

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE: NATIONAL PRESCRIPTION
OPIATE LITIGATION

) MDL 2804

)
) THIS DOCUMENT RELATES TO:

) Case No. 1:17-md-2804

)
) *The Montgomery County Board of County*
) *Commissioners, et al. v. Cardinal Health,*
) *Inc., et al., Case No. 1:18-op-46326*
) *(“Track Seven”)*

) Judge Dan Aaron Polster

) ORDER INCORPORATING
) OBJECTIONS TO PRIOR DAUBERT
) RULINGS

Before the Court is Kroger’s Motion to Preserve Prior *Daubert* Rulings and Objections Thereto (docket no. 4883).¹ Plaintiff Montgomery County filed a response (docket no. 4945) and Kroger filed a reply (docket no. 4966). For the reasons stated below, the Motion is **DENIED as moot** with respect to Kroger’s request to preserve the Court’s prior *Daubert* rulings. The Motion is **GRANTED in part** with respect to Kroger’s request to preserve prior objections to *Daubert* rulings.

* * *

Kroger asks the Court to enter an order incorporating its prior *Daubert* rulings from other case tracks of this MDL, including *Case Tracks 1, 1B, and 3*, into *Case Track 7*. But the Court has already done exactly that. On March 30, 2023, the Court entered an Order stating: “all of the

¹ The motion was filed by The Kroger Co., Kroger Limited Partnership I, and Kroger Limited Partnership II (collectively, “Kroger”).

Court's Orders and rulings entered in other case tracks of this MDL . . . shall apply to and control this *Case Track 7*, both in this Court and on remand to a transferor court, unless a party bound by such Order or ruling shows good cause why it should not apply." Order re: Previously Decided Issues at 3-4 (docket no. 4978). This Order expressly included prior *Daubert* rulings. *See id.* at 3 n.1. Accordingly, Kroger's request for an order preserving the Court's prior *Daubert* rulings is denied as moot.

Kroger also seeks to "assert and preserve as its own all prior arguments and objections" to *Daubert* rulings made by Defendants in *Case Tracks 1, 1B, and 3*.² Motion at 2. In response, Plaintiff similarly asks to incorporate and preserve the arguments and objections made by earlier Plaintiffs to prior *Daubert* rulings. Response at 1-2. Under the Court's recent order, "the parties' briefing, arguments, and objections submitted in *Case Tracks 1, 1B, and 3* are preserved and applicable to the *Case Track 7* parties, should they choose to adopt them." Order re: Previously Decided Issues at 4 (docket no. 4978).

In light of the parties' requests, the Court finds both Kroger and Plaintiff have elected to adopt the briefing, arguments, and objections made by their respective counterparts regarding the Court's previous *Daubert* rulings in *Case Tracks 1, 1B, and 3*, including but not limited to the rulings specifically identified in Kroger's Motion at 2-3 (docket no. 4883) and Plaintiff's Response at 2-3 (docket no. 4945). Thus, with respect to prior *Daubert* rulings entered in *Case Tracks 1, 1B, and 3*, the briefing, arguments, and objections raised by previous Defendants are preserved and

² In its motion, Kroger initially states that it requests to preserve prior objections raised by "the Pharmacy Defendants," Motion at 1, and later states that it seeks to preserve arguments and objections made by "the *Track 1A, Track 1B, and Track 3* Defendants," *id.* at 2. The Defendants in *Track 1A* included Manufacturers, Distributors, and Pharmacies, whereas the Defendants in *Tracks 1B and 3* included only Pharmacies. For the sake of clarity, the Court interprets Kroger's motion as seeking to adopt the briefing, arguments, and objections of *all* prior case track Defendants, not just the Pharmacy Defendants.

applicable to Kroger in *Case Track 7*; and the prior briefing, arguments, and objections raised by previous Plaintiffs are preserved and applicable to Montgomery County in *Case Track 7*.

IT IS SO ORDERED.

/s/ Dan Aaron Polster May 1, 2023
DAN AARON POLSTER
UNITED STATES DISTRICT JUDGE