

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE: NATIONAL PRESCRIPTION) MDL 2804
OPIATE LITIGATION)
) Case No. 1:17-md-2804
THIS DOCUMENT RELATES TO:)
) Judge Dan Aaron Polster
All Cases)
) **ORDER REGARDING TRACK THREE**
)

On April 16, 2020, the Court entered an Order regarding the establishment of Track Three to address public nuisance claims against pharmacy defendants in their roles as distributors and dispensers. *See* Doc. #: 3261. The Court directed the Plaintiffs' Executive Committee to identify proposed cases for a Track Three bellwether trial in the Northern District of Ohio, and to meet and confer with the Pharmacy Defendants to attempt to reach an agreement regarding which case(s) to select for Track Three. *See id.* at 2.

As requested, the PEC identified two cases for Track Three: *County of Lake, Ohio v. Purdue Pharma, L.P. et al.*, Case No. 1:18-op-45032 (N.D. Ohio); and *County of Trumbull, Ohio v. Purdue Pharma, L.P. et al.*, Case No. 1:18-op-45079 (N.D. Ohio). Defendants did not agree or disagree with Plaintiffs' identified cases, instead objecting to the Court's Order and suggesting instead a Track Three case from Georgia.¹ *See* Doc. #: 3275. Defendants did not propose any alternative Track Three case within the Northern District of Ohio. Accordingly, the Court now designates the two above-mentioned cases as the Track Three cases.

¹ Defendants also declined to waive the requirements of *Lexecon Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26 (1998), such that the Georgia case could not be tried by the MDL court.

The Court directs Track Three Plaintiffs to amend their Complaints, move to sever claims or parties, or provide notice that it will not be amending the Complaints or moving to sever any claims or parties, **on or before Friday, May 15, 2020**.

The Court further directs the parties to meet and confer and submit to Special Master Cohen, on or before **Friday, May 22, 2020**, proposed case management deadlines, *see, e.g.*, CMO-1, Doc. #: 232 at ¶3.b-h, and Track-1B CMOs, Doc. #: 3116 & 3175. The case management proposal should contemplate a four-week trial in May 2021. The proposal and any suggested discovery modifications should be agreed to in as many respects as possible; Special Master Cohen will resolve any disputes and enter a case management order. Fact discovery in Track Three shall not begin until Special Master Cohen enters the case management order.

IT IS SO ORDERED.

/s/ Dan Aaron Polster April 30, 2020
DAN AARON POLSTER
UNITED STATES DISTRICT JUDGE