

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* )  
 ) **ISSUE RULING FOUR**  
 ) **REGARDING THE SUFFICIENCY OF**  
 ) **CLAIMS AND ALLEGATIONS**

In *Issue Ruling One* (docket no. 6306), the Court stated it would publish a series of “Issue Rulings” to resolve common arguments raised by the parties in connection with plaintiffs’ numerous pending motions to amend complaints.<sup>1</sup> This *Issue Ruling Four* addresses defendants’ arguments concerning the sufficiency of plaintiffs’ claims and allegations against them. Specifically, the Court considers below:

(1) whether plaintiffs were required to append proposed amended complaints to their motions to amend;

(2) whether a proposed defendant is sufficiently put on notice of the claims and allegations against it if the plaintiff incorporates by reference an Exemplar Complaint<sup>2</sup> in which the proposed defendant is not named; and

---

<sup>1</sup> See *Issue Ruling One* at 2 (“Future Issue Rulings are deemed to incorporate by reference this [Legal Standards] Section of Issue Ruling One.”).

<sup>2</sup> Moving plaintiffs identified “a bellwether pleading for [each] defendant or a similarly situated defendant . . . that the Amending Plaintiffs plan to base their supplemental and amended allegations and claims for relief upon.” Plaintiffs’ Roadmap at 2–4 (docket no. 5565). The Court refers to these bellwether pleadings, on which plaintiffs purport to base their supplemental and amended allegations, as “Exemplar Complaints.”

(3) whether a proposed defendant is sufficiently put on notice of the claims and allegations against it if the plaintiff is of one category (*e.g.*, a third-party payor) and incorporates by reference an Exemplar Complaint filed by a plaintiff of another category (*e.g.*, a municipality).

## Background

On May 23, 2025, the Court conditionally lifted its moratorium on substantive filings and permitted plaintiffs to file motions for leave to amend their complaints. *See Amendment Order* (docket no. 5455). Pursuant to the *Amendment Order*, thousands of plaintiffs joined one or more of fourteen separate omnibus motions for leave to add fourteen different defendants to their complaints.<sup>3</sup> Those fourteen defendants fall, generally, into three categories: (1) pharmacy benefit managers (“PBMs”); (2) manufacturers of generic opioids (“Generic Manufacturers”); and (3) Pharmacies. *See Issue Ruling One* at 13–14 (briefing chart) (docket no. 6306).

The Court set certain conditions on plaintiffs’ filing of motions for leave to amend. *See Amendment Order* at 1 (“the Court will lift the moratorium to permit plaintiffs to move to amend their complaints; however, the PEC and plaintiffs must adhere to the following directives.”). The Court required each defendant-specific motion to “address[] plaintiff-specific facts and law against that defendant.” *Id.* at 2. Specifically, the plaintiff-specific portion of each motion was required to contain:

(1) a list of *all* cases seeking to add that defendant; (2) any plaintiff-specific factual allegations pertinent to *each individual* case; (3) any jurisdiction-specific claims the plaintiff seeks to add to (or dismiss from) *each individual* case; and (4) good cause for the proposed amendments, stating with particularity the reasons amendment should be permitted in *each individual* case.

*Id.* (emphasis in original).

---

<sup>3</sup> Of course, not all—and in fact maybe none—of the moving plaintiffs joined *all* of the omnibus motions to amend.

In their effort to comply with these requirements, plaintiffs: (1) provided, with each motion, a chart listing every plaintiff and case that joined the motion; (2) set forth in those charts “relevant plaintiff-specific information,” such as (a) the State and County in which the plaintiff is located, and (b) where applicable, certain opioid-related, market-share information derived from “new” ARCOS data;<sup>4</sup> (3) identified “a bellwether pleading [Exemplar Complaint] for that defendant or a similarly situated defendant . . . that the Amending Plaintiffs plan to base their supplemental and amended allegations and claims for relief upon”; and (4) provided collectively, in each motion, a discussion of “[the] circumstances that demonstrate good cause for all plaintiffs, or for all plaintiffs in a particular subset.” Plaintiffs’ Roadmap at 2–4 (docket no. 5565).

With respect to the Court’s requirement that plaintiffs must set forth in their omnibus motions to amend “any jurisdiction-specific claims the plaintiff seeks to add to (or dismiss from) *each individual* case,” *Amendment Order* at 2 (emphasis in original), Plaintiffs state that *if* the Court grants any individual plaintiff leave to amend its complaint, that plaintiff would then “file supplemental and amended allegations that will add to, but not supersede or replace, the plaintiff’s existing operative pleading.” Plaintiffs’ Roadmap at 3. Further, Plaintiffs explain that “[t]he jurisdiction-specific claims, and the basis for them, are in the underlying operative pleading originally filed by each plaintiff, which will remain operative even when supplemented by the additional allegations and claims.” *Id.*

---

<sup>4</sup> ARCOS—which stands for Automation of Reports and Consolidated Orders System—“tracks every single opioid pill from its point of manufacture, through the distribution chain, to its destination at a doctor’s office, hospital or pharmacy.” Docket no. 5115 at 2. Before August 14, 2023, Plaintiffs only had access to ARCOS data from the years 2006–2014. On July 14, 2023, the Court granted a motion by the PEC “seeking to enforce a subpoena it served upon the United States Drug Enforcement Administration (“DEA”) for production of *updated* ARCOS data.” *See id.* at 1 (emphasis added). On August 14, 2023, the DEA produced to the PEC raw ARCOS data from 2015–2019, which until that time had not been available to plaintiffs. *See* decl. of P. Mougey at 2 (docket no. 5565-2). This updated ARCOS data allowed plaintiffs to identify “additional entities, beyond those they already named as defendants, [that plaintiffs assert were] among those responsible for the continuing opioid crisis in their jurisdictions.” Plaintiffs Roadmap at 15–16.

## Analysis

Defendants argue plaintiffs' proposed application of the Court's procedures for amending their complaints is insufficient to put defendants on notice of the claims against them, and offer three primary bases for this assertion.

*First*, defendants insist that “the failure to supply a proposed amended complaint is, by itself, grounds to deny leave for [*sic*] amend.” PBM Part I Response at 19 (docket no. 6163). The Court finds this position is not well-taken. Defendants are correct that submission by plaintiff of a proposed amended complaint is the normal procedure. *See Kuyat v. BioMimetic Therapeutics, Inc.*, 747 F.3d 435, 444 (6th Cir. 2014) (“Normally, a party seeking an amendment should attach a copy of the amended complaint.”). Doing so does aid judicial review. Nonetheless, the Federal Rules of Civil Procedure do not explicitly require a plaintiff to submit with a motion to amend a proposed amended pleading. To the contrary, Rule 15, as interpreted by the Sixth Circuit, requires only that “the court must have before it *the substance* of the proposed amendment.” *Beydown v. Sessions*, 871 F.3d 459, 469 (6th Cir. 2017) (emphasis added); *see also Moore v. State of Ind.*, 999 F.2d 1125, 1131 (7th Cir. 1993) (“*the motion itself* may be acceptable so long as it puts the opposing party on notice of the content of the amendment”) (emphasis added) (citing Charles A Wright, *et al.*, 6 Fed. Prac. & Proc. Civ. § 1485 (2nd ed.)).

Here, the procedure proposed by plaintiffs is sufficient to provide defendants and the Court with the substance of the proposed amendments. This is especially true in the broad context of this MDL, where each existing complaint is hundreds of pages long and gives every defendant a substantial and particularized understanding of plaintiffs' claims and allegations. In view of the colossal resources that would be required for plaintiffs to create and attach thousands of proposed individual amended complaints, the Court finds the PEC's proposed procedure a reasonable

balance between the efficiency goals of an MDL and the required retention of each individual case's character.

Accordingly, plaintiffs' failures to attach thousands of proposed amended complaints—one by each plaintiff to its motion for leave to amend—is not, by itself, fatal to their motions for leave to amend.

**Second**, defendants argue a plaintiff's reference to and incorporation of an Exemplar Complaint in the plaintiff's motion to amend is, in some circumstances, still insufficient. Specifically, defendants assert a proposed defendant is not provided with adequate notice of the claims and allegations against it if the plaintiff incorporates by reference an Exemplar Complaint in which the proposed defendant is not even named and in which there are no defendant-specific factual allegations. *See, e.g.*, Generic Manufacturers' Joint Response (docket no. 5899) at 17, n.9 (noting that plaintiffs intend to supplement their claims through incorporation of the *City of San Francisco* Track 4 bellwether complaint, but "the *City of San Francisco* plaintiffs have not sued any of the Generic Manufacturers;" thus, the *City of San Francisco* Exemplar Complaint provides no defendant-specific allegations to any Generic Manufacturer). Here, the Court agrees.

Plaintiffs' approach to amendment in this instance tests the balance between the efficiency goals that justify multidistrict litigation and the fundamental fairness owed to each litigant. In effect, plaintiffs' plan is to stitch together: (1) jurisdiction-specific claims from the underlying operative complaint; (2) a few, insubstantial defendant-specific factual allegations from the motion for leave to amend; and (3) generalized, non-defendant-specific allegations of wrongful conduct from the incorporated Exemplar Complaints. This approach falls short: with regard to many of the proposed new defendants, the **totality** of these proposed claims and allegations simply do not identify or even suggest misconduct specific to that defendant.

The Court's *Amendment Order* cannot be read to permit plaintiffs to rely on Exemplar Complaints that contain *general* factual allegations of misconduct against certain named defendants broadly, but no *specific* factual allegations whatsoever that the proposed new defendant violated the CSA or engaged in other prohibited conduct. As the Sixth Circuit has made clear, efficiency must not become a substitute for the pleading discipline required by the Federal Rules or by this Court's directives. *See In re CVS*, 956 F.3d 838, 845 (6th Cir. 2020) ("a party's rights in one case [cannot] be impinged to create efficiencies in the MDL generally.").

As described in *Issue Ruling One*, Rule 15's liberal amendment standard incorporates principles of fairness and notice. Those principles are strained to excess when, as with several motions to amend here, a plaintiff merely incorporates by reference a complaint that neither names nor alleges any *specific* misconduct by a proposed defendant. The Court concludes plaintiffs' approach fails in some cases to satisfy the requirement imposed by Rule 15 that the Court and the proposed defendant "have before [them] the substance of the proposed amendment." *Beydown*, 871 F.3d at 469. Of no less importance, plaintiffs' approach also fails to meet the procedural requirements this Court imposed as a condition of lifting its moratorium (quoted at page 2 above).

The Court is mindful that MDL proceedings, by their nature, often rely upon representative pleadings and coordinated motion practice. *See In re CVS*, 956 F.3d at 845 (the Court retains "broad discretion to create efficiencies and to avoid unnecessary duplication in its management of pretrial proceedings in the MDL."); *see also Short Form Order* at 3 ("The goal of the Short-Form Complaint is to streamline the amendment process.") (docket no. 1282). But the MDL process cannot be used to excuse a complete absence of particularized allegations of wrongdoing. Plaintiffs

were required to provide something more.<sup>5</sup> At this late stage of the MDL, simply stating a defendant has an opioid market share above 5% is not sufficient where there are no other specific factual allegations in the motion for leave to amend or the Exemplar Complaint indicating the defendant engaged in any prohibited conduct.<sup>6</sup> By contrast, when the Exemplar Complaint includes specific allegations of wrongful conduct by the proposed new defendant, the incorporation by reference of those allegations, combined with the basic factual allegations in plaintiffs' motion, is sufficient to satisfy the requirements of Rule 15.

Thus, although the Court concludes each plaintiff is not required to attach an individualized proposed amended complaint, plaintiffs were obligated, at a minimum, to have made (or incorporated by reference via Exemplar Complaint) *some* defendant-specific factual allegations that could plausibly support a finding that the proposed new defendant, itself—and not a different

---

<sup>5</sup> Plaintiffs seek to excuse the absence of defendant-specific allegations by referring to the Court's prior use of the short-form amendment process in 2019. *See, e.g.*, PEC Reply to Generic Manufacturers Joint Response at 23–24 (docket no. 6171). During the short-form amendment process, the Court stated that “purported deficiencies with the [short-form] complaints can be addressed [when the case is set for trial] by subsequent Court order.” *Short Form Order* at 3 (docket no. 1282). In contrast, as the MDL enters its ninth year, the Court ordered that “[t]his will be [non-bellwether] plaintiffs’ final opportunity to amend their complaints.” *Amendment Order* at 2. At this juncture, unless a specific case is later chosen as a bellwether, Plaintiffs may not rely on yet another, future amendment to clarify and fully state their allegations and claims. *See In re: Meijer*, 2022 WL 20701236, at \*1 (6th Cir. Nov. 10, 2022) (ruling that plaintiffs can amend their complaints when selected as a bellwether).

<sup>6</sup> Ultimately, each plaintiff proposes to combine: (1) the allegations and claims stated in its existing, operative complaint; (2) a few defendant-specific allegations set out in the motion for leave to amend; and (3) additional factual allegations and claims from the Exemplar Complaint. While the Court concludes plaintiffs’ “combination” approach *may* generally provide adequate notice to a defendant of the claims and allegations against it, plaintiffs are still obligated to provide *some* allegations that *each* individual proposed new defendant engaged in wrongful conduct. An Exemplar Complaint that does not even name the proposed new defendant obviously contains no defendant-specific factual allegations. If there are also no defendant-specific factual allegations of misconduct in the motion for leave to amend, the Court cannot grant the motion.

For many of the defendants, plaintiffs did not cite to an Exemplar Complaint that names the proposed new defendant and also did not include any defendant-specific factual allegations of misconduct in the motion for leave to amend. Instead, plaintiffs merely included a “factual background” section in the motion that contains little more than a statement that the defendant’s market share of opioid sales increased according to the updated ARCOS data. That is insufficient. One notable exception is in plaintiffs’ motion to add Generic Manufacturer Lupin: plaintiffs allege Novel, a wholly owned Lupin subsidiary, “committed violations of the CSA by failing to account for approximately 3.1 kg oxycodone, 7.7 kg hydrocodone, and 30 kg Temazepam.” Docket no. 5553 at 4. This is sufficient and the motions to amend to add Lupin will *not* be denied for failure to allege wrongful conduct.

defendant—engaged in some prohibited conduct.<sup>7</sup> A plaintiff that did not do so fails to meet the legal standard set by Rule 15 and does not meet the balance the Court must strike between efficiency in the MDL and maintenance of an individual party’s rights in each case.

*Third*, defendants argue a plaintiff’s incorporation of an Exemplar Complaint is, in some circumstances, still insufficient for yet another reason: a proposed defendant is not given adequate notice of the claims and allegations against it if the plaintiff is of one category (*e.g.*, a third-party payor) and incorporates by reference an Exemplar Complaint filed by a plaintiff of another category (*e.g.*, a municipality). Unlike the focus of defendants’ second argument above, which was on the absence of *defendant*-specific allegations, the focus of defendants’ third argument is the nature of the moving *plaintiff*. The Court concludes this third argument is not well-taken.

Defendants contend that “[t]he absence of particularized facts is especially problematic for non-municipal Moving Plaintiffs because those plaintiffs provide *no indication whatsoever* of the kind of allegations that may appear in their future amended complaints against the [defendant].” PBM Part I Response at 72 (emphasis added). But this is not true. Plaintiffs explained in their Roadmap that “[t]he jurisdiction-specific claims, and the basis for them, are in the underlying operative pleading originally filed by each plaintiff, which will remain operative even when

---

<sup>7</sup> For example, the *Cobb County* complaint includes a section for *every named defendant* that contains factual allegations specific to that named defendant. More concretely, Cobb County names CVS and alleges it “lacked a genuine suspicious order monitoring system for much of the relevant time”—conduct that, if proven, would violate the CSA. *See, e.g., Cobb County* Compl. at §I.C.5.a.i (docket no. 3787). However, there is no equivalent section in the *Cobb County* complaint making a similar specific allegation against, for example, Ahold Delhaize, even though the amending plaintiffs purport to rely on the *Cobb County* complaint to “supplement their existing pleadings with claims substantially similar to those asserted against chain pharmacies [such as CVS].” Docket no. 5566 at 1. As to Ahold Delhaize, supplementation via the *Cobb County* complaint is simply not enough, even when assessed in light of Rule 15’s “liberal amendment policy.” *Brown v. Chapman*, 814 F.3d 436, 442–43 (6th Cir. 2016).

supplemented by the additional allegations and claims.” Plaintiffs’ Roadmap at 2–4.<sup>8</sup> Between the particularized, defendant-specific factual allegations in the Exemplar Complaint and the plaintiff- and jurisdiction-specific claims (and the bases for them) in the underlying operative complaint, the proposed new defendants and the Court are sufficiently informed of the substance of the operative claims and allegations; and the Court has more than enough information to evaluate the merits of the omnibus motions. Moreover, that the defendants and the Court are sufficiently informed remains true even regarding motions filed by non-municipal plaintiffs.<sup>9</sup>

Accordingly, the Court will not deny the motions for leave to amend solely on the basis that the moving plaintiff, though not itself a municipality, incorporates by reference into its motion to amend an Exemplar Complaint filed by a municipality. This ruling applies to plaintiffs that are third-party payors, hospitals, Tribes, and so on.

## Summary

Having considered all of the parties’ arguments on the common issues discussed above, the Court: (1) **overrules** defendants’ argument that a motion for leave to amend must be denied if the plaintiff did not attach a proposed amended complaint; (2) **denies** plaintiffs’ motions for leave

---

<sup>8</sup> The Court understands this assertion—that each plaintiff’s jurisdiction-specific claims are stated in the underlying operative pleadings—to limit and define the universe of claims that each plaintiff intends to pursue. Accordingly, if leave to amend is ultimately granted, the Court will not permit any plaintiff to add additional claims that do not already appear in its underlying operative complaint. For example, if a plaintiffs’ underlying complaint does not include state-specific unfair trade practices claims, that plaintiff will not be allowed to amend to add unfair trade practices claims, whether those claims exist in the Exemplar Complaint or not. The defendants are entitled to know what claims are being brought against them.

<sup>9</sup> For example, in *Local 404 Teamsters Health Service and Insurance Plan v. Purdue Pharma*, case no. 1:18-OP-45001, the underlying operative complaint asserts claims for violations of RICO, 18 U.S.C. §1962 *et seq.* (among others). In the *Rochester* complaint—from which the TPP asserts it will supplement its underlying operative complaint with substantially identical allegations—there are ample factual allegations against the PBMs to plausibly support a RICO claim. *See* docket no. 5598 (denying PBMs’ motion to dismiss *Rochester* complaint). The Court can readily apply the factual allegations from the *Rochester* complaint to the *Local 404 Teamsters* operative complaint—and the jurisdiction-specific claims contained therein—and evaluate the merits of the Local 404 Teamsters motion for leave to amend.

to amend if the plaintiff presented no defendant-specific factual allegations, in either the Exemplar Complaint or the motion itself, that the defendant engaged in prohibited conduct; and (3) **overrules** defendants' argument that a motion for leave to amend must be denied if a non-municipality plaintiff incorporated an Exemplar Complaint filed by a municipality.

The Court notes that rulings one and three above do not mean the motions to amend filed by the relevant plaintiffs are granted, because defendants have raised other arguments upon which the Court has not yet ruled.<sup>10</sup>

As stated in *Issue Ruling One*, it now falls to the parties to meet and confer and apply these rulings to each individual case and report back to the Court by **noon on Thursday, March 5, 2026**, with their results. *See* docket no. 6306 at 11–12.

**IT IS SO ORDERED.**

/s/ Dan Aaron Polster February 12, 2026  
**DAN AARON POLSTER**  
**UNITED STATES DISTRICT JUDGE**

---

<sup>10</sup> For example, the Court has not yet addressed whether amending plaintiffs have met Rule 16's good cause standard; this will be the subject of a future Issue Ruling. In contrast, ruling two above applies to deny a plaintiff's motion for leave regardless of the merits of the parties' other arguments.