

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE: NATIONAL PRESCRIPTION)	CASE NO. 1:17-MD-2804
OPIATE LITIGATION)	
)	JUDGE POLSTER
THIS DOCUMENT RELATES TO:)	
"All Cases")	
)	<u>ORDER REGARDING PRODUCTION</u>
)	<u>OF INFORMATION BY CERTAIN</u>
)	<u>NON-LITIGATING DEFENDANTS</u>

This Court earlier identified about 55 “Non-Litigating Defendants” and, over the past year, held conferences with them and the PEC periodically to facilitate settlement discussions. *See* docket no. 4380 (identifying the “ten Distributor and [ten] Manufacturer Defendant Families most frequently named in MDL cases” other than the major litigating defendants, and directing each Defendant Family to state “whether [it is] interested or currently engaged in active settlement negotiations”); docket no. 4670 (identifying about 35 additional Defendant Families). Many of these Defendant Families¹ are now engaged in active mediation, and many have produced information to the PEC for this purpose.

Some Defendant Families, however, have been dilatory or have not produced sufficient

¹ By “Defendant Families,” the Court means all entities that are related. For example, “H.D. Smith, LLC” includes “family member” defendants H.D. Smith, LLC; H.D. Smith Holding Company; H.D. Smith Holdings, LLC; and H.D. Smith Wholesale Drug Co.

information to make mediation possible. Moreover, nearly all of the information the PEC needs to make mediation possible will be discoverable in litigation. Accordingly, to facilitate the settlement process, the Court now **ORDERS** each Defendant Family listed at the end of this Order² to produce promptly to plaintiffs' liaison counsel Peter H. Weinberger a separate status report, under Evidence Rule 408, setting forth the following information, to the extent it has not already done so:

- (1) the volume of dosage units of opioid products manufactured or distributed or dispensed by the Defendant Family, by calendar year, between 2006-2018; and (2) where its opioid products were shipped or distributed to, by calendar year, between 2006-2018.³
- Financial Statements and Profit & Loss Statements for its last two fiscal years (audited Statements if available).

² Although the Court listed a total of 55 Defendant Families in docket nos. 4380 and 4670, this Order does not apply to a handful of them for various reasons, such as dismissal or settlement of all cases against the Defendant Family. This Order *does* include Discount Drug Mart, which was not earlier listed in docket nos. 4380 and 4670 due to oversight.

Finally, the production obligations stated in this Order ***do not apply*** if the listed defendant has not been served in any MDL case where it was named—a circumstance the Court cannot divine from ECF. Any subsequent motion by Plaintiffs to compel production of information from a listed defendant must include proof that the defendant was served properly in at least one MDL case.

³ Although the Court currently requires production of this information through calendar year 2018, the Court strongly encourages each Defendant Family to voluntarily produce this information through calendar year 2020. This is *at least* what the Court would require in discovery of a specific case, and is highly likely to help in mediation. Having just recently ordered production only through 2018 (*see* docket no. 4670), however, the Court will not require production through 2020 at this time.

The Court may also later order discovery of similar and additional information in the context of litigation of a specific case, and not covered by Evidence Rule 408. *See, e.g.*, docket no. 3170 (requiring production of far more dispensing information in the Track One cases).

IT IS SO ORDERED.

/s/ Dan Aaron Polster

DAN AARON POLSTER

UNITED STATES DISTRICT JUDGE

Dated: April 14, 2023

[Note: the Defendant Families to which this Order applies are listed on the next page]

Defendant Families

Abbott Laboratories	Louisiana Wholesale Drug Co., Inc.
Ahold Delhaize	Masters Pharmaceutical
Alvogen Inc.	Morris & Dickson Co.
Amneal Pharmaceuticals	Mylan Inc.
Apotex, Inc.	N.C. Mutual Wholesale Drug Co. (a/k/a Mutual Drug)
Assertio f/k/a Depomed, Inc.	Pfizer
Associated Pharmacies Inc.	Pharmacy Buying Association, Inc.
Auburn Pharmaceuticals	Prescription Supply, Inc.
Bloodworth Wholesale Drugs, Inc.	Quest Pharmaceutical
Costco	Richie Pharmacal Co.
Dakota Drug, Inc.	Sandoz Inc./Novartis
Discount Drug Mart	Sun Pharmaceutical Industries
Ethex Corporation	Supervalve Inc.
GCP Pharma, LLC	Target Corporation
Henry Schein, Inc.	Thrifty White
Hikma Pharmaceuticals PLC	Top Rx, LLC
Hy-Vee, Inc.	Value Drug Company
Indivior Inc.	Winn-Dixie
J.M. Smith Corporation/ Burlington Drug	Zydus Pharmaceuticals (USA), Inc.
Keysource Medical, Inc.	
KVK-Tech, Inc.	