

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</u>
)	<u>AUTHENTICITY OF</u>
)	<u>PURDUE DOCUMENTS</u>

For nearly nine months, the parties in the two PBM Bellwether cases have argued over the authenticity of certain documents produced by Purdue Pharma L.P. *See* docket no. 6277 at 20-31 (Sept. 12, 2025) (transcript of parties discussing this topic with Special Master Cohen). The Special Master suggested the parties should meet and confer and, if they could not come to agreement, then: (1) Plaintiffs would file a motion *in limine* identifying the documents at issue; (2) Defendants would respond saying whether they have any reason to believe any of the documents are not authentic; and (3) Plaintiffs would then respond with their evidence that the documents are authentic. *Id.* at 25-26.¹

Following further meet-and-confers, the parties did not come to agreement, so they filed their briefs. *See* docket nos. 6412 (Plaintiffs’ Motion *in Limine*), 6433 (PBMs’ Response), and 6454 (Plaintiffs’ Reply).

Plaintiffs’ Motion asks for an Order “finding that the [213] documents identified in the attached Appendix A, all of which were produced by [Purdue] in these proceedings, are authentic.”

¹ The Special Master suggested he would rule on the motion and the parties could then object to the Court, as allowed under Fed. R. Civ. P. 53(f). The Court chooses to instead rule directly.

Motion at 1. Plaintiffs set forth a variety of arguments and evidence and assert that every single document at issue bears sufficient “indicia of reliability” to make a *prima facie* showing of authenticity. *Id.* at 7-8.

The PBM Defendants respond that they “may be willing to stipulate to the authenticity of certain documents in good faith at the appropriate time,” such as after depositions of Purdue employees. Response at 14. But PBMs do not respond to the substance of Plaintiffs’ arguments; rather, PBMs contend Plaintiffs’ Motion is “premature and procedurally improper” because a motion *in limine* should not be filed until the “trial is imminent” and should be ruled on by the transferee trial judge, not this MDL court. *Id.* at 1-2.

In reply, Plaintiffs contend it is entirely within this MDL Court’s discretion to rule now on their motion *in limine*; moreover, Plaintiffs, observe, this Court will *have to* address authenticity when assessing summary judgment motions, which will surely rely on many of the 213 Purdue documents. Reply at 3, 8. Plaintiffs also argue they “have carried their ‘slight’ burden to make a *prima facie* showing that the subject documents are authentic,” *id.* at 6 (quoting *United States v. Didani*, 2025 WL 452472, at *11 (E.D. Mich. Feb. 10, 2025)), and “the PBMs have presented no evidence that any of them are inauthentic,” *id.* at 14.

Authentication requires the proponent of the record to “produce evidence sufficient to support a finding that the item is what the proponent claims it is.” Fed. R. Evid. 901(a). “The burden of proof for authentication is slight.” *United States v. Pancholi*, No. CR 19-20639, 2023 WL 5706197, at *1 (E.D. Mich. Sept. 5, 2023); *Gregg v. Ohio Dep’t of Youth Servs.*, 661 F. Supp. 2d 842, 852 (S.D. Ohio 2009) (citing *Lexington Ins. Co. v. W. Pa. Hosp.*, 423 F.3d 318, 328 (3rd Cir. 2005)). A record’s authenticity can be established through direct or circumstantial evidence. *United*

States v. Crosgrove, 637 F.3d 646, 658 (6th Cir. 2011). The Sixth Circuit has made clear “[i]t is permissible for the judge to make a preliminary determination as to authentication, admit the evidence conditionally under Rule 104(b), and then allow the jurors to be the final arbiters of whether it was actually authenticated.” *United States v. Puttick*, 288 F. App’x 242, 246 (6th Cir. 2008). “[T]he ultimate resolution of authenticity is a question for the jury.” *Id.* at 247.

As a threshold matter, the Court agrees with Plaintiffs that, as MDL Judge, it has both the authority and good reason to rule now on the motion *in limine*. Further, the Court has examined all of the documents at issue (submitted *in camera* to the Special Master) and easily agrees with Plaintiffs’ arguments, based on the evidence Plaintiffs point to, that they have made a *prima facie* showing that each document is authentic. *See* Motion at 5-9; Reply at 5-13. As Plaintiffs observe, “Purdue’s production of its own documents, the PBMs’ documents, or documents exchanged between them [clearly] establishes *prima facie* authenticity for more than 190 of the [213] listed documents, even aside from the other indicia of authenticity [they exhibit].” Reply at 8. Indeed, 90 of the documents were sent to, received from, or written by the PBMs (or their affiliates) themselves. As to the documents authored wholly or partly by someone *other than* Purdue or the PBMs, a *prima facie* showing of authenticity is established by employee names and signatures, corporate logos and copyrights, and/or non-public contents. These indicia demonstrate the documents are what they purport to be. Finally, the Court agrees with Plaintiffs’ contention that the authenticity of at least 120 documents is further supported because they are “ancient documents” under Fed. R. Evid.

901(b)(8).²

And as Plaintiffs note, “[t]hat the PBMs have not been able to *confirm* the documents are authentic does not constitute a valid basis to *dispute* their authenticity.” Motion at 9; *see Moyer v. Gov’t Emps. Ins. Co.*, 114 F.4th 563, 568 (6th Cir. 2024) (“[P]laintiffs must do more than assert that they don’t believe that the documents are what they purport to be, at least when the documents appear self-authenticating or the defendant has submitted a sworn statement authenticating them. Plaintiffs *must support their authenticity objections.*”) (emphasis added). Here, the PBMs have not made *any* showing that any of the listed documents are *not* authentic.

Conclusion

Accordingly, the Court **GRANTS** Plaintiffs motion *in limine*, as follows. The Court rules that Plaintiffs have made a *prima facie* showing that each of the 213 Purdue documents is authentic. If the PBMs still wish to challenge authenticity of any of these documents at trial, they must raise the issue with the transferor trial judge. Specifically, unless the transferor judge rules otherwise, no less than 90 days before trial the PBMs must: (i) produce evidence casting doubt on authenticity, and (ii) raise the issue by way of motion *in limine* or motion for reconsideration.

Finally, the Court makes clear that, if PBMs assert certain critical documents are authentic

² The PBMs observe that three of the Purdue documents (Exhibits 105, 129, and 179) display some scant handwritten notes. Purdue certified these documents as business records, but it did not certify the handwriting. *See* Response at 11; Reply at 12; docket no. 6412-3 (Purdue certification) at 16). Accordingly, as to these three documents, the Court concludes Plaintiffs have made a *prima facie* showing that the documents, themselves, are authentic, but Plaintiffs have not made any showing that the handwriting is authentic. *Compare In re Chiquita Brands Int’l, Inc. Alien Tort Statute & S’holder Derivative Litig.*, 2023 WL 2137941, at *5 (S.D. Fla. Feb. 21, 2023) (instructing the defendant, which had responded to requests for admission regarding authenticity of documents, had to “clarify it cannot admit or deny the authenticity of the handwriting” on those documents).

but Plaintiffs do not agree, the PBMs are free to file a similar motion.

IT IS SO ORDERED.

/s/ Dan Aaron Polster

**DAN AARON POLSTER
UNITED STATES DISTRICT JUDGE**

Dated: June 1, 2026