proposed recipient agrees to be bound by this Protective Order and completed the certification

contained in Exhibit A, Acknowledgment and Agreement to Be Bound. Plaintiffs' Liaison Counsel shall disclose to all Defendants at the end of each month a cumulative list providing the identity of the counsel who have executed such acknowledgements and will receive Confidential and Highly Confidential Information pursuant to this Order and a list of the case name(s), number(s), and jurisdiction(s) in which that counsel represents other claimants. Neither the receipt of information pursuant to this paragraph nor the provision of the certification shall in any way be deemed a submission, by the claimant represented by counsel in such outside litigation, to the jurisdiction of this Court or any other federal court or a waiver of any jurisdictional arguments available to such claimant, provided, however, that any such recipient of documents or information produced under this Order shall submit to the jurisdiction of this Court for any violations of this Order.; or

m. Witnesses during deposition, who may be shown, but shall not be permitted to retain, Confidential Information; provided, however, that, unless otherwise agreed by the relevant Parties or ordered by the Court, no Confidential Information of one defendant may be shown to any witness who is a current employee of another defendant who is not otherwise authorized to receive the information under this Order.

34. In the absence of written permission from the Producing Party or an order of the Court, any Highly Confidential Information produced in accordance with the provisions of this Protective Order shall be used solely for purposes of this Litigation (except as provided by Paragraph 34.j) and its contents shall not be disclosed to any person unless

that person falls within at least one of the following categories:

a. Outside Counsel and In-House Counsel of any Plaintiff, and the attorneys, paralegals, stenographic, and clerical staff employed by such counsel. Information designated as Highly Confidential by any Defendant may be disclosed to one In-House counsel of another Defendant, provided that the In-House counsel (i) has regular involvement in the Litigation, (ii) disclosure to the individual is reasonably necessary to this Litigation, and (iii) the individual completes the certification contained in Exhibit A, Acknowledgment and Agreement to Be Bound. Except as otherwise provided in this Order or any other Order in this Litigation, no other Employees of a Defendant may receive the Highly Confidential information of another. Any information designated as Highly Confidential shall be disclosed to an In-House Counsel for any Plaintiff only to the extent Outside Counsel for that Plaintiff determines in good faith that disclosure to the In-House Counsel is reasonably necessary to the Litigation;

b. Vendor agents retained by the parties or counsel for the parties, provided that the vendor agrees to be bound by this Protective Order and completes the certification contained in Exhibit A, Acknowledgment and Agreement to Be Bound;;

c. Individual Parties that have produced the designated information;

d. Stenographic employees and court reporters recording or transcribing testimony in this Litigation;

e. The Court, any Special Master appointed by the Court, and any members of their staffs to whom it is necessary to disclose the information;

f. Formally retained independent experts and/or consultants, provided that the recipient agrees to be bound by this Protective Order and completes the certification contained in Exhibit A, Acknowledgment and Agreement to Be Bound;

g. Any individual(s) who authored, prepared or previously reviewed or received the information;

h. State or federal law enforcement agencies, but only after such persons have completed the certification contained in Exhibit A, Acknowledgment and Agreement to Be Bound. Disclosure pursuant to this subparagraph will be made only after the Designating Party has been given ten (10) days' notice of the Receiving Party's intent to disclose, and a description of the materials the Receiving Party intends to disclose. If the Designating Party objects to disclosure, the Designating Party may request a meet and confer and may seek a protective order from the Court.

i. Plaintiff's counsel of record to any Plaintiff with a case pending in MDL 2804 shall be permitted to receive the Confidential Information of any Producing Party regardless of whether that attorney is counsel of record in any individual action against the Producing Party and there shall be no need for such counsel to execute such acknowledgement because such counsel is bound by the terms of this Protective Order;

j. Counsel for claimants litigation pending outside this Litigation and arising from one or more Defendants' manufacture, marketing, sale, or distribution of opioid products for use in this or such other action in which the Producing Party is a Defendant in that litigation, provided that the proposed recipient

agrees to be bound by this Protective Order and completes the certification contained in Exhibit A, Acknowledgment and Agreement to Be Bound. Plaintiffs' Liaison Counsel shall disclose to all Defendants at the end of each month a cumulative list providing the identity of the counsel who have executed such acknowledgements and will receive Confidential and Highly Confidential Information pursuant to this Order and a list of the case name(s), number(s), and jurisdiction(s) in which that counsel represents other claimants. Neither the receipt of information pursuant to this paragraph nor the provision of the certification shall in any way be deemed a submission, by the claimant represented by counsel in such outside litigation, to the jurisdiction of this Court or any other federal court or a waiver of any jurisdictional arguments available to such claimant; or

k. Witnesses during deposition, who may be shown, but shall not be permitted to retain, Highly Confidential Information; provided, however, that, unless otherwise agreed by the relevant Parties or ordered by the Court, no Highly Confidential Information of one defendant may be shown to any witness who is a current employee of another defendant who is not otherwise authorized to receive the information under this Order.

35. With respect to documents produced to Plaintiffs, documents designated as "HIGHLY CONFIDENTIAL" will be treated in the same manner as documents designated "CONFIDENTIAL," except that Plaintiffs may not disclose Highly Confidential Information to In-House Counsel (or current employees) of any Competitor of the Producing Party, except as otherwise provided in this Order or any other Order in this Litigation.

36. In the event that In-House Counsel (or current employees) of any Competitor of the Producing Party is present at the deposition of an employee or former employee of the Producing Party, prior to a document designated as Highly Confidential being used in the examination, such In-House Counsel (current employees) of any Competitor of the Producing Party shall excuse himself or herself from the deposition room without delaying or disrupting the deposition.

V. Confidentiality Acknowledgment

37. Each person required under this Order to complete the certification contained in Exhibit A, Acknowledgment and Agreement to Be Bound, shall be provided with a copy of this Protective Order, which he or she shall read, and, upon reading this Protective Order, shall sign an Acknowledgment, in the form annexed hereto as Exhibit A, acknowledging that he or she has read this Protective Order and shall abide by its terms. These Acknowledgments are strictly confidential. Unless otherwise provided in this Order, Counsel for each Party shall maintain the Acknowledgments without giving copies to the other side. The Parties expressly agree, and it is hereby ordered that, except in the event of a violation of this Protective Order, there will be no attempt to seek copies of the Acknowledgments or to determine the identities of persons signing them. If the Court finds that any disclosure is necessary to investigate a violation of this Protective Order, such disclosure will be pursuant to separate court order. Persons who come into contact with Confidential Information or Highly Confidential Information for clerical or administrative purposes, and who do not retain copies or extracts thereof, are not required to execute Acknowledgements, but must comply with the terms of this Protective Order.

VI. Litigation Experts and Consultants.

38. Formally Retained Independent Experts and Consultants. Subject to the provisions of this Protective Order, all Confidential Information or Highly Confidential Information may be disclosed to any formally retained independent expert or consultant who has agreed in writing pursuant to Paragraph 37 or on the record of a deposition to be bound by this Protective Order. The party retaining an independent expert or consultant shall use diligent efforts to determine if the independent expert or consultant is currently working with or for a Competitor of a Producing Party in connection with a Competitor's opioid product. Prior to the initial disclosure of any information designated as Confidential Information or Highly Confidential Information to an expert or consultant who is currently working with or for a Competitor of the Producing Party in connection with a Competitor's opioid product, the party wishing to make such a disclosure ("Notifying Party") shall provide to counsel for the Producing Party in writing, which may include by e- mail, a statement that such disclosure will be made, identifying the general subject matter category of the Discovery Material to be disclosed, providing the nature of the affiliation with the Competitor entity and name of the Competitor entity, and stating the general purpose of such disclosure; the specific name of the formally retained independent expert or consultant need not be provided. The Producing Party shall have seven (7) days from its receipt of the notice to deliver to the Notifying Party its good faith written objections (if any), which may include e-mail, to such disclosure to the expert or consultant.

39. Absent timely objection, the expert or consultant shall be allowed to receive Confidential and Highly Confidential Information pursuant to the terms of this Protective Order. Upon and pending resolution of a timely objection, disclosure to the expert or

consultant shall not be made. If the Notifying Party desires to challenge to the Producing Party's written objection to the expert or consultant, the Notifying Party shall so inform the Producing Party in writing, within ten (10) days of receipt of the Producing Party's written objection, of its reasons for challenging the objection. The expert or consultant shall then be allowed to receive Confidential and Highly Confidential Information pursuant to the terms of this Protective Order after seven (7) days from receipt of the Producing Party's timely challenge to the written objection to the expert or consultant, unless within that seven day period, the Producing Party seeks relief from the Court pursuant to the procedures for discovery disputes set forth in Section 9(o) of Case Management Order One, or the Parties stipulate to an agreement. Once a motion is filed, disclosure shall not occur until the issue is decided by the Court and, if the motion is denied, the appeal period from the Court order denying the motion has expired. In making such motion, it shall be the Producing Party's burden to demonstrate good cause for preventing such disclosure.

VII. Protection and Use of Confidential and Highly Confidential Information

40. Persons receiving or having knowledge of Confidential Information or Highly Confidential Information by virtue of their participation in this proceeding, or by virtue of obtaining any documents or other Protected Material produced or disclosed pursuant to this Protective Order, shall use that Confidential Information or Highly Confidential Information only as permitted by this Protective Order. Counsel shall take reasonable steps to assure the security of any Confidential Information or Highly Confidential Information and will limit access to such material to those persons authorized by this Protective Order.

41. Nothing herein shall restrict a person qualified to receive Confidential

Information and Highly Confidential Information pursuant to this Protective Order from making working copies, abstracts, digests and analyses of such information for use in connection with this Litigation and such working copies, abstracts, digests and analyses shall be deemed to have the same level of protection under the terms of this Protective Order. Further, nothing herein shall restrict a qualified recipient from converting or translating such information into machine-readable form for incorporation in a data retrieval system used in connection with this Litigation, provided that access to such information, in whatever form stored or reproduced, shall be deemed to have the same level of protection under the terms of this Protective Order.

42. All persons qualified to receive Confidential Information and Highly Confidential Information pursuant to this Protective Order shall at all times keep all notes, abstractions, or other work product derived from or containing Confidential Information or Highly Confidential Information in a manner to protect it from disclosure not in accordance with this Protective Order, and shall be obligated to maintain the confidentiality of such work product and shall not disclose or reveal the contents of said notes, abstractions or other work product after the documents, materials, or other thing, or portions thereof (and the information contained therein) are returned and surrendered pursuant to Paragraph 46. Nothing in this Protective Order requires the Receiving Party's Counsel to disclose work product at the conclusion of the case.

43. Notwithstanding any other provisions hereof, nothing herein shall restrict any Party's Counsel from rendering advice to that Counsel's clients with respect to this proceeding or a related action in which the Receiving Party is permitted by this Protective Order to use Confidential Information or Highly Confidential Information and, in the course thereof, relying upon such information, provided that in rendering such advice, Counsel

shall not disclose any other Party's Confidential Information or Highly Confidential Information other than in a manner provided for in this Protective Order.

44. Nothing contained in this Protective Order shall prejudice in any way the rights of any Party to object to the relevancy, authenticity, or admissibility into evidence of any document or other information subject to this Protective Order, or otherwise constitute or operate as an admission by any Party that any particular document or other information is or is not relevant, authentic, or admissible into evidence at any deposition, at trial, or in a hearing

45. Nothing contained in this Protective Order shall preclude any Party from using its own Confidential Information or Highly Confidential Information in any manner it sees fit, without prior consent of any Party or the Court.

46. To the extent that a Producing Party uses or discloses to a third party its designated confidential information in a manner that causes the information to lose its confidential status, the Receiving Party is entitled to notice of the Producing Party's use of the confidential information in such a manner that the information has lost its confidentiality, and the Receiving Party may also use the information in the same manner as the Producing Party.

47. If a Receiving Party learns of any unauthorized disclosure of Confidential Information or Highly Confidential Information, it shall immediately (a) inform the Producing Party in writing of all pertinent facts relating to such disclosure; (b) make its best effort to retrieve all copies of the Confidential Information or Highly Confidential Information; (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Protective Order; and (d) request such person or persons execute the Acknowledgment that is attached hereto as Exhibit A.

48. Unless otherwise agreed or ordered, this Protective Order shall remain in force after dismissal or entry of final judgment not subject to further appeal of this Litigation.

49. Within ninety (90) days after dismissal or entry of final judgment not subject to further appeal of this Litigation, or such other time as the Producing Party may agree in writing, the Receiving Party shall return all Confidential Information and Highly Confidential Information under this Protective Order unless: (1) the document has been offered into evidence or filed without restriction as to disclosure; (2) the Parties agree to destruction to the extent practicable in lieu of return;[1] or (3) as to documents bearing the notations, summations, or other mental impressions of the Receiving Party, that Party elects to destroy the documents and certifies to the producing party that it has done so.

50. Notwithstanding the above requirements to return or destroy documents, Plaintiffs' outside counsel and Defendants' outside counsel may retain (1) any materials required to be retained by law or ethical rules, (2) one copy of their work file and work product, and (3) one complete set of all documents filed with the Court including those filed under seal, deposition and trial transcripts, and deposition and trial exhibits. Any retained Confidential or Highly Confidential Discovery Material shall continue to be protected under this Protective Order. An attorney may use his or her work product in subsequent litigation, provided that the attorney's use does not disclose or use Confidential Information or Highly Confidential Information.

[1] The parties may choose to agree that the Receiving Party shall destroy documents containing Confidential Information or Highly Confidential Information and certify the fact of destruction, and that the Receiving Party shall not be required to locate, isolate and return e-mails (including attachments to e-mails) that may include Confidential Information or Highly Confidential Information, or Confidential Information or Highly Confidential Information contained in deposition transcripts or drafts or final expert reports.

VIII. Changes in Designation of Information

51. If a Party through inadvertence produces any Confidential Information or Highly Confidential Information without labeling or marking or otherwise designating it as such in accordance with the provisions of this Protective Order, the Producing Party may give written notice to the Receiving Party that the document or thing produced is deemed "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" and should be treated as such in accordance with the provisions of this Protective Order, and provide replacement media, images, and any associated production information to conform the document to the appropriate designation and facilitate use of the revised designation in the production. The Receiving Party must treat such documents and things with the noticed level of protection from the date such notice is received. Disclosure, prior to the receipt of such notice of such information, to persons not authorized to receive such information shall not be deemed a violation of this Protective Order. Any Producing Party may designate as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" or withdraw a "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" designation from any material that it has produced consistent with this Protective Order, provided, however, that such redesignation shall be effective only as of the date of such redesignation. Such redesignation shall be accomplished by notifying Counsel for each Party in writing of such redesignation and providing replacement images bearing the appropriate description, along with the replacement media, images, and associated production information referenced above. Upon receipt of any redesignation and replacement image that designates material as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL", the Receiving Party shall (i) treat such material in accordance with this Protective Order; (ii) take reasonable steps to notify any persons known to have possession of any such material of such redesignation under this

Protective Order; and (iii) promptly endeavor to procure all copies of such material from any persons known to have possession of such material who are not entitled to receipt under this Protective Order. It is understood that the Receiving Party's good faith efforts to procure all copies may not result in the actual return of all copies of such materials.

52. A Receiving Party does not waive its right to challenge a confidentiality designation by electing not to mount a challenge promptly after the original designation is disclosed. If the Receiving Party believes that portion(s) of a document are not properly designated as Confidential Information or Highly Confidential Information, the Receiving Party will identify the specific information that it believes is improperly designated and notify the Producing Party, in writing or voice-to-voice dialogue, of its good faith belief that the confidentiality designation was not proper and must give the Producing Party an opportunity to review the designated material, to reconsider the circumstances, and, if no change in designation is offered, to explain, in writing within seven (7) days, the basis of the chosen designation. If a Receiving Party elects to press a challenge to a confidentiality designation after considering the justification offered by the Producing Party, it shall notify the Producing Party and the Receiving Party shall have seven (7) days from such notification to challenge the designation by commencing a discovery dispute under the procedures set forth in Section 9(o) of Case Management Order One. The ultimate burden of persuasion in any such challenge proceeding shall be on the Producing Party as if the Producing Party were seeking a Protective Order pursuant to Fed. R. Civ. P. 26(c) in the first instance. Until the Court rules on the challenge, all Parties shall continue to afford the material in question the level of protection to which it is entitled under the Producing Party's designation. In the even that a designation is changed by the Producing Party or by Court Order, the Producing Party shall provide replacement media,

images, and associated production information as provided above.

IX. Inadvertent Production of Documents

53. Non-Waiver of Privilege. The parties agree that they do not intend to disclose information subject to a claim of attorney-client privilege, attorney work product protection, common-interest privilege, or any other privilege, immunity or protection from production or disclosure ("Privileged Information"). If, nevertheless, a Producing Party discloses Privileged Information, such disclosure (as distinct from use) shall be deemed inadvertent without need of further showing under Federal Rule of Evidence 502(b) and shall not constitute or be deemed a waiver or forfeiture of the privilege or protection from discovery in this case or in any other federal or state proceeding by that party (the "Disclosing Party"). This Section shall be interpreted to provide the maximum protection allowed by Federal Rule of Evidence 502(d).

54. Notice of Production of Privileged Information. If a Party or non-Party discovers that it has produced Privileged Information, it shall promptly notify the Receiving Party of the production in writing, shall identify the produced Privileged Information by Bates range where possible, and may demand that the Receiving Party return or destroy the Privileged Information. In the event that a Receiving Party receives information that it believes is subject to a good faith claim of privilege by the Designating Party, the Receiving Party shall immediately refrain from examining the information and shall promptly notify the Designating Party in writing that the Receiving Party possesses potentially Privileged Information. The Designating Party shall have seven (7) days to assert privilege over the identified information. If the Designating Party does not assert a claim of privilege within the 7-day period, the information in question shall be deemed non-privileged.

55. Recall of Privileged Information. If the Designating Party has notified the Receiving Party of production, or has confirmed the production called to its attention by the Receiving Party, the Receiving Party shall within fourteen (14) days of receiving such notification or confirmation: (1) destroy or return to the Designating Party all copies or versions of the produced Privileged Information requested to be returned or destroyed; (2) delete from its work product or other materials any quoted or paraphrased portions of the produced Privileged Information; and (3) ensure that produced Privileged Information is not disclosed in any manner to any Party or non-Party. The following procedures shall be followed to ensure all copies of such ESI are appropriately removed from the Receiving Party's system:

i. Locate each recalled document in the document review/production database and delete the record from the database;

ii. If there is a native file link to the recalled document, remove the native file from the network path;

iii. If the database has an image load file, locate the document image(s) loaded into the viewing software and delete the image file(s) corresponding to the recalled documents. Remove the line(s) corresponding to the document image(s) from the image load file;

iv. Apply the same process to any additional copies of the document or database, where possible;

v. Locate and destroy all other copies of the document, whether in electronic or hardcopy form. To the extent that copies of the document are contained on write-protected media, such as CDs or DVDs, these media shall be discarded, with the exception of production media received from the recalling party, which shall be treated as

described herein;

vi. If the document was produced in a write-protected format, the party seeking to recall the document shall, at its election, either (i) provide a replacement copy of the relevant production from which the document has been removed, in which case the receiving party shall discard the original production media; or (ii) allow the receiving party to retain the original production media, in which case the receiving party shall take steps to ensure that the recalled document will not be used; and

vii. Confirm that the recall of ESI under this procedure is complete by way of letter to the party seeking to recall ESI.

56. Notwithstanding the above, the Receiving Party may segregate and retain one copy of the clawed back information solely for the purpose of disputing the claim of privilege. The Receiving Party shall not use any produced Privileged Information in connection with this Litigation or for any other purpose other than to dispute the claim of privilege. The Receiving Party may file a motion disputing the claim of privilege and seeking an order compelling production of the material at issue; the Designating Party may oppose any such motion, including on the grounds that inadvertent disclosure does not waive privilege.

57. Within 14 days of the notification that such Privileged Information has been returned, destroyed, sequestered, or deleted ("Clawed-Back Information"), the Disclosing Party shall produce a privilege log with respect to the Clawed-Back Information. Within 14 days after receiving the Disclosing Party's privilege log with respect to such Clawed-Back Information, a receiving party may notify the Disclosing Party in writing of an objection to a claim of privilege or work-product protection with respect to the Clawed-Back Information. Within 14 days of the receipt of such notification, the Disclosing Party

and the objecting party shall meet and confer in an effort to resolve any disagreement concerning the Disclosing Party's privilege or work-product claim with respect to such Clawed-Back Information. The parties may stipulate to extend the time periods set forth in this paragraph.

58. If, for any reason, the Disclosing Party and Receiving Party (or parties) do not resolve their disagreement after conducting the mandatory meet and confer, the Receiving Party may request a conference with the Court pursuant to the procedures set forth in Case Management Order One. The Disclosing Party bears the burden of establishing the privileged or protected nature of any Privileged Information.

59. Nothing contained herein is intended to or shall serve to limit a party's right to conduct a review of documents, ESI or information (including metadata) for relevance, responsiveness and/or segregation of privileged and/or protected information before production. Nothing in this Order shall limit the right to request an in-camera review of any Privileged Information.

60. In the event any prior order or agreement between the parties and/or between the parties and a non-party concerning the disclosure of privileged and/or work product protected materials conflicts with any of the provisions of this Order, the provisions of this Stipulated Order shall control.

61. Nothing in this Order overrides any attorney's ethical responsibilities to refrain from examining or disclosing materials that the attorney knows or reasonably should know to be privileged and to inform the Disclosing Party that such materials have been produced.

X. Filing and Use at Trial of Protected Material

62. Only Confidential or Highly Confidential portions of relevant documents

are subject to sealing. To the extent that a brief, memorandum, or pleading references any document designated as Confidential or Highly Confidential, then the brief, memorandum or pleading shall refer the Court to the particular exhibit filed under seal without disclosing the contents of any confidential information. If, however, the confidential information must be intertwined within the text of the document, a party may timely move the Court for leave to file both a redacted version for the public docket and an unredacted version for sealing.

63. Absent a Court-granted exception based upon extraordinary circumstances, any and all filings made under seal shall be submitted electronically and shall be linked to this Stipulated Protective Order or other relevant authorizing order. If both redacted and unredacted versions are being submitted for filing, each version shall be clearly named so there is no confusion as to why there are two entries on the docket for the same filing.

64. If the Court has granted an exception to electronic filing, a sealed filing shall be placed in a sealed envelope marked "CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER." The sealed envelope shall display the case name and number, a designation as to what the document is, the name of the party on whose behalf it is submitted, and the name of the attorney who has filed the sealed document. A copy of this Stipulated Protective Order, or other relevant authorizing order, shall be included in the sealed envelope.

65. A Party that intends to present Confidential Information or Highly Confidential Information at a hearing shall bring that issue to the Court's and Parties' attention without disclosing the Confidential Information or Highly Confidential Information. The Court may thereafter make such orders, including any stipulated orders, as are necessary to govern the use of Confidential Information or Highly Confidential Information

at the hearing. The use of any Confidential Information or Highly Confidential Information at trial shall be governed by a separate stipulation and/or court order.

XI. Information or Highly Confidential Information Requested by Third Party; Procedure Following Request.

66. If any person receiving Discovery Material covered by this Protective Order (the "Receiver") is served with a subpoena, a request for information, or any other form of legal process that purports to compel disclosure of any Confidential Information or Highly Confidential Information covered by this Protective Order ("Request"), the Receiver must so notify the Designating Party, in writing, immediately and in no event more than five (5) court days after receiving the Request. Such notification must include a copy of the Request.

67. The Receiver also must immediately inform the party who made the Request ("Requesting Party") in writing that some or all the requested material is the subject of this Protective Order. In addition, the Receiver must deliver a copy of this Protective Order promptly to the Requesting Party.

68. The purpose of imposing these duties is to alert the interested persons to the existence of this Protective Order and to afford the Designating Party in this case an opportunity to protect its Confidential Information or Highly Confidential Information. The Designating Party shall bear the burden and the expense of seeking protection of its Confidential Information or Highly Confidential Information, and nothing in these provisions should be construed as authorizing or encouraging the Receiver in this Litigation to disobey a lawful directive from another court. The obligations set forth in this paragraph remain in effect while the Receiver has in its possession, custody or control Confidential Information or Highly Confidential Information by the other Party in this Litigation.

69. Materials that have been designated as Confidential or Highly Confidential Discovery Material shall not be provided or disclosed to any third party in response to a request under any public records act, or any similar federal, state or municipal law (collectively, the "Public Disclosure Laws"), and are exempt from disclosure pursuant to this Protective Order. If a Party to this Litigation receives such a request, it shall (i) provide a copy of this Protective Order to the Requesting Party and inform it that the requested materials are exempt from disclosure and that the Party is barred by this Protective Order from disclosing them, and (ii) promptly inform the Designating Party that has produced the requested material that the request has been made, identifying the name of the Requesting Party and the particular materials sought. If the Designating Party seeks a protective order, the Receiving Party shall not disclose such material until the Court has ruled on the request for a protective order. The restrictions in this paragraph shall not apply to materials that (i) the Designating Party expressly consents in writing to disclosure; or (ii) this Court has determined by court order to have been improperly designated as Confidential or Highly Confidential Discovery Material. The provisions of this section shall apply to any entity in receipt of Confidential or Highly Confidential Discovery Material governed by this Protective Order. Nothing in this Protective Order shall be deemed to (1) foreclose any Party from arguing that Discovery Material is not a public record for purposes of the Public Disclosure Laws; (2) prevent any Party from claiming any applicable exemption to the Public Disclosure Laws; or (3) limit any arguments that a Party may make as to why Discovery Material is exempt from disclosure.

XII.HIPAA-Protected Information

70. General. Discovery in this Litigation may involve production of "Protected Health Information" as that term is defined and set forth in 45 C.F.R. § 160.103, for which special protection from public disclosure and from any purpose other than prosecuting this Action is warranted

71. "Protected Health Information" shall encompass information within the scope and definition set forth in 45 C.F.R. § 160.103 that is provided to the Parties by a covered entity as defined by 45 C.F.R. § 160.103 ("Covered Entities") or by a business associate of a Covered Entity as defined by 45 C.F.R. § 160.103 ("Business Associate") in the course of the Litigation, as well as information covered by the privacy laws of any individual states, as applicable.

72. Any Party who produces Protected Health Information in this Litigation shall designate such discovery material "Confidential Protected Health Information" in accordance with the provisions of this Protective Order.

73. Unless otherwise agreed between counsel for the Parties, the designation of discovery material as "Confidential Protected Health Information" shall be made at the following times: (a) for documents or things at the time of the production of the documents or things; (b) for declarations, correspondence, expert witness reports, written discovery responses, court filings, pleadings, and other documents, at the time of the service or filing, whichever occurs first; (c) for testimony, at the time such testimony is given by a statement designating the testimony as "Confidential Protected Health Information" made on the record or within thirty (30) days after receipt of the transcript of the deposition. The designation of discovery material as "Confidential Protected Health

Information" shall be made in the following manner: (a) or documents, by placing the notation "Confidential Protected Health Information" or similar legend on each page of such document; (b) for tangible things, by placing the notation "Confidential Protected Health Information" on the object or container thereof or if impracticable, as otherwise agreed by the parties; (c) for declarations, correspondence, expert witness reports, written discovery responses, court filings, pleadings, and any other documents containing Protected Health Information, by placing the notation "Confidential Protected Health Information" both on the face of such document and on any particular designated pages of such document; and (d) for testimony, by orally designating such testimony as being "Confidential Protected Health Information" at the time the testimony is given or by designating the portions of the transcript in a letter to be served on the court reporter and opposing counsel within thirty (30) calendar days after receipt of the certified transcript of the deposition.

74. Pursuant to 45 C.F.R. § 164.512(e)(1), all Covered Entities and their Business Associates (as defined in 45 C.F.R. § 160.103), or entities in receipt of information from such entities, are hereby authorized to disclose Protected Health Information pertaining to the Action to those persons and for such purposes as designated in herein. Further, all Parties that are entities subject to state privacy law requirements, or entities in receipt of information from such entities, are hereby authorized to disclose Protected Health Information pertaining to this Action to those persons and for such purposes as designated in herein. The Court has determined that disclosure of such Protected Health Information is necessary for the conduct of proceedings before it and that failure to make the disclosure would be contrary to public interest or to the detriment of one or more parties to the proceedings.

75. The Parties shall not use or disclose Protected Health Information for any purpose other than the Litigation, including any appeals. The Parties may, inter alia, disclose Protected Health Information to (a) counsel for the Parties and employees of counsel who have responsibility for the Litigation; (b) the Court and its personnel; (c) Court reporters; (d) experts and consultants; and (e) other entities or persons involved in the Litigation.

76. Within sixty days after dismissal or entry of final judgment not subject to further appeal, the Parties, their counsel, and any person or entity in possession of Protected Health Information received pursuant to this Order shall destroy or return to the Covered Entity or Business Associate such Protected Health Information.

77. Nothing in this Order authorizes the parties to obtain Protected Health Information through means other than formal discovery requests, subpoenas, depositions, pursuant to a patient authorization, or any other lawful process.

XIII. Information Subject to Existing Obligation of Confidentiality Independent of this Protective Order.

78. In the event that a Party is required by a valid discovery request to produce any information held by it subject to an obligation of confidentiality in favor of a third party, the Party shall, promptly upon recognizing that such third party's rights are implicated, provide the third party with a copy of this Protective Order and (i) inform the third party in writing of the Party's obligation to produce such information in connection with this Litigation and of its intention to do so, subject to the protections of this Protective Order; (ii) inform the third party in writing of the third party's right within fourteen (14) days to seek further protection or other relief from the Court if, in good faith, it believes such information to be confidential under the said obligation and either objects to the Party's

production of such information or regards the provisions of this Protective Order to be inadequate; and (iii) seek the third party's consent to such disclosure if that third party does not plan to object. Thereafter, the Party shall refrain from producing such information for a period of fourteen (14) days in order to permit the third party an opportunity to seek relief from the Court, unless the third party earlier consents to disclosure. If the third party fails to seek such relief, the Party shall promptly produce the information in question subject to the protections of this Protective Order, or alternatively, shall promptly seek to be relieved of this obligation or for clarification of this obligation by the Court.

XIV. Miscellaneous Provisions

79. Nothing in this Order or any action or agreement of a party under this Order limits the Court's power to make any orders that may be appropriate with respect to the use and disclosure of any documents produced or use in discovery or at trial.

80. Nothing in this Protective Order shall abridge the right of any person to seek judicial review or to pursue other appropriate judicial action to seek a modification or amendment of this Protective Order.

81. In the event anyone shall violate or threaten to violate the terms of this Protective Order, the Producing Party may immediately apply to obtain injunctive relief against any person violating or threatening to violate any of the terms of this Protective Order, and in the event the Producing Party shall do so, the respondent person, subject to the provisions of this Protective Order, shall not employ as a defense thereto the claim that the Producing Party possesses an adequate remedy at law.

82. This Protective Order shall not be construed as waiving any right to assert a claim of privilege, relevance, or other grounds for not producing Discovery

Material called for, and access to such Discovery Material shall be only as provided for by separate agreement of the Parties or by the Court.

83. This Protective Order may be amended without leave of the Court by agreement of Outside Counsel for the Parties in the form of a written stipulation filed with the Court. The Protective Order shall continue in force until amended or superseded by express order of the Court, and shall survive and remain in effect after the termination of this Litigation.

84. Notwithstanding any other provision in the Order, nothing in this Protective Order shall affect or modify Defendants' ability to review Plaintiffs' information and report such information to any applicable regulatory agencies.

85. This Order is entered based on the representations and agreements of the parties and for the purpose of facilitating discovery. Nothing herein shall be construed or presented as a judicial determination that any documents or information designated as Confidential or Highly Confidential by counsel or the parties is subject to protection under Rule 26(c) of the Federal Rules of Civil Procedure or otherwise until such time as the Court may rule on a specific document or issue.

IT IS SO ORDERED.

Dated: 5/15/18

/s/Dan Aaron Polster
Honorable Dan Aaron Polster
United States District Judge

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

IN RE: NATIONAL PRESCRIPTION OPIATE LITIGATION **This document relates to:** ***All Cases***	**Case No.: 1:17-md-2804-DAP** **Honorable Dan Aaron Polster**

EXHIBIT A TO CASE MANAGEMENT ORDER NO. _____

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND BY PROTECTIVE ORDER

The undersigned agrees:

I declare under penalty of perjury that I have read in its entirety and understand the Protective Order (CMO No. __) that was issued by the United States District Court for the Northern District of Ohio on_____, 2018 in *In re: National Prescription Opiate Litigation* (the "Protective Order").

I agree to comply with and to be bound by all the terms of the Protective Order, and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to the Protective Order to any person or entity except in strict compliance with the provisions of the Protective Order.

I further agree to submit to the jurisdiction of the United States District Court for the Northern District of Ohio for the purposes of enforcing terms of the Protective Order, even if such enforcement proceedings occur after termination of these proceedings.

Date:_____

City and State where sworn and signed:_____

Printed Name:_____

Signature:_____

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EXHIBIT 2

RECOMMENDED FOR FULL-TEXT PUBLICATION
Pursuant to Sixth Circuit I.O.P. 32.1(b)

File Name: 19a0133p.06

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

IN RE: NATIONAL PRESCRIPTION OPIATE LITIGATION.

HD MEDIA COMPANY, LLC (18-3839); THE W.P. COMPANY, LLC, dba The Washington Post (18-3860),
Intervenors-Appellants,

v.

UNITED STATES DEPARTMENT OF JUSTICE; DRUG ENFORCEMENT ADMINISTRATION,
Interested Parties-Appellees,

DISTRIBUTOR DEFENDANTS; MANUFACTURING DEFENDANTS; CHAIN PHARMACY DEFENDANTS,
Defendants-Appellees.

Nos. 18-3839/3860

Appeal from the United States District Court
for the Northern District of Ohio at Cleveland.
No. 1:17-md-02804—Dan A. Polster, District Judge.

Argued: May 2, 2019

Decided and Filed: June 20, 2019

Before: GUY, CLAY, and GRIFFIN, Circuit Judges.

COUNSEL

ARGUED: Patrick C. McGinley, Morgantown, West Virginia, for Appellant in 18-3839. Karen C. Lefton, THE LEFTON GROUP, LLC, Akron, Ohio, for Appellant in 18-3860. Sarah Carroll, UNITED STATES DEPARTMENT OF JUSTICE, Washington, D.C., for Federal Appellees. Ashley W. Hardin, WILLIAMS & CONNOLLY, LLP, Washington, D.C., for Distributor, Manufacturer, and Chain Pharmacy Appellees. **ON BRIEF:** Patrick C. McGinley, Morgantown, West Virginia, for Appellant in 18-3839. Karen C. Lefton, THE LEFTON

GROUP, LLC, Akron, Ohio, for Appellant in 18-3860. Sarah Carroll, Mark B. Stern, UNITED STATES DEPARTMENT OF JUSTICE, Washington, D.C., for Federal Appellees. Enu Mainigi, WILLIAMS & CONNOLLY, LLP, Washington, D.C., Geoffrey Hobart, COVINGTON & BURLING LLP, Washington, D.C., Mark S. Cheffo, DECHERT LLP, New York, New York, Kasper J. Stoffelmayr, BARTLIT BECK LLP, Chicago, Illinois, for Distributor, Manufacturer, and Chain Pharmacy Appellees. Bruce D. Brown, THE REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS, Washington, D.C., for Amici Curiae.

CLAY, J., delivered the opinion of the court in which GRIFFIN, J., joined. GUY, J. (pp. 27–34), delivered a separate opinion concurring in part and dissenting in part.

OPINION

CLAY, Circuit Judge. Intervenors HD Media Company, LLC ("HDM") and The W.P. Company, LLC, d/b/a the Washington Post ("Washington Post") appeal the district court Opinion and Order holding that the data in the Drug Enforcement Administration's Automation of Reports and Consolidated Orders System ("ARCOS") database cannot be disclosed by Plaintiffs pursuant to state public records requests. Intervenors also argue on appeal that the district court erred in permitting pleadings and other documents to be filed under seal or with redactions.

For the reasons set forth below, we **VACATE** the district court's Protective Order and its orders permitting the filing of court records under seal or with redactions, and we **REMAND** to permit the district court to consider entering modified orders consistent with this opinion.

BACKGROUND

This interlocutory appeal arises out of a sweeping multidistrict litigation ("MDL"). Plaintiffs in the MDL consist of about 1,300 public entities including cities, counties, and Native American tribes.[1] Defendants consist of manufacturers, distributors, and retailers of prescription opiate drugs.[2] The United States Department of Justice and Drug Enforcement Administration

[1]Plaintiffs are not involved in this appeal.

[2]Defendants are involved in this appeal as Appellees.

(collectively, "the DEA") are not parties to the underlying MDL but are involved in this appeal as Interested Parties-Appellees; HDM and the Washington Post are not parties to the MDL but are involved in this appeal as Intervenors-Appellants.

In the underlying MDL, Plaintiffs seek to recover from Defendants the costs of life-threatening health issues caused by the opioid crisis. The district court presiding over this potentially momentous MDL has repeatedly expressed a desire to settle the litigation before it proceeds to trial. (*See, e.g.*, R. 800, Opinion and Order, Page ID# 18971 (noting that the court's order will assist "in litigating (and hopefully settling) these cases").)[3] President Trump has declared the opioid epidemic a national emergency, and as the district court noted, "the circumstances in this case, which affect the health and safety of the entire country, are certainly compelling." (R. 233, Order Regarding ARCOS Data, Page ID# 1119.)

The crux of this appeal is the question of who should receive access to the data in the DEA's ARCOS database, and the related question of how disclosure of the ARCOS data would further the public's interest in understanding the causes, scope, and context of this epidemic. The ARCOS database is "an automated, comprehensive drug reporting system which monitors the flow of DEA controlled substances from their point of manufacture through commercial distribution channels to point of sale or distribution at the dispensing/retail level – hospitals, retail pharmacies, practitioners, mid-level practitioners, and teaching institutions." (R. 717-1, Martin Decl., Page ID# 16517.) The data in the database is provided by drug manufacturers and distributors[4] and includes "supplier name, registration number, address and business activity; buyer name, registration number and address; as well as drug code, transaction date, total dosage units, and total grams." (R. 717-1, Page ID# 16517.)

In an order, the district court aptly characterized the opioid epidemic that provides the tragic backdrop of this case, observing that "the vast oversupply of opioid drugs in the United

[3]Unless otherwise stated, all citations to the record refer to Case No. 1:17-md-02804-DAP.

[4]The district court noted that the ARCOS data "are not pure investigatory records compiled for law enforcement purposes, [but] simply business records of defendants; . . . the database does not include any additional DEA analysis or work-product[.]" (R. 233, Page ID# 1119.)

States has caused a plague on its citizens and their local and State governments." (R. 233, Page ID# 1124.) Continuing its plague metaphor, the district court concluded that

> Plaintiffs' request for [production of] the ARCOS data, which will allow Plaintiffs to discover how and where the virus grew, is a reasonable step toward defeating the disease. *See Buckley v. Valeo*, 424 U.S. 1, 67 [(1976)] ("Sunlight is said to be the best of disinfectants.") (quoting Justice Brandeis, *Other People's Money* 62 (1933)).

(R. 233, Page ID# 1124–25.) Despite its confidence that disclosing the ARCOS data to Plaintiffs constituted such a reasonable step, the court later rejected the argument that a further reasonable step would be to disclose the data to HDM and the Washington Post (and by extension to the public at large, who would learn about the contents of the ARCOS data via reporting by those entities).

The full quote from Justice Brandeis that the district court cited is as follows: "Publicity is justly commended as a remedy for social and industrial diseases. Sunlight is said to be the best of disinfectants; electric light the most efficient policeman." *Buckley*, 424 U.S. at 67 (quoting L. Brandeis, *Other People's Money* 62 (1933)). The question before us is whether it was reasonable for the district court to permit only Plaintiffs to examine the data in the otherwise complete darkness created by the Protective Order, or whether the court abused its discretion by denying Intervenors the opportunity to expose the data to the broad daylight of public reporting. For the reasons below, we hold that this denial was an abuse of the district court's discretion.

The events leading up to this appeal were set into motion when, in the course of the MDL, Plaintiffs subpoenaed the DEA to produce transactional data for all 50 States and several Territories from its ARCOS database. Plaintiffs and the DEA stipulated to a protective order concerning the DEA's disclosure of the ARCOS data. (R. 167, Protective Order, Page ID# 937–44.)[6] The district court adopted a Protective Order "determin[ing] that any [] disclosure [of the

[6]The DEA and Defendants argue that this Protective Order was not stipulated because Plaintiffs and the DEA proposed rival protective orders; however, these rival orders were identical with respect to every aspect of the Protective Order relevant to this appeal. (*See* R. 167, Page ID# 937–38 (discussing the differences between the DEA's and Plaintiffs' proposed protective orders).) Because no party demonstrated "good cause" for these aspects of the Protective Order and no party challenged these aspects, we treat the Protective Order as one to which the parties stipulated.

ARCOS data] shall remain confidential and shall be used only for litigation purposes or in connection with state and local law enforcement efforts." (R. 167, Page ID# 937.)

The Protective Order by its terms covered "ARCOS data" and defined this term to include "any data produced directly from DEA's ARCOS database; any reports generated from DEA's ARCOS database; any information collected and maintained by DEA in its ARCOS database; and any derivative documents that the parties or their employees, agents or experts create using ARCOS data." (R. 167, Page ID# 938.) The Order pertained to documents, as well as electronically stored information. The court restricted the use of the ARCOS data to "mediat[ing], settl[ing], prosecut[ing], or defend[ing] the above-captioned litigation," and "law enforcement purposes," specifically precluding its use "for commercial purposes, in furtherance of business objectives, or to gain a competitive advantage." (R. 167, Page ID# 939.) The Protective Order also authorized the parties to file pleadings, motions, or other documents with the court that would be redacted or sealed to the extent they contained ARCOS data. However, the court noted that if the parties could not agree to a settlement, "[t]he hearing, argument, or trial w[ould] be public in all respects" and there "w[ould] be no restrictions on the use of any document that may be introduced by any party during the trial" absent order of the court. (R. 167, Page ID# 941.) The Protective Order contemplated the return of the ARCOS data to the DEA after dismissal or entry of final judgment. Significantly for purposes of this appeal, the Protective Order stated that if Plaintiffs received requests for any ARCOS data under "applicable Public Records Laws ('Public Records Requests')," Plaintiffs would "immediately notify the DEA and Defendants of the request." (R. 167, Page ID# 942.) After notification, the DEA and Defendants would be able to challenge the Public Records Request by filing their opposition to production of the records with the court.

After entering this Protective Order and over the objections of the DEA, the district court directed the DEA to comply with Plaintiffs' subpoena by producing ARCOS data pertaining to Ohio, West Virginia, Illinois, Alabama, Michigan, and Florida for the period of 2006 through 2014. (R. 233, Order Regarding ARCOS Data, Page ID# 1104.) Specifically, the DEA was ordered to provide Plaintiffs with Excel spreadsheets identifying

> the top manufacturers and distributors who sold 95% of the prescription opiates [] to each State [] during the time period of January 1, 2006 through December 31, 2014 [] on a year-by-year and State-by-State basis, along with [] the aggregate amount of pills sold and [] the market shares of each manufacturer and distributor.

(R. 233, Page ID# 1109.)

In overruling the DEA's objections to disclosure, the district court found that the DEA had not met its burden of showing "good cause" for not disclosing the data. (R. 233, Page ID# 1111 (citing Fed. R. Civ. P. 45).) The court's reasoning is highly relevant to this appeal. Regarding the interest in disclosure of the ARCOS data, the court found that "the *extent* to which each defendant and potential defendant engaged in the allegedly fraudulent marketing of opioids, filling of suspicious orders, and diversion of drugs . . . can be revealed only by all of the data." (R. 233, Order, Page ID# 1118.) Regarding the interests in nondisclosure of the data, the court rejected the arguments that "disclosure would reveal investigatory records compiled for law enforcement purposes [and] interfere with enforcement proceedings" and that "disclosure would violate DOJ's policy which prohibits the release of information related to ongoing matters." (R. 233, Page ID# 1119, 1120 (quoting 1:17-op-45041-DAP, R. 101, Page ID# 696, 698).) The court rejected these arguments for three reasons:

> First, Plaintiffs seek ARCOS data with an end-date of January 1, 2015. Given that the most recent data is over three years old, it is untenable that exposure of the data will actually or meaningfully interfere with any ongoing enforcement proceeding. Second, the ARCOS data are not pure investigatory records compiled for law enforcement purposes. Rather, the data is simply business records of defendants; these "[c]ompanies are legally required to submit the information" to ARCOS, the database does not include any additional DEA analysis or work-product, and the records are used for numerous purposes besides law enforcement. Indeed, Plaintiffs assert that part of the reason for the opioid epidemic is *lack* of law enforcement. And third, simply saying that disclosure of ARCOS records dating back to 2006 would detrimentally affect law enforcement does not make it so.

(R. 233, Page ID# 1119 (citation omitted).)

The court similarly rejected an argument that producing the data would cause Defendants "substantial competitive harm" by revealing "details regarding the scope and breadth of [each manufacturer's and distributor's] market share." (R. 233, Page ID# 1120 (alterations in original)

(quoting 1:17-op-45041-DAP, R. 101, Page ID# 697).) The court rejected this objection to disclosure because "the assertion was conclusory and . . . market data over three years old carried no risk of competitive harm." (R. 233, Page ID# 1120.)

The DEA complied with the court's order and produced the relevant spreadsheets. Production of the ARCOS data allowed Plaintiffs to identify and add as defendants previously-unknown entities involved in the manufacturing and distribution of opioids and to identify and remove as defendants improperly-named entities. The court noted that other benefits of the ARCOS data included "allowing [the litigation] to proceed based on meaningful, objective data, not conjecture or speculation" and "providing invaluable, highly-specific information regarding historic patterns of opioid sales." (R. 397, Secord Order Regarding ARCOS Data, Page ID# 5323.) To expand upon these benefits, the court ordered the DEA to produce further ARCOS data pertaining to "all of the States and Territories" for the same period of 2006 to 2014, with such disclosure being subject to the Protective Order. (R. 397, Page ID# 5323.)

Once the complete production of the ARCOS data occurred, HDM filed a West Virginia Freedom of Information Act request with the Cabell County Commission seeking the ARCOS data that the county received as a Plaintiff in this litigation, and the Washington Post filed similar public records requests with Summit and Cuyahoga counties in Ohio (also Plaintiffs in this litigation). Pursuant to the Protective Order, the three counties notified the district court, Defendants, and the DEA of the requests, and the DEA and Defendants objected to them.

The district court granted HDM and the Washington Post limited Intervenor status "for the limited purpose of addressing their Public Records Requests." (R. 611, Briefing Order, Page ID# 14995.) The arguments in the subsequent briefing as to why the Protective Order should or should not be modified to allow disclosure of the ARCOS data pursuant to Intervenors' requests largely tracked the arguments that had been made on the DEA's earlier objection to disclosing the ARCOS data to Plaintiffs: Defendants argued that the ARCOS data "is sensitive from the perspective of both the pharmacies and distributors because it is confidential business information, and it is sensitive from the perspective of DEA because it is crucial to its law-enforcement efforts." (R. 665, Defendants' Br. Opposing Disclosure, Page ID# 16012.) Intervenors argued that the risk of harm to Defendants and the DEA was speculative and

conclusory, and that the public had a compelling interest in receiving "a more complete and accurate story" of a national emergency, which the ARCOS data would allow Intervenors to tell. (R. 718, Wash. Post Br. Supporting Disclosure, Page ID# 16534; *see also* R. 725, HDM Br. Supporting Disclosure, Page ID# 16601–16.)[6] In an Opinion and Order, the district court held that the public records requests must be denied because the requests were barred by the court's Protective Order and Defendants and the DEA had demonstrated "good cause" for the Protective Order's application to such requests, as required under Rule 26(c)(1). (R. 800, Page ID# 18978.) The court specified that its holding extended to all present or future public records requests for the ARCOS data filed with any of the 1,300 public entity Plaintiffs in the underlying litigation.

In its analysis, the district court adopted language from Defendants' briefing, noting that the ARCOS data "is sensitive to pharmacies and distributors because it is confidential business information; and it is sensitive from the DEA's perspective because it is crucial to law enforcement efforts." (R. 800, Page ID# 18979–80.) The court further noted that the Freedom of Information Act ("FOIA") "exempts from public disclosure any confidential commercial information, the disclosure of which is likely to cause substantial competitive harm." (R. 800, Page ID# 18980 (citing 5 U.S.C. § 552(b)(4) and *Canadian Commercial Corp. v. Dep't of Air Force*, 514 F.2d 37, 39 (D.C. Cir. 2008)).) It also found relevant that FOIA exempts "records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement information could reasonably be expected to interfere with enforcement proceedings and criminal prosecutions." (R. 800, Page ID# 18981 (citing 5 U.S.C. § 552(b)(7)).) Finally, the court concluded that the ARCOS data "is not a record generated by the Counties" that would be subject to state public records requests. (R. 800, Page ID# 18981.)

Intervenors appealed the Opinion and Order to this Court.

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[6]The DEA initially filed its brief in support of objections with "heavy[] redact[ions]," and the Washington Post moved to access the unredacted brief. (R. 800, Page ID# 18972.) Before the district court ruled on this motion, the DEA filed an amended brief with fewer redactions. The district court ultimately dismissed the Washington Post's motion as moot, holding that the DEA's amended brief had "removed all but necessary redactions." (R. 800, Page ID# 18973.)

DISCUSSION

Because the DEA challenges this Court's jurisdiction to hear this appeal, we begin with that issue. We will then address whether the district court abused its discretion in finding "good cause" to support its Protective Order forbidding Plaintiffs to disclose the ARCOS data pursuant to state public records requests. Finally, we will address whether the district court erred in allowing court records to be filed under seal or with redactions.

I. Jurisdiction

We determine our own jurisdiction de novo. *Abu-Khaliel v. Gonzales*, 436 F.3d 627, 630 (6th Cir. 2006).

While Defendants concede that Intervenors can appeal the district court order, the DEA disagrees, arguing that this Court lacks jurisdiction over this appeal because it does not concern a final order.

Under 28 U.S.C. § 1291, this Court "ha[s] jurisdiction of appeals from all final decisions of the district courts of the United States." The DEA argues that the district court's Opinion and Order is not a final order under § 1291 because "[t]he district court has not entered judgment in the MDL from which these consolidated appeals arise; the litigation instead remains active." (DEA Br. 27.) For purposes of § 1291, a "final decision" "does not necessarily mean the last order possible to be made in a case." *Gillespie v. U.S. Steel Corp.*, 379 U.S. 148, 152 (1964). Rather, "the requirement of finality is to be given a 'practical rather than a technical construction.'" *Id.* (quoting *Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541, 546 (1949)).

The collateral order doctrine first identified in *Cohen* gives content to the finality requirement. Pursuant to that doctrine, an order that does not terminate a case may be appealed, but the order "(1) must be 'conclusive' on the question it decides, (2) must 'resolve important questions separate from the merits' and (3) must be 'effectively unreviewable' if not addressed through an interlocutory appeal." *Swanson v. DeSantis*, 606 F.3d 829, 833 (6th Cir. 2010) (quoting *Mohawk Indus., Inc. v. Carpenter*, 558 U.S. 100, 106 (2009)). Further, "[t]he justification for immediate appeal must . . . be sufficiently strong to overcome the usual benefits of deferring appeal until litigation concludes." *Id.* (quoting *Mohawk Indus.*, 558 U.S. at 107).

The DEA acknowledges that this Court has found "collateral-order jurisdiction over an appeal by a media company that was denied access to sealed court filings and transcripts," (DEA Br. 27 (discussing *Nat'l Broad. Co. v. Presser*, 828 F.2d 340 (6th Cir. 1987))), but it suggests that intervening precedent has undermined that decision. In support of that proposition, the DEA cites broad statements in which the Supreme Court "has repeatedly clarified the 'modest scope' of the collateral-order doctrine." (DEA Br. 28 (citing *Will v. Hallock*, 546 U.S. 345, 350 (2006)).) However, this is not a post-*Presser* development: from the collateral order doctrine's inception, the Supreme Court has acknowledged that the doctrine only applies to a "small class" of decisions. *Cohen*, 337 U.S. at 546.

Presser is on all fours with this case, and the DEA cites no persuasive reason to stray from this binding precedent. In *Presser*, NBC sought media access to sealed records relating to the federal government's ongoing prosecution of Jackie Presser. 828 F.2d at 341. After the district court denied NBC's application for access to the documents, NBC appealed to this Court the district court's memorandum and order directing that all documents remain under seal. *Id.* at 341–43. The DEA is correct that this Court did not provide much analysis. Nevertheless, it unequivocally held, "Although all of these orders are interlocutory with respect to the underlying case, we have jurisdiction of this appeal pursuant to 28 U.S.C. § 1291 [because] NBC was permitted to intervene in the district court, and the orders satisfy the 'collateral order doctrine' set forth in *Cohen*[.]" *Id.* at 343 (citing *Cohen*, 337 U.S. 541). Moreover, in *Presser*, this Court cited *Application of The Herald Co.*, in which the Second Circuit collected cases where federal courts of appeals found appellate jurisdiction to decide whether to grant intervenors access to evidence in pending litigation. *Id.*; *see Application of The Herald Co.*, 734 F.2d 93, 96 (2d Cir. 1984) (collecting cases).

Indeed, little analysis is necessary to demonstrate that Intervenors meet the three *Swanson* requirements. First, the district court's Opinion and Order was conclusive on the question of public records requests for the ARCOS data, *see Swanson*, 606 F.3d at 833, in that its decision applied to all present or future public records requests for the ARCOS data filed with any of the 1,300 public entity Plaintiffs in the underlying litigation and no further consideration of this issue will be possible. Further, the broad scope of the order provides "sufficiently strong

[justification] to overcome the usual benefits of deferring appeal." *Swanson*, 606 F.3d at 833 (quoting *Mohawk Indus.*, 558 U.S. at 107).

The order also plainly resolved important questions separate from the merits of the litigation, satisfying the second *Swanson* requirement. *See id.* at 833. The final requirement is that the order "be 'effectively unreviewable' if not addressed through an interlocutory appeal." *Id.* (quoting *Mohawk Indus.*, 558 U.S. at 106). The DEA argues that neither the first nor third element is satisfied because there remains a possibility of trial, at which the ARCOS data may become public. The possibility of trial was certainly also present in *Presser*, and would seem to be present in virtually every case involving an interlocutory appeal. Thus, contrary to the DEA's assertion, the possibility of trial cannot be a categorical bar to appellate jurisdiction pursuant to the collateral order doctrine. Further, given the district court's strong desire for settlement, disclosure of the ARCOS data at trial in this case is not certain or even necessarily likely.

Because Intervenors' stake in the litigation pertains *only* to disclosure of the ARCOS data and because the district court's Opinion and Order finally and conclusively decides that issue, we possess jurisdiction over this appeal of the Opinion and Order.

II. "Good Cause" for the Protective Order

This Court reviews the question of whether a district court's protective order was premised upon a showing of good cause for an abuse of discretion. *The Courier-Journal v. Marshall*, 828 F.2d 361, 364 (6th Cir. 1987).

A protective order shall only be entered upon a showing of "good cause" by the party seeking protection. Fed. R. Civ. P. 26(c)(1). Rule 26(c) contemplates the issuance of protective orders "to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense." Fed. R. Civ. P. 26(c)(1). To show good cause for a protective order, the moving party is required to make "a particular and specific demonstration of fact, as distinguished from stereotyped and conclusory statements." *Nemir v. Mitsubishi Motors Corp.*, 381 F.3d 540, 550 (6th Cir. 2004) (quoting *Gulf Oil Co. v. Bernard*, 452 U.S. 89, 102 n.16 (1981)). A district court abuses its discretion where it "ma[kes] neither factual findings nor legal arguments supporting the need for" the order. *Gulf Oil Co.*, 452 U.S. at 102. Despite these

formal requirements, "it is common practice for parties to stipulate to [protective] orders." *Procter & Gamble Co. v. Bankers Tr. Co.*, 78 F.3d 219, 229 n.1 (6th Cir. 1996) (Brown, J., dissenting). Protective orders "are often blanket in nature, and allow the parties to determine in the first instance whether particular materials fall within the order's protection." *Shane Grp., Inc. v. Blue Cross Blue Shield of Mich.*, 825 F.3d 299, 305 (6th Cir. 2016).

Because parties may stipulate to a protective order, courts sometimes permit intervenors to challenge protective orders. *See, e.g.*, *Presser*, 828 F.2d at 341. If an intervenor challenges a protective order, "the burden of proof will remain with the party seeking protection when the protective order was a stipulated order and no party had made a 'good cause' showing." *Phillips ex rel. Estates of Byrd v. Gen. Motors Corp.*, 307 F.3d 1206, 1211 n.1 (9th Cir. 2002).

In this case, the parties stipulated to a protective order that would prevent Plaintiffs from disclosing the ARCOS data to the media, and the district court did not make a good cause finding on this issue before entering its Protective Order. The dissent disputes that the parties stipulated to the relevant aspects of the Protective Order, arguing that "the parties energetically fought over the terms of the protective order and never, in fact, fully agreed to all its terms." (Dissent at 31.) We disagree. It is true that during the parties' initial negotiations over disclosure of the ARCOS data (outside the presence of the district court), Plaintiffs "opposed the entry of a broad protective order and recommended that the data be disclosed leaving to the discretion of the Court the ability to share data and/or reports generated therefrom with . . . the media." (R. 137, Status Report, Page ID# 742.) However, the scant treatment that this issue receives in the parties' status reports on their disclosure negotiations (compared with issues relating to the scope and content of the data to be disclosed) suggests that this was not a central issue in the parties' discussions. More importantly, at a hearing after these negotiations—which represented the first opportunity Plaintiffs had to raise before the district court the issue of public disclosure of the ARCOS data—Plaintiffs declined to raise this issue. In fact, it does not appear that the district court was even *aware* that this issue was disputed, stating, "No one is proposing making all this publicly available." (R. 156, Hearing Tr., Page ID# 566.) It is a grave mischaracterization to state that Plaintiffs "energetically fought" over the issue of public disclosure when they neither raised it before the district court nor even objected when the district court stated that the issue

was not disputed. Plaintiffs may have suggested the possibility of public disclosure in initial negotiations with Defendant, but they failed to ever raise this issue before the district court and instead stipulated to a protective order that barred public disclosure.

Because the issue of public disclosure of the ARCOS data was never squarely raised before the district court, the court never had occasion to find that Defendants or the DEA had made "a particular and specific demonstration of fact" justifying the Protective Order's permanent blanket ban on such disclosure. *Nemir*, 381 F.3d at 550. The dissent points to conclusory statements by the district court that "[n]othing is going to be revealed to the media unless there's a trial," as though these statements amounted to a good cause finding. (Dissent at 30 (quoting R. 156, Page ID# 861).) As mentioned, it is unclear that the district court was aware that this issue was disputed at all, so it seems unlikely the court intended these statements to represent a finding of good cause for this aspect of the Protective Order. Moreover, even if the district court intended to make a good cause finding, it failed to do so because it "made neither factual findings nor legal arguments supporting the need for" this aspect of the Protective Order, which it must do in order "to provide a[] record useful for appellate review." *Gulf Oil Co.*, 452 U.S. at 102.

Accordingly, although Intervenors challenge the Protective Order, the burden of demonstrating good cause not to disclose the ARCOS data remains with the DEA and Defendants (as the parties seeking protection). *See Phillips*, 307 F.3d at 1211 n.1.

Despite the "substantial latitude" afforded to district courts during the discovery process, *see Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 36 (1984), we hold that the district court abused its discretion in finding that good cause existed to permanently and categorically prevent the ARCOS data from being disclosed pursuant to public records requests. In considering whether good cause for protection exists, we balance the interests in favor of disclosure against the interests in favor of nondisclosure. *See The Courier-Journal*, 828 F.2d at 367; *Signature Mgmt. Team, LLC v. Doe*, 876 F.3d 831, 838 (6th Cir. 2017). Accordingly, we will balance Intervenors' interest in reporting on the ARCOS data and the public interest in learning what such reporting would reveal against Defendants' and the DEA's interest in keeping the ARCOS data secret. We will also bear in mind that it was the burden of Defendants and the DEA to

demonstrate good cause with particularity. *See Nemir*, 381 F.3d at 550; *Phillips*, 307 F.3d at 1211 n.1.

Ironically, the best evidence that good cause did *not* exist for the Protective Order comes from the district court's own balancing of the interests in disclosure versus nondisclosure.

In ordering the DEA to disclose the ARCOS data to Plaintiffs, the district court specifically held that the DEA did *not* meet its burden of showing "good cause" not to comply with Plaintiffs' subpoena for the ARCOS data. (R. 233, Page ID# 1111 (citing Fed. R. Civ. P. 45).) The court noted that the data "provid[es] invaluable, highly-specific information regarding historic patterns of opioid sales," (R. 367, Page ID# 5323), and emphasized that the role each Defendant played in the crisis "can be revealed *only by all of the data*." (R. 233, Page ID# 1118 (emphasis added).) The district court, comparing the opioid crisis to a plague, even stated that because it is possible to "discover how and where the virus grew" by studying the ARCOS data, disclosure of the ARCOS data "is a reasonable step toward defeating the disease." (R. 233, Page ID# 1124–25.)

In the same order concerning disclosure to Plaintiffs, the district court rejected Defendants' and the DEA's arguments that there was "good cause" for nondisclosure. The court specifically rejected the DEA's arguments that disclosing the data would interfere with law enforcement interests. Emphasizing the speculative nature of the harm given the age of the data, the court concluded that "it is untenable that exposure of the data will actually or meaningfully interfere with any ongoing enforcement proceeding." (R. 233, Page ID# 1119.)[7] In sum, the district court found the DEA's stated law enforcement interests to be vague and attenuated. (*See* R. 233, Page ID# 1119 ("[S]imply saying that disclosure of ARCOS records dating back to 2006 would detrimentally affect law enforcement does not make it so.").) The court likewise rejected the argument that producing the data would cause Defendants competitive harm, explaining that "the assertion was conclusory and . . . market data over three years old carried *no risk* of competitive harm." (R. 233, Page ID# 1120 (emphasis added).)

[7]The district court even noted as relevant that "Plaintiffs assert that part of the reason for the opioid epidemic is *lack* of law enforcement." (R. 233, Page ID# 1119.)

Between the time it ordered the DEA to produce the ARCOS data to Plaintiffs and the time it denied Intervenors' requests for the data, the district court seems to have done a complete about-face concerning the relevant interests at stake. It is true that this about-face might be explained in part by the different interests at stake when disclosure is made only to parties to a case pursuant to a protective order, as compared to third parties that intend to publicly report on the disclosed information. *Cf. Shane Grp.*, 825 F.3d at 305 (recognizing that there is a lower requirement for protective orders relating to discovery, during which secrecy is permitted, than for orders to seal court records, which carry a strong presumption of openness).[8] In other words, the fact that the district court ordered the DEA to disclose the ARCOS data to Plaintiffs pursuant to the Protective Order does not necessarily imply that the same considerations would require disclosing that data to Intervenors and, by extension, the public.

However, it is readily apparent from the record that the district court's analysis in its first order *did* take into account the public's interest in obtaining the ARCOS data and the interests of Defendants and the DEA in keeping this data from the public.[9] If the district court ordered the DEA to disclose the ARCOS data with the understanding that it would only be seen by Plaintiffs

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[8]Intervenors argue that this Court's line of cases emphasizing the "strong presumption in favor of openness in the courtroom" supports their position. *Brown & Williamson Tobacco Corp. v. F.T.C.*, 710 F.2d 1165, 1179 (6th Cir. 1983); *see Signature Mgmt. Team, LLC v. Doe*, 876 F.3d 831, 836 (6th Cir. 2017); *In re Knoxville News-Sentinel Co.*, 723 F.2d 470, 476 (6th Cir. 1983). However, the strong presumption of openness *in* the courtroom and for court records does not apply to the discovery process, which occurs *before* the parties get to the courtroom. *See Shane Grp.*, 825 F.3d at 305. These cases are thus inapplicable to this issue—except to the extent that they demonstrate a more generalized, but less intense, public interest in the disclosure of documents related to litigation. Nevertheless, while there may not be a strong presumption in favor of disclosure in the discovery context, the party seeking nondisclosure still must demonstrate "good cause" for a protective order "specifying terms . . . for the disclosure or discovery." Fed. R. Civ. P. 26(c)(1).

[9]Nor was this the first time that the district court had raised the risk of public disclosure of the ARCOS data notwithstanding the Protective Order. At the same hearing where the district court stated that any protective order it would enter would limit the use of the ARCOS data to "two purposes; litigation, law enforcement," it is clear that the court was also concerned with the potential for harm if the data leaked. (R. 156, Page ID# 861.) For example, before it was informed that the location of warehouses in which large quantities of drugs were stored was already publicly available, the district court was greatly concerned that this information would be part of the ARCOS data being disclosed to Plaintiffs. (R. 156, Page ID# 836–38.) The hearing transcript makes clear that the district court's concerns stemmed from the possibility that a criminal could steal drugs from these warehouses if he knew their locations. (*See* R. 156, Page ID# 836–38, 865, 888.) Obviously, if the Protective Order guaranteed that no one other than the parties would access the data, such concerns would be completely unfounded. The fact that the district court expressed concerns about the risk of public disclosure well before its order that the DEA disclose the ARCOS data to Plaintiffs provides strong evidence that these concerns were on the district court's mind when it considered that order as well.

and only used for litigation purposes, there would have been no reason to write that "market data over three years old carried *no risk* of competitive harm." (R. 233, Page ID# 1120 (emphasis added).) Nor would it have been necessary to state that "[g]iven that the most recent data is over three years old, it is untenable that exposure of the data will actually or meaningfully interfere with any ongoing enforcement proceeding." (R. 233, Page ID# 1119.) These statements speak to the interests that Defendants and the DEA had in keeping the ARCOS data away from *public* eyes—not just the eyes of Plaintiffs. The dissent argues that we take these quotes out of context; however, the totality of the district court's balancing analysis supports our position and nothing quoted in the dissent suggests otherwise.

Given the balancing of interests in its order compelling the DEA to disclose the ARCOS data to Plaintiffs, it is bizarre that the district court could later hold that the ARCOS data at issue "is sensitive to pharmacies and distributors because it is confidential business information; and it is sensitive from the DEA's perspective because it is crucial to law enforcement efforts." (R. 800, Page ID# 18979–80.) The district court repeatedly expressed its desire that the underlying litigation settle before proceeding to trial. The court also warned the parties when it was considering a protective order that if the case went to trial, the ARCOS data would likely become public. (*See* R. 156, Page ID# 861 ("Nothing is going to be revealed to the media unless there's a trial. If there's a trial, obviously trials in our country are public. Hopefully there will be no trials.").) These statements suggest that at least part of the reason for the district court's about-face on what interests Defendants and the DEA have in nondisclosure of the ARCOS data might have been a desire to use the threat of publicly disclosing the data as a bargaining chip in settlement discussions. If this was a motivation for its holding, then the district court abused its discretion by considering an improper factor. *See Just Film, Inc. v. Buono*, 847 F.3d 1108, 1115 (9th Cir. 2017) ("An abuse of discretion occurs when the district court, in making a discretionary ruling, relies upon an improper factor[.]" (quoting *Parra v. Bashas', Inc.*, 536 F.3d 975, 977–78 (9th Cir. 2008))). And even if this was not part of the district court's motivation, it appears that the court abused its discretion by acting irrationally. *See United States v. Swift*, 809 F.2d 320, 323 (6th Cir. 1987) (noting that a court of appeals should "uphold the trial judge's exercise of discretion unless he acts arbitrarily or irrationally" (quoting *United States v. Robinson*, 560 F.2d 507, 515 (2d Cir. 1977))).

Further, the district court was largely correct in its initial analysis of the relevant interests in this case: Intervenors, as representatives of the public, have a substantial interest in disclosure of the ARCOS data, while the DEA and Defendants have only a lesser interest in avoiding potential harms that can be avoided by narrower, less categorical means. The district court correctly observed that the ARCOS data "provid[es] invaluable, highly-specific information regarding historic patterns of opioid sales." (R. 397, Page ID# 5323.) The ARCOS data will aid us in understanding the full enormity of the opioid epidemic and might thereby aid us in ending it.

Intervenors' reporting bears out these conclusions. HDM was able to receive some ARCOS data from West Virginia's Attorney General in a previous, unrelated litigation. This data included "hundreds of printed pages of ARCOS data spreadsheets that revealed the number of hydrocodone and oxycodone dosage units sold to every retail pharmacy in West Virginia from 2007 to 2012." (HDM Br. 9.) That data was used in HDM's extensive reporting on the opioid crisis, which was awarded a Pulitzer Prize for exposing the causes, context, and scope of the epidemic. Reporting by Intervenors also prompted a committee of the House of Representatives to investigate and issue a report on the opioid epidemic. *See* Energy and Commerce Committee, *Red Flags and Warning Signs Ignored: Opioid Distribution and Enforcement Concerns in West Virginia* (2018), available at https://www.ruralhealthinfo.org/assets/2616-9819/Opioid-Distribution-Report-FinalREV.pdf.

The DEA and Defendants attempt to undermine the importance of the ARCOS data in educating the public about and drawing attention to the opioid crisis. Defendants argue that Intervenors "cannot explain why they need transaction-level data . . . to educate the public about the depth and magnitude of the prescription drug crisis" when "publicly-available reports [provide] the volume of opioids distributed per quarter in any three-digit zip code prefix." (Defendants Br. 34, 35 (citation omitted).) Intervenors respond:

> The aggregate data [] identifies narcotics only by weight and the number of grams that were shipped to a generalized geographic area; it does not identify the number of pills that were shipped, the type of pills that were shipped, the dosage units of the pills, the pharmacy that ordered the pills, or the manufacturers and the distributors that shipped them. This is all extraordinarily relevant information,

> essential to learn how, in little more than a decade, routine drug abuse escalated into the worst drug epidemic in American history.

(Wash. Post Reply Br. 3.) Intervenors convincingly argue that "[t]he dosage of the pill is of immense public interest, as people want to know whether their neighborhood was supplied with 5 mg oxycodone pills, such as Percocet, which are generally prescribed for minor dental procedures and routine injuries, or 30 mg oxycodone tablets, which have been shown to be the most abused and diverted pills[.]" (Wash. Post Reply Br. 2.)

Defendants' argument that aggregate data is sufficient might be more availing if there were no direct, tangible evidence of the compelling nature of specific transactional data. But, as Intervenors point out, specific transactional data has proved extremely effective and consequential in calling attention to the horrors of the opioid crisis. For example, in a report on the opioid crisis in West Virginia, the Energy and Commerce Committee of the United States House of Representatives noted that it became interested in the crisis after reading reporting in the Charleston Gazette-Mail (part of HDM) and the Washington Post. Energy and Commerce Committee Report, *supra* at 4. Not only did the Committee specifically reference reporting by Intervenors, it called out for special attention details from their reporting, like one instance in which "distributors sent more than 20.82 million doses of hydrocodone and oxycodone to two pharmacies located four blocks apart in a town of approximately 3,000 people" and another in which "a single pharmacy in a town of 406 people received nearly 13 million doses of hydrocodone and oxycodone from all distributors between 2006 and 2012." Energy and Commerce Committee Report, *supra* at 100. The available aggregate data does not provide such granular detail as the number of doses sent to individual pharmacies, meaning that this reporting would have been impossible without the ARCOS data. Thus, Intervenors have presented substantial evidence of the significant public interest in transactional-level data.

By contrast, as the district court recognized, most of Defendants' and the DEA's asserted interests pertain only to the potential for future harm. In its order requiring disclosure of the ARCOS data to Plaintiffs, the district court concluded that these harms were vague and

speculative, even suggesting that there was *no* law enforcement interest in the data due to its age.[10]

We need not find, as the district court seemed to, that Defendants' and the DEA's interests carry no weight in order to hold that there was not "good cause" to protect the ARCOS data from disclosure pursuant to state public records requests. It is true that some of the identified harms are not sufficiently particularized to carry much weight, like the DEA's vague assertion that disclosing the ARCOS data "would undermine DEA's mission of investigating and prosecuting misconduct involving controlled substances." (DEA Br. 44.) How this interest would be impeded by the public release of the data is not made clear.

The law enforcement interests in the ARCOS data identified in the declaration of DEA Assistant Administrator John J. Martin are somewhat more concrete. Martin notes, "Frequently, DEA investigations remain open for multiple years .... Therefore, it is not unusual for ARCOS data first generated a decade ago to continue to have relevance in ongoing investigations and enforcement actions." (R. 717-1, Page ID# 16519.) But insufficient explanation is given as to how law enforcement interests are furthered by permanently and categorically keeping confidential data that is at least four years old. Even accepting Martin's statements, it is undeniable that data becomes less valuable as it ages—particularly in the case of ARCOS data, because there is a five-year statute of limitations on controlled substance offenses. 18 U.S.C. § 3282.

Moreover, the interests set forth in Martin's declaration also suffer from a lack of particularity. In a redacted portion of his declaration, Martin notes an example of one ongoing case that the disclosure of the ARCOS data could impede: "Public release of ARCOS data that is the subject of this pending action would be detrimental to DEA's prosecution of [an administrative action involving DEA's efforts to revoke a distributor's DEA Certificate of

[10]The DEA asserts that the district court reconsidered its position on the law enforcement interests at issue after reading the declaration of DEA Assistant Administrator John J. Martin. (DEA Br. 41 (citing R. 717-1, Martin Decl. Page ID# 16519.) There is no record evidence for the DEA's assertion, as the district court did not cite or refer to the Martin declaration in its Opinion and Order. Further, it would be surprising if this was the case, since the declaration asserted substantially the same points that the DEA had made in all of its previous briefing—points which the district court had rejected.

Registration] because DEA intends to provide testimony regarding ARCOS data in this action." (R.662-1, SEALED Martin Decl., Page ID# 15973.)[11] It is not clear what this statement means or what we are supposed to take from it. Martin does not attempt to explain what the ARCOS data in the action will evidence or the nature of the testimony about the data. If the testimony will simply establish how the ARCOS database operates, for example, no law enforcement interest would be compromised by disclosing the ARCOS data to Intervenors. Martin's declaration is simply too vague in its evaluation of the law enforcement interests at issue to demonstrate "good cause" for a blanket, permanent Protective Order. Similarly, the one-page report included with Martin's declaration that provides the number of "open cases from 2006 to 2014 involving opioids" without explaining the nature or status of any of those cases, (R. 663-1, Page ID# 16001, 16005), fails to establish "good cause" for the Protective Order.

It is important to emphasize that the ARCOS data "are not pure investigatory records compiled for law enforcement purposes, [but] simply business records of defendants; . . . the database does not include *any* additional DEA analysis or work-product[.]" (R. 233, Page ID# 1119 (emphasis added).) At oral argument, the DEA was questioned about why a permanent blanket ban on disclosure was needed rather than a narrower protective order that would permit the DEA to object to disclosure of specific pieces of ARCOS data as they relate to specific investigations. The DEA responded that "if we delete [data relating to a specific investigation] from [the ARCOS] database and give [Intervenors] the data without those things, I suspect that [a] manufacturer [whose data was not included in the disclosure] will say, 'Huh, the Washington Post published this dataset that removed everything that was related to an ongoing investigation and I see that I'm not on there, so maybe I'm the subject of an ongoing investigation.'" (May 2, 2018, Oral Arg. 43:40–44:00.) However, it is difficult to understand this response given the

[11]We quote this portion of the declaration even though it was redacted in the unsealed court filing because, for reasons discussed in the following section, it was error for the district court to allow portions like this to be filed under seal. In brief, there is a "strong presumption in favor of openness" of court records, which include court filings (like the DEA Brief in Support of Objections to Disclosure of ARCOS Data) and exhibits thereto (like the Martin declaration). *See Shane Grp.*, 825 F.3d at 305. "Only the most compelling reasons can justify non-disclosure of judicial records." *Id.* at 305 (quoting *Knoxville News-Sentinel Co.*, 723 F.2d at 476). The quoted sentence from Martin's declaration contains only very general information about an ongoing administrative action into an unidentified distributor. We reject the notion that compelling reasons justified redacting this sentence and therefore quote it without redaction. *See id.* at 303–04 (quoting from a sealed report in an opinion vacating the district court's orders to seal court records).

nature of the ARCOS data. This response seems to assume that the DEA is unable to disclose data about a manufacturer under investigation—but it is unclear why this should be the case. If data about a manufacturer is included in the ARCOS data, it is only because the manufacturer (or an entity with which it transacted) kept the data as a business record and submitted it to the DEA. There would therefore be no compelling need for the DEA to *hide* the information from the very manufacturer that likely provided the information to the DEA. This is not to say that there could never be a law enforcement interest in keeping ARCOS data secret, but the DEA has not adequately explained why the data should be subject to a permanent blanket ban on disclosure, rather than a narrower protective order that would allow the DEA to object to disclosure as specific investigations may require.

Further, the DEA's argument as to the risk to law enforcement interests if the data is disclosed is undermined to some degree by the DEA's failure to point to any harm caused by HDM's reporting on the ARCOS data it received from the West Virginia Attorney General in 2016. Instead of doing so, the DEA asserts, without further explanation, that "HD[M] is in no position to assess the harm that publication of sensitive federal law-enforcement data may have done to DEA's law-enforcement activities." (DEA Br. 45.) The DEA argues that this prior disclosure "says nothing about the jeopardy that a much broader disclosure would create for the federal government's law-enforcement activities." (DEA Br. 45.) We disagree. At the very least, the fact that this disclosure occurred and the DEA cannot point to any resulting harm demonstrates that there is little chance of *imminent* harm from disclosure of the ARCOS data. In sum, the DEA's stated law enforcement interests do not seem very weighty, given that they primarily pertain to potential future harms that could be avoided by limited redactions to those particular portions of the ARCOS data that correspond to specific ongoing investigations.[12]

Last, but importantly, the DEA has never explained why it could not simply redact the portions of the ARCOS data that relate to this and other ongoing investigations. *Cf. Madel v.*

[12]The DEA also argues that allowing Intervenors to obtain the ARCOS data would be to allow them to get around the requirements of the Freedom of Information Act. However, for the reasons stated above, we do not believe that disclosing the ARCOS data, particularly with the option of partial redaction, "could reasonably be expected to interfere with enforcement proceedings," which means that the data would be available under FOIA. 5 U.S.C. § 552(b)(7).

U.S. Dep't of Justice, 784 F.3d 448, 453 (8th Cir. 2015) (holding that the DEA could "not automatically withhold an entire document when some information is exempt" from production). Our "good cause" inquiry takes into account "[t]he scope of the protective order" as it relates to the relevant interests. *In re Ohio Execution Protocol Litig.*, 845 F.3d 231, 238 (6th Cir. 2016); *see also The Courier-Journal*, 828 F.2d at 366. Because the Protective Order in this case prevented any disclosure of any ARCOS data by any Plaintiff, and because this ban on disclosure would remain in effect in perpetuity, the DEA and Defendants faced a high hurdle in demonstrating "good cause" for these extreme restrictions.

With respect to Defendants' interests, the district court correctly noted the great "public interest in solving the opioid crisis" and held that these and other interests "outweigh[ed] any slight risk of anticompetitive harm." (R. 199, Order, Page ID# 1008–09.) The ARCOS data does not contain sensitive information like trade secrets, and the age of the data makes the risk of anticompetitive harm slight and speculative. *See United States v. Int'l Bus. Machines Corp.*, 67 F.R.D. 40, 49 (S.D.N.Y. 1975) (rejecting a business's request for continued protection of its commercial data, all of which was at least two years old, because "it reveals directly little, if anything at all, about [the business's] current operations" and because "the value of this data to [] competitors is speculative."). Defendants have not alleged any harm resulting from the publication of the ARCOS data HDM received from the West Virginia Attorney General in 2016. Defendants underscore the speculative nature of the harm they assert in stating that "[i]t likely is too soon in any event to draw firm conclusions about the competitive harm caused by those earlier disclosures." (Defendants' Br. 31.) Defendants have offered no new reasons on appeal to question the district court's analysis of their interest in nondisclosure,[13] and we

[13]Instead, Defendants argue that the district court was correct in holding that "the ARCOS data is not a record generated by the Counties that are, or may be, subject to state public records requests." (R. 800, Page ID# 18981.) It is not clear why the district court found this relevant to its inquiry; there is no reason for this Court or any other federal court (rather than the courts of Ohio and West Virginia) to decide the scope of those state laws. Further, the text of both state statutes strongly suggests that the data would be subject to the public records request. *See* Ohio Rev. Code § 149.43(A)(1) ("'Public record' means records kept by any public office, including, but not limited to, state, county, city, village, township, and school district units[.]"); W. Va. Code § 29B-1-2(5) ("'Public record' includes any writing containing information prepared or received by a public body, the content or context of which, judged either by content or context, relates to the conduct of the public's business."). The fact that the Attorney General of West Virginia previously provided ARCOS data to HDM is further evidence that the West Virginia public records law covers the data.

conclude that Defendants' interests are far outweighed by the specific, concrete interest Intervenors and the public have in disclosure of the ARCOS data.

The reporting on the ARCOS data that HDM received from the West Virginia Attorney General resulted in no demonstrated commercial harm to Defendants and no demonstrated interference with law enforcement interests; but this reporting did result in a Pulitzer Prize, a Congressional Committee report, and a broader public understanding of the scope, context, and causes of the opioid epidemic. Further disclosure of the ARCOS data is warranted because the DEA and Defendants have failed to demonstrate "good cause" not to disclose the data to Intervenors. As the district court acknowledged, "[s]unlight is said to be the best of disinfectants," and the ARCOS data and the insight it will provide into the opioid epidemic should be brought to light. *Buckley*, 424 U.S. at 67 (quoting L. Brandeis, *Other People's Money* 62 (1933)).

For the foregoing reasons, we hold that the district court abused its discretion in finding "good cause" not to permit disclosure of the ARCOS data pursuant to state public records requests. We vacate the district court's Protective Order and remand to permit the district court to consider entering a new protective order consistent with the proper legal standards as set forth in this opinion. On remand the district court may entertain arguments by the DEA as to why *particular* pieces of ARCOS data that relate to *specific* ongoing investigations should not be disclosed; however, the district court shall not enter a blanket, wholesale ban on disclosure pursuant to state public records requests. Nor shall any modified protective order specify that the ARCOS data be destroyed or returned to the DEA at the conclusion of this litigation.

III. Sealing and Redaction of Pleadings

Intervenors argue that the district court erred in allowing Defendants and the DEA to file pleadings and other court documents under seal and with redactions. We review a court's decision to seal its records for an abuse of discretion, but we note that "'[i]n light of the important rights involved, the district court's decision is not accorded' the deference that standard normally brings." *Shane Grp.*, 825 F.3d at 306 (quoting *In re Knoxville News-Sentinel Co.*, 723 F.2d 470, 476 (6th Cir. 1983)).

As an initial matter, because the district court allowed Intervenors to intervene "for the limited purpose of addressing their Public Records Requests," (R. 611, Briefing Order, Page ID# 14995), Defendants and the DEA argue that this issue is beyond the scope of this appeal. However, we have in past cases "'reach[ed] the question' of the district court's seal 'on our own motion,'" without any party having raised the issue. *Shane Grp.*, 825 F.3d at 305 (quoting *Brown & Williamson Tobacco Corp. v. F.T.C.*, 710 F.2d 1165, 1176 (6th Cir. 1983)). We therefore need not concern ourselves with whether this issue is within the scope of Intervenors' intervention; rather, the issue is within our authority to decide regardless of whether or not the district court conferred intervenor status upon HDM or the Washington Post to make arguments about the issue. *See id.*

Concerning nondisclosure in litigation, this Court has distinguished between secrecy in the context of discovery, which as discussed above is permissible with a showing of "good cause," and secrecy in the context of adjudication, which is generally impermissible due to the "strong presumption in favor of openness" of court records. *Shane Grp.*, 825 F.3d at 305 (quoting *Brown & Williamson*, 710 F.2d at 1179). We have stated that "[t]he line between these two stages, discovery and adjudicative, is crossed when the parties place material in the court record." *Id.* The presumption in favor of openness of court records is justified because "[t]he public has an interest in ascertaining what evidence and records the District Court and this Court have relied upon in reaching our decisions." *Id.* (quoting *Brown & Williamson*, 825 F.3d at 1181). This strong presumption in favor of openness is only overcome if a party "can show a compelling reason why certain documents or portions thereof should be sealed, [and] the seal itself [is] narrowly tailored to serve that reason." *Id.* Further, "the greater the public interest in the litigation's subject matter, the greater the showing necessary to overcome the presumption of access." *Id.*

In this case, the sealed or redacted pleadings, briefs, or other documents that the parties have filed with the court, as well as any reports or exhibits that accompanied those filings,[14] are

[14]These documents include, but are not limited to, the DEA's Amended Brief in Support of Objections (R. 717), John J. Martin's Declaration (R. 663-1), and any pleadings filed under seal or with redactions. On remand, the district court shall conduct a full review of court documents filed under seal or with redactions, and it shall in each

the sort of records that would help the public "assess for itself the merits of judicial decisions." *Id.*; *see id.* at 304–05 (treating as court records entitled to the presumption of openness the following: pleadings, motions for class certification, evidentiary motions, and exhibits accompanying the parties' filings). These documents are therefore subject to the strong presumption in favor of openness, which applies here with extra strength given the paramount importance of the litigation's subject matter.

The district court abused its discretion in permitting Defendants and the DEA to file their pleadings under seal. "[A] district court that chooses to seal court records must set forth specific findings and conclusions 'which justify nondisclosure to the public,'" even if no party objects to their sealing. *Shane Grp.*, 825 F.3d at 306 (quoting *Brown & Williamson*, 710 F.2d at 1176). We have made clear that "a court's failure to set forth those reasons—as to why the interests in support of nondisclosure are compelling, why the interests supporting access are less so, and why the seal itself is no broader than necessary—is itself grounds to vacate" an order allowing court documents to be filed under seal or with redactions. *Id.* at 306. No such findings or conclusions were made in this case,[15] and the district court *ipso facto* abused its discretion. *Id.*

We therefore vacate any district court orders to the extent they permit sealing or redacting of court records. We remand for the district court to reconsider each pleading filed under seal or with redactions and to make a specific determination as to the necessity of nondisclosure in each instance. The court is advised to bear in mind that the party seeking to file under seal must provide a "compelling reason" to do so and demonstrate that the seal is "narrowly tailored to serve that reason." *Shane Grp.*, 825 F.3d at 305. On remand, if the district court permits a pleading to be filed under seal or with redactions, it shall be incumbent upon the court to adequately explain "why the interests in support of nondisclosure are compelling, why the interests supporting access are less so, and why the seal itself is no broader than necessary." *Id.*

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instance reevaluate whether redaction or seal is necessary in light of the proper legal standards as set forth in this opinion.

[15]The DEA argues that the district court's statement, in a footnote, that the DEA's Amended Brief in Support of Objections had "removed all but necessary redactions" was sufficient analysis. (DEA Br. 64 (quoting R. 800, Page ID# 18973).) This statement does not explain "why the interests in support of nondisclosure are compelling, why the interests supporting access are less so, and why the seal itself is no broader than necessary." *Shane Grp.*, 825 F.3d at 306. It is therefore insufficient to justify the redactions. *Id.*

at 306. In doing so, the district court is to pay special attention to this Court's statement that "[o]nly the most compelling reasons can justify non-disclosure of judicial records." *Id.* at 305 (internal quotation marks omitted). The district court's findings and conclusions must also be consistent with the proper balancing of interests with respect to the ARCOS data, as discussed in the previous section.

CONCLUSION

For the reasons stated above, we **VACATE** the district court's Protective Order and any orders permitting the parties to file pleadings under seal or with redactions, and **REMAND** to permit the district court to consider entering new orders consistent with this opinion.

EXHIBIT 3

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE: NATIONAL PRESCRIPTION OPIATE LITIGATION	)	**CASE NO. 1:17-MD-2804**
	)	**JUDGE POLSTER**
THIS DOCUMENT RELATES TO: *"Track One Cases"*	)	
	)	**ORDER REGARDING ARCOS DATA PROTECTIVE ORDER**

This Court earlier directed the Plaintiffs, the Defendants, the DEA, and the Media-Intervenors to submit position papers regarding: "(a) whether it should lift entirely its Protective Orders regarding all ARCOS data produced to the parties in this case; and (b) the extent to which it should lift its Protective Orders regarding all Suspicious Order Reports produced to and by the parties in this case." Order at 1 (docket no. 1725). The Court has reviewed the parties' submissions[1] and now rules as follows.

The DEA asks "that the Court allow the DEA, Plaintiffs, Defendants, and the Media Intervenors to meet and confer toward a modified Protective Order." Docket no. 1833 at 4. The Court concludes this request is well-taken, with a caveat. The parties' submissions show that the older the ARCOS data, the less reason for *any* Protective Order. The Court concludes there is clearly no basis to shield from public view ARCOS data dated on or before December 31, 2012. Accordingly, the Protective Order is hereby lifted as to ARCOS data dated on or before

[1] *See* docket nos. 1798, 1807, 1808, 1809 (position papers); docket nos. 1830, 1831, 1832, 1833 (responses thereto).

December 31, 2012. *See* docket no. 1725 at 2 n.1 (defining "ARCOS data"). The Court's July 5, 2019 Order Amending Procedures Regarding Redactions and Filing of Briefs Under Seal, docket no. 1813 at 2-3, is modified to reflect this change.

With regard to subsequent ARCOS data and all Suspicious Order Reports, the Court directs the parties to meet and confer and submit, on or before noon on July 25, 2019, a proposed modified protective order. To the extent the parties cannot reach full agreement, they shall submit a proposal identifying their areas of agreement and their positions on areas of disagreement.

This Order does not change the Court's instructions regarding redaction of briefs, *see* docket no. 1813.

IT IS SO ORDERED.

/s/ Dan Aaron Polster
DAN AARON POLSTER
UNITED STATES DISTRICT JUDGE

Dated: July 15, 2019

EXHIBIT 4

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE: NATIONAL PRESCRIPTION OPIATE LITIGATION	)	**CASE NO. 1:17-MD-2804**
	)	**JUDGE POLSTER**
THIS DOCUMENT RELATES TO: *"Track One Cases"*	)	**ORDER AMENDING PROCEDURES REGARDING REDACTIONS AND FILING OF BRIEFS UNDER SEAL**

On June 20, 2019, the Sixth Circuit issued a ruling addressing the extent to which this Court's ARCOS Protective Order should remain in place. *See In re: National Prescription Opiate Litig.*, 2019 WL 2529050 (6th Cir. June 20, 2019) ("*ARCOS Ruling*"). The existing ARCOS Protective Order generally limits disclosure of ARCOS data to plaintiffs, who may use it only for certain purposes, and directs the parties to redact or place under seal documents filed on the record containing ARCOS data. *See* docket no. 1545.[1] The Court of Appeals vacated the ARCOS Protective Order and directed this Court to determine whether there should instead be "a narrower protective order that would allow the DEA to object to disclosure [of ARCOS data] as specific investigations may require" – that is, an Order that allows only "limited redactions to those particular portions of the ARCOS data that correspond to specific ongoing investigations." *ARCOS Ruling*, 2019 WL 2529050 at *12.

In addition, noting that the parties had redacted or filed under seal documents containing

[1] The ARCOS Protective Order at docket no. 1545 consolidates and supersedes all of the prior versions of ARCOS Protective Orders, found at docket nos. 167, 233, 397, 400, 602, 668, 800, 1106.

other allegedly confidential information – not just ARCOS data – the Court of Appeals also directed this Court to "conduct a full review of court documents filed under seal or with redactions, and . . . in each instance reevaluate whether redaction or seal is necessary in light of the proper legal standards as set forth in this opinion." *Id.* at 14 n.14.

The appellate court issued its ruling eight days before the existing June 28, 2019 due date for the parties' summary judgment and *Daubert* motions. The parties had been drafting and redacting their motions premised upon existing protective orders, so the appellate opinion created some confusion on how to proceed. Accordingly, this Court and Special Master Cohen quickly issued several rulings setting out redaction standards and mechanisms for the upcoming motions and exhibits.[2] The Court also directed interested parties to submit position papers on the appropriate scope of a revised ARCOS Protective Order; the Court received position papers from plaintiffs, defendants, media-intervenors, and the DEA. *See* docket nos. 1798, 1807, 1808, & 1809.

Having reviewed these position papers, and having observed some problems with the mechanisms that were quickly put into place for filing redacted motions, the Court now clarifies and amends its prior orders as follows.

ARCOS Data

In its position paper, the DEA asserts that "a district court should not proceed to implement

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[2] *See* docket no. 1719 (Special Master's Directions Regarding Filing of [*Upcoming*] Briefs Under Seal). *See also* docket no. 1725 (Court's Order Regarding ARCOS Data and Documents *Previously* Filed Under Seal); docket text entry dated June 28, 2019, 3:02 p.m. (stating that "all existing Protective Orders are reaffirmed and shall remain in place until the Court issues a ruling determining the scope of a new Protective Order"); docket text entry dated June 28, 2019. 4:35 p.m. ("[t]he Court is keeping in place the existing [ARCOS] Protective Order for now . . . but requires prompt briefing").

the decision of a court of appeals until the mandate has issued." Docket no. 1809 at 2. Defendants agree, and also note they have a right to seek rehearing, which would be effectively denied "[i]f this Court orders ARCOS data to be released to the public" before a petition for rehearing can be considered. Docket no. 1807 at 12. The Court agrees that, until the reconsideration period expires and the Sixth Circuit issues a mandate, the ARCOS Protective Order should remain in place. Accordingly, the parties should continue their adherence to the provisions in the ARCOS Protective Order regarding redaction and filing under seal. *See* docket no. 1545 at 6, ¶8.

Other Confidential Information

In the wake of the Sixth Circuit's *ARCOS Ruling*, Special Master Cohen provided directions to the parties regarding redaction of information from their summary judgment and *Daubert* motions. *See* docket no. 1719 at 2-3. Among other things, the Special Master ruled that "[i]nformation that is considered "business confidential" but that is not a bona fide trade secret does not qualify for redaction. *Id.* at 3 n.4 (citing *Kondash v. Kia Motors America, Inc.*, 767 Fed. Appx. 635, 639 (6th Cir. 2019)).

In their position paper, defendants point to a very recent Supreme Court case – *Food Marketing Inst. v. Argus Leader Media*, 2019 WL 2570624 (U.S. June 24, 2019) – and argue that "the Special Master's directions on sealing briefs are not consistent with *Food Marketing*." Docket no. 1807 at 11.[3] The Court disagrees. In *Food Marketing*, the Supreme Court examined the meaning of "confidential commercial or financial information" in the context of FOIA requests. The Supreme Court held that, "where commercial or financial information is both customarily and

[3] *Food Marketing* was issued within hours after the Special Master's directions.

actually treated as private by its owner *and provided to the government under an assurance of privacy*, the information is 'confidential' within the meaning of [FOIA] Exemption 4." 2019 WL 2570624 at *7 (emphasis added). In this case, the information defendants seek to keep confidential (by redaction and/or filing under seal) *was produced by defendants in discovery*; it was not obtained from the government after defendants provided it to a federal agency. Moreover, the allegedly confidential information at issue is now being placed in the court record. FOIA requests are akin to discovery; the *Food Marketing* opinion says nothing, either explicitly or by implication, to undermine the Sixth Circuit's ruling that "there is a lower requirement for protective orders relating to discovery, during which secrecy is permitted, than for orders to seal court records, which carry a strong presumption of openness." *ARCOS Ruling*, 2019 WL 2529050 at *9 (citing *Shane Grp., Inc. v. Blue Cross Blue Shield of Mich.*, 825 F.3d 299, 305 (6th Cir. 2016)). This Court rejects defendants' assertion that, because FOIA and Fed. R. Civ. P. 26(c)(1)(g) both refer to "confidential commercial information," *Food Marketing* suggests protective orders must now be construed more broadly. At best, *Food Marketing* may give defendants distant reason to ask the Sixth Circuit to reconsider its conclusion regarding ARCOS data (which plaintiffs obtained from a federal agency by subpoena, not FOIA request), but *Food Marketing* does not call into question the long-applicable standard for redaction of other allegedly confidential information that is made a part of this Court's record.

In sum, the Court affirms Special Master Cohen's instructions regarding what the parties should and may redact, *see* docket no. 1719 at 2-3. Furthermore, the Court warns the parties that failure of a party to adhere to these standards will carry consequences. If the Court (or the Special Master): (1) is asked repeatedly to resolve disputes over whether information designated for

redaction or sealing was appropriate; and (2) repeatedly concludes the designation was improper; then (3) the designating party will lose the right to make future confidentiality designations in later-filed documents, and/or the Court will simply lift all of that party's redaction designations. That said, the Court and the Special Master do not have time to, and generally will not, rule upon the propriety of confidentiality designations regarding exhibits (or portions thereof) upon which the motions do not actually rely.

Redaction and Sealing Mechanisms

The Sixth Circuit instructed that "evidentiary motions, and exhibits accompanying the parties' filings . . . [are] subject to the strong presumption in favor of openness, which applies here with extra strength given the paramount importance of the litigation's subject matter," and "[o]nly the most compelling reasons can justify non-disclosure of judicial records." *ARCOS Ruling*, 2019 WL 2529050 at *14. Accordingly, Special Master Cohen, with input from the parties, set out a mechanism to ensure the summary judgment and *Daubert* motions would be placed on the public record as soon as possible. *See* docket no. 1719 at 1-2. Since then, however, the parties have struggled with this mechanism, in part because of the very large volume of exhibits that need review, and in part because *Food Marketing* caused defendants to question whether the Special Master's redaction instructions remained valid.

Accordingly, the Court modifies the mechanism as follows. The following procedures are designed to: (1) maintain confidentiality of all of, but only, the appropriate portions of the documents; (2) remove inappropriate redactions and sealing of documents as quickly as possible; (3) allow the Court to begin its review of filed documents immediately; and (4) provide easy cross-

referencing of all exhibits to all briefs. Put differently, these procedures are designed to adhere to the Sixth Circuit's instructions regarding disclosure of judicial records, while also providing some logistical tranquility.

Summary Judgment and *Daubert* Motions filed on or before June 28, 2019

A. As to all *Daubert* and dispositive motions filed on or before June 28, 2019, the parties shall undertake or continue the confidentiality-designation process outlined in steps 3 and 4 of Special Master Cohen's directions at docket no. 1719. The parties shall then meet and confer to resolve any disputes. All proposed redactions to the *motions and memoranda in support* must be exchanged by July 9, 2019 at noon, and the meet and confer process must conclude on July 11, 2019. As to all *exhibits to the motions*, all proposed redactions must be exchanged by July 15, 2019 at noon, and the meet and confer process must conclude on July 18, 2019.

B. On July 19, 2019, the Filing Party shall file: (1) a public version of the motions and exhibits as served, containing (i) all agreed-to redactions (if any) and also (ii) any disputed redactions (if any); (2) if there are any redactions, an unredacted version of the filing under seal, and (3) an accompanying motion to seal that identifies remaining disputes, and explaining the bases for all redactions by attaching the correspondence of the parties setting forth their positions on the proposed redactions. No additional briefing shall be included. The Special Master will then rule on the motions; ruling may be deferred until after response briefs are filed and all *relevant* redactions of a given document are identified.

C. On July 19, 2019, the Filing Party shall also file full transcripts of any depositions and full copies of any expert reports cited in the motions, both (i) under seal in unredacted form and (ii) on the public docket with all agreed-upon *and* disputed redactions. Going forward, parties may cite to the versions of these documents by docket number. Previously-filed motions need not be edited to cite to newer exhibit docket numbers. The Filing Parties must file a chart cross-referencing exhibit citations in their motions with the separately-filed docket numbers of the full deposition transcripts or full expert reports.

D. Further regarding paragraph C, all plaintiffs' expert reports cited as exhibits shall be filed as a group with a single docket number, and all defendants' expert reports cited as exhibits shall be filed as a group with a single docket number. (*E.g.*, docket no. **3456**, Notice of

filing of plaintiffs' expert reports; docket no. 3456-1, Jones Report; docket no. 3456-2, Smith Report; docket no. **3457**, Notice of filing of defendants' expert reports; docket no. 3457-1, Harris Report; and so on).

E. Further regarding paragraph C, all deposition transcripts cited as exhibits shall be filed as one or two groups with a single docket number, see Paragraph D. (The parties shall coordinate this filing. They can either choose *not* to segregate transcripts by plaintiffs and defendants and file them all under a single docket number, or utilize an agreed-upon method, such as "the party to first notice the deposition files the transcript," to segregate by plaintiffs and defendants.)

F. To the extent any of the disputed redactions are overruled, within one business day, the Filing Party shall refile on the docket the final version of the document as appropriate. If any redactions remain, the corrected document shall be filed on the public docket with the court-ordered redactions.

Summary Judgment and *Daubert* Responses and Replies

G. Because both parties filed dispositive motions prior to June 28, 2019 that relate to motions later filed on June 28, 2019, and in order to encourage the parties to consolidate their briefing as instructed, all responses and replies to the *Daubert* and dispositive motions filed on or before June 28, 2019, including docket nos. 1691, 1692, 1703, 1716, 1733, 1736, are due at 3:00 p.m. on Tuesday July 31, 2019; and replies are due at 3:00 p.m. on August 16, 2019.

H. The parties shall follow the confidentiality-designation process outlined in Special Master Cohen's Ruling at docket no. 1719 for responses and replies. The parties shall then meet and confer to resolve any disputes. As to *response briefs*, any disputes must be submitted following the procedure on August 9, 2019; as to new *response exhibits*, this process must conclude on August 13, 2019. As to *reply briefs*, this process for the motions and briefs must conclude on August 23, 2019; as to new *reply exhibits*, this process must conclude on August 27, 2019.

I. Steps B-F above then apply.

Thumb-Drives and Hard Copies

The Special Master earlier issued directions regarding submission of thumb-drives and hard copies, *see* docket no. 1719 at 2 n.2. Those directions are amended as follows. The parties shall provide unredacted Trial Briefs to Court staff as follows:

- to chambers, one hard-copy of supporting briefs only (not motions or exhibits), and two thumb drives with PDFs of motions, briefs, and exhibits. The hard-copies of briefs shall be hand-delivered to chambers at 3:00 p.m. on the date due.
- to Special Master Cohen, one thumb drive with PDFs of motions, briefs, and exhibits.

Other instructions issued by Special Master Cohen regarding file names, passwords, compression, combining thumb-drives, and emailing of briefs remain in place.[4]

IT IS SO ORDERED.

/s/ Dan Aaron Polster
DAN AARON POLSTER
UNITED STATES DISTRICT JUDGE

Dated: July 5, 2019

[4] *See* these emails from Special Master Cohen: (1) "Thumb Drive Issues - Important," July 1, 2019, 2:27 p.m.; and (2) "filings and thumb-drives - amended," June 27, 2019 12:57 p.m.

EXHIBIT 5

The Washington Post

Investigations

76 billion opioid pills: Newly released federal data unmasks the epidemic

By Scott Higham ,
Sari Horwitz and
Steven Rich
July 16 at 8:19 PM

America's largest drug companies saturated the country with 76 billion oxycodone and hydrocodone pain pills from 2006 through 2012 as the nation's deadliest drug epidemic spun out of control, according to previously undisclosed company data released as part of the largest civil action in U.S. history.

The information comes from a database maintained by the Drug Enforcement Administration that tracks the path of every single pain pill sold in the United States — from manufacturers and distributors to pharmacies in every town and city. The data provides an unprecedented look at the surge of legal pain pills that fueled the prescription opioid epidemic, which has resulted in nearly 100,000 deaths from 2006 through 2012.

Just six companies distributed 75 percent of the pills during this period: McKesson Corp., Walgreens, Cardinal Health, AmerisourceBergen, CVS and Walmart, according to an analysis of the database by The Washington Post. Three companies manufactured 88 percent of the opioids: SpecGx, a subsidiary of Mallinckrodt; Actavis Pharma; and Par Pharmaceutical, a subsidiary of Endo Pharmaceuticals.

Purdue Pharma, which the plaintiffs allege sparked the epidemic in the 1990s with its introduction of OxyContin, its version of oxycodone, was ranked fourth among manufacturers with about 3 percent of the market.

The volume of the pills handled by the companies skyrocketed as the epidemic surged, increasing about 51 percent from 8.4 billion in 2006 to 12.6 billion in 2012. By contrast, doses of morphine, a well-known treatment for severe pain, averaged slightly more than 500 million a year during the period.

Those 10 companies along with about a dozen others are now being sued in federal court in Cleveland by nearly 2,000 cities, towns and counties alleging that they conspired to flood the nation with opioids. The companies, in turn, have blamed the epidemic on overprescribing by doctors and pharmacies and on customers who abused the drugs. The companies say they were working to supply the needs of patients with legitimate prescriptions desperate for pain relief.

The database reveals what each company knew about the number of pills it was shipping and dispensing and precisely when they were aware of those volumes, year by year, town by town. In case after case, the companies allowed the drugs to reach the streets of communities large and small, despite persistent red flags that those pills were being sold in apparent violation of federal law and diverted to the black market, according to the lawsuits.

Plaintiffs have long accused drug manufacturers and wholesalers of fueling the opioid epidemic by producing and distributing billions of pain pills while making billions of dollars. The companies have paid more than $1 billion in fines to the Justice Department and Food and

Drug Administration over opioid-related issues, and hundreds of millions more to settle state lawsuits.

But the previous cases addressed only a portion of the problem, never allowing the public to see the size and scope of the behavior underlying the epidemic. Monetary settlements by the companies were accompanied by agreements that kept such information hidden.

The drug companies, along with the DEA and the Justice Department, have fought furiously against the public release of the database, the Automation of Reports and Consolidated Order System, known as ARCOS. The companies argued that the release of the "transactional data" could give competitors an unfair advantage in the marketplace. The Justice Department argued that the release of the information could compromise ongoing DEA investigations.

Until now, the litigation has proceeded in unusual secrecy. Many filings and exhibits in the case have been sealed under a judicial protective order. The secrecy finally lifted after The Post and HD Media, which publishes the Charleston Gazette-Mail in West Virginia, waged a year-long legal battle for access to documents and data from the case.

On Monday evening, U.S. District Judge Dan Polster removed the protective order for part of the ARCOS database.

Lawyers for the local governments suing the companies hailed the release of the data.

"The data provides statistical insights that help pinpoint the origins and spread of the opioid epidemic — an epidemic that thousands of communities across the country argue was both sparked and inflamed by opioid manufacturers, distributors, and pharmacies," said Paul T. Farrell Jr. of West Virginia, co-lead counsel for the plaintiffs.

In statements emailed to The Post on Tuesday, the drug distributors stressed that the ARCOS data would not exist unless they had accurately reported shipments and questioned why the government had not done more to address the crisis.

"For decades, DEA has had exclusive access to this data, which can identify the total volumes of controlled substances being ordered, pharmacy-by-pharmacy, across the country," McKesson spokeswoman Kristin Chasen said.

A DEA spokeswoman declined to comment Tuesday "due to ongoing litigation."

Cardinal Health said that it has learned from its experience, increasing training and doing a better job to "spot, stop and report suspicious orders," company spokeswoman Brandi Martin wrote.

AmerisourceBergen derided the release of the ARCOS data, saying it "offers a very misleading picture" of the problem. The company said its internal "controls played an important role in enabling us to, as best we could, walk the tight rope of creating appropriate access to FDA approved medications while combating prescription drug diversion."

While Walgreens still dispenses opioids, the company said it has not distributed prescription-controlled substances to its stores since 2014. "Walgreens has been an industry leader in combatting this crisis in the communities where our pharmacists live and work, " said Phil Caruso, a Walgreens spokesman.

Mike DeAngelis, a spokesman for CVS, said the plaintiffs' allegations about the company have no merit and CVS is aggressively defending against them.

Walmart, Purdue and Endo declined to comment about the ARCOS database.

A Mallinckrodt spokesman said in a statement that the company produced opioids only within a government-controlled quota and sold only to DEA-approved distributors.

Actavis Pharma was acquired by Teva Pharmaceutical Industries in 2016, and a spokeswoman there said the company "cannot speak to any systems in place beforehand."

A virtual road map

The Post has been trying to gain access to the ARCOS database since 2016, when the news organization filed a Freedom of Information Act request with the DEA. The agency denied the request, saying some of the data was available on its website. But that data did not contain the transactional information the companies are required to report to the DEA every time they sell a controlled substance such as oxycodone and hydrocodone.

The drug companies and pharmacies themselves provided the sales data to the DEA. Company officials have testified before Congress that they bear no responsibility for the nation's opioid epidemic.

The numbers of pills the companies sold during the seven-year time frame are staggering, far exceeding what has been previously disclosed in limited court filings and news stories.

Three companies distributed nearly half of the pills: McKesson with 14.1 billion, Walgreens with 12.6 billion and Cardinal Health with 10.7 billion. The leading manufacturer was Mallinckrodt's SpecGx with nearly 28.9 billion pills, or nearly 38 percent of the market.

The states that received the highest concentrations of pills per person per year were: West Virginia with 66.5, Kentucky with 63.3, South Carolina with 58, Tennessee with 57.7 and Nevada with 54.7. West Virginia also had the highest opioid death rate during this period.

Rural areas were hit particularly hard: Norton, Va., with 306 pills per person; Martinsville, Va., with 242; Mingo County, W.Va., with 203; and Perry County, Ky., with 175.

In that time, the companies distributed enough pills to supply every adult and child in the country with 36 each year.

The database is a virtual road map to the nation's opioid epidemic that began with prescription pills, spawned increased heroin use and resulted in the current fentanyl crisis, which added more than 67,000 to the death toll from 2013 to 2017.

The transactional data kept by ARCOS is highly detailed. It includes the name, DEA registration number, address and business activity of every seller and buyer of a controlled substance in the

United States. The database also includes drug codes, transaction dates, and total dosage units and grams of narcotics sold.

The data tracks a dozen different opioids, including oxycodone and hydrocodone, which make up three-quarters of the total pill shipments to pharmacies.

Under federal law, drug manufacturers, distributors and pharmacies must report each transaction of a narcotic to the DEA, where it is logged into the ARCOS database. If company officials notice orders of drugs that appear to be suspicious because of their unusual size or frequency, they must report those sales to the DEA and hold back the shipments.

As more and more towns and cities became inundated by pain pills, they fought back. They filed federal lawsuits against the drug industry, alleging that opioids from the companies were devastating their communities. They alleged the companies not only failed to report suspicious orders, but they also filled those orders to maximize profits.

As the hundreds of lawsuits began to pile up, they were consolidated into the one centralized case in U.S. District Court in Cleveland. The opioid litigation is now larger in scope than the tobacco litigation of the 1980s, which resulted in a $246 billion settlement over 25 years.

'Where the virus grew'

Judge Polster is now overseeing the consolidated case of nearly 2,000 lawsuits. The case is among a wave of actions that includes other lawsuits filed by more than 40 state attorneys general and tribal nations. In May, Purdue settled with the Oklahoma attorney general for $270 million.

In the Cleveland case, Polster has been pressing the drug companies and the plaintiffs to reach a global settlement so communities can start receiving financial assistance to mitigate the damage that has been done by the opioid epidemic.

To facilitate a settlement, Polster had permitted the drug companies and the towns and cities to review the ARCOS database under a protective order while barring public access to the material. He also permitted some court filings to be made under seal and excluded the public and press from a global settlement conference at the outset of the case.

Last June, The Post and the Charleston Gazette-Mail asked Polster to lift the protective order covering the ARCOS database and the court filings. A month later, Polster denied the requests, even though he had said earlier that "the vast oversupply of opioid drugs in the United States has caused a plague on its citizens" and the ARCOS database reveals "how and where the virus grew." He also said disclosure of the ARCOS data "is a reasonable step toward defeating the disease."

Lawyers for The Post and the Gazette-Mail appealed Polster's ruling. They argued that the ARCOS material would not harm companies or investigations because the judge had already decided to allow the local government plaintiffs to collect information from 2006 through 2014, withholding the most recent years beginning with 2015 from the lawsuit.

"Access to the ARCOS Data can only enhance the public's confidence that the epidemic and the ensuing litigation are being handled appropriately now — even if they might not have been handled appropriately earlier," The Post's lawyer, Karen C. Lefton, wrote in her Jan. 17 appeal.

The lawyers also noted the DEA did not object when the West Virginia attorney general's office provided partial ARCOS data to the Gazette-Mail in 2016. That data showed that drug distribution companies shipped 780 million doses of oxycodone and hydrocodone into the state between 2007 and 2012.

On June 20, the 6th Circuit Court of Appeals in Ohio sided with the news organizations. A three-judge panel reversed Polster, ruling that the protective order sealing the ARCOS database be lifted with reasonable redactions and directed the judge to reconsider whether any of the records in the case should be sealed.

On Monday, Polster lifted the protective order on the database, ruling that all the data from 2006 through 2012 should be released to the public, withholding the 2013 and 2014 data.

'Prescription tourists'

The pain pill epidemic began nearly three decades ago, shortly after Purdue Pharma introduced what it marketed as a less addictive form of opioid it called OxyContin. Purdue paid doctors and

nonprofit groups advocating for patients in pain to help market the drug as a safe and effective way to treat pain.

But the new drug was highly addictive. As more and more people were hooked, more and more companies entered the market, manufacturing, distributing and dispensing massive quantities of pain pills.

Purdue ending up paying a $634 million fine to the Food and Drug Administration for claiming OxyContin was less addictive than other pain medications.

Annual opioid sales nationwide rose from $6.1 billion in 2006 to $8.5 billion in 2012, according to industry data gathered by IQVIA, a health care information and consulting company.

Individual drug company revenues ranged in single years at the epidemic's peak from $403 million for opioids sold by Endo to $3.1 billion in OxyContin sales by Purdue Pharma, according to a 2018 lawsuit against multiple defendants by San Juan County in New Mexico.

During the past two decades, Florida became ground zero for pill mills — pain management clinics that served as fronts for corrupt doctors and drug dealers. They became so brazen that some clinics set up storefronts along I-75 and I-95, advertising their products on billboards by interstate exit ramps. So many people traveled to Florida to stock up on oxycodone and hydrocodone, they were sometimes referred to as "prescription tourists."

The route from Florida to Georgia, Kentucky, West Virginia and Ohio became known as the "Blue Highway." It was named after the color of one of the most popular pills on the street — 30 mg oxycodone tablets made by Mallinckrodt, which shipped more than 500 million of the pills to Florida between 2008 and 2012.

When state troopers began pulling over and arresting out-of-state drivers for transporting narcotics, drug dealers took to the air. One airline offered nonstop flights to Florida from Ohio and other Appalachian states, and the route became known as the Oxy Express.

A decade ago, the DEA began cracking down on the industry. In 2005 and 2006, the agency sent letters to drug distributors, warning them that they were required to report suspicious orders of painkillers and halt sales until the red flags could be resolved. The letter also went to drug manufacturers.

Even just one distributor that fails to follow the law "can cause enormous harm," the 2006 DEA letter said.

DEA officials said the companies paid little attention to the warnings and kept shipping millions of pills in the face of suspicious circumstances.

As part of its crackdown, the DEA brought a series of civil enforcement cases against the largest distributors.

The corporations to date have paid nearly $500 million in fines to the Justice Department for failing to report and prevent suspicious drug orders, a number that is dwarfed by the revenue of the companies.

But the settlements of those cases revealed only limited details about the volume of pills that were being shipped.

In 2007, the DEA brought a case against McKesson. The DEA accused the company of shipping millions of doses of hydrocodone to Internet pharmacies after the agency had briefed the company about its obligations under the law to report suspicious orders.

"By failing to report suspicious orders for controlled substances that it received from rogue Internet pharmacies, the McKesson Corporation fueled the explosive prescription drug abuse problem we have in this country," the DEA's administrator said at the time.

In 2008, McKesson agreed to pay a $13.25 million fine to settle the case and pledged to more closely monitor suspicious orders from its customers.

That same year, the DEA brought a case against Cardinal Health, accusing the nation's second-largest drug distributor of shipping millions of doses of painkillers to online and retail pharmacies without notifying the DEA of signs that the drugs were being diverted to the black market.

Cardinal settled the case by paying a $34 million fine and promising to improve its suspicious monitoring program.

Some companies were repeat offenders.

In 2012, the DEA began investigating McKesson again, this time for shipping suspiciously large orders of narcotics to pharmacies in Colorado. One store in Brighton, Colo., population 38,000,

was ordering 2,000 pain pills per day. The DEA discovered that McKesson had filled 1.6 million orders from its Aurora, Colo., warehouse between 2008 and 2013 and reported just 16 as suspicious. None involved the Colorado store.

DEA agents and investigators said they had amassed enough information to file criminal charges against McKesson and its officers but they were overruled by federal prosecutors. The company wound up paying a $150 million fine to settle, a record amount for a diversion case.

Also in 2012, Cardinal Health attracted renewed attention from the DEA when it discovered that the company was again shipping unusually large amounts of painkillers to its Florida customers. The company had sold 12 million oxycodone pills to four pharmacies over four years.

In 2011, Cardinal shipped 2 million doses to a pharmacy in Fort Myers, Fla. Comparable pharmacies in Florida typically ordered 65,000 doses per year.

The DEA also noticed that Cardinal was shipping unusually large amounts of oxycodone to a pair of CVS stores near Sanford, Fla. Between 2008 and 2011, Cardinal sold 2.2 million pills to one of the stores. In 2010, that store purchased 885,900 doses — a 748 percent increase over the previous year. Cardinal did not report any of those sales as suspicious.

Cardinal later paid a $34 million fine to settle the case. The DEA suspended the company from selling narcotics from its warehouse in Lakeland, Fla. CVS paid a $22 million fine.

As the companies paid fines and promised to do a better job of stopping suspicious orders, they continued to manufacture, ship and dispense large amounts of pills, according to the newly released data.

"The depth and penetration of the opioid epidemic becomes readily apparent from the data," said Peter J. Mougey, a lawyer for the plaintiffs from Pensacola, Fla. "This disclosure will serve as a wake up call to every community in the country. America should brace itself for the harsh reality of the scope of the opioid epidemic. Transparency will lead to accountability."

Aaron Williams, Andrew Ba Tran, Jenn Abelson, Aaron C. Davis and Christopher Rowland contributed to this report.

Scott Higham
Scott Higham is a Pulitzer-Prize winning investigative reporter at The Washington Post, where he has worked on Metro, National and Foreign projects since 2000. Follow

Sari Horwitz
Sari Horwitz is a Pulitzer-Prize winning reporter who covers the Justice Department, law enforcement and criminal justice issues for The Washington Post, where she has been a reporter for 34 years. Follow

Steven Rich
Steven Rich is the database editor for investigations at The Washington Post. While at The Post, he has worked on investigations involving the National Security Agency, police shootings, tax liens and civil forfeiture. He was a reporter on two teams to win Pulitzer Prizes, for public service in 2014 and national reporting in 2016. Follow

---

EXHIBIT 6

The Washington Post

Investigations

Five takeaways from the DEA's pain pill database

For the first time ever, a database maintained by the Drug Enforcement Administration **that tracks the path of every single pain pill sold in the United States — from manufacturers and distributors to pharmacies in every town and city — is being made public.** The data was released **as part of the largest civil action in U.S. history and provides an unprecedented look at the surge of legal pain pills that fueled the prescription opioid epidemic, which resulted in nearly 100,000 deaths from 2006 through 2012.**

Here are The Post's biggest takeaways:

1. The national database has never been released publicly.

The database is based on previously unreleased company data supplied to the DEA and reveals what each company knew about the number of pills it was shipping and dispensing, year by year, town by town. It is a virtual road map to the opioid epidemic. The drug companies, along with the DEA and the Justice Department, have fought furiously against the public release of the database, the Automation of Reports and Consolidated Order System, known as ARCOS.

2. The companies flooded the nation with pills as the opioid epidemic raged.

A Washington Post analysis of the database shows that America's largest drug companies distributed 76 billion oxycodone and hydrocodonepain pills across the country between 2006 and 2012 as the nation's deadliest drug epidemic spun out of control.

About two dozen companies are being sued in federal court in Cleveland by nearly 2,000 cities, towns and counties alleging that they conspired to flood the nation with opioids. The companies, in turn, have blamed the epidemic on overprescribing by doctors and pharmacies, and on customers who abused the drugs. The companies say they were working to supply the needs of patients with legitimate prescriptions desperate for pain relief.

3. A handful of companies manufactured and distributed most of the opioids.

Just six companies distributed 75 percent of the pills — oxycodone and hydrocodone — during this period: McKesson Corp., Walgreens, Cardinal Health, AmerisourceBergen, CVS and Walmart, according to an analysis of the database by The Washington Post.

Three companies manufactured about 88 percent of the opioids: SpecGx, a subsidiary of Mallinckrodt; Actavis Pharma; and Par Pharmaceutical, a subsidiary of Endo Pharmaceuticals.

4. The number of pills distributed skyrocketed over seven years.

The volumes of the pills handled by the companies climbed as the epidemic surged, increasing 51 percent from 8.4 billion in 2006 to 12.6 billion in 2012. By contrast, doses of morphine, a well-known treatment for severe pain, averaged slightly more than 500 million a year during the same period.

The numbers of pills the companies sold during the seven-year time frame are staggering, far exceeding what has been previously disclosed in limited court filings and news stories.

The opioid epidemic began with prescription pills, spawned increased heroin use and then resulted in the current fentanyl crisis, which added more than 67,000 to the death toll from 2013 to 2017.

5. Some states and rural areas were saturated.

The states that received the highest concentrations of pills per person per year were: West Virginia with 66.5, Kentucky with 63.3, South Carolina with 58, Tennessee with 57.7 and Nevada with 54.7. West Virginia also had the highest opioid death rate from 2006 through 2012.

Rural areas with the greatest number of pills shipped per person per year were: Norton, Va., with 306; Martinsville, Va., with 242; Mingo County, W.Va., with 203; and Perry County, Ky., with 175.

EXHIBIT 7

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

IN RE: NATIONAL PRESCRIPTION OPIATE LITIGATION	)	MDL No. 2804
	)	Case No. 1:17-MD-2804
THIS DOCUMENT RELATES TO ALL CASES	)	Hon. Dan A. Polster

TUESDAY, JULY 31, 2018

HIGHLY CONFIDENTIAL - SUBJECT TO FURTHER CONFIDENTIALITY REVIEW

- - -

Videotaped deposition of Nathan J. Hartle, held at the offices of Covington & Burlington, LLP, One City Center, 850 Tenth Street Northwest, Washington, DC, commencing at 9:04 a.m., on the above date, before Carrie A. Campbell, Registered Diplomate Reporter, Certified Realtime Reporter, Illinois, California & Texas Certified Shorthand Reporter, Missouri & Kansas Certified Court Reporter.

- - -

GOLKOW LITIGATION SERVICES
877.370.3377 ph | 917.591.5672 fax
deps@golkow.com

now administer the oath to the witness.

NATHAN J. HARTLE,

of lawful age, having been first duly sworn to tell the truth, the whole truth and nothing but the truth, deposes and says on behalf of the Plaintiffs, as follows:

DIRECT EXAMINATION

QUESTIONS BY MR. FARRELL:

Q. Good morning.

A. Good morning.

Q. Please state your name.

A. My name is Nathan -- I go by Nate -- John Hartle.

Q. And what is your occupation, and who is your employer?

A. I'm currently a vice president of regulatory affairs and compliance for McKesson Corporation.

Q. How long have you been employed by McKesson?

A. Since May of 2014.

Q. Have you ever had your

THE WITNESS: Again, it depends -- I would say it doesn't change my answer. It depends on the role that they played.

QUESTIONS BY MR. FARRELL:

Q. Well, back to McKesson Corporation, which is you sitting in the chair today. Knowing what you know as the 30(b)(6) representative, the corporate designee, knowing about your past conduct, knowing about the past interactions with the DEA, I'm going to ask you again: Does McKesson Corporation accept partial responsibility for the societal costs of prescription drug abuse in America?

MS. HENN: Objection to form.

THE WITNESS: Again, you know, I -- we're part of the closed system, so we're responsible for preventing diversion.

QUESTIONS BY MR. FARRELL:

Q. So the answer is?

MS. HENN: Objection to form.

THE WITNESS: Again, I think we're responsible for something. I

don't know what -- how you define all societal costs and -- I still believe it depends on different circumstances.

QUESTIONS BY MR. FARRELL:

Q. Sir, we're not going to parse out percentages.

A. Yeah.

Q. Let's just talk globally for McKesson Corporation. So I don't want to put words in your mouth because it's got to come out of your mouth. So the answer is yes or no.

MS. HENN: Objection to form.

THE WITNESS: I would say yes, partially.

QUESTIONS BY MR. FARRELL:

Q. How about Purdue Pharma? Does McKesson Corporation take the position that Purdue Pharma is partially responsible for the societal costs of prescription drug abuse in America?

MS. HENN: Objection to form. Outside the scope.

THE WITNESS: I'm not going to answer for other companies. I'm --

EXHIBIT 8

To: FFSOrderMngt[/O=PURDUE/OU=PURDUE US/CN=RECIPIENTS/CN=FFSORDERMNGT]
From: Seid, Stephen
Sent: Wed 9/9/2009 4:03:21 PM
Subject: RE: Item On Order Exceeds Average Exception

Approved

Steve Seid
National Accounts
& Trade Relations

From: valueTrak@valuecentric.com [mailto:valueTrak@valuecentric.com]
Sent: Wednesday, September 09, 2009 3:30 PM
To: FFSOrderMngt
Subject: Item On Order Exceeds Average Exception

DATE CREATED: 09/09/2009 3:30 PM

The following exception was generated based on the Order # 0000378646:

EXCEPTION:	Order Management Exceptions & Alerts Item On Order Exceeds Average Order Size
TRIGGER:	Item Total of **$442,063.92** (408 Units) on Order #0000378646 exceeded it's **12-Week** Average (**$179,508.70** / 170.40 units) by **146.26%**.
TRANSACTION DATE:	WED SEPTEMBER 9, 2009
TRADING PARTNER:	SMITH DRUG
LOCATION:	SMITH DRUG COMPANY - VALDOSTA
PRODUCT:	59011010710 - OXC180 OXYCONTIN 80 MG CR TABLETS 100'S

The Exception was generated based on the Parameters & Settings defined at the

following level:

LEVEL:	Product Master Record
PARAMETER SETTING:	Create Exception if Item On Order Exceeds Average Order Size. NUMBER OF WEEKS' ORDERS TO USE IN AVERAGE: **12 Weeks** AVERAGE EXCEEDED BY XX%: **75.00%** ORDER HANDLING: **Hold order**

EXHIBIT 9

To: FFSOrderMngt[/O=PURDUE/OU=PURDUE US/CN=RECIPIENTS/CN=FFSORDERMNGT]
From: Seid, Stephen
Sent: Thur 9/24/2009 11:20:57 AM
Subject: RE: Item On Order Exceeds Average Exception

Approved

Steve Seid
National Accounts
& Trade Relations

From: valueTrak@valuecentric.com [mailto:valueTrak@valuecentric.com]
Sent: Thursday, September 24, 2009 11:10 AM
To: FFSOrderMngt
Subject: Item On Order Exceeds Average Exception

DATE CREATED: 09/24/2009 11:10 AM

The following exception was generated based on the Order # 0000380331:

EXCEPTION:	Order Management Exceptions & Alerts Item On Order Exceeds Average Order Size
TRIGGER:	Item Total of **$156,022.56** (144 Units) on Order #0000380331 exceeded it's **12-Week** Average (**$66,844.23** / 62.67 units) by **133.41%**.
TRANSACTION DATE:	THU SEPTEMBER 24, 2009
TRADING PARTNER:	HD SMITH WHOLESALE DRUG CO
LOCATION:	HD SMITH WHOLESALE DRUG - LOUISVILLE
PRODUCT:	59011010710 - OXC180 OXYCONTIN 80 MG CR TABLETS 100'S

The Exception was generated based on the Parameters & Settings defined at the

following level:

LEVEL:	Product Master Record
PARAMETER SETTING:	Create Exception if Item On Order Exceeds Average Order Size. NUMBER OF WEEKS' ORDERS TO USE IN AVERAGE: **12 Weeks** AVERAGE EXCEEDED BY XX%: **75.00%** ORDER HANDLING: **Hold order**

EXHIBIT 10

To: FFSOrderMngt[/O=PURDUE/OU=PURDUE US/CN=RECIPIENTS/CN=FFSORDERMNGT]
From: Seid, Stephen
Sent: Tue 10/27/2009 4:16:42 PM
Subject: FW: Item On Order Exceeds Average Exception

Approved

Steve Seid
National Accounts
& Trade Relations

From: valueTrak@noreply.valuecentric.com [mailto:valueTrak@noreply.valuecentric.com]
Sent: Tuesday, October 27, 2009 4:15 PM
To: FFSOrderMngt
Subject: Item On Order Exceeds Average Exception

DATE CREATED: 10/27/2009 4:15 PM

The following exception was generated based on the Order # 0000384543:

EXCEPTION:	Order Management Exceptions & Alerts Item On Order Exceeds Average Order Size
TRIGGER:	Item Total of **$292,757.76** (1,152 Units) on Order #0000384543 exceeded it's **12-Week** Average (**$150,444.96** / 592.00 units) by **94.59%**.
TRANSACTION DATE:	TUE OCTOBER 27, 2009
TRADING PARTNER:	CARDINAL HEALTH - NLC
LOCATION:	CARDINAL HEALTH NLC
PRODUCT:	59011081510 - OXC115 OXYCONTIN 15 MG CR TABLETS 100'S

The Exception was generated based on the Parameters & Settings defined at the

following level:

LEVEL:	Product Master Record
PARAMETER SETTING:	Create Exception if Item On Order Exceeds Average Order Size. NUMBER OF WEEKS' ORDERS TO USE IN AVERAGE: **12 Weeks** AVERAGE EXCEEDED BY XX%: **75.00%** ORDER HANDLING: **Hold order**

EXHIBIT 11

To: FFSOrderMngt[/O=PURDUE/OU=PURDUE US/CN=RECIPIENTS/CN=FFSORDERMNGT]
From: Seid, Stephen
Sent: Thur 10/1/2009 1:53:31 PM
Subject: FW: Item On Order Exceeds Average Exception

Approved

Steve Seid
National Accounts
& Trade Relations

From: valueTrak@valuecentric.com [mailto:valueTrak@valuecentric.com]
Sent: Thursday, October 01, 2009 1:10 PM
To: FFSOrderMngt
Subject: Item On Order Exceeds Average Exception

DATE CREATED: 10/01/2009 1:10 PM

The following exception was generated based on the Order # 0000381403:

EXCEPTION:	Order Management Exceptions & Alerts Item On Order Exceeds Average Order Size
TRIGGER:	Item Total of **$4,629,208.32** (14,256 Units) on Order #0000381403 exceeded it's **12-Week** Average (**$2,628,685.81** / 8133.33 units) by **76.10%**.
TRANSACTION DATE:	THU OCTOBER 1, 2009
TRADING PARTNER:	MCKESSON CORP - RDC
LOCATION:	MCKESSON CORP 8194 - MEMPHIS
PRODUCT:	59011010310 - OXC120 OXYCONTIN 20 MG CR TABLETS 100'S

The Exception was generated based on the Parameters & Settings defined at the

following level:

LEVEL:	Product Master Record
PARAMETER SETTING:	Create Exception if Item On Order Exceeds Average Order Size. NUMBER OF WEEKS' ORDERS TO USE IN AVERAGE: **12 Weeks** AVERAGE EXCEEDED BY XX%: **75.00%** ORDER HANDLING: **Hold order**

EXHIBIT 12

Message

From: Borelli, Victor [/O=THCG/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=VICTOR.BORELLI]
Sent: 1/27/2009 4:12:07 PM
To: Steven J. Cochrane [steve@keysourcemedical.com]
Subject: RE: Oxy 30

Just like Doritos

keep eating, we'll make more.

Victor M. Borelli

National Account Manager, Retail
Covidien
Mallinckrodt Pharmaceutical Generics
O:410.308.0633
F:410.308.0634
C:443.204.7914
email: victor.borelli@covidien.com
www.covidien.com

From: Steven J. Cochrane [mailto:steve@keysourcemedical.com]
Sent: Tuesday, January 27, 2009 11:08 AM
To: Borelli, Victor
Subject: Re: Oxy 30

Keep 'em comin'! Flyin' out of here. Its like people are addicted to these things or something. Oh, wait, people are...

Thank you,
Steve

Steven J. Cochrane
VP, Purchasing
KeySource Medical, Inc.
An **Inc. 5 0** *Company*

e-mail Steve@KeySourceMedical.com
direct tel 1-866-371-0408
cell 1-516-510-6582

From: "Borelli, Victor" <Victor.Borelli@Covidien.com>
To: Steven J. Cochrane <steve@keysourcemedical.com>
Sent: Tuesday, January 27, 2009 10:31:51 AM
Subject: Oxy 30

Just got a release today. You will receive 1200 bottles on Thursday morning.

Thanks,

Victor M. Borelli

National Account Manager, Retail
Covidien
Mallinckrodt Pharmaceutical Generics
O:410.308.0633
F:410.308.0634
C:443.204.7914
email: victor.borelli@covidien.com
www.covidien.com

F I L E D
Electronically
CV18-01895
2019-09-13 04:25:37 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 7484425

EXHIBIT 13

From: Stewart, Cathy <Cathy.Stewart@Covidien.com>
Sent: Tuesday, May 20, 2008 7:55 PM
To: Ratliff, Bill <Bill.Ratliff@Covidien.com>; Harper, Karen <Karen.Harper@Covidien.com>
Subject: FW: Sunrise Wholesale

FYI – the customer service reps all state that Victor will tell them anything they want to hear just so he can get the sale.....

From: Stewart, Cathy
Sent: Tuesday, May 20, 2008 12:15 PM
To: Ratliff, Bill; Harper, Karen
Cc: Rehkop, Brenda D
Subject: FW: Sunrise Wholesale
Importance: High

FYI..... This is a new customer.

From: Rehkop, Brenda D
Sent: Tuesday, May 20, 2008 11:56 AM
To: Borelli, Victor
Cc: Stewart, Cathy; Gregory, Connie J
Subject: RE: Sunrise Wholesale
Importance: High

Victor,

Sunrise has sent in three 222 forms this week for CII products. They are not including a PO with the 222 forms and this can become confusing. We must have a hard copy PO with the NDC #s specified. This will eliminate any need for CS to guess which product is being ordered. Please let them know and they can call me if further explanation is needed.

The 222 forms total $195,000. I have put the latest and largest order on hold (it is also waiting to be allocated) till I hear from you. Were you expecting Sunrise to place such a large order?? And do they really want 2520 bottles of OXYCODONE HCL 30MG TABS USP, 100 count each ??

Please advise ASAP.

Thank you,

Brenda Rehkop

Customer Service Representative

Covidien / Mallinckrodt Dosage Pharmaceuticals

675 McDonnell Blvd.

Hazelwood, Mo 63042

800-325-8888 - phone

800-323-5039 - fax

From: Borelli, Victor

Sent: Tuesday, May 20, 2008 7:57 AM

To: Rehkop, Brenda D

Subject: Sunrise Wholesale

Who is going to be the customer service manager for this new account and can I have that persons phone, fax e mail etc... I am traveling down to the account and want to supply them with all the proper information.

Also, they will be buying CII's as well, what address to they send that in to?

Thanks,

Victor M. Borelli

National Account Manager, Retail

Covidien

Mallinckrodt Pharmaceutical Generics

O:410.308.0633

F:410.308.0634

C:443.204.7914

email: victor.borelli@covidien.com

www.covidien.com

EXHIBIT 14

intended recipient is prohibited. If you receive this in error, please inform the sender and remove any record of this message.

From: Steven J. Cochrane [mailto:steve@keysourcemedical.com]
Sent: Tuesday, May 20, 2008 7:33 PM
To: Borelli, Victor
Subject: Re: things

Understood Godfather. We did order 'extra' on the Oxycodones, but I'll get with Dave tomorrow and order more.

Thanks,
Steve

PS- I would still rather listen to a bloated Keith Hernandez any day over Ken Singleton...zzzzzzzzzzzzzzzzzzzzzzzzzzzzzzzzzzzzzzz.

Steven J. Cochrane
VP, Purchasing
KeySource Medical, Inc.
An **Inc. 5 0** *Company*

e-mail Steve@KeySourceMedical.com
direct tel 1-866-371-0408
cell 1-516-510-6582

--- On **Tue, 5/20/08, Borelli, Victor** *<Victor.Borelli@Covidien.com>* wrote:
From: Borelli, Victor <Victor.Borelli@Covidien.com>
Subject: things
To: steve@keysourcemedical.com
Date: Tuesday, May 20, 2008, 7:09 PM

I am watching the Syracuse sports channel and Keith (me want food) Hernandez is on... Man he doesn't miss the post game buffet line does he? Maybe he quit smoking? And Mike Piazza retires! Wow...

Okay, seriously for a second, I just got off a conference call and the Actavis oxy back orders are affecting everyone's orders. Can you do us both a favor and check your inventories on oxy 5, 15 mg & 30 mg . If you are low, order more. If you are okay, order a little more. Capesce?

Call me in the morning to talk it through...

By the way, destroy this e mail... Is that really possible? Oh well...

Thanks,

Victor M. Borelli

National Account Manager, Retail
Covidien
Mallinckrodt Pharmaceutical Generics

O:410.308.6633
F:410.308.0634
C:443.204.7914
email: victor.borelli@covidien.com
www.covidien.com

CODE: 3880

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Attorneys for Defendant McKesson Corporation

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND FOR THE COUNTY OF WASHOE

CITY OF RENO,

Plaintiff,

v.

PURDUE PHARMA, L.P.; PURDUE PHARMA, INC.; THE PURDUE FREDERICK COMPANY, INC. d/b/a THE PURDUE FREDERICK COMPANY, INC.;

Case No.: CV18-01895
Dept. No.: 8

DISTRIBUTORS' RESPONSE TO CITY OF RENO'S SUPPLEMENTAL BRIEFING IN SUPPORT OF OPPOSITIONS TO DEFENDANTS' MOTIONS TO DISMISS

PURDUE PHARMACEUTICALS, L.P.; TEVA PHARMACEUTICALS USA, INC.; McKESSON CORPORATION; AMERISOURCEBERGEN DRUG CORPORATION; CARDINAL HEALTH, INC.; CARDINAL HEALTH 6 INC.; CARDINAL HEALTH TECHNOLOGIES LLC; CARDINAL HEALTH 108 LLC d/b/a METRO MEDICAL SUPPLY;DEPOMED, INC; CEPHALON, INC.; JOHNSON & JOHNSON; JANSSEN PHARMACEUTICALS, INC.; JANSSEN PHARMACEUTICA, INC. n/k/a JANSSEN PHARMACEUTICALS, INC.;ORTHO-MCNEIL-JANSSEN PHARMACEUTICALS, INC. n/k/a JANSSEN PHARMACEUTICALS, INC.;ENDO HEALTH SOLUTIONS INC.; ENDO PHARMACEUTICALS, INC.; ALLERGAN USA, INC.; ALLERGAN FINANCE, LLC f/k/a ACTAVIS, INC. f/k/a WATSON PHARMACEUTICALS, INC.; WATSON LABORATORIES, INC.; ACTAVIS PHARMA,INC f/k/a WATSON PHARMA, INC.; ACTAVIS LLC; INSYS THERAPEUTICS, INC.,MALLINCKRODT, LLC:;MALLINCKRODT BRAND PHARMACEUTICALS INC.; and MALLINCKRODT US HOLDINGS, INC.; ROBERT GENE RAND, M.D. AND RAND FAMILY CARE, LLC; DOES 1 through 100; ROE CORPORATIONS 1 through 100; and ZOE PHARMACIES 1 through 100, inclusive,

Defendants.

DISTRIBUTORS' RESPONSE TO CITY OF RENO'S SUPPLEMENTAL BRIEFING IN SUPPORT OF OPPOSITIONS TO DEFENDANTS' MOTIONS TO DISMISS

The City's supplemental brief has no bearing on Distributors' motion to dismiss. The supplemental brief is procedurally improper, substantively irrelevant, and factually inaccurate. This Court should reject Plaintiffs' attempt to amend its Complaint by way of supplemental brief and grant Distributors' motion to dismiss for the reasons stated therein.

As a threshold matter, the City's supplemental brief should be disregarded because it is an impermissible attempt to add factual allegations to its Complaint. It is black-letter law that when ruling on a motion to dismiss, a court may consider only the allegations in the plaintiff's complaint. *Schneider v. Cont'l Assur. Co.*, 110 Nev. 1270, 1271, 885 P.2d 572, 573 (1994) ("If 'matters outside the pleading are presented to and not excluded by the court,' a motion to dismiss for failure to state a claim upon which relief can be granted 'shall be treated as one for summary judgment and disposed of as provided in Rule 56.'" (quoting NRCP 12(d))). "A deficient pleading … cannot be cured by new allegations raised in a plaintiff's opposition to a motion to dismiss." *Korhonen v. Sentinel Ins., Ltd.*, 2014 WL 12789822, at *3 (D. Nev. Mar. 24, 2014) (citing *Schneider v. Cal. Dep't of Corr.*, 151 F.3d 1194, 1197 n. 1 (9th Cir. 1998)). "Indeed, 'it is axiomatic that the complaint may not be amended by the briefs in opposition to a motion to dismiss.'" *Id.* (quoting *Car Carriers, Inc. v. Ford Motor Co.*, 745 F.2d 1101, 1107 (7th Cir. 1984)). If the City wished to add allegations to its Complaint, it could have sought leave to amend. But it has not, and it cannot use a supplemental brief to do so.

Even if this Court were inclined to consider the allegations in the City's supplemental brief, they would have no effect on Distributors' motions to dismiss. Part II of the City's brief identifies just one way in which the new allegations are supposedly relevant to its opposition to Defendants' motions to dismiss: According to the City, the new allegations show that "if it was required to plead the facts with specificity" under NRCP 9(b), "it was unable to do so because the facts of the fraudulent activity are in the defendants' possession." City's Supp. Br. 11. Distributors did not move to dismiss on the basis of NRCP 9(b), so the new allegations have no

bearing on Distributors' motion. *Id.* at 10 n.6 (identifying motions raising the NRCP 9(b) argument and not identifying Distributors' motion).[1]

More broadly, the new allegations are nothing more than an attempt to distract from the controlling legal authority mandating dismissal of the City's claims. The new allegations do not change the fact that the statewide concern doctrine bars the City's claims. They do not change the fact that the City has not pled that Distributors' actions have been the proximate cause of harm to the City. They do not change the fact that the City's alleged injuries are derivative of opioid users' injuries. As such, they do not undermine any of the arguments in Distributors' motion to dismiss.

This Court therefore should dismiss the City's claims against Distributors for the reasons stated in Distributors' motion to dismiss.

AFFIRMATION

The undersigned declare under penalty of perjury under the law of the State of Nevada that the foregoing document does not contain the Social Security number of any person.

Dated this 4th day of October, 2019.

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[1] Moreover, the allegations in the City's supplemental brief concerning Distributors are inaccurate and misleading. For example, the City incorrectly claims that Exhibit 13 is an "Internal Cardinal Health Email"; as the email addresses and signature blocks make clear, that email exchange was between employees of Covidien, an entity related to Mallinckrodt (indeed, the email was produced in the MDL by Mallinckrodt, as evidenced by the "MNK" bates-number prefix). The City also erroneously suggests that a McKesson witness "admitted that they are partially responsible for the social costs of prescription drug abuse in America" when, in reality, the witness merely admitted that McKesson has responsibilities as a participant in the pharmaceutical supply chain. City's Supp. Br. 6–7.

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CERTIFICATE OF SERVICE

Pursuant to Rule 5(b), I hereby certify that on this date, the foregoing **DISTRIBUTORS' RESPONSE TO CITY OF RENO'S SUPPLEMENTAL BRIEFING IN SUPPORT OF OPPOSITIONS TO DEFENDANTS' MOTIONS TO DISMISS** was filed electronically with the Second Judicial District Court of Nevada. Electronic service of the foregoing document shall be made in accordance with the E-Service list.

DATED this 4th day of October, 2019.

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IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

CITY OF RENO,

Plaintiff,

vs.

PURDUE PHARMA, L.P. et al.,

Defendants.

Case No.: CV18-01895
Dept. No.: 8

MANUFACTURER DEFENDANTS' RESPONSE TO PLAINTIFF'S SUPPLEMENTAL BRIEFING RE MOTIONS TO DISMISS

INTRODUCTION

The City's Supplemental Brief in support of its Opposition to Defendants' Motions to Dismiss is the latest in the series of efforts by the private lawyer for the City to try this lawsuit in the media. Immediately after the August 27 status conference (during which the Court granted the City leave to file its Supplemental Brief), the City's private lawyer gave an interview on the courthouse steps that resulted in a media report in which he announced that "local juries" will "discover the actual

financial, physical and emotional toll the opioid epidemic has had on their communities."[1] Twelve days later, the same lawyer proclaimed on NPR that "the American public" should "be crying for some of these people to go to prison" for their "corporate indifference and greed" that gave rise to "this opiate epidemic."[2] The Supplemental Brief continues this smear campaign, purporting to characterize a handful of documents from among millions produced in the federal opiate multidistrict litigation ("Opiate MDL") as showing "the callous attitudes of Defendants towards the opioid epidemic" and a "flippant and dismissive" view of addiction issues. Supp. Br. at 6:1-2, 8:6-9.

The Supplemental Brief is not a serious or good-faith response to Manufacturer Defendants' Joint Motion to Dismiss ("Joint MTD"); it is another attempt by the City's private lawyer to poison the well. Indeed, the Supplemental Brief ignores nearly every argument raised in the Joint MTD and makes only a cursory attempt (at the very end) to tie its inflammatory rhetoric to a legal issue raised in the Joint MTD—namely, whether the City has pleaded fraud with particularity. The Court's resolution of the Joint MTD turns solely on the legal sufficiency of the First Amended Complaint ("FAC"), and the Supplemental Brief contributes nothing to that analysis. The Court should dismiss the FAC in its entirety as against Manufacturer Defendants.[3]

MEMORANDUM OF POINTS AND AUTHORITIES

I. THE SUPPLEMENTAL BRIEF IGNORES NEARLY EVERY ARGUMENT RAISED IN THE JOINT MTD

Manufacturer Defendants have shown that the City lacks authority to maintain this action because the action (1) does not address a "matter of local concern" within the meaning of Nevada

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[1] **Ex. A** (available at https://www.kolotv.com/content/news/Local-opioid-case-One-for-the-history-books-558502891.html) (last visited Sept. 27, 2019).

[2] **Ex. B** (available at https://knpr.org/knpr/2019-09/drug-makers-know-whats-coming-says-nevada-opioid-lawsuit-lawyer) (last visited Sept. 27, 2019).

[3] The moving "Manufacturer Defendants" are identified in footnote 1 of the Joint MTD. After Manufacturer Defendants filed their Reply in support of the Joint MTD, two signatories to the Joint MTD, the Purdue Defendants and Insys Therapeutics, Inc., filed for bankruptcy, and the claims against those defendants have been automatically stayed. Additionally, the City dismissed the Janssen and Johnson & Johnson Defendants from the action. Accordingly, those defendants are not signatories to this brief.

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law, and (2) is not otherwise authorized under Dillon's Rule. Reply ISO Joint MTD at 2:20-13:2; *see Premium Standard Farms, Inc. v. Lincoln Twp. of Putnam Cty.*, 946 S.W.2d 234, 240 (Mo. 1997) (Dillon's Rule barred a township from maintaining a civil public nuisance claim because "[n]o express authority to prosecute a nuisance action has been granted townships."). The Supplemental Brief offers no response to these arguments.

Notably, the City omitted from its Supplemental Brief a key development that bears on whether political subdivisions like the City may bring opioid-related actions. On July 23, 2019 (*i.e.*, after Manufacturer Defendants filed their Reply in support of the Joint MTD), 38 state attorneys general filed a letter in the Opiate MDL in opposition to a proposed settlement class of cities and counties. *In re Nat'l Prescription Opiate Litig.*, No. 1:17-md-02804-DAP (N.D. Ohio), ECF No. 1951. In that letter, the attorneys general assert that they "are exercising [their] unique roles as the top law enforcement officers of [their] States, with broad statutory, constitutional, and common-law powers to bring suit and obtain meaningful relief on behalf of all of [their] citizens." *Id.* at 2. They go on to explain that "political subdivision[s] . . . lack the broad powers and duties that are necessary to effectively protect the States' citizenry as a whole." *Id.* Nevada's Attorney General joined in those statements. *In re Nat'l Prescription Opiate Litig.*, No. 1:17-md-02804-DAP (N.D. Ohio), ECF No. 1955.

Beyond the issue of the City's lack of authority to maintain this action, the Supplemental Brief likewise fails to respond to Manufacturer Defendants' showing that the City's claims are barred by the municipal cost recovery rule and the prohibition against group pleading. Joint MTD at 6:12-9:2; Reply ISO Joint MTD at 13:3-16:11. Nor does the Supplemental Brief address the fatal infirmities of each of the City's individual claims. Joint MTD at 12:1-23:12; Reply ISO Joint MTD at 18:13-29:12.

II. THE SUPPLEMENTAL BRIEF DOES NOT CURE THE CITY'S FAILURE TO PLEAD FRAUD WITH PARTICULARITY.

The only legal issue raised in the Joint MTD that is addressed in the City's Supplemental Brief is the argument that the FAC fails to plead fraud with particularity. Supp. Br. at 11:11-13. According to the City, recently unsealed information from the Opiate MDL allegedly shows that

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"documents" are supposedly "within the possession of Defendants" such that "it is impossible for" the City "to meet the requirements of NRCP 9(b)," and thus the Court should excuse the City from satisfying those requirements. Supp. Br. at 11:2-13 (citing *Rocker v. KPMG LLP*, 122 Nev. 1185, 148 P.3d 703 (2006)).

The City's argument is without merit. Contrary to the City's assertion, *Rocker* does not excuse compliance with NRCP 9(b) whenever a plaintiff claims that "documents . . . are within the possession of Defendants that have not been made public." Supp. Br. at 11:11-13. If that were the law, any plaintiff could avoid NRCP 9(b) by claiming that some information is not yet known to him. *Rocker* requires more: a plaintiff must "[1] *show* [2] *in [the] complaint* that [3] [it] cannot plead with more particularity because the required information is in the defendant's possession." *Rocker*, 122 Nev. at 1195, 148 P.3d at 709 (emphasis added). The City's perfunctory assertion in its Supplemental Brief does not "show" anything, nor is that assertion "in [the] complaint." *Id.*

The City, moreover, cannot cure deficiencies in its pleading by making allegations in its Supplemental Brief that are not in the FAC. *See Breliant v. Preferred Equities Corp.*, 109 Nev. 842, 847, 858 P.2d 1258, 1261 (1993) ("As a general rule, the court may not consider matters outside the pleading being attacked."); *see also Nevada-Douglas Consolidated Copper Co. v. Berryhill*, 58 Nev. 261, 75 P.2d 992, 994 (1938) ("A fact necessary to be proven is equally necessary to be alleged."). Notably, the FAC alleges that the purportedly misleading statements forming the basis of the City's claims were widely and publicly disseminated, going so far as to call them part of "one of the biggest pharmaceutical marketing campaigns in history." *See* FAC ¶¶ 8, 96, 101-02, 105. These admissions by the City contradict its assertion that it cannot identify with further particularity the factual basis of its claims.

CONCLUSION

Manufacturer Defendants respectfully request that the Court dismiss the FAC with prejudice as against them.

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AFFIRMATION

The undersigned affirms that the preceding document does not contain personal information as described in WDCR 10(7).

Dated this 4th day of October, 2019.

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LIST OF EXHIBITS

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CERTIFICATE OF SERVICE

I hereby certify, under penalty of perjury, that I am an employee of McDonald Carano and that on this date, a true and correct copy of the **MANUFACTURER DEFENDANTS' RESPONSE TO PLAINTIFF'S SUPPLEMENTAL BRIEFING RE MOTIONS TO DISMISS** was electronically served via the Court's electronic filing system to the following parties associated with this case. For the following parties not registered with the court's electronic filing system, then a true and correct copy of the above-named document was served via U.S. mail:

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I declare under penalty of perjury that the foregoing is true and correct.

Dated: October 4, 2019.

/s/ Beau Nelson
An employee of McDonald Carano LLP

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EXHIBIT A

Local opioid case: One for the history books

By Terri Russell | Posted: Tue 6:10 PM, Aug 27, 2019 | Updated: Wed 12:42 PM, Aug 28, 2019

RENO, Nev. (KOLO) In a small 1940's courtroom: a big case pitting the City of Reno and Washoe County against our country's opioid manufacturers like Purdue, along with distributors like McKesson.

At stake, money spent by local municipalities to help contain and treat the opioid epidemic.

According to a DEA data base, in Washoe County from 2006 to 2012, more than 133,000,000 prescription pain pills were distributed.

That is 46 pills for every man woman and child living here.

Attorney for the City of Reno, Robert Eglet, says there's more to this case than just pill popping.

“Where is it going?” asks Eglet. “So there has to be, the only explanation is, it is going from the legal market into the elicit market, how that is occurring we don't know yet. I suspect we are going to find out,” he says.

That is only part of the case.

Because the cost of a human life, and the cost to save that life also has a price tag; cities and counties throughout the state will all be trying to recoup the costs of hospital treatment, emergency care, court costs, police and fire response, to name just a few.

The state of Nevada too has its own case where they will try to get reimbursed for Medicaid costs.

While it seems logical to bundle all of these cases into one, Eglet says it can't be done that way.

“The damages are different,” he says. “The damages that the state has versus the City of Reno, versus Clark County or Las Vegas, or Henderson or North Las Vegas or any other counties are different,” says Eglet.

Eglet's firm represents the lion's share of municipalities and the state in these opioid lawsuits.

In Judge Barry Breslow's courtroom today, guidelines were discussed on how this case would proceed.

Once underway within the next two years, with evidence and testimony and two dozen defendants it could take up to seven months to try.

Such a case in Clark County is several steps ahead of the one here in Washoe County.

But that has been put on hold, as the defendants have appealed to Nevada's Supreme Court saying municipalities do not have standing, and cannot bring suits like this in district court.

No one can predict when the state supreme court will rule on the Clark County opioid case.

Judge Breslow says nevertheless, the case in his courtroom will proceed and won't wait for that decision.

Depending upon the outcome, local residents all over the state could serve on local juries and discover the actual financial, physical and emotional toll the opioid epidemic has had on their communities.

Monday Web Weather

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EXHIBIT B

NEVADA PUBLIC RADIO®

knpr KNPR's State of Nevada

Drug Makers 'Know What's Coming,' Says Nevada Opioid Lawsuit Lawyer

Courtesy Eglet Prince

Robert Eglet won more than a half-billion dollars suing over a Southern Nevada hepatitis outbreak. Now he's going after the makers of opioid painkillers on behalf of Clark County taxpayers.

LISTEN (19:19) Download

Sep 09, 2019

The private attorney representing Clark, Washoe and several other Nevada counties in suing drug manufacturers says it will take decades to address the legacy of the opioid epidemic.

Las Vegas attorney Rober Eglet told State of Nevada that “this public nuisance needs to be abated, and it’s going to take decades to get done. And it’s going to take money every year for the abatement.”

Eglet, who was hired by counties across the state, is seeking more than $4 billion in the lawsuits he has filed.

He said a recent $572 million judgment against Johnson & Johnson in Oklahoma — and a jump in the company's stock price on the news — showed how big the financial stakes are.

"The verdict was a lot less than their analysts expected, the company expected. They did better than thought they would," he said. "It just goes to show you these companies know what's coming."

Eglet predicted a Sept. 17 hearing would bring new revelations about makers of prescription opioids, which have been blamed for at least 250 deaths in Nevada in each of the last 15 years.

"The public will finally get to understand the depths and the widths of how bad this problem is and the unbelievable corporate indifference and greed that was going on when it comes to why this opiate epidemic happened in the first place," he said.

And while Oklahoma's case garnered headlines, Eglet said Nevada's opiate problem is worse than Oklahoma's even though that state has a larger population.

"What it means is the drug companies were shipping a lot of these opiates into Nevada," he said, "Our state has the fourth-worst problem as far as the number of opiates being shipped in here per capita."

He also said the Silver State had the 4th highest overdose death rate in the country and the 2nd highest per capita number of oxycodone and hydrocodone pills being shipped to the state.

According to court documents, in Clark County between 2006 and 2012, 1.3 billion doses were prescribed. In Washoe County, that number was 180 million. That's nearly 1.5 billion doses for two counties with well under 3 million in combined population--roughly 50 pills per person.

Eglet said the pharmaceutical industry fought to keep those numbers confidential for years but new information coming out in court cases across the country show the companies knew they were addicting the American public but they didn't care because they were making billions of dollars a year.

"They were putting profits over patients and sales over safety," he said.

And while the number pills shipped to Washoe and Clark County are stunning, the numbers for rural counties seem even more startling.

Mineral County, which is between Carson City and Las Vegas, has fewer than 5,000 residents. But from 2006 to 2012, 2.5 million opioid doses were prescribed there. In Nye County, same time period, 34 million doses for 43,000 people—that's a whopping 790 pills, on average, per person.

Eglet said while opioids were and continue to be a problem for rural areas, the numbers show the bigger problem was diversion, which is when pills are moved from the legal market to the illegal market.

“The simple scenario is they go in the front door," he said, "They’re shipped in the front door from distributors and manufacturers into the pharmacies and then a large number of those pills go out backdoor into the illicit market.”

Eglet has litigated many personal injury cases and cases against other pharmaceutical companies, including in the infamous case of hepatitis C in Las Vegas that was spread through a colonoscopy clinic.

But he told KNPR's State of Nevada that he has never seen corporate conduct as egregious as in the opioid cases.

He said as the cases in Nevada and elsewhere unfold the American public will start to understand just how serious the problem was and continues to be.

“Once the American public really learns about all of this, I can’t imagine the American public isn't going to be crying for some of these people to go to prison,” he said.

hear more

KNPR's State of Nevada

DEC 07, 2017

Las Vegas Personal Injury Lawyer Sets Sights On Opioid Manufacturers

LISTEN (17:04)

Guests: Robert Eglet, attorney, suing drug makers

More from: Nevada & the Southwest, Civic Life, nevada opioid use, opioid lawsuits, opioid crisis, robert eglet, KNPR's State of Nevada

IN THE SUPREME COURT OF THE STATE OF NEVADA

PURDUE PHARMA L.P.; PURDUE PHARMA, INC.; THE PURDUE FREDERICK COMPANY INC.; PURDUE PHARMACEUTICALS L.P.; TEVA PHARMACEUTICALS USA, INC.; CEPHALON, INC.; JOHNSON & JOHNSON; JANSSEN PHARMACEUTICALS, INC.; ORTHO-MCNEIL-JANSSEN PHARMACEUTICALS, INC., N/K/A JANSSEN PHARMACEUTICALS, INC.; JANSSEN PHARMACEUTICA, INC., N/K/A JANSSEN PHARMACEUTICALS, INC.; ABBVIE INC.; ABBVIE US LLC; ENDO PHARMACEUTICALS INC.; ENDO HEALTH SOLUTIONS, INC.; ALLERGAN, INC.; ALLERGAN USA, INC.; ALLERGAN FINANCE, LLC, F/K/A ACTAVIS, INC., F/K/A WATSON PHARMACEUTICALS, INC.; WATSON LABORATORIES, INC.; ACTAVIS LLC; ACTAVIS PHARMA, INC., F/K/A WATSON PHARMA, INC.; INSYS THERAPEUTICS, INC.; AND MALLINCKRODT LLC,

Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK; AND THE HONORABLE TIMOTHY C. WILLIAMS, DISTRICT JUDGE,

Respondents,

and

CLARK COUNTY,

Real Party in Interest.

No. 79002

FILED

OCT 21 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

19-43428

ORDER DISMISSING PETITION

This is a petition for a writ of mandamus directing the district court to dismiss the underlying action.

Several defendants in the proceedings below, Cardinal Health, Inc., AmerisourceBergen Drug Corporation, and McKesson Corporation have filed joinders to the writ petition; real party in interest has moved to strike the joinders, the defendants have filed an opposition, and real party has filed a reply.

On September 20, 2019, Cardinal Health, Inc., filed a "Notice of Filing of Notice of Removal," in which it asserts that the underlying proceedings have been removed to the United States District Court for the District of Nevada. Attached to the notice is a copy of a notice of removal of the underlying district court case. Under 28 U.S.C. § 1446(d), after the filing of a notice of removal, and notice to this court of its filing, "the State court shall proceed no further unless and until the case is remanded." Despite Cardinal Health Inc.'s assertion that it has filed for remand to the Eighth Judicial District Court, the federal district court's jurisdiction over the matters commenced when the notice of removal was filed in that court. *See In re Diet Drugs*, 282 F.3d 220, 231 n.6 (3rd Cir. 2002). This court can no longer proceed with the matters "until the federal court decides whether it will retain jurisdiction or not." *Adair Pipeline Company v. Pipeliners Local Union No. 798*, 203 F. Supp. 434, 437 (S.D. Tex. 1962). This court therefore takes no action on the pending joinders and motion to strike.

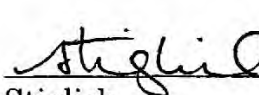
Finally, to avoid having this petition linger on this court's docket indefinitely, this court dismisses the petition without prejudice to

petitioners' right to move for its reinstatement within 30 days of any remand from the federal district court, if deemed appropriate.

It is so ORDERED.[1]

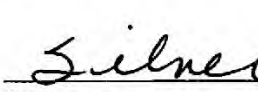
_____, C.J.
Gibbons

_____, J.
Hardesty



_____, J.
Stiglich

_____, J.
Cadish



_____, J.
Silver

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[1]The Honorable Kristina Pickering, Justice, and Ron Parraguirre, Justice, did not participate in the decision of this matter.

+cc: Hon. Timothy C. Williams, District Judge
Ballard Spahr LLP/Las Vegas
McDonald Carano LLP/Las Vegas
Morgan, Lewis & Bockius LLP/Miami
Evans Fears & Schuttert LLP
O'Melveny & Myers LLP/Los Angeles
Kirkland & Ellis LLP/Chicago
Holland & Knight/Portland
Arnold & Porter Kaye Scholer LLP/Los Angeles
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Kirkland & Ellis LLP/Washington DC
Dechert LLP/New York
Olson, Cannon, Gormley, Angulo & Stoberski
Hymanson & Hymanson
Ropes & Gray LLP/San Francisco
Laxalt & Nomura, Ltd./Reno
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EGLET ADAMS

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND FOR THE COUNTY OF WASHOE

CITY OF RENO,

Plaintiff,

vs.

PURDUE PHARMA, L.P., PURDUE PHARMA, INC.; THE PURDUE FREDERICK COMPANY, INC. D/B/A THE PURDUE FREDERICK COMPANY, INC.; PURDUE PHARMACEUTICALS, L.P.; TEVA PHARMACEUTICALS USA, INC.; MCKESSON CORPORATION; AMERISOURCEBERGEN DRUG CORPORATION; CARDINAL HEALTH, INC.; CARDINAL HEALTH 6 INC.; CARDINAL HEALTH TECHNOLOGIES

Case No.: CV18-01895
Dept. No.: 8

CITY OF RENO'S SUPPLEMENTAL BRIEFING IN SUPPORT OF OPPOSITIONS TO DISTRIBUTORS' JOINT MOTION TO DISMISS

LLC; CARDINAL HEALTH 108 LLC D/B/A METRO MEDICAL SUPPLY; DEPOMED, INC.; CEPHALON, INC.; JOHNSON & JOHNSON; JANSSEN PHARMACEUTICALS, INC.; JANSSEN PHARMACEUTICA, INC. N/K/A JANSSEN PHARMACEUTICALS, INC.; ORTHO-MCNEIL-JANSSEN PHARMACEUTICALS, INC. N/K/A JANSSEN PHARMACEUTICALS, INC.; ENDO HEALTH SOLUTIONS INC.; ENDO PHARMACEUTICALS, INC.; ALLERGAN USA, INC.; ALLERGAN FINANCE, LLC F/K/A ACTAVIS, INC. F/K/A WATSON PHARMACEUTICALS, INC.; WATSON LABORATORIES, INC.; ACTAVIS PHARMA, INC F/K/A WATSON PHARMA, INC.; ACTAVIS LLC; INSYS THERAPEUTICS, INC., MALLINCKRODT, LLC; MALLINCKRODT BRAND PHARMACEUTICALS INC.; AND MALLINCKRODT US HOLDINGS, INC.; ROBERT GENE RAND, M.D. AND RAND FAMILY CARE, LLC; DOES 1 THROUGH 100; ROE CORPORATIONS 1 THROUGH 100; AND ZOE PHARMACIES 1 THROUGH 100, INCLUSIVE,

Defendants.

Plaintiff, City of Reno, by and through the undersigned attorneys, hereby submits this Supplemental Briefing in Support of its Opposition to Distributors' Motion to Dismiss. This Supplement is submitted for purposes of clarifying certain items and addressing certain clerical errors in the Opposition.

I. INTRODUCTION

The City of Reno submits this Supplemental Briefing on the grounds that mistakes were made in the drafting of the Opposition and Distributors knew that they were mistakes. These mistakes were not the fault of the City of Reno and the City should not be punished for what amounts to copy and pasting errors. Moreover, Distributors are not prejudiced by the submission of this Supplement. Distributors are aware of the facts alleged against them and the City's arguments as they faced similar arguments in two (2) other cases in the state. Courts have the discretion to set

aside a default for "good cause" or a default judgment on the basis of mistake or excusable neglect. *See* NRCP 55(c) and NRCP 60(d). Certainly, a Court has the discretion to consider similar grounds when determining whether a clerical error in an opposition to a motion to dismiss should result in dismissal of an entire claim. *See* NRCP 55(c) and NRCP 60(d). If the Court believes it is necessary, the City of Reno is agreeable to continuing the hearing on the Distributors' Joint Motion to Dismiss to allow them time to respond to the supplement.

The standard of review for a dismissal under NRCP 12(b)(5) is rigorous as this Court must construe the complaint liberally, take all factual allegations in the complaint as true, and draw every fair inference in favor of the nonmoving party. *Vacation Village v. Hitachi America*, 110 Nev. 481, 484, 874 P2d 744, 746 (1994). Upon review of the City of Reno's First Amended Complaint and the allegations contained therein, accepting all facts as true, the City has alleged claims against Distributors upon which relief can be granted.

II. THE CITY HAS ALLEGED THAT DISTRIBUTORS WERE ENGAGED IN BUSINESS PRACTICES THAT DIRECTLY LED TO THE SPREAD OF THE OPIOID EPIDEMIC IN THE CITY.

Throughout their Reply, Distributors point to clerical errors in the City's Opposition as though they relieve Distributors of their duties and responsibilities to the City. There are errors in the Opposition in which Distributors are identified as having created (manufactured) opioids and developed the marketing scheme for those opioids.

The City's Opposition, however, also points to the allegations in the First Amended Complaint that the Distributors ignored the law, paid fines, and continued to unlawfully fill suspicious opioid orders. *See* City of Reno's Opposition, p. 3:20-22. Additionally, the City argued that Distributors engaged in business transactions within the City every time they filled a suspicious order and that those orders had a direct impact on the City and its residents. *Id.* at p. 4:3-5.

Moreover, the First Amended Complaint is replete with allegations of Distributors' actions and inactions that led to the creation of, and continuing spread, of the opioid epidemic throughout the City. Paragraph 66 of the First Amended Complaint alleges that the Distributors

distributed opioids, or facilitated the distribution of opioids, in Reno and that each of the companies have been subjected to disciplinary action by the DEA arising out of their dangerous distribution practices. *See* First Amended Complaint, on file herein, at ¶ 66. One section of the First Amended Complaint is titled "Duty of Drug Distributors and Pharmacies as Gate Keepers," which specifically details the Distributors' duties to the City and their violation of those duties. *Id.* at ¶¶ 138-153. As to the nuisance claim, the City alleges that "Defendants intentionally and/or unlawfully distributed opioids without reporting or refusing to fill suspicious orders or taking other measures to maintain effective controls against diversion." *Id.* at ¶ 188. The City also alleged that "Defendants intentionally and/or unlawfully continued to ship and failed to halt suspicious orders of opioids," and that "[s]uch actions were inherently dangerous." *Id.*

Distributors are aware of the allegations against them as they are clearly stated in the First Amended Complaint. Clerical errors in the Opposition should not be grounds for dismissal. Nevada's courts have long recognized the public policy in favor of deciding motions and cases on their merits. *See Price v. Dunn*, 106 Nev. 100, 105 (1990) (internal citations omitted). Accordingly, Distributors' Motion to Dismiss should be denied.

III. THERE IS NO CONTROL REQUIREMENT IN A PUBLIC NUISANCE CAUSE OF ACTION

On Reply, Distributors argue that the City conceded that there is a control requirement in a public nuisance claim because it was not addressed in the Opposition. The City has made no such concession. The purported "control" requirement is neither "hornbook" or "black letter" as Distributors claim. In their Motion to Dismiss, Distributors include a short argument regarding the alleged control requirement and, despite claiming that it is "hornbook law," none of the cases they cite are from Nevada or anywhere in the Ninth Circuit. *See* Defendants' Motion to Dismiss, p. 11:13-12:4 and p. 11, FN 7. Distributors are not prejudiced by the inclusion of this argument in this supplement because they have had to address this argument in two (2) other opioid cases, most recently in a hearing on December 2, 2019. They are aware that the omission of the control argument here was a mistake and seek to capitalize upon that mistake because the law is not nearly as clear cut in their favor.

Control is not an element of a public nuisance claim under the Restatement (Second) of Torts. In Nevada, which follows the Restatement, it would be inconsistent with that language to include an element of control in a public nuisance claim. Multiple jurisdictions, California included, have rejected the notion that control is a separate element of common law public nuisance: "[l]iability for nuisance does not hinge on whether the defendant owns, possesses or controls the property, nor on whether he is in a position to abate the nuisance; **the critical question is whether the defendant *created or assisted in the creation of the nuisance.***" *County of Santa Clara v. Atlantic Richfield Co.*, 40 Cal. Rptr. 3d 313, 325 (Cal. Ct. App. 2006) (quoting *City of Modesto Redevelopment Agency v. Superior Court*, 119 Cal.App. 4th 28, 38 (Cal. Ct. App. 2004)) (bold added, italics supplied in original); *see also, e.g., In re Methyl Tertiary Butyl Ether Prod. Liab. Litig.*, 175 F. Supp. 2d 593, 629 (S.D.N.Y. 2001) (there must be circumstances in which a defendant that contributed to a nuisance can be liable for the nuisance, even if it is no longer in control of the instrumentality); *Selma Pressure Treating Co. v. Osmose Wood Preserving Co. of Am.*, 271 Cal. Rptr 596, 606-607 & n. 7 (Cal Ct. App. 1990) (the State may seek damages for a public nuisance even though the defendant was not in control of the instrumentality of the nuisance) (overruled on limited grounds related to perceived adoption of the "sophisticated user defense" by *Johnson v. American Standard, Inc.*, 43 Cal. 4th 56, 70 (Cal. 2008).

The focus of the Restatement's definition of public nuisance is whether the defendant's conduct caused an unreasonable interference with a public right, including the public health. *See Restatement (Second) of Torts*, §821B. Also, section 834 of the Restatement provides that a defendant may be liable for a nuisance "caused by an activity, not only when he carries on the activity but also when he participates to a substantial extent in carrying it on." *Id.* at §834. Activity is defined as acts causing harm to another's interests. *Id.* at Comment (b). This idea that the defendant must be in control of the instrumentality of the nuisance in order to be liable for damages arising out of the nuisance, is expressly rejected in Comment (e) to Section 834 of

the Restatement, which provides that a person who substantially participated in an activity may be liable for a nuisance even if the activity has ceased and "even though he is no longer in a position to abate the condition and to stop the harm." *Id.* at §834, Comment (e).

Moreover, the cases cited by Distributors are factually distinguishable from this case. For example, in *Ashley Cnt., Ark. v. Pfizer, Inc.*, 552 F.3d 659 (8th Cir. 2009), the court found that the distributors of pseudophedrine were not in control of the product when the nuisance at issue – crystal meth addiction – was created. This can be distinguished from the facts here, because the pseudophedrine was not, on its own, the nuisance. It was not the mechanism of the addiction and crisis as it is only one ingredient in the illegally manufactured and distributed crystal meth. Individuals had to purchase the pseudophedrine and modify its entire chemical makeup through illegal means to resell it as an unrecognizable product. In the *State v. Lead Indus. Ass'n*, 951 A.2d 428 (R.I.) case, the lead paint at issue had been used on homes since the early 1900s and the companies had ceased the use of lead paint long before the litigation was filed. Here, opioids are not being modified and turned into an illegal drug as was the case with pseudophedrine and Distributors are not out of the opioid distribution business as in the *Lead Indus.* case. Opioids are dangerous in their original formulation and are still being distributed by Defendants.

The issue of control in public nuisance law is neither well-settled nor "horn book." It is not a requirement recognized throughout courts and jurisdictions as Distributors would have this Court believe. On Reply, Distributors cite to the same cases as identified in their Motion. They point to the *Erickson v. Courtney*, 702 F. App'x 585 (9th Cir. 2017) case as authority for their position that the City conceded this argument. But, that case involved a scenario where the opposing party failed to file any opposition at all to a summary judgment motion. *See Erickson v. Courtney*, 702 F.App'x at 588. Moreover, the rule applicable to this Court, District Court Rule 13(3), only deems a party to have consented to a motion if the party failed to file and serve a written opposition. Here, the City filed an Opposition addressing Distributors' arguments.[1] It

[1] It is worth noticing that Distributors' control argument has been rejected by other Nevada District Court judges.

would be an error for this Court to grant Distributors' Motion to Dismiss as it relates to the Public Nuisance Claim where there is no settled law on the issue and the purported control requirement directly contradicts the language of the Restatement.

IV. CONCLUSION

Distributors focus on errors in the Opposition as a basis for dismissal. Nevada's public policy recognizes a preference for deciding issues on their merits. However, the allegations of the First Amended Complaint and the legal arguments contained in the Opposition, demonstrate that the City of Reno has stated claims on which relief may be granted against Distributors. Accordingly, the City respectfully requests Distributors' Motion be denied in its entirety.

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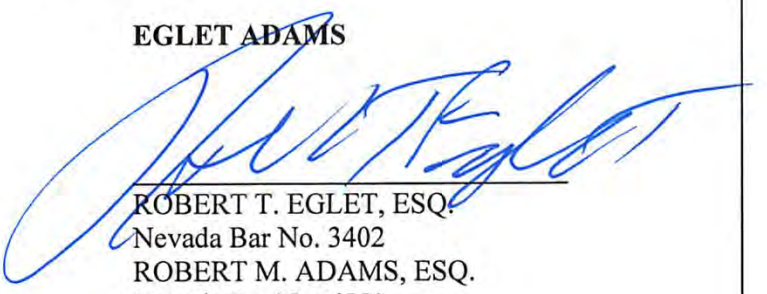
AFFIRMATION

The undersigned affirms that the preceding Supplemental Briefing in Support of the Opposition to Distributors' Joint Motion to Dismiss does not contain personal information as described in WDCR 8.

DATED this 4th day of January, 2020.

EGLET ADAMS



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EGLET ADAMS

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of EGLET ADAMS, and that on January 4, 2020, I caused the foregoing document entitled **CITY OF RENO'S SUPPLEMENTAL BRIEFING IN SUPPORT OF OPPOSITIONS TO MOTIONS TO DISMISS** to be served upon those persons designated by the parties in the E-Service Master List for the above-referenced matter in the Second Judicial District Court eFiling System in accordance with the mandatory electronic service requirements of Administrative Order 14-2 and the Nevada Electronic Filing and Conversion Rules and by U.S. regular mail as follows:

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/s/ Crystal Garcia
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